

American graffiti protection: shy until further notice

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Introduction:

Graffiti is public art that is painted in the streets on the exterior walls of buildings.¹ Some murals appear suddenly in the morning, sometimes without even seeing their creator, and usually without the permission of the owner of the wall, which typically fits with the incrimination and censure of it.² This is because it is a platform for those without one, and instead of paying huge amounts for commercial advertising space, it is enough to use spray colors to deliver the message.³ These arts appear with motives such as protest, for example.⁴ Therefore, Artists of graffiti recommend choosing a wall in a diplomatic space to paint an unprecedented message.⁵ It began in the sixties of the last century in Philadelphia and New York, before it developed and moved globally.⁶ Therefore, it is considered among the latest visual arts.⁷ Nevertheless, The United States (US) authorities have considered graffiti as a pandemic harmful to society that needs to be fought.⁸ As for the media, its artists have shown that they are a subversive component of society.⁹ However, graffiti was considered by some to be a fine art, since it was seen as a symbol of gentrification, since it was illegal.¹⁰ This art is secretly created on the walls of properties because it is easy to do, which prompted it to be considered a distortion of the landmarks of cities and real estate.

¹ Emma C. Peplow, 'Paint on Any Other Canvas: Closing a Copyright Loophole for Street Art on the Exterior of an Architectural Work' (2021) 70 Duke LJ 885, 889.

² Alison Young, 'From object to encounter: Aesthetic politics and visual criminology' (2014) 18 Theoretical Criminology 159, 162.

³ James A. Hayes, 'Copyright beyond Law: Regulating Creativity in the Graffiti Subculture, by Marta Iljadica' (2017) 54 Osgoode Hall L J 655, 661.

⁴ Maureen E. Brady, 'Property and Projection' (2020) 133 Harv L Rev 1143, 1144.

⁵ Hayes (n 3), 665.

⁶ Katya Assaf-Zakharov & Tim Schnetgoke, 'Reading the Illegible: Can Law Understand Graffiti?' (2021) 53 Conn L Rev 117, 119.

⁷ Sonya G. Bonneau, 'Ex Post Modernism: How the First Amendment Framed Nonrepresentational Art' (2015) 39 Colum JL & Arts 195, 230.

⁸ Zakharov & Schnetgoke (n 6), 120.

⁹ Ibid.

¹⁰ Connell Vaughan, 'Protecting Art In The Street: A Guide To Copyright In Street Art And Graffiti, By Enrico Bonadio. Stockholm: Dokument Forlag' (2021) 51 The Journal of Arts Management, Law, and Society, 346.

According to graffiti artists, increasing the number of graffiti drawings by a specific artist, means increasing their entitlement to respect and good reputation.¹¹ However, street art and graffiti have many things in common, i.e. that both aim to alter the appearance of the surroundings in an otherwise unauthorized manner.¹² That produced a street revolution in the art world, and what was forbidden, by law, prevailed, before it gained an undeniable legitimacy.¹³ For this reason, some graffiti artists see that this art in particular opposes its isolation from daily life, and challenges the authorities.¹⁴ On the other hand, according to Katya Assaf-Zakharov and Tim Schnetgoke, some graffiti are now being sold in museums at exorbitant prices, so it should not be surprising to see a 'highly regarded national museum' marketing the work of a deceased or imprisoned graffiti artist, having fallen victim to this art.¹⁵ So, despite efforts to constrain it, graffiti art is expanding.¹⁶ So, once considered against the law, the graffiti artist today earns money, reputation and respect as their work increases and the uniqueness of their messages changes the appearance of the place, and while the authorities have tried to fight it, graffiti has responded by becoming a voice.

This paper critically discusses the legislative shortcomings that graffiti provokes in the field of intellectual property (IP) and argues that graffiti art in the US suffers from difficulty and a lack of complete and clear protection for it as art, artists, goals, and results. Part I reviews some of the laws to which the law has been annexed to gain partial protection, Part II discusses the protection of graffiti and the challenges associated with this principle, Part III reviews two of the most famous cases of graffiti in the US, and Part IV presents a conclusion.

