

THE CONCEPT OF “ORIGINALITY” IN STREET ART AND GRAFFITI: A COMPARATIVE ANALYSIS OF THE LEGAL SCENARIO OF UNITED STATES AND INDIA

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ABSTRACT

This paper examines and looks at how the concept of “originality” is examined and understood in graffiti and street art and the paper highlights upon the importance of graffiti and street art in copyright law in the United States and India. Originality is one of the necessary component and ingredient of copyright protection, however, it is interpreted differently in these two countries based upon varied heritage and cultural backgrounds. In the U.S., the concept of originality focuses more on personal creativity having laws like the Visual Artists Rights Act (VARA) 1990, which protects street artists and graffiti creators. In India, the Copyright Act 1957, is more influenced by the country’s rich cultural heritage, where the concept of originality includes both collective art as well as the traditional artworks. The paper discusses is how the laws can be adapted to protect the graffiti and street art while also balancing the various rights of individual artists and how their artwork is influenced from that of the cultural background the artist belongs from. By examining and comparing the approaches of the U.S. and India, the study done in this paper explores how the copyright laws can recognize these art works in a better form highlighting upon their legal, cultural and artistic importance.

KEYWORDS: Originality, Graffiti, Street Art, Creativity, Artistic.

INTRODUCTION

Graffiti and street art which was once considered to be an act of rebellion has come a long way in today’s era. While in the past, the various forms of graffiti and street art were often considered as an expression of various illegal activities like for the instances drawing or writing upon walls in the form of graffiti by not taking prior authorization from the owner of such work

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was considered an act of vandalism meaning an act to deface public or private property. This act is often considered by many people an act of nuisance further creating a sign which causes urban degradation. However, with passing time and evolution of new generation the concept of graffiti and street art have gained huge popularity and is considered not as an illegal act but as a legitimate act considering graffiti and street art- a precious form of expression of art.

Graffiti is a form of an artwork which includes many different forms and styles, and it is not just one way of a creation of art but it is an amalgamation of various techniques, designs and expressions whereby each style that is present in the graffiti has its own unique and special appearance and message which makes the artwork a diverse and also a creative movement.⁷³

Graffiti can be created and made by using variety of tools like spray paint, brushes, stencils, rollers, posters, mosaics and even by installing lighting which widens the range of options for the creators or artists to create different styles and different designs.⁷⁴ Street art on the other hand is a type of graffiti which has different methods and uses different tools like that of stickers, posters, free hand drawing, images downloaded from the internet, etc., which unlike that of some graffiti, it completely focuses on being artistic and is further created to be visually artistic which is appreciated by the public.⁷⁵

The Graffiti artists or the writers of graffiti demonstrates and expresses their thoughts and perception towards the society through art and the space where they portray such street art and graffiti also is a space which belonged to them.⁷⁶ Through graffiti and street art the graffiti artists or the graffiti writers provides a message to the society about their feelings and opinions on various socio-cultural issues which many times the society do not want to hear and in further ignore as such message is not important for them.⁷⁷ The word “graffiti” has indeed a very flexible as well as an unpredictable meaning to the term meaning that if the word “graffiti” is used and also understood in various ways by different people be it scholars or the curators or

⁷³ Britney Karim, “The Right to Create Art in a World Owned by Others- Protecting Street Art and Graffiti Under Intellectual Property Law”, (2019) 23 *Intell. Prop. & Tech. L.J.* 53

<https://heinonline.org/HOL/NotSubscribed?collection=0&bad_coll=journals&send=1> accessed 15 February 2025

⁷⁴ Celia Lerman, “Protecting Artistic Vandalism: Graffiti and Copyright Law”, (2013) 2 *N.Y.U.J. Intell. Prop. & Ent. L.* 295, 298-99

⁷⁵ *Ibid*

⁷⁶ Bhawna Chauhan, “The Impact of Social-Culture on the Acceptance of Graffiti Art in Delhi” (22 June, 2018) 6 (6) *IMPACT: International Journal of Research in Humanities, Arts and Literature (IMPACT: IJRHAL)*, 319-334

⁷⁷ *Ibid*

the media or by the policy makers, each of the group will interpret or reinterpret the terminology in their own way making the meaning of graffiti sometimes unclear.⁷⁸

