

Alberto Frigerio, Elvira Khakimova

Shaping the Street Art Legal Framework: The Clash between Private and Public Interests in the Banksy "Slave Labour" Case

(doi: 10.7390/74743)

Aedon (ISSN 1127-1345)

Fascicolo 2, aprile-luglio 2013

Ente di afferenza:

()

Copyright © by Società editrice il Mulino, Bologna. Tutti i diritti sono riservati.

Per altre informazioni si veda <https://www.rivisteweb.it>

Licenza d'uso

Questo articolo è reso disponibile con licenza CC BY NC ND. Per altre informazioni si veda <https://www.rivisteweb.it/>



Aedon

Rivista di arti e diritto *on line*

quadrimestrale diretto da Marco Cammelli

numero 2, 2013, Issn 1127-1345 home indice ricerca risorse web

La fruizione del patrimonio culturale: i luoghi della fruizione ed i nuovi diritti

Shaping the Street Art Legal Framework: The Clash between Private and Public Interests in the Banksy "Slave Labour" Case

di [Alberto Frigerio e Elvira Khakimova](#)

Sommario: [1. Introduction: the facts in short.](#) - [2. Street art: art, vandalism or both?](#) - [3. Assessing the ownership issue: who has title over street art?](#) - [4. Re-assembling the pieces of the puzzle: the diverging views sustained by the main interest groups.](#) - [5. Preventing any undesirable circumstances: a national list aimed to safeguard outstanding urban artworks.](#) - [6. Final remarks.](#)

In mid-February a Banksy mural called *Slave Labour* was mysteriously extracted from the wall of a building in north London (UK), transported to Miami (USA) and enlisted in the catalogue of an auction house (Fine Arts Auction Miami). The community of Haringey, the borough where the mural was originally located, formally protested and asked for its restitution. As a result, on February 23 this artwork was withdrawn from the sale. Nevertheless, a few months later, it was brought back to London and re-auctioned on June 2 by a different organization named Sincura Group. This article provides an in-depth analysis of the legal questions raised by this case and proposes an evaluation of the potential impact of this story on the future of street art.

1. Introduction: the facts in short

In mid-February 2013 a mural realized by Banksy (*Slave Labour*) was mysteriously removed from the wall of a north London shop [1]. About one week later, an auction house located in Miami, the Fine Art Auctions, listed the mural within the artifacts on sale in an upcoming auction. The community of Haringey, the borough where the mural was previously exposed, started a protest campaign against the sale of the artwork: in their view the mural was illegitimately removed and, therefore, they asked for its restitution. The owner of the building where the mural was painted (Wood Green Investment Ltd.) refused to comment the episode. Likewise, the agents of the auction house of Miami refused to reveal the identity of the seller, simply stating that they received this piece of art from a "well-known collector" and that they did all the necessary controls to verify his legitimate title over this property. Banksy did not make any official statement about this particular event. However, in the past, he condemned similar episodes and, as sign of protest, he refused to recognize the authenticity of some artworks that were put on sale without his approval (Lyon & Turnbull auction, 2008). Surprisingly, on February 23, the auction house of Miami cancelled the selling of the Banksy mural just before its auctioning. The company did not add further explanations, but it is plausible that the vigorous protest of the Haringey community as well as the lack of the artist's authentication played a decisive role in this decision. Nevertheless, some months later, the artwork (after being restored) was brought back to London, only for being re-auctioned, on June 2, by an organization named Sincura Group [2].

Overall, this episode reveals that there are several pending issues that still need to be solved: is street art a simple act of vandalism or (also) an art expression that should be protected? Who owns a street art piece? What are the interests involved? How does law regulate them? How the public interest toward the street art could be protected? This article aims to explore in-depth these issues and assess how the *Slave Labour* case could affect the future development of street art.

2. Street art: art, vandalism or both?

Street art is a form of visual art, deliberately practiced in public spaces through the use of techniques such as, for example, artistic installations, mosaics, murals, sculptures, stickers, posters and video projections. Street artists

reclaim the "world" as a free space where they may express their creativity. Thus, their artworks are not usually created for being exposed in traditional artistic contexts, like museums or art galleries, but to be disseminated in freely accessible urban settings.