Part I: Laws partially protect graffiti:

¹¹ Hayes (n 3), 663; 667

¹² Young (n 2), 163.

¹³ Dan Karmel, 'Off the Wall: Abandonment and the First Sale Doctrine' (2012) 45 Colum JL & Soc Probs 353, 356.

¹⁴ Zakharov & Schnetgoke (n 6), 120.

¹⁵ *Ibid.*

¹⁶ *Ibid.*, 119.

There are various American laws that do not explicitly pay attention to graffiti, but this art has been timidly attached to them.¹⁷ However, the protections were not what the artists had hoped for, one of these laws being the Visual Artists Rights Act (VARA), which, often, evades the definition of public art legally, that deprives public artists of protection in general, and moral protection in particular, thus siding with the owners of properties painted with public art.¹⁸ Not only this, but one of the conditions for the artwork to be covered under the VARA umbrella is that the work be 'recognized state', without specifying a clear definition for that.¹⁹ Rather than reducing its possibility, VARA made a collision possible between the rights of the property owners and the moral rights of the artist, exposing this collision to an escalation to the judiciary.²⁰ Among the moral rights protected by artists under VARA is 'prevent any destruction of a work of recognized state'.²¹ Therefore, VARA protects the artist's work from mutilation, destruction or other undesirable modification as long as the artist is alive, provided the work has acquired the 'recognized status'.²² The artist is thus afforded exclusive privileges such as judicial protection of their art until they die, but, after death, the property owner is then allowed to destroy or modify the work, without regard to the artist's heirs.²³ In support of the foregoing, according to Emma C. Peplow, in 2020, artists were compensated 6.75 million for the destruction of 45 artworks deemed 'recognized state' in Brooklyn, where they were found eligible for VARA protection.²⁴ While VARA partially withdraws from the artist's protection, it offers the privilege of protection as long as the artist is alive, but only on the condition that the artwork fulfills unclear conditions.

Specifying whether or not the property owner intends to demolish the property after a period of time, and in order to qualify for VARA protection, the graffiti

¹⁷ Emma G. Stewart, 'United States Law's Failure to Appreciate Art: How Public Art Has Been Left out in the Cold' (2020) 97 Wash U L Rev 1233, 1234.

¹⁸ *Ibid.*

¹⁹ Shane Michael Burke, '5 Pointz down: The New York District Court Ruling on Graffiti Mecca' (2014) 4 Queen Mary J Intell Prop 226, 228.

²⁰ Thomas A. Shelburne, 'When Art Might Constitute a Taking: A Takings Clause Inquiry under the Visual Artists Rights Act' (2021) 23 Vand J Ent & Tech L 919, 942.

²¹ Drew Thornley, 'The Visual Artists Rights Act's Recognized Stature Provision: A Case for Repeal' (2019) 67 Clev St L Rev 351, 352.

²² Shelburne (n 20), 920.

²³ Griffin M. Barnett, 'Recognized Stature: Protecting Street Art as Cultural Property' (2013) 12 Chi-Kent J Intell Prop 204, 214.

²⁴ *Cohen v. G&M Realty L.P.*, 320 F. Supp. 3d 421, 447 (E.D.N.Y. 2018), *aff'd sub nom. Castillo*, 950 F.3d at 173.