The question as “Where did the style of graffiti art come from?” might indeed seem quite straight forward however, this question represents ingredients of complex elements.⁷⁹ The term graffiti can be referred to various things like that of gang symbols or political images, and in further the word “style” also can be interpreted to have many meanings. But when it comes to graffiti art, the word “style” is considered to have a specific meaning, whereby graffiti art style represents the way graffiti is drawn. For example, through various forms of shapes, colors and techniques which developed a purpose and meaning of graffiti over the time and such unique artistic characteristics of graffiti developed out of the similar roots which has shaped graffiti as a form of expression.⁸⁰

THE IDEA OF “ORIGINALITY”: APPLICATION TO STREET ART AND GRAFFITI

Originality plays a vital role in understanding both art as well as intellectual property law. In art, it is the unique and creative expression of an idea in a new way by an artist and for aspect of law, originality plays an important role for copyright protection, determining if a work could be legally preserved under the copyright laws. Some forms of graffiti for example “stickers” generally do not rely upon being created in a specific location but they can be created or made anywhere and further can be placed in public spaces. The question whether the realms of copyright law protects these graffiti art, depends upon the “originality” of such work or artwork and to qualify for copyright protection the work done must be created must portray some level of creativity which if meets with the norms and criteria of “originality”, then such work or artwork as graffiti can receive the copyright protection, no matter how or rather where from such work is eventually portrayed or displayed.⁸¹ Graffiti art which is made using the spray paint on canvas or the “aerosol-on-canvas”⁸² is very similar to the traditional art forms which clearly coincides with the standards for the copyright protection. However, on the other hand a very simple graffiti for example, any short phrases or short words, may not amount to be

⁷⁸ Ondřej Škrabal, Leah Mascia, Ann Lauren Osthof and Malena Ratzke, ‘Towards a Cross-Cultural Understanding of Graffiti: Terminology, Context, Semiotics, Documentation’ (2023) 35 *Graffiti Scratched, Scrawled, Sprayed*, De Gruyter

⁷⁹ Lisa Gottlieb, *Graffiti Art Styles- A Classification System and Theoretical Analysis* (McFarland & Company, Inc., Publishers 2008), 35

⁸⁰ *Ibid*

⁸¹ Nicole Grant, ‘Outlawed Art: Finding a Home for Graffiti in Copyright Law’ (*SSRN*, 2 March 2012) <https://papers.ssrn.com/sol3/papers.cfm?abstract_id=2030514> accessed 15 February 2025

⁸² The works of “aerosol-on-canvas” are in better words called as “graffiti-style” because a graffiti is usually created in the public spaces and such graffiti works interacts directly with its ambience, while these graffiti artworks are created over a canvas in amuch controlled surroundings

protected under copyright law due to lack of creativity or not meeting the standards of “originality” to meet the legal requisites for copyright laws.⁸³

Originality is a very important component for the graffiti artists or the graffiti writers when the artists think regarding the subject matter in what constitutes to make their artwork creative. This whole idea is important to understand the terminology creativity in general as it means that coming up with something new and fresh and unique that is exceptional and stands out from other people’s work. So, for graffiti artists, being original is a way to portray their identity, artistic expression as well as their skill.⁸⁴ In order to get a work protection under copyright law, such work must be original.⁸⁵ Copyright Act 1957, defines Originality - This means that it should be a creation of a person who claims such work and is not copied from some other people. The work also needs to have a certain level of creativity, even if the percentage of such creativity in the work is less. A work cannot be qualified to get protection under copyright if such work does not meet with the standards of originality. To figure out what constitutes a work to be “original” for copyright protection is not always easy.⁸⁶ It implies that for a work that has been created by an author should portray some amount of creativity, however, exactly how much of creativity required is difficult to measure or to define, as the level of creativity varies based on different cases and may have varied ways of deciding whether the work of the author constitute original enough to which can be protected.

Graffiti writers give a lot of importance on their names attached to the artwork because it represents not just the creativity of the work but also their identity which is attached to their names. According to the German definition of originality, this concept fits well as it says that for a work to be original, such work must be created by the author⁸⁷ and display their exclusive personality which should not be something which is ordinary or generic that anyone could be able to make; portraying how the graffiti writers see their artwork as a personal and very distinct expression of themselves.⁸⁸ In further a question that arises as to how the planning and effort is made behind the creation of graffiti which might be helpful in determining the work if it is original.⁸⁹ This also includes the decision made by the author with respect to the designing of the artwork, choosing of colors, and deciding and selecting the location; which furthers displays

⁸³ *Supra* note 79

⁸⁴ Marta Iljadica, *Copyright Beyond Law: Regulating Creativity in the Graffiti Subculture* 142, (1st edn., Oxford and Portland, Oregon)

⁸⁵ 17 U.S. Code, s 102

⁸⁶ *Supra* note 82

⁸⁷ In case of graffiti, it is artist.

