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**“Navigating Intellectual Property Rights in Legal Framework”****TITLE: Street Art: The Concept of Community Ownership**

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**ABSTRACT**

Street art has evolved over the years, representing many cultures, communities, and feelings. The underlying idea is that art should be accessible to all and not just people who have the means to place it in galleries. Sassoon Docks, Mumbai represented the lives of fishermen's communities. People from all over the world have worked on it. Recently, a Mexican artist challenged a mural which was used by a general insurance company. The fundamental question which arises here is who can claim intellectual property on it, the municipal bodies? or the artist? or the agent commissioning it? and when such art is placed in the public domain does it lose its copyright claims? There are two basic arguments- no copyright at all or the copyright of the creator. With the development of technology, a piece of art could be easily reproduced and put forward for other uses.

This paper rejects both the above claims and introduces the concept of community ownership. When artists work on such things, they earn goodwill. The creator should not get the ownership rather it should be with the people for whom it was created. This paper breaks the existing copyright laws and introduces the concept of community ownership. The art needs to benefit the interest for which it is made. It cannot be commercialized.

***Key Words:*** *Street Art; Copyright; Community Ownership.*

**INTRODUCTION**

Art has moved from canvas and cave walls to the street. Street art is generally defined as “work publicly displayed on buildings, streets, or any other public surface.” Earlier termed as illegal or vandalism, now it has transformed and become an urban regeneration project, commissioned to increase area aesthetics, and means to convey a larger message. Artists like Banksy have changed the way street art has been looked at and transformed it into a political message and tourist attraction. New York, London, and Paris have street art tours. India is not

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an exception to this. Street art has found its place in India, The Lodhi Public Art Street in Delhi is one of the finest examples of urban regeneration art. Street art might increase the value of tinted places.

Customers and the public are increasingly becoming more engaged in this artistic movement. Books, CDs, T-shirts, and other products with artwork are frequently published without the original creator's consent. In response to this, artists are filing more lawsuits claiming copyright protection. The question is whether street art is entitled to copyright protection. There are no precedents in India dealing with this issue. As per the **Berne Convention**, copyright protection is not limited to a particular territory, therefore, we look at the precedent of other countries dealing with this issue.

In the US case of *Villa v. Pearson Education, Inc.*,<sup>3</sup> the copyrightability of graffiti was challenged as illegal. Pearson Education published a book featuring the work of graffiti artist Hiram Villa. Pearson argued that the work was illegal and therefore not entitled to copyright protection. The court in this case said that whether the work is copyrightable or not is a question of fact. The matter was settled out of court. The court accepted the illegal mural without deciding the copyrightability.

Peter Rosenstein published a book featuring various murals in New York City. Various artists challenged the book and sought a settlement. He argued that he did not need permission as the art was publicly placed and used the doctrine of fair use. The fact that defence under copyright was sought implies that work could have been identified as copyrightable.

In the recent Hennes and Mauritz AB (Hereafter referred to as H&M<sup>4</sup>) case the artist where H&M used graffiti as a part of an art campaign. This outraged the entire graffiti community. H&M initially sought legal action but later withdrew the proceeding due to public outcry.

Even though the courts have not explicitly held the rights of street artists. They have applied and looked into the issue from a copyright perspective, focusing on copyright defences. This paper argues that just because a piece of art is placed in a public space, it does not lose its copyrightability and become free for use.

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<sup>3</sup> *Villa v. Pearson Education*, 03 C 3717 (N.D. Ill. Dec. 8, 2003)

<sup>4</sup> FROESELAW, <https://www.froeselaw.com/post/is-street-art-and-graffiti-copyright-protected> (last visited Jan. 4, 2024)

## ANALYSIS

In this paper, we don't delve into the legality or illegality of street art. Our primary focus is on legally authorised street art. We are trying to address whether a piece of art loses its copyright when it is placed in the public domain. There is a conflict between Section 14<sup>5</sup> and Section 52 (1) (t) of the Copyrights Act, 1957<sup>6</sup>. Section 14 gives the author of the work the power to display his work in public, reproduce, store and sell his work. Section 52 defines when acts that don't constitute infringement of copyright. "Section 52 (t) the making or publishing of a painting, drawing, engraving or photograph of a sculpture, or other artistic work falling under sub-clause (iii) of clause (c) of section 2, if such work is permanently situated in a public place or any premises to which the public has access." This section deals with fair use. The two Sections are contrary in the sense one gives exclusive economic rights to the creator and the latter Section does not term it copyright infringement when the piece of art is placed in the public domain and terms it as fair use.

Recently a Mexican Artist sued when her piece of art placed at a public work was used by an insurance company without permission. Sassoon docks were transferred into an open art gallery with the collaboration of the Street Art Foundation, Asian Paints and Mumbai Port Authority. With the growth of technology, it has become easy for someone to click a picture of a particular art and claim it as their own. This is nothing but plagiarism. Does a piece of art lose copyright when it is placed in the public domain? If we consider this view, the art would lose its value. There will be no incentive for the authors to create work of social value. If we go by the incentive theory, the legislative intent behind copyright protection is to give fair economic return to the creator for their work along with recognition. When the work is publicly commissioned for a larger purpose, taking the case of Sassoon docks, artists from all around the world flew and worked to revitalise the area. The idea that water comes from the sea, the coastline and marine life and how essential it is for the city of Mumbai. The art depicted diverse communities and fishing not only as an occupation but a way of life, and heritage which predates the city. It showed the complex relationship between water and the environment. The project told stories of the sea and the people working there. The aim was that art should be accessible to anybody who feels like expressing themselves. It should not be confined to art galleries. Artists from all around the world had come and contributed to this history voluntarily. It was open to everybody. If we look at the incentive theory, the artists who worked on this got recognition and goodwill for the work that they had created. We

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<sup>5</sup> The Copyright Act, 1957, S. 14 Act of Parliament, 1949 (India)

<sup>6</sup> The Copyright Act, 1957, S. 52 (1) (t), Act of Parliament, 1949 (India)

argue that the economic returns shall remain with the people for whom the art was created at the inception. It should be used for their benefit. The debate again comes down to just because a person painted a piece of land which is not even his, does he acquire copyright over it? In this paper we argue that the copyright should rest with the people of the community, thereby bringing the concept of community ownership. The art should fulfil the purpose for which it has been created.

The next question is whether the art placed in public places can be commercialised. We have already established that copyright exists and the concept of community ownership. The artists should have moral rights and recognition for their work. When we argue fair use, it is one thing to click a picture of publicly displayed artwork and another thing to claim it as your own or commercialise it without prior consent. Even if it is to be commercialised it should be with prior permission and for the benefit of the community.

## **CONCLUSION**

Any form of art should not be denied copyright because of material transgression. It is time we reform our laws and move towards more non-conventional ways to see art. When we don't recognise street art, we confine art into a strict bottle formula which it is not supposed to be. Street art plays a crucial role in representing us as a community. It shows teamwork and support for each other. Art should always serve the purpose for which it is made. Art has played a crucial role in representing difficult concepts. In this paper, we have argued why street art cannot be commercialised. Even if something is publicly placed, it does not mean that it is free for use. The moral rights, recognition and goodwill should be with the painters who stood up for a larger cause and created heritage. We propose the communal ownership of this artwork when it comes to economic rights as it should benefit the community and the people for whom it was created in the first place.