artist must obtain or be entitled to the respective property owner's written consent before commencing their artwork and use of the wall.²⁵ Also, VARA protects the artist's work from any neglect, destruction, alteration or mutilation that harms the artist's reputation and honor, provided that the work is recognized.²⁶ But this law does not protect the works related to the place, which automatically excludes many works of graffiti art, because they are embedded in the walls of real estate, meaning that removing one of them modifies, distorts, or destroys the other.²⁷ So Griffin M. Barnett argues that VARA and similar laws should be amended so that art visible to the public is protected, as well as explicitly recognized and protected, with the importance of linking the work to the site objectively and explicitly.²⁸ Additionally, legislators, jurists and their sectors should follow the artistic point of view to understand public art, in order to strengthen and create adequate protection, because the artistic perspective will help reform VARA, as following this approach will help awareness of the value of artistic expressive capabilities.²⁹ VARA aims to recognize works of art, seeking to protect their beneficial effects on the mental and spiritual health of those around them.³⁰ So, under VARA, a graffiti artist has the right to control their artwork if someone else wants to take advantage of them.³¹ It does protect moral and in-kind rights more than under copyright law.³² The importance of these rights often emerges after the unauthorized distribution, alteration or destruction of artwork.³³ So, rather than a societal concern towards the cultural value in artworks, VARA seeks to protect the rights of artists as individuals.³⁴ Some of the requirements for obtaining VARA protection challenge some of the principles of graffiti, the fractionality and speed of the graffiti on the wall.

Among the other laws is the Copyright Act, which gave an institutional dimension to street art.³⁵ This art, especially graffiti, has long combined

²⁵ Sara Rosano & Birgit Kurtz, 'Tear down This Wall: The Destruction of Sanctioned Street Art under U.S. and Italian Law' (2020) 30 *Fordham Intell Prop Media & Ent LJ* 767, 803.

²⁶ Barnett (n 23), 206.

²⁷ *Ibid*, 213.

²⁸ *Ibid* 211.

²⁹ Stewart (n 17), 1264.

³⁰ Barnett (n 23), 210.

³¹ Shelburne (n 20), 920.

³² Barnett (n 23), 207.

³³ Peplow (n 1), 891.

³⁴ Barnett (n 23), 210.

³⁵ Vaughan (n 10), 346.

branding, creativity, and literary writing.³⁶ However, in order for a work of art to be eligible for protection under this law, it must obtain the criteria of originality and fixation on a tangible medium.³⁷ This law gives visual art authors rights in two ways: First, under VARA, the creator is granted the right to protect the artist's reputation by preventing modification of the work, choosing how their name is associated with the work, and managing the artwork, provided it is linked to a judicial report and that the work is occupied 'work of recognized stature', and ; Second, under § 106 of the Copyright Act, the creative author is granted exclusive rights associated with the work, the most important of which is the right to prevent copying of the work, provided that it is placed on tangible medium, as well as fulfilling the principle of originality.³⁸ Additionally, public art images, when shared, do not require the public interest to have a full right to create copies of copyrighted works.³⁹ However, when, say, a graffiti is secretly copied and installed without permission, whoever did so must compensate the copyright owner.⁴⁰ Even the creators of visual arts have, under the copyright Act, the exclusive right to display their work as long as they are alive, with 70 years after their death.⁴¹ James A. Hayes argues that many creative artworks 'exceed copyright's bounds', and considers this a loophole in the law.⁴² This highlights that content and quality are not considered as barriers when following the originality criterion in copyright, as the morality of artwork does not invalidate copyright protection.⁴³ On the other hand, some artists run risks when seeking copyright protection.⁴⁴ For example, one of the goals of graffiti writing is to conceal the artist's identity in order to protect themselves from any penalties related to their often illegal artistic activity, and this sometimes stands as an obstacle when submitting graffiti work to procedures for obtaining copyrights.⁴⁵ Contrasting with the principle of concealing the artist's true

³⁶ Hayes (n 3), 658.

³⁷ Burke (n 19), 227.

³⁸ Peplow (n 1), 890.

³⁹ Mary LaFrance, 'Public Art, Public Space, and the Panorama Right' (2020) 55 Wake Forest L Rev 597, 645.

⁴⁰ *Ibid*, 643.

⁴¹ Barnett (n 23), 206.

⁴² Hayes (n 3), 656.

⁴³ Vaughan (n 10), 346.

⁴⁴ *Ibid*.

⁴⁵ Hayes (n 3), 657.

identity, and implementing the conditions for obtaining protection under this law, graffiti grants such privileges as protection 70 years after the artist's death.

