The Writing on the Wall: Street Art and Copyright

# ABSTRACT:

The author: Aislinn O’Connell is a lecturer in law at Royal Holloway University of London. Her research is based around copyright in the digital age and copyright in new media.

The article: Edgy, popular, and hugely lucrative, street art is a big-money business. With original works being sold for millions, the question arises whether this art form is covered by copyright provisions. This article examines firstly the legislative provisions covering street art and concludes that there is no legislative bar to copyright in street art. It then moves on to case history of arguments that there is no copyright in illegally created works, and notes the lack of precedent available. By combining the indicators of ancillary rights and further looking to the judicial treatment of illegality and considering whether this is applicable to street art, the article concludes by arguing that there is currently no bar in the UK to copyright arising in illegal works of street art.

# INTRODUCTION

Street art[[1]](#footnote-1) is not new, and it is not going away. Although the history of wall writing stretches back tens of thousands of years,[[2]](#footnote-2) the modern street art movement traces its origins to 1970s New York,[[3]](#footnote-3) spreading from there to other locations.[[4]](#footnote-4) From London advertisers[[5]](#footnote-5) to loyalist murals in Northern Ireland,[[6]](#footnote-6) walls have often been a location for artistic and literary works. The popularisation, monetisation, and reproduction of that work, however, brings new issues with it. Works of street art by popular artists can sell for six-figure sums,[[7]](#footnote-7) and the value of street art can outstrip that of the wall on which it is painted.[[8]](#footnote-8) In the High Court, a 2015 case sought to determine ownership of a wall on which a Banksy mural was placed.[[9]](#footnote-9) Although this case was a protracted legal battle over who owned an artwork, the person who created the artwork – anonymous street artist Banksy – was only briefly mentioned in the judge’s decision, to state that he presumably owned the copyright in the work.[[10]](#footnote-10) This brief statement raises further questions. On closer investigation, does this presumption still stand? Is street art subject to copyright? This article considers this question in the context of English and Welsh copyright law, considering case history from other jurisdictions, before concluding that although the author argues strongly that current law supports the notion of copyright existing in illegal street art, and she is not alone in this assertion,[[11]](#footnote-11) it is possible to argue the opposite. Therefore, this ambiguity in law needs to be clarified.

# STATUTORY AUTHORITY

Although commentary on the IP concerns of street art or graffiti stretches back over a decade,[[12]](#footnote-12) there is still no English or Welsh case law or statute which decisively settles the issue. This article assesses the disparate sources of law which could be utilised to establish the answer to the following questions: Is street art subject to copyright? Is the grant of copyright format neutral? Or does illegally placing an artwork deny the author all the protections of copyright?

The first place to which we must look in order to determine the copyright status of a work is the Act which grants copyright to artistic works. Under the Copyright, Designs, and Patents Act 1988 (CDPA), copyright subsists in any artistic work.[[13]](#footnote-13) ‘Artistic work’ is further defined as ‘a graphic work, photograph, sculpture or collage, irrespective of artistic quality … a work of artistic craftsmanship’.[[14]](#footnote-14) The Act allows a copyright holder to control the reproduction and distribution of that work to the public, as well as controlling renting or lending to the public, communicating the work, or doing any of the above with relation to an adaptation of that work.[[15]](#footnote-15) Simply put, an artwork cannot be reproduced or distributed without the permission of the copyright holder. This applies irrespective of the artistic quality of a work[[16]](#footnote-16) – provided the European *Infopaq[[17]](#footnote-17)* standard is met, ie that the work must be ‘the author’s own intellectual creation’.[[18]](#footnote-18) Given that examples of street art have been exhibited in art museums,[[19]](#footnote-19) it is difficult to justify a claim that no street art would meet this standard, and that requirement will be assumed to have been met for our hypothetical consideration.

A second requirement for copyright protection, fixation, is a further hurdle. While in the US, to be eligible for protection, the work must be ‘fixed in a tangible medium’,[[20]](#footnote-20) the provision on fixation in the CDPA is less clear. The Adam Ant case[[21]](#footnote-21) denied copyright protection to facial makeup as it did not qualify as a painting under s3 of the Copyright Act 1956 (which was replaced by the CDPA), and could not exist independently of Adam Ant’s face.[[22]](#footnote-22) However, the 1956 Act and the CDPA do not give a specific fixation requirement for artistic or graphic works. Rather, s4(2) of the CDPA gives examples of graphic works, and s4(2)(b) includes the provision for a ‘similar work’. While Adam Ant’s face paint did not qualify as a painting under the 1956 Act, the wider categories included in the CDPA as well as the permanent nature of, for example, spray paint on a wall, combine to suggest that street art would qualify as a painting.[[23]](#footnote-23) Failing that, street art may alternatively qualify under the provision of ‘similar work’.[[24]](#footnote-24) Thus, if classified as an artistic work, meeting the fixation requirement, and being of sufficient artistic standard under *Infopaq,* street art would meet the requirements of the CDPA.