⁸⁸ A Rahmatian, ‘Originality in UK Copyright Law: The Old ‘Skill and Labour’ Doctrine under Pressure’ [2013] 44 (1) IIC International Review of Intellectual Property and Competition Law 4,17

⁸⁹ *Supra* note 82

the creativity of the artist and the personal input, which does help to prove that the work done by the graffiti artist is original and not just a copy of someone else's work or the work is something which is generic in nature.⁹⁰

The courts have decided that the ingredient originality is very essential for someone who is to be considered as the creator of a work by explaining, "[one] who has slavishly or mechanically copied from others may not be able to claim the authorship"⁹¹ This means that it is only the works which portrays or displays the creativity, and the personal effort can be thus considered to be original, while on the other hand copying something exactly does not count such work to be original. Art includes and involves multiple key elements which guide and show direction to an artist's work- which includes imagination, skill, creativity and originality.⁹² Imagination means to come up with new and fresh ideas that have not been used or seen before. For skill, it is an ability to convert the ideas into a tangible medium by using the correct techniques or right tools. The term creativity defines something which permits the artists to combine various elements in an exclusive or through uncommon manner. The term originality defines that the work should be fresh and new and such work should not be copied from other people. All these elements- together contribute to a common aspect of what motivates and encourages people to create art.⁹³

When it comes to originality in street art it highlights upon the creativity and expression of the artist and an amalgamation of the personal style of the artist with the social and cultural themes. Legally, the criterion of originality under the copyright law is required to attain protection which further requires a creation of artwork to be independent and not a copy of someone's work and such work should adhere to minimum standard of creativity.⁹⁴ However, the street art's unauthorized and collaborative nature often results in complicating this standard whereby works are often incorporated through existing motifs or are responded to their surroundings which raises questions regarding the originality of the work. Regardless of these challenges, street art's involvement with the public spaces and the distinctive visual language that it emphasizes upon has an innovative touch to it and has an original character to such work.⁹⁵

Graffiti and street art works are extremely vibrant and dynamic, and it can also be considered as a visual art form with a constant changing form. The concept of "originality" with respect

⁹⁰ *Ibid*

⁹¹ *SherryMfg. Co. v Towel King of Fla., Inc.* 753 F.2d 1565, 1568, 11th Cir. [1985]

⁹² Britney Karim, 'The Right to Create Art in a World Owned by Others- Protecting Street Art and Graffiti Under Intellectual Property Law', HEINONLINE, [2019] 23 Intell. Prop. & Tech. L.J. 53

⁹³ *Id*

⁹⁴ *Feist Publications, Inc. v Rural Tel. Serv. Co.* 499 U.S. 340 [1991]

⁹⁵ *Cohen v G&M Realty L.P.* Case No.13-CV-05612 [FB] [RLM] [E. D. N. Y. Jun. 13, 2018]

to graffiti art works is connected to international copyright laws. United States and India both have joined the crucial and important international agreements however, the interpretation, adoption and application made by U.S is different from that of India which is based upon varied cultures and heritage and legal traditions of these two countries.

AGREEMENTS PROTECTING THE ARTWORK OF GRAFFITI

BERNE CONVENTION FOR PROTECTION OF LITERARY AND ARTISTIC WORKS 1886

The Convention discusses the preservation of works and the rights of the authors to such works by providing means to the creators to have control of how the creator's works are used, by whom the work is used and on what term the work is used.⁹⁶ The convention is based upon three principles which includes a series of a minimum standard of protection for copyright and the convention also contains special rules for developing countries who are member parties to use them.⁹⁷ The United States and India both are signatory members of the convention who have applied and adopted the rules of the convention into their domestic copyright laws.

Under the U.S Copyright Law⁹⁸ emphasis upon personal creativity is adopted from the convention. Graffiti works are "original" when such work portrays an artistic effort made by the artist which even if done illegally on a public or private property. The idea of the convention also aligns with the moral rights prescribed under the Visual Artistic Rights Act (VARA).⁹⁹

Under Indian Copyright Act 1957, it highlights upon the convention's requirements however, the adaptation is based upon the cultural and traditional expressions. The approach taken by India appreciates and acknowledges the component of "originality"¹⁰⁰ for works which are also heavily influenced by traditional as well as cultural heritage.