Additionally, among those laws is The Intellectual Property Act (IPA), which defines property, as a concept, with all tangible and intangible things.⁴⁶ To align with emerging interests, this law is constantly updated, with the aim of supporting useful art and science.⁴⁷ However, for various reasons, some graffiti artists lag behind formal means of IP protection, seeing that IPA loopholes are filled by rules and norms.⁴⁸ Some graffiti, which is not wholly or partly regulated by law, is based on informal IP legislation.⁴⁹ This law only protects the artist's right to their own graffiti, without directly protecting the actual graffiti work.

Part II: Graffiti protection:

There is a clearly contradictory social position on the issue of the Illegal graffiti.⁵⁰ The unauthorized or illegal graffiti has become a phenomenon which existence cannot be ignored.⁵¹ Although it is, this does not mean that it is misused or exploited.⁵² However, official publication laws, such as the IPA, exclude illegal graffiti.⁵³ Because of the often illegal nature of their drawings, many graffiti artists are being treated unfairly when seeking to protect their work.⁵⁴ In fact, the law sometimes ignores the protection of some influential graffiti paintings, due to their political, religious, or other content, and law may considerate it illegal because of that.⁵⁵ Some legalists see no need to protect illegal graffiti under any IPA.⁵⁶ This view highlights the absence of an understanding relationship between legalists and graffiti as art, artists, and goals.⁵⁷ In fact, due to the failure of legal experts to see the creative arts, a fog

⁴⁶ H. A. Amankwah, 'The Relevance of Traditional Knowledge in the Socio-Economic System' (2020) 26 James Cook U L Rev 31, 54.

⁴⁷ Al Roundtree, 'Graffiti Artists Get Up in Intellectual Property's Negative Space' (2013) 31 Cardozo Arts & Ent LJ 959, 993.

⁴⁸ Ibid, 992.

⁴⁹ Ibid, 961.

⁵⁰ Zakharov & Schnetgoke (n 6), 120.

⁵¹ Sheldon A. Evans, 'Taking Back the Streets - How Street Art Ordinances Constitute Government Takings' (2015) 25 Fordham Intell Prop Media & Ent LJ 685, 687.

⁵² Roundtree (n 47), 960.

⁵³ Ibid, 961.

⁵⁴ Roundtree (n 47), 961.

⁵⁵ Hayes (n 3), 662.

⁵⁶ Roundtree (n 47), 992.

⁵⁷ Hayes (n 3), 662.

emerged about the concept of some arts, such as graffiti, its creators, and how they should be rewarded.⁵⁸ Some may attribute the reason for this to the fact that jurists are still stuck, for example, in the question whether graffiti is an extension integrated into the architectural work or separate from it,⁵⁹ art and property should be involved, or the environment, sometimes as an integrated entity rather than the independence of both of them.⁶⁰ In addition, the negative legal and social responses to graffiti art are explained by concern about the meanings of the sometimes difficult-to-read writings and symbols embedded in the painting, especially those which outright evil.⁶¹ Graffiti artists do not receive the desired protection, simply because the content of the painting was in opposition to some points of view.

Because public art has complex features, works of public art, such as graffiti, are usually left with little or no protection, and they and their artists lack moral rights and are, instead, supposed to provide adequate legal protection and support.⁶² The author loses the rights to allow or prohibit the reproduction of their work, if their work is divided into an architectural work, even if it is drawn on a blank canvas.⁶³ So, instead, graffiti, as an art, deserves to be considered a legal work, and the artwork can even be restored if damaged.⁶⁴ However, although it is an important legacy, this still haunts their artists, even their paintings are whitewashed.⁶⁵ In contrast, the laws combat vandalism, in all its forms, that touch someone's property without their consent, and graffiti is seen as vandalism.⁶⁶ It should be noted, however, that when public art is destroyed, societies lose part of their heritage.⁶⁷ To prevent this from happening, Katya Assaf-Zakharov & Tim Schnetgoke suggest paying attention to graffiti and treating its content as a message that calls for a response, if for example political, with appropriate legal change, just like newspaper caricatures.⁶⁸

⁵⁸ Lior Zemer, 'Dialogical Transactions' (2016) 95 Or L Rev 141, 144.