The CDPA is silent with regard to specifically denying copyright protection to illegally placed street art, thus we must look elsewhere for guidance. In 2015, Arnold J stated (obiter) that prima facie copyright did exist in Banksy’s *Art Buff* and belong to Banksy himself.[[25]](#footnote-25) Although not binding, this statement would be inexplicable if copyright did not arise in illegally placed artworks. However, there is not yet a conclusive statement of whether or not copyright subsists in illegally placed street art.

# CASE AUTHORITY

The second area to which we would look to establish whether copyright exists in street art would be case law. Unfortunately, this is lacking in England and Wales. Thus, we must look further afield for persuasive arguments which could be used to determine copyright for street art.

In California and New York, those who have sought to deny copyright protection for street art[[26]](#footnote-26) cite illegal placement as a barrier to copyright protection. This is the argument made by the defendants in *Villa v Pearson Education*,[[27]](#footnote-27) *Williams v Cavalli,[[28]](#footnote-28) Tierney v Rime,[[29]](#footnote-29)* and the plaintiffs in *H&M Hennes v Williams*.[[30]](#footnote-30) These cases would evidence that the arguments are being made. However, given that all cases settled, and that in several cases this argument is made where the work is not illegally placed – for example *Williams v Cavalli*,[[31]](#footnote-31) and *Anasagasti v American Eagle Outfitters[[32]](#footnote-32)* – the reliance which can be placed on the arguments made is limited.

To discuss firstly legally created street art, the matter is relatively straightforward. Despite the lack of actual case precedent, a legally created mural would satisfy all the requirements of copyright protection, and not face the hurdle of illegality of creation. The relative lack of contention around this can be seen in two examples which never made it as far as the courts. Photographer Peter Rosenstein published a 2006 photography book, ‘Tattooed Walls’, which depicted graffiti murals around New York City.[[33]](#footnote-33) Following a complaint by a group of artists whose work was depicted in the book, the publisher withdrew the book from sale. The artists and Rosenstein later settled on undisclosed terms.[[34]](#footnote-34) In 2011, car manufacturer Fiat released an advertisement which featured a Fiat 500 driving around the Bronx, clearly showcasing legal murals by graffiti group Tats Cru.[[35]](#footnote-35) The graffiti crew claimed that permission was not sought for use of the murals, and later settled on undisclosed terms.[[36]](#footnote-36) Similarly, David Anasagasti, better known as graffiti artist Ahol Sniffs Glue, settled relatively quickly with American Eagle Outfitters after they created an advertising campaign which heavily featured his (legally painted) mural and signature ‘droopy eyes’ motif. Although Anasagasti did lodge a complaint with the New York Southern District Court,[[37]](#footnote-37) the two parties settled before a full hearing was held.[[38]](#footnote-38) While inclusion of some street art may arguably fall under the European ‘freedom of panorama’ provision,[[39]](#footnote-39) this would apply only if copyright existed in the first place.

However, while legally painted murals may settle relatively easily, without a question as to whether protection exists, there remains some questions about whether illegally placed street art is subject to the same copyright protection.

Although there are many American cases which have considered the prospect of copyright protection for street artists, there has been no conclusive statement whether or not copyright exists in illegally created art. In the early 2000s case *Villa v Pearson Education[[40]](#footnote-40)*, graffiti artist Hiram Villa, who used the pen name UNONE, brought a suit against Brady Publishing for including his artwork in a Tony Hawk Strategy Guide without permission. Although at first instance in 2002 the court dismissed the suit for lack of copyright registration, which would mean that Villa was unable to claim compensation, by 2003 Villa had registered his work as subject to copyright, and sought to sue again. Brady Publishing applied to summarily dismiss the case, arguing that ‘that the mural in question is not protected by copyright, either because it is illegal graffiti or because it incorporates words or letters.’[[41]](#footnote-41) The court denied the motion to dismiss, stating that the success of the first argument ‘would require a determination of the legality of the circumstances under which the mural was created. The second would necessitate an evaluation of the degree of creativity exhibited in his original mural.’[[42]](#footnote-42) Although not explicit, this could potentially be read as stating that copyright does not arise in illegally painted works – and indeed, this is the position that Danwill Schwender took in his article advocating for limited protection of illegal graffiti.[[43]](#footnote-43) Alternatively, however, I would argue that the granting of registration of the copyright in the work at issue indicates that the illegality or otherwise of the act of creating the artwork does not prima facie affect the copyrightability of the artistic work. Neither of these interpretations are explicitly supported, however, and the parties settled before a full hearing was heard.