TRADE RELATED ASPECT OF INTELLECTUAL PROPERTY RIGHTS (TRIPS) AGREEMENT 1994

TRIPS Agreement forms a crucial part of the World Trade Organization (WTO) which is built upon the Berne Convention to protect to protect and conserve the intellectual property rights within all the member countries. The agreement also focuses upon making sure that the enforcement of copyright laws is done properly which also includes art works like graffiti and street art. For United States, TRIPS agreement emphasis on protecting original works done by individual creators under the 17 U.S.C Section 102(a), which enables graffiti works to attain protection if such work meets the required standards.

⁹⁶ Berne Convention for the Protection of Literary and Artistic Works 1886

⁹⁷ *Ibid*

⁹⁸ Copyright Act of 1976, 17 U.S.C

⁹⁹ Visual Artistic Rights Act 1990

¹⁰⁰ Copyright Act 2013, s 13

The alignment of Indian Copyright Act 1957 with respect to TRIPS agreement supports protection not only the modern expressions of creativity but also the traditional expressions which includes invariably includes graffiti and street art. However, these creativity graffiti work and street art remain as an underexplored areas in Indian jurisprudence.

LEGAL SCENARIO OF CONCEPT OF ORIGINALITY IN US AND INDIA

In New York, the concept and writing of the graffiti during the time of 1980s expanded but after the year 1989, most of the artists stopped graffiti painting on the subways and in further started creating the paintings on the walls and some other surfaces due the reason that the city of New York made it difficult and harder for the artists to have the accessibility of subway yards and also there was an increased penalty and punishments were imposed to keep the system of subway clear and free of graffiti work.¹⁰¹ At 1980s, graffiti writing and painting and its culture was widely spread to other cities in the United States¹⁰² and also to other countries around the globe, turning out to be a global movement.¹⁰³

In U.S., originality which is one of the key components to get protection under copyright reflects upon the importance of a person's creativity and expression which displays the culture values and the ability of the author to create something new and fresh and which is not copied from someone else's work. An artistic work gets protection under copyright law when such work adheres to the basic legal rules of copyright law. Some of the rule's states that the person or the creator who creates the work is the only person who is to be considered as the author of such work. Further the work must be original which means that the work is created independently and is not a copy of someone else's work- the work reflecting minimum standard of creativity and finally the work must be fixed in a tangible medium which can be seen or shared.¹⁰⁴ The creative artwork must be created or made by the author, and such creation of work must be in existence which is stable enough to be either seen or be shared. It means that the artwork should not be present or should not exist for a short tenure, but such work should meet the minimum standard and be either in writing or painted whose existence for longer tenure which the public can experience in future.¹⁰⁵ If graffiti work and street art follow the basic rules to be protected by copyright like the artwork being original and such work is fixed

¹⁰¹ Enrico Bonadio, *The Cambridge Handbook of Copyright in Street Art and Graffiti* (2019, Cambridge University Press) 105

¹⁰² Roger Gatsman and Caleb Neelon, *A History of American Graffiti*, Collins Design (2011, Collins Design)

¹⁰³ *Supra* note 101

¹⁰⁴ 17 U.S.C 2013, s 102 (a)

¹⁰⁵ 17 U.S.C., s 101

in a tangible medium then just like any other work, graffiti work shall also be granted protection under copyright law.¹⁰⁶

In India, the Copyright Act 1957, the concept of art and its essence is generally an amalgamation of the ideas related to traditional cultures and the creativity of artists. Many artists take motivation and inspiration from the country's rich heritage and history, however, apart from the references taken from India's history, it is also the blend of artists personal styles and creative ideas which they express in the form of their work. In case of graffiti and street art which are generally, a creation of artwork done on the premise of walls or surfaces of public spaces, usually without taking the owner's consent, the enforcement of law fails to provide a clear consistency and ways of handling and dealing with such situations. Arts which are displayed in public streets are generally linked to either religious beliefs or spiritual assumptions, especially where such traditions are norms are common like places associated with homes or neighborhoods.¹⁰⁷ Within these homes and neighborhoods, there are certain cultural and traditional practices which are followed, and the source of such practices is deeply embedded in the community's way of their lives. For example, muggu, or muggulu (in plural), is one of a traditional practice which is found in southern parts of India is a practice of creating beautiful floor designs with decorative patterns which are made temporarily, often by using materials like rice flour or chalk powder.¹⁰⁸ In some areas it is also called as "Kolam". Muggu can be more than just an art – it brings together local knowledge, cultural traditions and practices and a unique visual style which makes it an important part for the community's identity which is equally part of their daily life.¹⁰⁹ Street art or graffiti artwork might develop a motivation from such traditional and cultural values and practices incorporating similar themes, or styles which resonates with the local and traditional cultures. It is this connection which help to maintain a sense of belonging as well as continuity while simultaneously adding a personal touch to public spaces.