⁵⁹ Peplow (n 1), 892.

⁶⁰ Richard Chused, 'Charging Bull, Fearless Girl, Artistic Composition, and Copyright' (2020) 10 NYU J Intell Prop & Ent L 43, 90.

⁶¹ Young (n 2), 162.

⁶² Stewart (n 17), 1234.

⁶³ Peplow (n 1), 892.

⁶⁴ Zakharov & Schnetgoke (n 6), 120.

⁶⁵ Ibid.

⁶⁶ Barnett (n 23), 208.

⁶⁷ Cathay Y. N. Smith, 'Community Rights to Public Art' (2016) 90 St John's L Rev 369, 370.

⁶⁸ Zakharov & Schnetgoke (n 6), 153.

Unclear graffiti is seen as not worthy of protection, although great artists over the past century have mastered drawing blurred paintings, but because they are drawn on paper and frames that have been protected, which leaves the legacy of graffiti unprotected, and exposes it to collapse and disappearance.

Graffiti, as public non-representational art, deserves legal protection.⁶⁹ Therefore, some art is protected by the First Amendment to the US Constitution, and nonrepresentational art is an essential case of expression protected by this amendment.⁷⁰ However, some artists may avoid liability by using the freedom of expression mentioned in the First Amendment.⁷¹ Nevertheless, the US judiciary looks at the extent to which art institutions recognize the graffiti artist, and the commercial value factor of their artwork.⁷² In order for a work to acquire the right of protection under copyright, there are many requirements that must be applied, the most important of which is that the author or artist must unite conversations and ideas in a creative way.⁷³ In addition, the originality criterion is among the most important criteria for a graffiti work's eligibility for protection.⁷⁴ With regard to freedom of expression, it is well known that the US government has always called, and continues to call, for it to be respected both internally and externally.⁷⁵ Philosophers of the principles of freedom of expression affirm that this principle is subject to conditions, including the possibility of enlightening democracy, and protecting and realizing the freedom of individual autonomy, conditions that were not fulfilled doctrinally in the First Amendment.⁷⁶ However, as they sometimes forget or ignore this, government decision makers should realize that graffiti, even if it is sometimes illegal or unauthorized, may be under the terms of freedom of expression.⁷⁷ To improve the constitution in general, Sean Flores argues that independent socio-political entities must be created, for example, and that the cultural apparatus must be

⁶⁹ Roundtree (n 47), 992.

⁷⁰ Bonneau (n 6), 196; 198.

⁷¹ Brady (n 4), 1149.

⁷² Zakharov & Schnetgoke (n 6), 120.

⁷³ Zemer (n 58), 221.

⁷⁴ Hayes (n 3), 662.

⁷⁵ Sean Flores, "'You Write in Cursive, I Write in Graffiti': How #BlackLivesMatter Reorients Social Movement Legal Theory' (2020) 67 UCLA L Rev 1022, 1025.

⁷⁶ Bonneau (n 6), 197.

⁷⁷ Kelly Oeltjenbruns, 'Legal Defiance: Government-Sanctioned Graffiti Walls and the First Amendment' (2018) 95 Wash U L Rev 1479, 1499.

democratic.⁷⁸ The art that sits on the throne of freedom of expression is free to protect, and it is worthwhile for technicians specialized in it to see it at the departments concerned with providing protection, so that they can understand the message of the painting and analyze its meanings, thus protecting it as befits.

Additionally, the American public has long questioned whether liberalism, democracy, law and the constitution hold gains, such as freedom of expression, as promised and meaningful.⁷⁹ In 2015, the Ferguson Police Department was convicted of abuses against black city dwellers, including violating the First Amendment to the US Constitution, and clearly fighting and banning graffiti, so it should not be surprising to see the rise of uprising movements such as the #BlackLivesMatter movement in 2020⁸⁰ As a product and effect of the oppression of a major section of the American social fabric, even in its graffiti, the sound of its freedom is not heard.⁸¹ The employees of this art may explode indefinitely, between riots, abuse, rebellion or others, if they are faced with ignoring the laws instead of taking care of their arts.