Nicholas O’Donnell made a similar point in his blog post on the Art Law Reportconcerning *Seltzer v Green Day, Inc*.,[[44]](#footnote-44) where the Ninth Circuit appeals court found that the incorporation of a poster into a video backdrop for use at live concerts was fair use.[[45]](#footnote-45) O’Donnell argued if the mural was not subject to copyright in the first place, then it could not be fair use – one cannot utilise an exception to copyright if that copyright does not exist.[[46]](#footnote-46) However, to suggest that this can be applied to all street art is a flawed interpretation, as the poster was created in separate circumstances, not painted directly onto the wall. Thus, the copyright arose at the point of creation, presumably in a studio, without any illegality attached. However, this could have interesting implications for street artists who work with stencils – does the copyright arise at the point where the design is created, or does it only manifest at the point of creation of the mural? It is possible that there are two copyrights in those circumstances – one in the stencils, and one in the adaptation of the stencils to create a spray-painted work on a wall.

The question of illegality looked like it would be carefully discussed in 2016, in a dispute between fashion house Moschino and street artist Joseph Tierney, in the US District Court for Central California.[[47]](#footnote-47) Tierney, better known as Rime, alleged that Moschino’s use of his VandalEyes motif on a catwalk collection, also worn at the Met Gala[[48]](#footnote-48) without the permission of the artist infringed trademark law, copyright law, constituted unfair competition, and damaged Tierney’s reputation: “nothing is more antithetical to the outsider ‘street cred’ that is essential to graffiti artists than association with European chic, luxury and glamour – of which Moschino is the epitome.”[[49]](#footnote-49)

Moschino SPA, together with creative director Jeremy Scott, filed several motions to strike and motions to dismiss, with largely overlapping claims. The Court denied Moschino and Scott’s motions to dismiss and motions to strike, setting an expedited schedule for hearing the case. [[50]](#footnote-50) Moschino and Scott then sought summary judgment, alleging inter alia that Rime’s work was ineligible for copyright protection due to its illegality. In his response to these motions, Rime stated that the artwork was created as part of the Detroit Beautification Project, and was in no way illegal.[[51]](#footnote-51) The parties, however, settled before a full hearing.[[52]](#footnote-52)

A further opportunity looked to arise to discuss the copyright status of street art in California in 2016. *[[53]](#footnote-53)* McDonald’s were named as defendants in a suit alleging that the graffiti-style artwork they had installed in their European restaurants infringed the copyright of the late artist Dashiell Snow in his stylised signature.[[54]](#footnote-54) This had the potential to be an extremely interesting case,[[55]](#footnote-55) with scope for much discussion, but the case was dismissed for lack of personal jurisdiction, and the issue has not resurfaced in a more appropriate court.[[56]](#footnote-56)

This is not the only issue that McDonald’s has faced with graffiti artists. After McDonald’s released a marketing video entitled ‘McDonald’s Presents the Vibe of Bushwick NY’, the food giant faced a complaint from a collection of New York-based artists,[[57]](#footnote-57) who alleged that the inclusion of their works in a video promoting the New York Bagel Supreme was an infringement of their copyright. No court case occurred in these circumstances, however, and McDonald’s quickly removed the video from their advertising campaigns.[[58]](#footnote-58)

By mid-2018, fashion retailer H&M filed a case which could potentially have settled the issue for graffiti artists and interested parties in the US. *[[59]](#footnote-59)* Street artist Revok, who was also a complainant in *Williams v Cavalli*, sent H&M a cease and desist letter when his artwork was included in an advertising campaign. H&M responded with a submission to the Eastern District of New York court,[[60]](#footnote-60) seeking a declaration that illegally placed graffiti is not subject to copyright protection. This resulted in widespread news coverage,[[61]](#footnote-61) with both support and criticism of the company.[[62]](#footnote-62) Although the fashion giant quickly dropped the suit,[[63]](#footnote-63) and stated that they were working with the artist to find a solution, the issues of copyright enforcement for street artists are clearly not isolated, and unlikely to disappear. In fact, later that same year, a further complaint was lodged in the Central California District Court relating to street art, this time against sunglasses manufacturer Oakley.*[[64]](#footnote-64)* In the initial complaint, plaintiffs Donald Robbins (aka Keptione) and Noah Daar (aka DJ Rakus) alleged that Oakley included in their advertising campaign several artworks which had been painted by the pair in San Francisco in 2015. Prior to filing the suit, Robbins and Daar claim that they contacted Oakley’s parent company, Luxxotica. They stated in their complaint: ‘shockingly, counsel for Luxottica [the eyewear behemoth that owns Oakley] … responded to [their] concerns by acknowledging that Oakley had used their work, but then offensively suggested that their artwork does not have any ‘modicum of creativity’ and is just ‘generic’ markings not ‘eligible’ for any protection.‘[[65]](#footnote-65) Although not considering the question of illegality, the suggestion is still that copyright does not exist in works of street art. Nonetheless, for the US, the question of copyright protection for street art remains uncertain

However, this uncertainty is not the case for all jurisdictions. In France, in 2007, the Tribunal de Grande Instance considered the question of protection in copyright for street art with regard to the work of pseudonymous mosaic artist Invader and granted those rights to the appellant. Invader alleged, in his 2005 suit, that the removal of his mosaics from the public walls where he had cemented them and their subsequent display in the showroom of Peugeot France constituted an infringement of his copyright in the work. Considering the question in 2007, the High Court concluded:

Certain aspects of Mr X’s work … are protectable by copyright. This is the case with the transposition in the form of pool tiles of the pixels of an existing videogame, this formalisation bearing the imprint of the personality of the artist, and it does not matter that other artists have transposed these pixelated creatures extracted from videogames into other materials. Similarly to the nature of the pool tiles attached to urban walls, the choice of the location of their placement bears the imprint of the personality of the author.[[66]](#footnote-66)

The French Intellectual Property Code accords copyright to ‘all works of the mind, whatever their kind, form of expression, merit or purpose’,[[67]](#footnote-67) a more liberal allowance than the CDPA, which specifies distinct categories of copyright works, but both are silent with regard to the illegality of the creation of the work. Although France’s civil law tradition does not harmonise perfectly with the common law jurisdiction of England and Wales, this granting of copyright to Invader in his illegal works indicates that similar would, and indeed should, be possible under English and Welsh law, both of which are derived from the same European Directive.[[68]](#footnote-68)

Thus, where case law in the US is undecided on the copyrightability of works of illegal street art, and French law provides a strong, but not perfect, precedent, the question of whether street art in England and Wales is subject to copyright remains undecided. It is clear from the above discussion that the issue is argued in multiple jurisdictions, and graffiti artists have been able to obtain financial recompense for unauthorised use of their works, but a clear legal decision has yet to emerge. Thus, we must look further to other elements of authority.

# ANCILLARY RIGHTS

Further supporting the notion that street art is protected by copyright is the evidence that street artists have exercised rights which are ancillary to copyright. Anonymous Bristol-born street artist Banksy profits[[69]](#footnote-69) from the Artist’s Resale Right,[[70]](#footnote-70) the Guardian asserts, which entitles creators of physical artworks to a proportion of the proceeds from the sale of their work. However, it is unclear whether this applies only to his paintings and prints, or also to his (illegal) mural works. It is also not a strict copyright, but rather an ancillary right. Similarly, the 2018 New York 5Pointz case granted almost $7million in damages to street artists after their (placed with permission) artworks were whitewashed by the owner of the buildings on which they were painted. This too was not strict copyright, but concerned the Visual Artists Rights Act 1990 (VARA),[[71]](#footnote-71) which grants specific protections to artworks of recognised stature which are displayed in public.[[72]](#footnote-72) However, VARA and copyright are closely intertwined, and thus strong evidence for the existence of rights in street art. Finally, street artists themselves, despite declaring that ‘Copyright is for losers’,[[73]](#footnote-73) are keen to enforce their rights where possible, especially where reputational damage is concerned, as shown through the case history discussed above. The settlement of almost all of the cases discussed creates a (rebuttable) presumption that such rights exist, and can be enforced.

While the granting of ancillary rights may go a long way to suggest that street art is gaining legitimacy as art which is protected by law, there still is not yet an English precedent which conclusively settles the question of whether street art is subject to copyright protections and provisions, whether legally or illegally placed. Statutory interpretation from France indicates that copyright does exist under the InfoSoc Directive, but it is possible that an argument could be put forward that the illegality of creation negates the grant of copyright. Thus, this article will move on to consider the question of illegality.

# COPYRIGHT IN ILLEGAL WORKS

Unfortunately, once again there is a lack of copyright case law to be found in the English and Welsh courts, thus we must look to other jurisdictions for persuasive authority. In the US, a 1979 Court of Appeals for the Fifth Circuit case regarding the unauthorised showing of an adult film reversed the finding of a lower court and found that the question of obscenity (which was, at the time, illegal) did not affect whether copyright arose in an artistic work – ‘there is not even a hint in the language of [the copyright act] that the obscene nature of a work renders it any less a copyrightable “writing”.’[[74]](#footnote-74) By analogy, one could expand this to illegality in general. Furthermore, the same case goes on to state very clearly that an ‘unclean hands’ doctrine should not be a barrier to copyrightability, as to do so would ‘actually frustrate the congressional purpose underlying an all-inclusive copyright statute’[[75]](#footnote-75) Similarly, *Belcher v Tarbox,* a1973 Ninth Circuit case, stated that fraudulent declarations did not preclude racing handicaps from obtaining copyright protection,[[76]](#footnote-76) again supporting the notion that copyright works created via trespass or criminal damage would likely be subject to copyright.

A crucial quote from this case delves into the intricacies of the ‘clean hands’ doctrine which the cinema attempted to rely on in denying copyright protection to the ‘obscene’ film. Per the Court in *Mitchell Bros*:

The maxim of unclean hands is not applied where plaintiff's misconduct is not directly related to the merits of the controversy between the parties, but only where the wrongful acts “in some measure affect the equitable relations between the parties in respect of something brought before the court for adjudication”. The alleged wrongdoing of the plaintiff does not bar relief unless the defendant can show that he has personally been injured by the plaintiff's conduct. The doctrine of unclean hands “does not purport to search out or deal with the general moral attributes or standing of a litigant.” Here it is clear that plaintiffs' alleged wrongful conduct has not changed the equitable relationship between plaintiffs and defendants and has not injured the defendants in any way [citations omitted].[[77]](#footnote-77)

Thus, while the clean hands doctrine may well preclude a graffiti artist from claiming copyright protection against the property owner whose wall has been defaced, the illegality of the original action would not affect the equitable relationship between the artist or copyright holder and the third party who seeks to reproduce it, or perform other acts restricted by copyright.