In some cases street art is commissioned: the artist and the interested party (public or private) define in a contract the terms of the agreement. Anyway, most of the times, urban artworks are unlawfully performed, lacking the consensus of the owners of the structures on which they are represented. For this reason street art is often viewed as a form of vandalism, that spoils the decorum of a city and violates the property rights. As a result, the governments of numerous states have approved specific laws and provisions aimed to fight this criminal activity (such as, for example, *the Criminal Damage Act 1971*, *the Anti-social Behaviour Act 2003* and *the Clean Neighborhoods and Environment Act 2005* in UK, or article 639 of the Italian Penal code and its amendments introduced through article 3, paragraph 3 of the law 15 July 2009, n. 94 in Italy) [3].

However, in the last years, art-experts, private collectors and part of the public community have gradually become more aware of the special quality and creativity of some street artists [4]. The murals of Banksy, for example, are nowadays diffusely praised as creative art, although they are not always appreciated (some of them have been scrubbed and painted over) nor approved by law (they are, in any case, the result of an illegal action).

The problem is that there is not a valuable, clear and shared method for distinguishing between street artworks and mere acts of vandalism (beyond the legitimacy-illegitimacy of its realization). Nonetheless, a distinction, albeit informally, is already realized: probably, if it was not a Banksy, the removal of the mural called *Slave Labour* would not have created so much sensation. Overall, this condition creates a sort of paradox: a graffiti that, according to the law, should be considered as an aesthetic defacement is, on the contrary, perceived as a symbolic asset that deserves protection by the community of Haringey.

3. Assessing the ownership issue: who has title over street art?

In general, as already explained, a work of street art can be legally or illegally realized. In the first case, the parties involved usually sign a binding contract, thereby regulating all the most relevant legal matters (like, for example, ownership over the artworks, copyrights, and other related issues). In the second case, the artist performs his artworks violating the property right of a third party. This is the case of the Banksy *Slave Labour* mural, which was realized without the approval of the owner of the painted wall. There is not law specifically aimed to regulate a similar event. Nevertheless, there is no reason to presume that the title over a property may change due to an illegal activity performed by a third party without the owner's consensus. As a result, we may assume that: first, the owner of the building upon whose wall a mural is illegally drawn becomes also the owner of the mural itself; and, second, the owner of such structure preserves the right to freely dispose of his properties (mural included). Therefore, should there be a removal of the mural without his consensus, he may come before the competent court claiming its restitution.

Interpreting the *Slave Labour* case, if the mural was removed with the consensus of Wood Green Investment Ltd., then there are no evidences of law infringements. Differently, if the mural was removed without the approval of the building's owner, the seller who addressed the auction house took illegally possession of this property. Therefore, Wood Green Investment Ltd. could denounce the theft and ask for its restitution. However, none of these actions have, up to now, been started [5].

Differently, in the current juridical framework, the Haringey community seems to have few legal powers to ask for the restitution of the mural despite a relevant emotional involvement. Assessing the *Slave Labour* mural as a "gift" to the people living in the borough of Haringey is a fascinating, but unlikely interpretation: the respect of the three parameters required by law (delivery, donative intent and acceptance) is hardly verifiable and scarcely suitable being the mural realized on a private property without the owner's approval.

4. Re-assembling the pieces of the puzzle: the diverging views sustained by the main interest groups

Exploring the *Slave Labour* case, it stands to reason that different actors may express legitimate interests with regard to street art: the author of the mural (Banksy), the people living in the area where the mural has been painted (Haringey community), the owner of the building on whose wall the mural has been realized (Wood Green Investment Ltd.), and the auction house-organization (Fine Art Auctions Miami and Sincura Group) involved in the attempt to sell the mural [6].

As a whole, one of the urban artists' main interests is (presumably) to preserve their works of street art in their original context and let them be freely enjoyed by the public. At the same time, street artists are also aware of the likely "temporary condition" of their works, which may be painted over, scrubbed away, disfigured by tags or deteriorated by natural elements. Moreover, once these creations are the result of an illegal action, their authors have scarce legal power to claim the respect of their wills [7]. As a result, some artists have taken alternative measures to "protect" their works of art. In 2008, Banksy founded an authentication service (Pest Control) aimed to regulate the sale in the market of his artworks [8]. The core idea is that, without a certificate of authenticity, potential purchasers cannot really know if they are buying an original work of Banksy [9]. This measure should reduce the chance to sale Banksy's artworks without his consensus, but it turned out to be inefficient in the *Slave Labour* case.