Some places are known and preserved with artworks preserved in them.⁸² Some companies even adopt graffiti art for the tourism, food and fashion industries.⁸³ However, in laws the concept of "art" must balance the interests of property owners, public artists, and members of society.⁸⁴ As the artwork either partially or completely controls the public or natural space.⁸⁵ It is well known that, from antiquity until today, the land, above and below, has remained important,⁸⁶ and in order to reduce the property owner's control over the surfaces of their land and their estates, Katya Assaf- Zakharov and Tim Schnetgoke suggest a change in the property rights law.⁸⁷ Among the reasons why some people follow this doctrine is that the importance of land increases

⁷⁸ Flores (n 75), 1027.

⁷⁹ Ibid.

⁸⁰ Ibid.

⁸¹ Ibid, 1026.

⁸² Smith (n 67), 370.

⁸³ Vaughan (n 10), 346.

⁸⁴ Stewart (n 17), 1234.

⁸⁵ LaFrance (n 39), 645.

⁸⁶ Amankwah (n 46), 54.

⁸⁷ Zakharov & Schnetgoke (n 6), 1253.

exponentially through its economic exploitation.⁸⁸ To achieve this, it is advisable to obtain implicit or explicit permission from the property owners to use the property wall to paint graffiti, which may give the artwork popularity and fame, which in turn will move to its surroundings.⁸⁹ Additionally, several issues raised the importance of obtaining written permission from real estate owners before starting to use their walls for graffiti works, which reinforces the importance of this permission compared to implicit permission.⁹⁰ Many people find that many places get lucky on the economic map just by adding a simple graffiti.

On the other hand, Dan Karmel wonders if not doing so is giving up a work of art and enough to pass it on to the landlord or others.⁹¹ This question reminds what happened in 1987, when a huge bull statue was placed in front of the New York Stock Exchange, and nearly two decades later, the city was surprised to put a statue of a little girl near the bull, both of which are similar to having been placed overnight, without the permission of the property owners or the authorities, which allowed the owner of the bull statue to claim the rights to control the location and shape of both statues.⁹² Nuisance protection laws protect the owner and their interests from illegal exploitation.⁹³ Graffiti artists express their message by taking away the control and supremacy of the owners, by exploiting the external appearance of the property.⁹⁴ However, various states have tried to introduce penalties and laws to curb graffiti, but, while seeking to punish the artist, these laws also seek to punish property owners if they do not remove graffiti from their property walls.⁹⁵ Such laws affect the constitutional rights of landlords to free use of their property as they wish, since from the very beginning of the US, private property has been considered among the most essential necessities of building a free society, without losing sight of the possibility that property value may be damaged when the state forces the owner to remove graffiti.⁹⁶ In this respect, Drew Thornley recommends that property be given, as a rule, superiority to the rights of

⁸⁸ Amankwah (n 46), 54.

⁸⁹ Smith (n 67), 370.

⁹⁰ Barnett (n 23), 208.

⁹¹ Karmel (n 13), 377.

⁹² Chused (n 60), 44.

⁹³ Brady (n 4), 1148.

⁹⁴ *Ibid.*, 1214.

⁹⁵ Evans (n 51), 688.

⁹⁶ *Ibid.*

traditional graffiti artists, with regard to priority of importance, in order to avoid the inviolability of property, and also recommends that property owners, in order to avoid having any liability against them, refuse to allow these arts merge with their possessions from the beginning, with a notice board that prevents this, for example.⁹⁷ Including the right to destroy their property, Drew demanded that the rights of property owners take precedence over the moral rights of graffiti artists.⁹⁸ It is legislatively illogical for the state to gain control over freedom of expression or housing in any way. Instead, it would have been better for the laws and rights to be facilitated, whether for the artist or the property owner, in order for both of them to obtain the desired protection.