A further argument to consider is that in other forms of artistic works, the illegality or illegitimacy of the creation of the work in the original circumstances does not preclude copyright from existing in the work. In *The College of Charleston Foundation v Benjamin Ham,* where a professional photographer sold a photograph he took while trespassing, the US District Court for South Carolina specifically considered whether the issue would be dealt with under the Copyright Act, and concluded that it was, indicating that the copyright in a photograph taken while trespassing still exists.[[78]](#footnote-78) Copyright in a song which violates the copyright of an earlier song still exists also (although it would be shared with the original songwriter),[[79]](#footnote-79) and the Italian Supreme court recently declared that a derivative work which infringes copyright can be both infringing and protectable.[[80]](#footnote-80) To stretch this comparison to its limits, had JK Rowling written her Harry Potter books with a stolen pen, it would be fallacious to suggest that the copyright in them would fail to arise. While illegality might be a barrier to the full exploitation of copyright (through, for example, having to pay a proportion of royalties, or being unable to enforce moral rights against the property owner), it is clear that in the US it does not prevent copyright from arising in all circumstances. Thus, it is clear to see why a series of graffiti artists have claimed copyright in their works, or sought to prevent others using their works without authorisation, and that similar conclusions can be drawn in England and Wales.

# ILLEGAL CONTRACTS AND COPYRIGHT

Assuming the creation of the artwork is done without permission, there are potentially tensions to be found between the criminal nature of wall painting or spraying and copyright protections in the ensuing art. Procedures in place to prevent those who commit crimes from profiting from that criminal activity, and enable the court to reclaim profits from criminal activities could apply to those who seek to gain economically from graffiti or street art.[[81]](#footnote-81) However, control of one’s art – and the rights granted by copyright – encompasses more than just economic rights.[[82]](#footnote-82) Copyright also grants moral rights, including the right of attribution[[83]](#footnote-83) (to be identified as the author of the work) and the right to object to derogatory treatment of the work.[[84]](#footnote-84) As such, while the Proceeds of Crime Act 2002 may prohibit artists from gaining economically from their criminal vandalism, it would not necessarily prevent the copyright from arising in the first place. It would simply empower the recovery of profits made after the fact. Thus, it would appear that there is no statutory bar through the criminal nature of the original act of creation.

There is potentially a common law thread which one could follow to prevent the courts administering copyright in illegal works. The bar on courts enforcing illegal contracts would render street artists unable to enforce contracts to licence their artistic works, and consequently effectively unable to prevent copyright infringement. As stated in the 1775 case *Dering v Earl of Winchelsea*,[[85]](#footnote-85) ‘Courts will not support claims which rely on immoral or illegal acts.’ The 2016 Supreme Court judgment in *Patel v Mirza[[86]](#footnote-86)* makes a similar point in the opening of the lead judgment from Lord Toulson, with whom Lady Hale, Lord Kerr, Lord Wilson, and Lord Hodge agreed: ‘[n]o court will lend its aid to a man who founds his cause of action upon an immoral or an illegal act.’[[87]](#footnote-87)However, Lord Toulson then gives a thorough history of the courts’ dealing with claims where illegality is concerned, which is far more nuanced than these two quotes would suggest. Specifically, he points to the Australian case of *Nelson,[[88]](#footnote-88)* approved in *Fitzgerald v FJ Leonhardt Pty Ltd,[[89]](#footnote-89)* where McHugh J stated:

it is not in accord with contemporaneous notions of justice that the penalty for breaching a law or frustrating its policy should be disproportionate to the seriousness of the breach. The seriousness of the illegality must be judged by reference to the statute whose terms or policy is contravened. It cannot be assessed in a vacuum. The statute must always be the reference point for determining the seriousness of the illegality.[[90]](#footnote-90)

*Patel* also cited with approval the Canadian case of *Hall v Hebert[[91]](#footnote-91)*, which describes the illegality doctrine as refusing to enforce a claim where it would be harmful to the integrity of the legal system to do so.[[92]](#footnote-92)

Although in *Patel,* there was no dissent, each had separate reasoning for their decisions. Lord Toulson, giving the lead judgment, departed from the earlier case of *Tinsley v Milligan[[93]](#footnote-93)* and its reliance doctrine, instead using a public interest discussion. Lord Toulson laid out the rationale behind both the denial of civil relief in illegality cases and the difficulty of justifying a punishment imposed by the civil courts:

Punishment is not generally the function of the civil courts, which are concerned with determining private rights and obligations. The broad principle is not in doubt that the public interest requires that the civil courts should not undermine the effectiveness of the criminal law; but nor should they impose what would amount in substance to an additional penalty disproportionate to the nature and seriousness of any wrongdoing.[[94]](#footnote-94)

