

THE PROTECTION OF INTELLECTUAL PROPERTY RIGHTS: COPYRIGHT FOR GRAFFITI

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Abstract

The article examines the features of the legal status of graffiti and its legality in the context of copyright. A comparative analysis of Ukrainian and foreign legal approaches to determining the grounds that allow graffiti to be considered legal, that is, one that meets the criteria of originality and is subject to copyright protection is conducted. It is determined that, subject to obtaining permission from the owner of the surface on which the image is placed, graffiti is considered legal, and its author is exempted from legal liability. However, if there is no such consent, the status of the drawing becomes controversial: it is considered illegal (unapproved), and the author may be brought to justice. Special attention is paid to the issues of legal conflict between the rights of the owner of the building and the rights of the author of the work, since graffiti is inextricably linked to the material object on which it is executed. It is emphasized that in the event of a legal dispute, one has to choose what exactly needs primary protection – property rights or copyright. The lack of a single regulatory framework for regulating such relations causes disagreements in legal doctrine: some experts believe that graffiti cannot be objects of copyright due to violation of the general principles of civil law, while others insist on the possibility of their legal protection even without the consent of the building owner. It is emphasized that there is an urgent need to develop clear criteria for distinguishing between legal and illegal graffiti. It is proposed to determine the legal status of such objects based on two factors: the objective criterion of protectability and the subjective socio-cultural significance.

Keywords: copyright object, legal protection, graffiti, property rights, street art.

1. Introduction

In the 21st century, street art, in particular graffiti, has become a global cultural phenomenon that is actively taking shape in the urban environment of many countries around the world. Street art has long since gone beyond the boundaries of a marginal phenomenon and has gained recognition as an independent form of modern art, influencing the formation of public opinion, the visual identity of cities and even contributing to the development of the tourist attractiveness of territories. However, in parallel with the growth of street art popularity, complex issues of legal regulation of the results of such creative activity arise.

Today, there is no unified concept in the world regarding the legal status of graffiti and the mechanisms for its protection as objects of copyright. The legislative approaches of different countries either differ significantly or do not provide for special regulation of issues related to street art at all. One of the main difficulties is the complexity of determining the legal regime of graffiti: the issue of the legality of its creation (in particular, on someone else's property without the owner's permission), the criteria for originality that provide grounds for recognizing a work as an object of copyright, as well as the problem of proving authorship in the event of disputes.

In addition, the issue of balancing the rights of street art authors, owners of the property on which the work is placed, and the interests of the general public remain relevant. The lack of clear protection

mechanisms poses numerous risks for artists: from the illegal use of their works for commercial purposes to the destruction of works without the consent of the authors.

In this context, there is an urgent need for in-depth research into the theoretical and practical aspects of protecting rights to street art objects, the formation of effective approaches to their protection in national legal systems, as well as at the international level. A comprehensive analysis of existing problems and the search for ways to solve them will contribute not only to strengthening the legal protection of street art, but also to developing a culture of respect for creative activity in society as a whole.

The purpose of the research is to conduct a general analysis of the positions of lawyers on the recognition of street drawings as legal, that is, original enough to extend copyright to them, to compare them and to formulate conclusions about whether lawyers from different countries of the world hold a unanimous opinion on issues of legal regulation of this type of art. This will allow us to comprehensively reveal the problem of determining the legal nature of street art and propose criteria for recognizing street drawings as objects of copyright subject to protection.

In preparing the article, a set of interdisciplinary methods was used, which allowed for a comprehensive analysis of the legal status of street art objects in different countries:

- Comparative legal method – was used to compare legislative approaches to recognizing street art as an object of copyright in the USA, Lithuania, Ukraine, France and Argentina. This allowed us to identify both common features and key differences in legal regulation.

- Dogmatic (legal and technical) method – was used to analyse the norms of current legislation (in particular, copyright laws in Ukraine, the USA, Lithuania) to determine the conditions for protecting rights to street art works.

- Casuistic (case-study) method – was based on the analysis of specific court cases, such as the “5 Pointz” case in the USA, cases from the practice of Ukrainian and Lithuanian courts. This allowed us to illustrate the practical implementation of theoretical provisions.

- Content analysis of scientific sources – a review of academic publications, analytical articles and positions of experts in the field of intellectual property on the legal status of street art was carried out, which ensured the scientific validity of the study.

- System-structural method – among the interrelationships between copyright, property rights and public interests, which is necessary for the development of a balanced approach to the legal regulation of street art.

The use of these methods made it possible to comprehensively cover both theoretical aspects and law enforcement practice, which contributes to a deeper understanding of the issues of legal protection of street art in Ukraine and international contexts.