LEGAL DEFINITION AND ANALYSIS OF ORIGINALITY IN US

¹⁰⁶ Celia Lerman, 'Protecting Artistic Vandalism: Graffiti and Copyright Law' (22 April, 2013) 2 (2) NYU Journal of Intellectual Property and Entertainment Law <https://jipel.law.nyu.edu/vol-2-no-2-2-lerman/#_ftnref55> accessed 15 February 2025

¹⁰⁷ Nandita Saikia, 'The Cambridge Handbook of Copyright in Street Art and Graffiti' in E. Bonadio (ed) (2019) 272

¹⁰⁸ Kaustav Chatterjee, 'Performing muggu: Art where home and street meet' (*Garland Magazine*, 1 March 2024)

<[https://garlandmag.com/article/muggu/#:~:text=Muggu%20or%20muggulu%20\(plural\)%20is,local%20knowledge%20and%20visual%20vocabulary](https://garlandmag.com/article/muggu/#:~:text=Muggu%20or%20muggulu%20(plural)%20is,local%20knowledge%20and%20visual%20vocabulary)> accessed 15 February 2025

¹⁰⁹ *Ibid*

Various forms of street art like that of murals, stickers, posters and art made out from different or from abandoned objects, are artistic works which are protected under the U.S copyright law.¹¹⁰ This means that the work must evolve from the creator's or artist's own efforts and hard work and should not be an outcome of copied work from someone else. Originality means that the work must portray a certain level of creativity and skill however, it does not mean that the work needs to be different or unique. The term originality under the copyright law, is one of the basic requirements which determines whether a work qualifies to get a protection under the copyright law. Graffiti indeed satisfies the description of "pictorial and graphical works"¹¹¹, however, it has less clarity whether all the types and forms of graffiti satisfies the standard of "original works of authorship,"¹¹² which is required by the U.S. Copyright Act.¹¹³ However, the graffiti paintings with bright and popping colors, intricate designs and creative pictorial scenes satisfies the standard required the work to be original and hence are protected under the copyright law.¹¹⁴ While most of the graffiti and street art are to be considered as original work because such work display the artist's creativity and personal style attached to the art work, however, works like tags¹¹⁵ and throw-ups¹¹⁶ in most circumstances lacks the creativity which is not considered to be truly an original work.¹¹⁷

The moment we look beyond the assumptions and stereotypes and in further learn and understand the subcultures, it becomes more clear to understand that the graffiti writers spend months and years to create their own lettering style which is creative and unique and such lettering styles require rigorous practices for hours to become master in such art work, even though the final work of graffiti might seem to be shabby to the public.¹¹⁸ The display of graffiti artwork with respect to its style and pattern of letters, often makes it hard and difficult to read, especially for those people who are not familiar and accustomed with graffiti works or the cultural background of graffiti works.¹¹⁹ The graffiti artwork is different from various other

¹¹⁰ 17 U.S. Code, s 102(a)(5)

¹¹¹ *Ibid*

¹¹² *Id*

¹¹³ *Supra* note 82

¹¹⁴ *Ibid*

¹¹⁵ Tags are fashionable formats of signatures.

¹¹⁶ Throw-ups more simple graffiti pictures and designs which are made with an outline in Colour and Often a single layer of colour is used to fill the graffiti. It is more of a simple and quick bubble-letter design.