Thus, preventing copyright from arising in a work of illegal street art would be an additional penalty disproportionate to the nature and seriousness of criminal damage. Copyright is a long-lasting right, encompassing the lifetime of the author plus seventy years after the year of their death, and includes the right to control reproduction and distribution of an artwork, together with moral rights of attribution and objection to derogatory treatment. To deny this protection to an artist or author because of the location of their artwork is a sanction which far outweighs the penalties for the criminal actions of the artist. Where the value of criminal damage, the provision which covers graffiti and street art, is less than £5,000[[95]](#footnote-95) criminal damage cases should be tried summarily, and the maximum penalty at summary trial is three months’ imprisonment or a fine of £2,500.[[96]](#footnote-96) Where the value of the damage is more than £5,000, criminal damage cases are triable either way. If tried summarily, the maximum penalty is six months’ imprisonment[[97]](#footnote-97) or a fine of £5,000.[[98]](#footnote-98) On indictment, the maximum custodial penalty is 10 years’ imprisonment.[[99]](#footnote-99) For minor graffiti and flyposting offences, a fixed penalty notice can be issued.[[100]](#footnote-100) Although the financial value of graffiti may not outweigh the financial penalties for criminal damage, there are clear circumstances in which it does.[[101]](#footnote-101) A blanket denial of copyright, rather than a balancing of artist’s intellectual property rights against the owner’s real property rights, far outstrips the consequences of criminal penalties. Thus, there is a clear argument to be made that the denial of copyright protection to illegally placed works which would otherwise be subject to copyright would outstrip the bounds of the illegality doctrine as stated in *Patel v Mirza.*

# CONCLUSION

While street artists have sought to protect their rights in other jurisdictions, there has been a notable lack of the same discussion in the English courts. There is, as yet, no similar case to discuss. The only mention in English courts – aside from prosecutions for criminal damage and vandalism – is in the 2015 *Creative Foundation v Dreamland[[102]](#footnote-102)* judgment. In this case, which concerned the removal of a Banksy mural from a wall in Folkestone for sale in Miami, the dispute was whether the wall (and consequently the mural which was painted on the wall) was the property of the landlord of the building or the tenant occupier. In finding for the landlord, Arnold J stated:

For the avoidance of doubt, I am not concerned with the copyright in the artistic work, which *prima facie* belongs to Banksy[[103]](#footnote-103)

This presumes not only that the copyright in the work belongs to Banksy, but ipso facto presumes that a copyright actually exists in the work. However, it is clear from Arnold J’s wording that this is merely a presumption. Absent a declaration by the courts or Parliament to the contrary, it is clear that copyright exists in illegal street art.

Academics have argued that copyright should protect works of street art. Danwill Schwender argued that *Villa* established that ‘the current state of the law denies street graffiti artists any protection from copyright infringement due to the defense[sic] of illegality’,[[104]](#footnote-104) while Jamison Davies suggested that ‘graffiti would likely receive copyright protection upon full consideration’.[[105]](#footnote-105) Sara Cloon argues that the incentive theory of copyright ‘requires this protection for graffiti’, although she admits that ‘courts have not explicitly stated that unsanctioned graffiti deserves copyright protection’.[[106]](#footnote-106) Celia Lerman, similarly, argues that copyright should protect illegal street art by remaining neutral towards the means of creation.[[107]](#footnote-107) All of these interpretations of US law stop short of stating that copyright already exists in works of illegal street art.

These arguments do not go far enough when looking at the CDPA. UK academics have shown more willing to accept and support the notion of copyright in illegal street art, with Enrico Bonadio discussing the possibility of copyright for illegal street art in 2017,[[108]](#footnote-108) reiterating and developing his position in 2018.[[109]](#footnote-109) Similarly, Marta Iljadica argued for moral rights protection of street art in 2015,[[110]](#footnote-110) and her monograph is premised on an assumption of copyright in graffiti subculture.[[111]](#footnote-111) This article has shown that there are no barriers, implicit or explicit, to the granting of copyright in illegally created works of street art in England and Wales. Absent an explicit statement to the contrary, it is clear that graffiti and street art which meet the requirements of the CDPA are subject to copyright. Equitable doctrines would prevent a street artist from seeking to enforce that copyright against the property owner, and hence the owner of the physical artwork. However, there is no bar to allowing a street artist to enforce their copyright against an unrelated third party. There is no statutory provision or case law which denies automatic copyright protections to street art, and there is also European case precedent which supports it. The doctrine of illegality would not prevent copyright from arising in an artwork which was created through criminal damage. There is sufficient evidence to determine that, absent a contradictory statement from the Courts or Parliament, illegally created street art is subject to copyright.