2. Body text

According to the most researchers of contemporary culture, street art is a form of visual art distinguished by its urban character and placement on objects of private or public property. This type of art includes wall paintings, urban space installations, posters, stickers, and other similar forms of street creativity (Smith, 2014). The main factor determining the legality of such artwork is obtaining permission from the property owner on which it is placed. If such consent is given, the artist does not bear legal responsibility for their actions. At the same time, the owner’s permission does not guarantee the protection of the artist’s rights, nor does the absence of such permission automatically mean a violation of those rights.

A notable case in this context is the New York site 5 Pointz, once regarded as a global centre for graffiti and an “open-air aerosol art museum”. Initially, street art on the building’s facades was created with the owner’s consent. However, the owner later decided to demolish the structure to build residential towers. Federal Judge Frederic Block, in reviewing the case, recognized the graffiti as a full-fledged

artwork (act of lettering) and granted it the status of a “work of recognized stature” under the U.S. Visual Artists Rights Act (V.A.R.A.). This decision established a legal precedent that confirmed graffiti can be protected as a subject of copyright. The V.A.R.A. law guarantees authors of such works certain moral rights, including the right to timely notice (at least 90 days) before the destruction of their work, regardless of property ownership. As stated by the attorney of one of the artists, Eric Baum, the 5 Pointz owner failed to fulfil this obligation – instead, he hired workers who painted over the graffiti with white paint overnight (Bonadio, 2018).

The legal regulation of copyright in street art (graffiti) in Lithuania is the subject of scholarly analysis focused on balancing the rights of artists, property owners, and the public interest. Lithuanian researcher Sergej Glotov, in his study of the conflict between artistic freedom and property rights, states that “a street artist is not always entitled to claim copyright status. And even when they can, their copyright ranks lowest in the hierarchy of involved rights” (Glotov, 2022). This reflects a legal approach that prioritizes the interests of the property owner on which the graffiti is created.

In Lithuanian public spaces, the practice of realizing creative rights depends on prior authorization from the authorities or property owners. As Ruta Pilkyte, an advisor to the mayor of Vilnius, emphasizes, permission is required even for artworks of cultural value (Guseva, 2025).

To maintain this balance, Lithuanian cities like Vilnius (Zienka, 2024) and Kaunas (Stoyanov, 2019) have introduced policies to legalize graffiti through the designation of special zones for street art and the marking of officially recognized artworks with information plaques. These measures simultaneously protect both the interests of artists and the rights of property owners.

Thus, a legal practice is emerging in Lithuania that recognizes copyright in graffiti only if the artwork is placed in accordance with the law – specifically, with the consent of the property owner. At the same time, the Lithuanian academic community actively discusses the limits of permissible interference in artistic freedom, which highlights the relevance and evolving nature of this legal issue (Republic of Lithuania, Law on Copyright and Related Rights, 1999).

The recognition of street art as a subject of copyright is also confirmed in Ukrainian legal practice. For example, one case considered the denial of the artist’s opportunity to exercise the so-called “last photo right” before the destruction of their work as a sufficient basis for partial satisfaction of the artist’s claim. The case involved the state enterprise “Mystetskyi Arsenal”, which invited an artist to create a graffiti for a temporary exhibition. Within this agreement, the institution provided the artist with an appropriate wall and necessary materials. Despite the absence of a written contract, the artist was verbally informed that the artwork would be displayed only during the exhibition period and would be destroyed afterward (Zaslavska, Arsen Buchkovskii, 2019).

At the same time, a strict deadline was set for the creation of the artwork, and the artist, unable to complete the graffiti in time, lost the opportunity to present a finished work. Since the administration of Mystetskyi Arsenal did not consider it appropriate to display an unfinished piece, the image was painted over. This violated one of the key provisions of current copyright law – part 2 of Article 10 of the Law of Ukraine “On Copyright and Related Rights” (Verkhovna Rada of Ukraine, 2023). According to this provision, if preserving the physical object embodying the original work is impossible, the owner must allow the author to make a copy in an appropriate form. If the work is associated with an architectural structure, such a copy may take the form of a photograph. This reflects the moral right of the author to be identified with their work and to preserve its integrity, even without a physical medium.

Thus, the court, applying this norm, recognized that the image on the wall was protected as a copyright object. However, it is important to note that not all artists create street art by commission or obtain the property owner’s consent. This raises several important legal questions:

1. Can an image placed on a building without the owner’s permission be considered as an object of intellectual property?
2. If recognition is possible, what personal non-property and property rights can the author have?