¹¹⁷ *Supra* note 101

¹¹⁸ Mark Halsey and Alison Young, 'Our desires are ungovernable: Writing graffiti in urban space' (2006) 10 (3) Sage Journals, Theoretical Criminology, 275, 294

¹¹⁹ Enrico Bonadio, *Copyright in the Street: An Oral History of Creative Processes in Street Art and Graffiti Subcultures* (2023) 30

forms of street art, like memorial murals, which portrays a very comprehensible and unambiguous words, making it easy for the public to read and understand.¹²⁰ Hendrick ECB, street artist, famously known for his style of creating large scale portraits and together with Indian artist Anpu, they created the tallest mural of Mahatma Gandhi in India at the Delhi Police Headquarters, which is over 150 ft tall and it is widely recognized as the tallest mural in India.¹²¹ The mural represented and also displayed the progress in how art and the government can work and function in harmony together. A project of such massive scale and size proved that the Indian public institutions are willing to embrace and accept new and creative ideas.¹²² This creation was not just a work of art but also the creation of mahatma Gandhi's mural was created to display honor and gratitude to someone who made their message communicated unambiguously for everyone in the society.

In *Reece v. Mark Ecko Unlimited*,¹²³ the artist named Reece contended and filed a complaint against a video game company for using a stylish version of the word "Dip" which was in use in their graffiti-themed game. Reece who had already created the work in 1972 and registered such work under U.S Copyright Office, proved that creative, stylish lettering indeed can be considered as an original work which is enough to be protected by the copyright law.¹²⁴ Judge Debra Freeman confirmed that the word "DIP" WAS Reece's "tag" as that of a graffiti artist, meaning that he has used the word "DIP" as his personal signature or an identifying mark. Although Judge Freeman did not find any type of copyright infringement because of the differences between that of Reece's tag and the image used in the video game, Judge Freeman listed some important points suggesting that styled tags and throw-ups can have originality enough to meet the requirements for copyright protection.¹²⁵ Judge Debra Freeman has confirmed through the findings from the Reece's case that creative lettering inclusive of stylish tags and also throw-ups, can be considered an original work and hence can be given protection under copyright law.¹²⁶ Graffiti tags can further be compared to typefaces, however when it comes to typefaces, they cannot be copyrighted under the copyright law in the United States of America.¹²⁷ In case of typefaces, it has been argued that a unique or creative form of typefaces

¹²⁰ *Ibid*

¹²¹ Akshat Nauriyal, 'India's Tallest Mural: Gandhi at the Police Headquarters', Start Foundation <<https://artsandculture.google.com/story/india-s-tallest-mural-gandhi-at-the-police-headquarters-st-art-india/-AVxwQKPKx0A8A?hl=en>> accessed 15 February 2025

¹²² *Id*

¹²³ *Reece v Mark Ecko Unlimited* 10 Civ. 02901 (JSR) (DF) S.D.N.Y. [August 19, 2011]

¹²⁴ *Supra* note 101

¹²⁵ *Ibid*

¹²⁶ *Ibid*

¹²⁷ *In Eltra Corp. v Ringer* 579 F. 2d 294, 4th Cir. [1978]

which meet the standard of creativity and skills, deserves a copyright protection because of their artistic designs can be seen as entirely separate from that of their basic function as text styles.¹²⁸

The conflict between graffiti and copyright law often raises the questions as to graffiti artists on their graffiti work holds the exclusive bundle of rights under copyright law?¹²⁹ Generally, the copyright law grants exclusive bundle of rights to the artists¹³⁰ for the works which are copyrightable in nature.¹³¹ Since many of the graffiti artworks are created not just by one artist but by multiple artists, there are possibilities whereby it could create legal challenges if the copyright protection is given to such multiple artists. The main issue here would be how one graffiti artist could be able to use their rights to have control over the creative work when other artists have also contributed to the artwork.¹³²

In the case of *Villa v. Pearson Education*,¹³³ the plaintiff, Hiram Villa who sued the defendants Pearson Education and Brady Publishing as they have used a copy of plaintiff's work in a book without seeking prior permission. The court held that if there was a copyright infringement it would depend upon facts which are specific and under what circumstances the mural was created.¹³⁴ The court in this case, acknowledges that this was an important and crucial factual question, a case though not directly dealt about the property rights of the owner, however the court was willing and agreed to recognize that a graffiti artist's rights under Section 106 of the U.S. Copyright Act.¹³⁵

LEGAL DEFINITION AND ANALYSIS OF ORIGINALITY IN INDIA

The concept of culture and society when it comes in relation to literature and anthropology has always been a debatable topic of discussion among various theorists, sociologists, anthropologists and various literary critics.¹³⁶ Robert Lowie (1917) argued that culture is not something which can be inherited through the process of race or genes, but it can be learned through social communications and interactions as well as through differential social

¹²⁸ Jacqueline D Lipton, 'To © or Not to ©?', Copyright and Innovation in the Digital Typeface Industry' [2009] 43:143 University of California, Davis, 155-162