1. For the purposes of this article, the term street art is used to refer to visual artworks located in public, including graffiti writing. Although the term encompasses many forms of art, including yarn bombing, abandoned art, sculpture, postering, spray painting, and graffiti writing, the majority of this paper focuses on the notion of art of some description which is affixed to a permanent structure, such as freehand sprayed or stencilled artwork, wheatpaste postering, etc. [↑](#footnote-ref-1)
2. Valladas and others, ‘Radiocarbon AMS Dates for Paleolithic Cave Paintings’ 2001 43(2B) Proceedings of the 17th International Radiocarbon Conference 977. [↑](#footnote-ref-2)
3. Norman Mailer, Mervyn Kurlansky and Jon Naar, *The Faith of Graffiti* (Praeger 1974). [↑](#footnote-ref-3)
4. For more, see photographic collections of street art such as Magda Danysz, *From Style Writing to Art: A Street Art Anthology* (Drago 2010); Martha Cooper and Henry Chalfant, *Subway Art* (Thames & Hudson Ltd 1984); Henry Chalfant and James Prigoff, *Spraycan Art* (Thames & Hudson Ltd 1987). [↑](#footnote-ref-4)
5. On which see Alison Young, *Street Art, Public City: Law, Crime and the Urban Imagination* (Routledge 2013), 5. [↑](#footnote-ref-5)
6. Magda Danysz, *From Style Writing to Art: A Street Art Anthology* (Drago 2010) 304. [↑](#footnote-ref-6)
7. Maev Kennedy, ‘Sotheby’s cleans up on Banksy at £500k a time’ (6 June 2014, The Guardian) <<https://www.theguardian.com/artanddesign/2014/jun/06/sothebys-banksy-artist-exhibition-street-art>> accessed 25 June 2018. [↑](#footnote-ref-7)
8. Sara Newman, ‘Banksy mural goes on sale – with a house thrown in’ (10 February 2007, Independent) <<https://www.independent.co.uk/news/uk/this-britain/banksy-mural-goes-on-sale-with-a-house-thrown-in-435813.html>> accessed 25 June 2018. [↑](#footnote-ref-8)
9. *Creative Foundation v Dreamland Leisure Ltd* [2015] EWHC 2556 (Ch). [↑](#footnote-ref-9)
10. ibid, 2. [↑](#footnote-ref-10)
11. Enrico Bonadio argued for the existence of copyright in his 2017 article: Enrico Bonadio, ‘Copyright protection of street art and graffiti under UK law’ (2017) 2 IPQ 187, and Marta Iljadica states that copyright ‘likely’ exists in works of graffiti: Marta Iljadica, *Copyright Beyond Law* (Hart 2016), 3. [↑](#footnote-ref-11)
12. See for example Tomasz Rychlicki ‘Legal Questions about Illegal Art’ (2008) 3 JIPLP 6. [↑](#footnote-ref-12)
13. Copyright, Designs, and Patents Act 1988 (CDPA) s1(1)(a). [↑](#footnote-ref-13)
14. ibid, s4. [↑](#footnote-ref-14)
15. ibid, s16. [↑](#footnote-ref-15)
16. ibid, s4. [↑](#footnote-ref-16)
17. Judgment in Infopaq International A/S v Danske Dagblades Forening C-5/08, ECLI:EU:C:2009:465. This case concerned whether short summaries of news articles attracted copyright protection as creative works in their own right, or whether they could be freely copied on the basis that they did not meet the minimum standard for copyright protection. The court found that they were sufficiently creative, and were subject to protection. [↑](#footnote-ref-17)
18. ibidat paras 1, 6, 7, 11, 33, 35, 37, 44, 48. [↑](#footnote-ref-18)
19. See, for example, Banksy vs the Bristol Museum, as discussed in Paul Gough (ed) *Banksy: The Bristol Legacy* (Sansom & Co 2012). [↑](#footnote-ref-19)
20. 17 USC §102(a). [↑](#footnote-ref-20)
21. *Merchandising Corporation v Harpbond* [1983] FSR 32. [↑](#footnote-ref-21)
22. ibid 46. [↑](#footnote-ref-22)
23. CDPA (n 13) s 4(1)(a). [↑](#footnote-ref-23)
24. ibid s4(1)(b). There is a possibility for interpretation here, as the phrase similar works is contained in the section which refers to engravings, rather than paintings. However, the conjunction between s4(1) and s4(2) is *and*, rather than *or,* which could lead to a more permissive interpretation of the provision. [↑](#footnote-ref-24)
25. *Creative Foundation v Dreamland Leisure Ltd* [2015] EWHC 2556 (Ch) 2. [↑](#footnote-ref-25)
26. Such as, for example, in *Tierney aka Rime v Moschino and others* (2016) Central California District Court, 2:15-cv-05900-SVW (PJWx), where the defendant claimed that copyright could not exist in illegal works, using the Black Dahlia murder as an example. The case settled, however, and thus does not provide a precedent. [↑](#footnote-ref-26)
