

Street Art – Is it protected by copyright?

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According to the Tourism magazine, Travel + Leisure, Melbourne is one of the world's top cities for street art – indeed the scene is so big that Hosier Lane, the centre of the scene in Melbourne, has its own Trip Adviser rating. Increasingly, artists are attempting to profit off their creations and auction houses are selling their works. It is clear that there is a commercial value to street art that has not always been acknowledged. It is therefore timely to consider the legality of reproducing street art and selling the reproduction of that art. This includes through means such as photos, on clothing, repainting, posting online and putting it in exhibitions.

Many street artists have used popular images as the basis of their work however because of the previously underground nature of street art, they have avoided claims of copyright infringement. This, however, is changing along with the growing profile of the medium. Indeed, in addition to street artists being taken to Court over their use of popular images, discussion now surrounds the unauthorised use of street art. **Are you allowed to take photos or make reproductions of street art for commercial purposes?**

Although it is untested in relation to street art, there is clear law in Australia surrounding the taking of photographs for a commercial purpose. If you are photographing people for a commercial purpose, you must make sure that you have their permission to do so. However, the Copyright Act states that you are allowed to take photographs of buildings and sculptures and other artistic works of this nature without infringing copyright. Importantly, murals do not come under this exception. It is highly likely that street art would come under the same umbrella as murals and that taking photographs of street art would be seen as an infringement of copyright. Their reproduction online, therefore, would also be illegal (unless, of course that use was for fair dealing for the purposes of research or study, as is the case for this blog).

There is some law on this in the United States, where the question of whether or not you can steal graffiti art is currently a contentious issue – it is clear that there are no property rights for the artist where the work was unauthorised. World renowned street artist Banksy – whose work in Melbourne was the subject of some controversy when it was painted over by council workers (perhaps the piece was not to their liking), was at the centre of a recent United States case regarding work he had done in Detroit which was removed by the 555 artist group – ostensibly to save it, as it was attached to a ruined building and other street artists had threatened to deface it. Following the removal of the work from its original position, the group wanted to display the image in their gallery. Ultimately, it was held that the group was allowed to do so – however this was only after they had paid the owner of the building on which the work had been done US\$2,500, even though the work had a potential value of US\$100,000.

Interestingly, given the fact that it was a potentially extremely valuable work of Banksy's, his rights have not been mentioned in the commentary surrounding the case – instead the dispute centred on the people who owned the building on which the work was done, and those who removed it. It appears, therefore, that if someone wishes to reproduce street art in an exhibition, there would be nothing to prevent them from doing so – at least from the artist's point of view.

The copyright issues surrounding reproducing street art for commercial purposes – on clothing, for example – are untested in Australia and it seems like the best cause of action the artist would have would rise not under copyright law but under the Australian Consumer Law or the tort of passing off.

The crucial aspect for both of these causes of action, however, is that the artist in question would have to establish that they had a reputation that could be damaged by the reproduction of their work by a competitor. It is difficult to see what damage could be claimed by a previously anonymous street artist.

Similarly, if the artist is well known enough, then they would have grounds to bring an action under misleading or deceptive conduct if their work was, without their authorisation, reproduced for profit by someone else. It would be regarded as misleading and deceptive because it would be suggesting that there is an association between the artist and the fashion label which does not in fact exist. It is unlikely that street artists, who have for so long existed in the underground, would be regarded as well known enough that such a use of their work could cause them damage.

Overall, the laws surrounding this area of art, which, if it is produced on a property without the owner's permission is itself illegal, are uncertain and open to being tested. What is clear is that as the art becomes increasingly prominent, so to will the legal issues pertaining to it.

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