The local community where a street artwork is located has a direct emotional interest, being daily exposed to its view. Past cases show that the public may differently react in front of a street artwork: the members of a community could perceived it as a vulgar act of vandalism that damages the décor of the entire district, thus asking for its removal, while the people of a different community could aesthetically appreciate it, thereby demanding its preservation [10]. In the *Slave Labour* case the community of Haringey has appreciated the artistic quality as well as the constructive social (civic pride) and economic (increased number of tourists visiting the area) value of this mural, thus asking for its restitution.

The owner of a building on whose walls a mural has been painted wishes the respect of his property rights (including the right to freely dispose of his assets). The owners of the Wood Green Investment Ltd. did not release any official comment on the removal of the mural and, consequently, the course of occurred events is not still completely clear. However, to date, no denounce of theft or export law infringements has been reported. This seems to suggest that the *Slave Labour* mural was removed and exported legally (although the fact that these operations were performed in secrecy raises some doubts about their "moral legitimacy").

An auction house has an interest to sale artworks considered artistically noteworthy and economically profitable. In recent years, considering the growing interest of private collectors toward the street art, the art market has started to sell artworks realized by famous urban artists, causing a considerable growth of their monetary value (and Banksy is one of the most known and appreciated street artist of the world) [11]. An auction house may legitimately sell urban artworks, but, as for all the articles enrolled in its catalogue, it has the responsibility to verify that the pieces on sale have not been illegally acquired or illicitly imported/exported by their current owners. Several aspects of the *Slave Labour* case have not been revealed yet (among them, how the mural was removed and who currently possesses it). Nevertheless, both the representatives of Fine Art Auctions Miami and, successively, those of the Sincura Group have sustained that they made adequate controls to verify the seller legitimacy over this mural. Therefore, from a purely legal viewpoint, the auctioning of this mural was (presumably) legally performed. Interestingly, other auction houses (like, for example, Sotheby's and Christie's) have expressed the intention not to sell Banksy artworks without their related documents of authentication. This measure primarily aims to prevent the sale of illegitimate artworks and to protect interested customers from the risk of fakes. Overall, this seems a good solution, balancing the collectors' desire to purchase original pieces with a trustable provenance and the artist's will to preserve in their original contexts his works of street art publicly displayed.

Comparing these divergent positions it clearly emerges how the entire event is set on a clash of interests: from one hand, the private interest of the building's owner and the legitimate trade of cultural properties; on the other, the public interest of the local community (and, in this case, of the artist too) to preserve *in situ* and publically accessible street art. This explains the complexity of the *Slave Labour* case beyond the specific legal aspects. But, while the law somehow recognizes and regulates the private interest, the public interest toward the street art is, for the moment, totally unprotected. In the UK legislation, the [Criminal Damage Act 1971](#), the [Anti-social Behaviour Act 2003](#) and the [Clean Neighbourhoods and Environment Act 2005](#) are specifically designed to prevent [12], punish the authors of [13] and remove graffiti [14], while there are currently no laws or provisions aimed to protect the public interest toward this form of art.

5. Preventing any undesirable circumstances: a national list aimed to safeguard outstanding urban artworks

An increase in demand of urban artworks for private collections is likely to cause a rise in their prices. Positively, this growing appreciation of street art could lead to a greater consideration of its artistic and creative value. Negatively, it could also raise the number of urban artworks that are legally/illegally removed from their original places in order to be sold in the art market.

To identify a legal solution for preserving the street art may seem foolish, considering that they are works meant to be temporary, often produced as effect of a criminal offence (private property violation) and chiefly realized in relatively recent years (less than 50 years old). At the same time, the current legal vacuum seems hardly acceptable in view of the public significance attributed to some street artworks (due to their aesthetic, artistic, economic, social and symbolic value).