There is no explicit way to relieve aggrieved landlords of infringing nuisance and property restrictions, which also leaves them without an express solution.⁹⁹ Indeed, finding graffiti on the walls of someone's property has become similar to discovering oil, in the sense that many responsibilities arise, the simplest of which is cleaning up the resulting mess.¹⁰⁰ After they discover unauthorized work on their walls for a reasonable time, some laws may prohibit property owners from taking any legal action against it.¹⁰¹ So the law must balance the interests of property owners and graffiti artists.¹⁰² Section 113(d) of VARA has protected artworks that are hardly removed from the building, such as graffiti.¹⁰³ Therefore, to avoid legal escalation of compensation matters, the graffiti artist has the right to receive a notice of sufficient time to transfer their drawing from ownership, if the owner wishes to demolish their property.¹⁰⁴ Where a work of art cannot be removed from property without damage to the artwork, such as graffiti, or there is no documented waiver by the artist, courts and Congress must strive to balance moral rights, referred to in VARA, with economic property rights.¹⁰⁵ Similarly, if two artworks are attached, one of which is only protected by copyright, the author of the protected one remains the holder of the right to protect their work as long as the other unprotected exists offline, so assuming

⁹⁷ Thornley (n 21), 352.

⁹⁸ *Ibid.*

⁹⁹ Brady (n 43), 1149.

¹⁰⁰ Evans (n 51), 687.

¹⁰¹ Barnett, (n 23), 210.

¹⁰² Rosano & Kurtz (n 25) 803.

¹⁰³ Shelburne (n 20), 920.

¹⁰⁴ Rosano & Kurtz (n 25) 803.

¹⁰⁵ Shelburne (n 20), 921.

that a graffiti is attached to an external wall, it will be legally protected if it is considered separate from the building.¹⁰⁶ Realtors, artists and legal professionals must work together to determine a strategy that balances the benefit of the property owner and the artist, which will create a consensus-based law.

Part III: general cases:

Several cases associated with graffiti have been raised in recent years, perhaps the most important being the 5 Pointz building, which, after being an industrial facility, has been turned into a graffiti haven.¹⁰⁷ Before it was demolished in 2013, its assorted graffiti walls were known as one of New York's top tourist attractions.¹⁰⁸ These colorful walls also brought in tourists from all countries.¹⁰⁹ When the 5 Pointz building's graffiti artists learned that the building's owner had decided to demolish it, they, in a first-of-its-kind court precedent, attempted to prevent it 'under the moral rights provisions of the [...] VARA'.¹¹⁰ It was hoped that 5Pointz's graffiti would be protected with a US copyright legal perspective, but it was too late and that spatial wealth of art was destroyed before the desired protection could be obtained.¹¹¹ However, for the first time also, graffiti artists won this case, and received a heavy financial compensation after the property owner violated their moral rights, meaning that the moral rights of the art prevailed over the rights of the property owner.¹¹² The owner of 5Pointz could have refused to allow artists to paint on these walls from the start, but the Landlord preferred to remain silent when it was best to speak, so their silence was tacitly accepted by law.¹¹³ After that case, 5Pointz gained protection.¹¹⁴ So, the right of the community trumps the right of the individual, when it comes to a popular inheritance in a residential neighborhood or, as in 5 Pointz, a property

¹⁰⁶ Peplow (n 1), 892.

¹⁰⁷ John Bicknell, 'Is Graffiti Worthy of Protection: Changes within Recognized Statute Requirement of the Visual Artists Rights Act' (2014) 17 Tul J Tech & Intell Prop 337, 337.

¹⁰⁸ Burke (n 19), 226.

¹⁰⁹ Oeltjenbruns (n 77), 1500.

¹¹⁰ Burke (n 19), 226.

¹¹¹ Bicknell (n 107), 351.

¹¹² Castillo et al. v. G&M Realty L.P. (2020).

¹¹³ Thornley (n 21), 371.