<https://lawreview.sf.ucdavis.edu/sites/g/files/dgvnsk15026/files/media/documents/43-1_Lipton.pdf> accessed 15 February 2025

¹²⁹ *Supra* note 82

¹³⁰ Copyright Act, 17 U.S.C., s 106

¹³¹ 17 U.S. Code, s 102

¹³² *Supra* note 82

¹³³ *Villa v Pearson Education* 03 C 3717 N.D. Ill. [December 8, 2003]

¹³⁴ *Ibid*

¹³⁵ *Supra* note 82

¹³⁶ *Supra* note 77

experiences.¹³⁷ As we travel through the cities by various modes of transport, be it bus, train, cars or on foot, graffiti can be seen and displayed almost in every corner. However, for many people the concept of graffiti is just a mere glimpse of colors or a sign of any anti-social behavior which is linked to that global subculture. Despite this mindset of certain group of people in the society, graffiti do play an important and crucial role in the urban landscape by adding a life and soul to the city and in further shaping how we can perceive that space by offering a new way of thought-provoking ideas about how we can engage with the cities and in the process reimagine the urban environment.¹³⁸

Originality in India under the Act,¹³⁹ is the main law which protects and safeguards the creative works in the country. Copyright is given to “original” literary, dramatic, musical, and artistic works under Section 13(1)(a) of the Act.¹⁴⁰ But the Act does not mention a detailed definition as what “originality” means. It is the interpretation and decisions made by the courts which has stated as what qualifies to be “original” which is based upon case to case.

According to Copyright Act 1957,¹⁴¹ the copyright protection is applicable to original literary and artistic works. However, when it comes to the definition of a “literary work” in the Act under section 2(o), it is vague because it only lists out the components like that of computer programs, tables, and compilations which includes compilation of computer databases. On the other hand, Section 2(c) of the Act, provides a clear list of “artistic works”, where components like paintings, sculptures, photographs, works of architecture and various other forms of artistic craftsmanship are included. All these works are eligible to get protection under Act if these works are original.¹⁴² Street art and graffiti it often includes the elements of both visual and text, and all these elements can be artistic or written in a stylish manner. Depending upon the content, a specific piece of graffiti or street art could be classified under the Copyright Act, 1957 as either a work of literary nature or in simple “literary work” or an “artistic work”. As per section 13(1)(a) of the Act if the work fulfills the standard of originality and is new and original, then such work is eligible for copyright protection, however, section 13(3) specifies that protection under copyright is not applicable to films or sound recording that infringe upon the copyright of dramatic, literary or musical works.¹⁴³ The Copyright Board in New Delhi

¹³⁷ Venu Gopal and Dr. Mutyala Suresh, ‘A Socio-Cultural Study Of Delhi By Khushwant Singh’ [2022] 13 (9) Journal of Pharmaceutical Negative Results

¹³⁸ *Supra* note 77

¹³⁹ Copyright Act 1957

¹⁴⁰ Copyright Act 1957, s 13 (1)(a)

¹⁴¹ *Supra* note 101

¹⁴² *Supra* note 100

¹⁴³ *Ibid*

stated that the copyright law does not depend on how good or how high the quality of a work is but the copyright law is very clear that work should not be a “copy” of another person’s work, which automatically qualifies a work to avail copyright protection.¹⁴⁴

The Copyright Act of 1957 does not provide clear definition as to what makes a work “original”. Indian courts through various decisions have created their own interpretations and suggested that a work must portray a “flavor of minimum requirement of creativity” to be eligible for copyright protection.¹⁴⁵ In most of the times, graffiti and street art could be qualified for protection under the copyright law but these artworks i.e., the graffiti and street art are often created without giving much attention and concern for the copyright rules.¹⁴⁶ The Act, has indeed been influenced by the Western cultures and ideologies which has been focused on individual creativity and originality.¹⁴⁷ But in reality keeping the traditions and culture of India, to simply, focus on individual’s creativity does not fit with the rich Indian traditional art as reuses of certain common patterns and designs are often used whereby the “originality” under Indian art usually means to understand that it is a work which is created by the artist, whereby the ideas or the patterns are not completely new.¹⁴⁸ The Division Bench of the Delhi High Court held in the case of *Camlin Pvt Limited v. National Pencil Industries* that when it comes to “originality” it refers not only to the term ‘Novelty’ but also to the work in question which has originated with its author or authors.¹⁴⁹ Hence for the judicial authorities in India, to have a copyright over a work and to get protection of copyright under the copyright law, it is of no importance whether the work is common¹⁵⁰, provided that the work has not been a copied version of someone else’s work or copied from another author.¹⁵¹