A prospective way out to prevent unpleasant scenarios could be the creation of a national list aimed to protect and maintain *in situ* the most outstanding examples of urban artworks [15]. Considering the final goal, a bottom up approach should be preferably adopted in the listing process: local communities might be encouraged to propose selected street artworks to be enrolled in the list (for example, by collecting a certain number of signatures) and a local council should then evaluate the conformity of the suggested artworks with pre-fixed mandatory parameters (for example, they should not be offensive [16], discriminatory, dangerous for the public or the surrounding environment) before proceeding with their enrollment. In this way, the thorny issue to distinguish between street art and pure vandalism could be, at least temporarily, evaded. For the enrollment of those artworks realized on private properties, the consensus of the legitimate owner of the defaced property should be considered as an additional pre-fixed parameter. Once enrolled, the street artworks realized on public spaces will be protected from being scrubbed, painted over or removed for a certain number of years (but potential exceptional circumstances should be considered too).

To date, the listing process is probably one of the most viable and effective solution among those potentially available. It could reduce the risk of intentional/accidental destruction and thwart the secretive removal of the most outstanding works of street art. However, this hypothetical solution presents also some major challenges to be practically implemented: for example, should the listing process be introduced through an *ad hoc* law or by amending existing laws? How is possible to conciliate this mechanism with the existing anti-graffiti provisions? In addition, there are still numerous core questions that need to be further evaluated: for instance, should the law make a distinction between the street artworks realized on public properties and those realized on private properties? To which extent might the property right of the legitimate owner be limited in order to protect the public interest toward an artwork illegally produced? What are the long-term effects that this approach could have on the spread of the illegal street art? Is the sole listing process really going to increase the effective protection of this form of art?

6. Final remarks

The *Slave Labour* case caused the beginning of a heated debate about the phenomenon of street art that, most likely, will last for a long time. The commercialization of murals originally displayed in public spaces is, at least from a legal viewpoint, a new and unpredicted circumstance, which extends to street art the classical divergence between public and private interests concerning the management of cultural assets [17]. As a matter of fact this event, on one hand, opens up interesting perspectives for all those whose possessions have been illegitimately "defaced" by a famous street artist, but, on the other, it seems to undermine the artists' intents and destabilize the public interests to keep this form of art in its original location (provided that this interest is expressly stated).

On the whole, this experience reveals that there are still numerous pending issues to solve:

- the difficult task of providing a legal definition of street art (is it useful and fair to make a distinction among the works of street art illegally realized? According to which parameters should the law distinguish between a pure act of vandalism and a work of street art? What are the effects that this distinction may produce?);
- the necessity to regulate the clash between the private-public interests in relation to those street artworks that are considered as cultural assets (should the property rights of a private party be limited for the benefits of the public interest?);
- the legitimacy (ethical and legal), on one hand, to sale and, on the other, to protect the street art (is it conceivable that artworks produced in order to be freely enjoyable by the public may be put on sale for financial gain? Should a state protect works of art illegally produced?).

Starting up a constructive discussion about this issues is vital taking into consideration that the sale of this mural risks to unleash an uncontrolled campaign of (legal-illegal) looting of street art. This would be a particularly unfortunate circumstance bearing in mind the current legal vacuum on this matter. The adoption of laws specifically aimed to protect artworks created by unlawful acts seems, at least for the moment, quite unrealistic. Nevertheless, considering the relevance of the interests at stake, we may expect a progressive evolution of the national (and perhaps international) legislative framework related to street art.

Concluding, this analysis ends up raising more questions than providing answers. From a legal point of view the research on this topic is just at the beginning and probably it will develop further in the coming years. Certainly a significant change is already in progress: the phenomenon of street art is no longer associated only with an act of vandalism, but the art market and the public are starting to recognize that this "movement" has the ability to create works with considerable artistic, economic and social values. Therefore, the current anti-graffiti measures, although absolutely necessary to prevent and repress the violations of property rights, are not anymore adequate tools to regulate the multiple aspects raised by this issue.

Note

[1] Banksy is the pseudonym adopted by one of the most famous street artist in the world. The *Slave Labour* mural depicts a child while he is producing a series of bunting of the United Kingdom using a sewing machine.

[2] It seems that, for the purchase of this mural, Sincura Group received 3 bids of more than £750,000 (over \$1 million). [Source: Bloomberg](#).

[3] See UK, [Criminal Damage Act 1971](#);

UK, [Anti-social Behaviour Act 2003](#);

UK, [Clean Neighbourhoods and Environment Act 2005](#);

Italy, [Penal Code, article 639](#);

Italy, [Law 15 July 2009, n. 94, article 3, paragraph 3](#).