¹¹⁴ Bicknell (n 107), 351.

left unused, thus transferring the right to authorize the destruction of the property, which contains this heritage, from the individual to the community.¹¹⁵ If the property owner is not satisfied that their property has been defaced with graffiti, he must not remain silent, and instead directly seek to remove it legally.

Another case was raised after a woman passed by a trash can painted with graffiti in one of the episodes of the "Vinyl" series, which prompted a graffiti artist to sue the series on the grounds that he is the owner of this drawing, and that the series did not obtain a license to show their work, because the trademark rights and its printing and publishing was violated by this series.¹¹⁶ However, the artist lost the case, as the court did not see that this artwork needed protection or a license because the graffiti artist failed to prove that the violation was not just copying a subversive artwork, as it is accepted that the owner of the IP of these drawings is the one who Burden of Evidence.¹¹⁷ Mary LaFrance considers, in this respect, that the public, whoever they are, has the right to photograph in the street with their back a mural, whether for a media campaign or otherwise this is one of the purposes of making this art available in the street to the public, otherwise the artist would have painted it at home.¹¹⁸ It is worth developing artists' awareness of the necessity of linking their graffiti drawings to official documents and laws that preserve their rights, in order to prevent losing their art rights.

Part IV: Conclusion:

For a while, graffiti was considered a distortion that carried an insignificant message and sprang up suddenly on walls. However, with the passage of time, artists of this type of art have gained reputation and respect for their unique mural artwork, which has developed and sometimes bears messages that seek to impose a new ostensible and democratic reality, and despite attempts to kill this art, it resisted until it became a voice. Unexpectedly, this voice did not earn its place in US legislation, and is now shyly included in laws not designed for it

¹¹⁵ Smith (n 67), 370.

¹¹⁶ (2018) 34 Ent & Sports Law 34, 34.

¹¹⁷ Gayle v. HBO, Inc. - No. 17-CV-5867 (JMF), 2018 U.S. Dist.

¹¹⁸ LaFrance (n 39), 644.

but because nowhere else can protect it. Which criticizes the ignoring and neglect of the American legislator that many places gain their fame by adding the modern artistic element, such as graffiti.

One of the laws that the US courts have given the importance of using when dealing with graffiti cases is the VARA, which gives partial and temporary protection related to the artist's life only in exchange for unclear conditions and challenges some of the principles of graffiti, the secrecy and speed of the appearance of the drawing on the wall. Also, the Copyright Act, although it is a principle of graffiti to protect it artists from being held accountable for their freedom of expression, this law opposed the concealment of the artist's true identity in exchange for granting their works privileges including protection for 70 years after the artist's death. In addition to the IPA, which aims to protect the artist's right to graffiti, not to protect it as a drawing. These laws that sometimes oppose the principles of this art and provide incomplete protection at other times question the seriousness of the American legislator in giving this art its full legal right.

Instead of relying on some jurists unfamiliar with the dimensions and aesthetics of graffiti art, real estate experts should be given the opportunity to help create a law that does not diminish its right. There are reasons to create strategic laws that are compatible with the modern era and compatible with the views, in which street arts have become competitive with others. These laws must balance strategically between the benefit of the artist and the owner of the property in order to prevent an increase in the void between these parties.

According to the constitution, it is not permissible to bully the freedom of expression of all kinds. While an incomprehensible painting is protected simply because it is drawn within a frame and on paper, graffiti is seen as not worthy of protection because its message is unclear or opposing an opinion, which leads US law to ignore the consideration of this art under the freedom of expression clause. The process must be reversed before the lovers of this art become impatient, which may lead to an artistic and cultural uprising, of undefined form and dire consequences, if they continue to face disregard for laws instead of doing their part to protect their art.

Although the world is on the verge of 2022, there is still an unfair absence in the US of adequate protection for this public art and its affiliates, given its nature and principles. The reason for this is that there is a large gap between the American law, the graffiti and their affiliates, which is detrimental to the democracy of the free artistic voice there.

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