3. How can these rights be effectively protected?

When resolving these issues, the special nature of the relevant legal relations should be taken into account: the artwork is inherently tied to the physical medium – the wall – creating a conflict between the artist's and the property owner's interests. Street art created without the owner's consent is usually considered illegal, since the artist, using someone else's property as a basis for the work, interferes with the absolute right guaranteed by law of the owner of the building. Such an owner has the full right to own, use and dispose of the object, including destroying the image, for example, by painting it over. At the same time, the surface of the building on which the street art appeared already acts as a carrier of the work of art, therefore its destruction is equivalent to the loss of the original artistic work. However, it is worth emphasizing that the building itself does not grant the owner automatic rights to the work of art placed on it, and, accordingly, without the author's consent, he does not have the right to dispose of this work. Thus, in the legal field, a conflict arises between the inviolable right of private property and copyright to a work.

Due to the lack of a unified legal position regarding the legal status of street art, judicial practice sometimes adopts an approach according to which street art is treated as a form of vandalism and, accordingly, is not considered an object of copyright protection at all. French intellectual property lawyer Jean-Michel Bruguière supports this view, arguing that street art created without the property owner's consent contradicts fundamental civil law principles and thus cannot qualify for protection as a work of art. He believes that actions violating property rights strip the artist of any legitimate claim to protection for their creation. This approach is reflected in French legal practice, where it is presumed that if the image was applied illegally and without prior agreement with the owner, the creator does not acquire any copyright – neither personal non-property nor property rights. This model protects the rights of the property owner but casts doubt on the artist's ability to obtain legal recognition of authorship if they violated the law (Bruguière, 2017).

Silvia Lerman, a professor at the Torquato Di Tella University in Argentina and an expert on intellectual property, insists on the opposite. She argues that if street art meets the minimum requirements of protectability, it should be protected by copyright even without the property owner's consent. She maintains that copyright applies solely to the immaterial part of the work, so the artist's violation of the material owner's rights should not automatically strip them of intellectual property protection (Lerman, 2013).

A similar position is expressed by Ukrainian legal researchers K. Zaslavska and A. Buchkovsky. They stress that street art should be recognized as a copyright object because it usually meets two main criteria of protectability: first, it has a material form; second, it results from individual creative activity. The first criterion is objective and easily verifiable, while the second is subjective and requires complex analysis. Crucial here is whether the image qualifies as an artwork or as a form of graphic vandalism – such as “bombing” (rapid tagging under risky conditions), “tagging” (author's name or nickname), or other destructive or anti-social behavior. Thus, both the artist's intent and the artistic value of the image must be considered (Zaslavska, Buchkovsky, 2019).

To clearly distinguish artistic expression from acts of vandalism, various facts and circumstances must be weighed. A vandal is someone who intentionally damages someone else's property, leaving marks or images without artistic or cultural value, driven by destructive motives. An artist, by contrast, uses other means of self-expression, aiming to convey ideas or emotions through creativity, not destruction. Therefore, the motivation and intent of the creator are crucial in determining whether the act is art or vandalism. In order to determine whether a work has “recognized artistic value” and can qualify for copyright protection, the involvement of an art expert may be appropriate. However, this is rare in actual court cases – judges often rely solely on their own assessment of the image's artistic merit (Golovchyn, 2018).

In deciding whether street art qualifies as a copyright object, two main criteria should be considered. The first is the objective criterion of protectability – requiring material expression and creative input.

The second is the socio-cultural criterion, subjective in nature, but helpful in distinguishing between a random scribble meant to damage property and an artwork reflecting creative intent. This approach includes analysing characteristics such as identifiable style, creative motivation, and other signs indicating the work is of “recognized value.” This approach involves taking into account a number of characteristics, including the ability to identify the author’s style, the intentions that accompanied the process of creating the image, and other features that allow the work to be considered as a “work of recognized value”.

Creating graffiti without the owner’s prior consent should not automatically exclude it from copyright protection if it meets protectability criteria. Like other copyright objects, street art is the result of creative effort expressed in a material, visually perceptible form. An author’s moral rights to a street art piece exist independently of the ownership rights to the surface it is painted on. Thus, the legality of using a building as a canvas should be evaluated separately and should not in itself negate copyright. However, a court may conclude that an artist has abused their rights, justifying denial of protection – for instance, if the work lacks artistic value and is merely “bombing,” “tagging,” or vandalism, failing the protectability test as a creative work. In such a case, the object will not be protected by copyright, and the legal analysis will focus solely on property damage.