[4] In 2009, for example, over 300,000 people visited the Banksy's exhibition at Bristol City Museum and Art Gallery. With an average of almost 4,000 visitors per day this event entered in the list of the 30 most visited exhibitions in the world in 2009. See

http://www.museologie.uqam.ca/Page/Document/frequentation_musees_monde.pdf.

[5] As reported by the *Financial Times*, a lawyer for the Wood Green Investment Ltd. stated: "If they deny removing the mural they will become embroiled in an international criminal investigation that has already involved the FBI, but if they admit to consenting to (its removal) then they will become the target of abuse. As a consequence, the advice to my client has been to say nothing". See [T. Batchelor, *Banksy mural withdrawn from sale*](#), *Financial Times*, 24 Feb. 2013.

[6] The mysterious figure who organized the removal of the mural has not been here considered because it is not yet completely clear whether he acted legally or illegally.

[7] A further issue that, however, here will not be analyzed, is the possible recognition of "intellectual property rights" for pieces of street art. On this topic see, for example, C. Lerman, *Protecting Artistic Vandalism: Graffiti and Copyright Law* in *Journal of Intellectual Property and Entertainment Law*, Vol. 2:295. About the related UK legislation see [Copyright, Design and Patents Act 1988](#) and its amendments.

[8] See the web-site: <http://www.pestcontroloffice.com/whatispc.html>.

[9] In general, Pest Control does not authenticate Banksy street artworks because the author has expressed the desire to keep them in the places where they have been originally realized and, in addition, they are the final outcome of an illegal activity.

[10] In 2006, as a result of an online poll promoted by the Bristol City Council concerning the preservation or removal of a Banksy's mural painted over the wall of a clinic, 93% of the voters expressed the will to keep this artwork.

[11] In 2008, for example, the Banksy's artwork *Keep It Spotless* (a defaced version of a Damien Hirst's canvas) was sold for \$1,870 million during a Sotheby's charity auction in New York.

[12] See, for example, section 54 of the [Anti-Social Behaviour Act 2003](#), "Sale of aerosol paint to children", and the amendments introduced with section 32 of the [Clean Neighborhoods and Environment Act 2005](#).

[13] See section 43 of the [Anti-Social Behaviour Act 2003](#), "Penalty notices for graffiti and flying posting" and the amendments introduced with section 28 of the [Clean Neighborhoods and Environment Act 2005](#). Take also into consideration section 1 ("Destroying or damaging property") and following of the [Criminal Damage Act 1971](#).

[14] Section 48 of the [Anti-social Behaviour Act 2003](#) ("graffiti removal notices") states that "this section applies where local authority is satisfied that a relevant surface in an area has been defaced by graffiti or any poster or flyer the display of which contravenes regulations under section 220 of the [Town and Country Planning Act 1990](#), and that the defacement is detrimental to the amenity of the area or is offensive". See UK, [Anti-social Behaviour Act 2003](#), section 48, subsection 1, as amended by [Clean Neighborhoods and Environment Act 2005](#), section 31.

[15] The idea to list the most significant examples of street art is not new. In 2011, for example, John Webster already suggested the possibility to use the [Planning \(Listed Buildings and Conservation Areas\) Act 1990](#) to protect the Banksy's works of street art in addition to the historic buildings. But, at least for the moment, this option has never been tested. See the web-site: <http://www.bristol.ac.uk/news/2011/7811.html>. An extensive version of Webster's study was published in the *Journal of Planning & Environmental Law* (2011), but unfortunately the authors did not have the opportunity to access this article.

[16] Clearly, a further challenge is to balance the freedom of artistic expression with the social impact that an "offensive" artwork could generate. In other terms, when (if ever) should a provocative artwork be "banned"? To what extent should an adverse public response be taken into consideration?

[17] See, for example, [L. Casini, *Italian Hours: The Globalization of Cultural Property Law*](#), Jean Monnet Working Paper No. 11, 2010, E. Jayme, *Globalization in Art Law: Clash of Interests and International Tendencies*, *Vanderbilt Journal of Transnational Law*, Vol. 38, 2005, and J.H. Merryman, *The Public Interest in Cultural Property*, *California Law Review*, Vol. 77, 1989.

copyright 2012 by [Società editrice il Mulino](#)
[Licenza d'uso](#)

[inizio pagina](#)