When it comes to the jurisprudence and legal ideologies about the creativity of the work, it suggests that a work does not get a guaranteed protection under the copyright just because such work was created by an author independently. The work that is created by an author needs to have something extra i.e., creative approach, portrayal of skill and the “originality”. This means that the work whether a work of art, or writing or painting, must reflect originality which is beyond the basic creation. To simply declare that the work has evolved from the author is not just enough but the distinctiveness and the creative aspect that make the work stand out from

¹⁴⁴ *Enercon Systems Pvt. Ltd. v Registrar of Copyrights* MANU/CP/0012/2008 [4 July 2008]

¹⁴⁵ *Eastern Book Company and Ors v D B Modak & Anr.* MANU/SC/4476/2007 [2007]

¹⁴⁶ *Supra* note 100

¹⁴⁷ *Ibid*

¹⁴⁸ *Ibid*

¹⁴⁹ *Camlin Private Limited v National Pencil Industries* MANU/DE/1324/2001 [2001]

¹⁵⁰ *Mohd. Naseer v Iqbal Hussain, Copyright Board, Bangalore* MANU/CP/0006/2008 [2008]; *supra* note 27

¹⁵¹ *Fateh Singh Mehta v O.P. Singhal & Ors* MANU/RH/0003/1990 [1989]

the rest of the existing works is the one that qualifies the standard of originality and avails protection under the copyright law. For graffiti and street art, the standards for getting protection under the copyright law, however, might not be the same. For graffiti although there can be the originality existing, however, for street art, it is different. Graffiti is often judged as more closely associated with individual identity and style whereby originality becomes the key to its meaning and value. For street art, based upon the views of the society it is more accepted under the Indian culture as it serves a broader and wider community purpose. Hence for graffiti a higher standard of creativity is expected as compared to that of street art.¹⁵²

SUGGESTIONS

The legal reforms in India with respect to the copyright laws requires a change to protect and secure graffiti art work and street art. These modifications should include by providing with the protection under copyright laws once the work meet the minimum required standard of “originality”. Once an official copyright protection is prescribed for graffiti works and street art, then such recognition develops enthusiasm and motivation for the artists who feel encouraged to create their work without the fear of their work being copied or misused by others. Such changes and reforms are required which provide unambiguous rules which solves confusions and disagreements about who is the owner of the rights of such work, which further makes the procedure fair for all the parties involved. It is extremely crucial and important to create an open communication between the artists, and policymakers to support and understand the cultural aspect of graffiti works and street art with open mind and forward thinking. These discussions ensure the interest of both the artist’s as well as that of the policy makers that graffiti art should be recognised and acknowledged as a valuable and precious cultural contribution rather than an act of vandalism. There can be public spaces specifically assigned to display street art through which artists can freely express their ideologies through their creative work to share important messages to the society. By conducting public awareness campaigns, the cultural significance and the original creativity of the graffiti artists could be highlighted as a form of an artistic expression rather than being seen as an act of crime.

CONCLUSION

The analysis made in this paper, has multiple facets of the concept of originality in graffiti and street art, which has emphasized the artworks unique and dynamic dovetail with artistic and cultural frameworks. These artworks which is embedded in personal expression and

¹⁵² *Supra* note 100

community narratives, portray a challenge on the conventional notions of authorship and creativity. The concept of ‘originality’ is often manifested through the innovative styles and techniques in correlation with the urban spaces which reflects both an individual’s vision and a collective cultural identity associated with such artwork.

Graffiti and street art are not just an illumination but, they are influential and powerful mediums of communication, storytelling and at times use this form of works as a medium of protest. The research in this paper accentuates that these artworks create an ambiguous dichotomy between the refined, mainstream art and the grassroot, community-driven creativity, emphasizing changing landscape of creativity and the progressive development of creativity in today’s contemporary culture.

An important conclusion from this study is the binary role of originality in graffiti and street art as a flag bearer of individual artistry and as a product of shared cultural environments. On one hand where the graffiti work prioritizes the creativity and personal identity, on the other hand street art often tends to the form of visual representation that resonates the cultural background of the community, which adds a unique contribution of both forms of artworks to urban spaces and intercultural expressions.