The issue of the legal classification of street art is especially relevant in the Ukrainian context. A vivid example is the repeated destruction of works by one of Ukraine’s most well-known street artists – Hamlet Zinkivskyi, the author of graphic compositions, installations, and performances. In 2013, he represented Ukraine at the prestigious Venice Biennale, and in 2009, he was nominated for the Pinchuk Art Centre Prize. The destruction or deformation of his street art has sparked heated debates among both art experts and legal professionals. Zinkivskyi’s works meet all criteria for copyright protection and cannot be equated with vandalism. This is evident from their compliance with key standards: first, the street art has material embodiment and result from individual creative effort; second, the artist’s style is distinctive – typically monochrome, devoid of female imagery, accompanied by philosophical texts. Furthermore, the goal of these works is not destruction or distortion of cultural space, but integration into the urban environment to provoke deeper reflection (Yankevych, 2024).

Conclusions

The issue of regulatory treatment of street art still lacks a consistent solution both in practical terms and within the theoretical-legal discourse across various legal systems. The main difficulty lies in the absence of clearly defined criteria that would allow for an accurate distinction between permitted and prohibited street art, as well as a definitive determination of which right – property or copyright – should take precedence in the event of a conflict. This legal uncertainty results in contrasting approaches in different countries: in some jurisdictions, street art is actively supported, with thematic festivals being held and mural districts gaining the status of architectural landmarks; whereas in others, graffiti artists face criminal prosecution, and their work is interpreted as acts of vandalism.

In this context, a well-grounded approach appears to be the recognition of any graffiti-style work – regardless of whether prior consent was obtained from the owner of the surface on which it was created – as a subject of copyright, provided it meets established protection requirements. At the same time, there is a pressing need to develop a methodological framework that allows for the clear differentiation between works of art and manifestations of tagging, bombing, and other forms of street vandalism.

Such a framework could be based on the combination of two complementary criteria: first, an objective one – the presence of a tangible medium and the creative nature of the image; and second, a subjective one – the socio-cultural significance of the work, the ability to identify the individual style of the author, as well as the intention behind the creation of the artwork.

So, the above analysis gives grounds to believe that street art should be recognized as an object of copyright under the appropriate legal conditions. Such an approach corresponds to the modern vision of intellectual property as a form of protection not only of the economic, but also of the personal non-property rights of the creator. At the same time, it is worth emphasizing the expediency of developing special legislative norms that take into account the peculiarities of street art as an art of public space in order to avoid legal uncertainty and ensure effective protection of both the interests of authors and owners of real estate.

In the future, further research into the mechanisms of correlation of property rights and copyright in urban space is relevant, which will contribute to the harmonization of legal approaches and support for cultural development.

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INTELEKTINĖS NUOSAVYBĖS TEISIŲ APSAUGA: AUTORINĖS TEISĖS Į GRAFITI

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Santrauka

Straipsnyje nagrinėjamos teisinio grafičių statuso ypatybės ir jų teisėtumas autorių teisių kontekste. Atlikta Ukrainos ir užsienio šalių teisinių požiūrių, susijusių su grafičių pripažinimu teisėtais – tokiais, kurie atitinka originalumo kriterijų ir gali būti saugomi autorių teisėmis – lyginamoji analizė. Nustatyta, kad gavus paviršiaus, ant kurio piešinys sukurtas, savininko leidimą, grafitis laikomas teisėtu, o jo autorius – atleidžiamas nuo teisinės atsakomybės. Tačiau jei toks sutikimas nebuvo gautas, piešinio statusas tampa ginčytinas: jis laikomas neteisėtu (nesuderintu), o autorius gali būti patrauktas atsakomybėn. Ypatingas dėmesys skiriamas teisiniam konfliktui tarp pastato savininko teisių ir kūrinio autoriaus teisių, kadangi grafitis yra neatsiejamai susijęs su materialiu objektu, ant kurio jis sukurtas. Pabrėžiama, kad teisinio ginčo atveju būtina nuspręsti, ką pirmiausia reikia ginti – nuosavybės teises ar autorių teises. Vieningos teisinio reglamentavimo sistemos nebuvimas lemia skirtingus požiūrius teisės doktrinoje: vieni ekspertai teigia, kad grafitis negali būti autorių teisių objektu dėl bendrųjų civilinės teisės principų pažeidimo, o kiti pasisako už jų teisinę apsaugą net ir be pastato savininko sutikimo. Akcentuojama, kad būtina sukurti aiškius kriterijus teisėtų ir neteisėtų grafičių atskyrimui. Siūloma grafičių teisinį statusą nustatyti remiantis dviem veiksniais: objektyviu apsaugos kriterijumi ir subjektyvia sociokultūrine reikšme.

Raktiniai žodžiai: autorių teisių objektas, teisinė apsauga, grafitis, nuosavybės teisės, gatvės menas.