27. *Villa v Pearson Education*, (2003) Northern District of Illinois District Court, 03 C 3717. [↑](#footnote-ref-27)
28. *Jason Williams and others v Roberto Cavalli SpA, et al* (2014), Central California District Court, CV 14-06659-AB. [↑](#footnote-ref-28)
29. *Tierney aka Rime v Moschino et al* (2016) Central California District Court, 2:15-cv-05900-SVW (PJWx). [↑](#footnote-ref-29)
30. *H&M Hennes & Mauritz GBC AB et al v Williams*, (2018) East District of New York District Court 1:18-cv-01490. [↑](#footnote-ref-30)
31. *Jason Williams, and others v Roberto Cavalli SpA, et al* (2014), Central California District Court, CV 14-06659-AB. [↑](#footnote-ref-31)
32. *Anasagasti v. American Eagle Outfitters, Inc,* (2014) New York Southern District Court, 1:14-cv-05618. [↑](#footnote-ref-32)
33. Peter Rosenstein and Isabel Bau Madden, *Tattooed Walls* (Mississippi University Press 2006) (out of print). [↑](#footnote-ref-33)
34. David Gonzalez, ‘Walls of Art for Everyone, but Made by Not Just Anyone’, New York Times, June 4, 2007, <<http://www.nytimes.com/2007/06/04/nyregion/04citywide.html>> accessed 10 August 2018. [↑](#footnote-ref-34)
35. Specifically, their I ❤the Bronx mural, which is visible on the Commercial Work page of their website: Tats Cru NYC Graffiti Artists (Undated) ‘Commercial Work’ (Image 28 of 40) <<https://www.tatscru.net/project/nyc-commercial-graffiti/>> accessed 10 August 2018. [↑](#footnote-ref-35)
36. Fox News Latino, ‘TATS Cru, Graffiti Muralists, Reach Settlement With Fiat Over Jennifer Lopez Commercial’ (Huffington Post, 12 February 2011) <<https://www.huffingtonpost.com/2011/12/02/jennifer-lopez-tats-cru-graffiti-commercial_n_1126610.html>> accessed 10 August 2018; Vanessa Kaster, ‘Fiat pays for use of Graffiti Mural “I ❤ the Bronx” …in their commercial’ (IP Legal Freebies, 11 January 2011) <https://iplegalfreebies.wordpress.com/2012/01/11/fiat-pays-for-use-of-graffiti-mural-i-%E2%9D%A4-the-bronx-in-their-commercial/> accessed 10 August 2018. [↑](#footnote-ref-36)
37. *Anasagasti v. American Eagle Outfitters, Inc*, (2014) New York Southern District Court, 1:14-cv-05618. [↑](#footnote-ref-37)
38. Bill Donahue, ‘American Eagle, Street Artist Settle Copyright Suit’ (Law360, 2 December 2014) <<https://www.law360.com/articles/600542/american-eagle-street-artist-settle-copyright-suit>> accessed 10 August 2018; *Anasagasti v American Eagle Outfitters, Inc* (n 32) , Stipulation of Voluntary Dismissal, filed 01 December 2014. [↑](#footnote-ref-38)
39. Contained in s62 of the CDPA, this exception permits the depiction of works of artistic craftsmanship, if permanently situated in a public place or in premises open to the public. However, it does not cover paintings, which would encompass many types of street art. [↑](#footnote-ref-39)
40. *Villa v Pearson Education* (n 27). [↑](#footnote-ref-40)
41. ibid, 4. [↑](#footnote-ref-41)
42. ibid, 6. [↑](#footnote-ref-42)
43. Danwell Schwender, ‘Promotion of the Arts: An Argument for Limited Copyright Protection of Illegal Graffiti’ (2008) 55 Journal of the Copyright Society of the USA 257. [↑](#footnote-ref-43)
44. *Seltzer v Green Day, Inc,* (2013) 9th Circuit Appeals Court, 725 F.3d 1170. [↑](#footnote-ref-44)
45. ibid, 1179. [↑](#footnote-ref-45)
46. Nicholas O’Donnell, ‘Is Graffiti Ineligible for Copyright Protection Just Because the Act of Tagging is Illegal?’ (17 May 2016, Art Law Report) <<https://blog.sandw.com/artlawreport/is-graffiti-ineligible-for-copyright-protection-because-the-act-of-tagging-is-illegal>> accessed 13 August 2018. [↑](#footnote-ref-46)
47. *Tierney v Moschino* (n26) [↑](#footnote-ref-47)
48. Tshepo Mokoena, ‘Katy Perry’s Met Ball dress the subject of copyright infringement lawsuit’ (The Guardian, 6 August 2015) <<https://www.theguardian.com/music/2015/aug/06/katy-perry-met-ball-moschino-dress-copyright-infringement-lawsuit>> accessed 15 August 2018 [↑](#footnote-ref-48)
49. *Tierney v Moschino* (n 26) complaint for damages and injunctive relief for copyright infringement, violation of the Lanham Act, violation of the right of publicity, unfair competition, and negligence demand for jury trial (5 August 2015) 8. [↑](#footnote-ref-49)
50. *Tierney v Moschino* (n 26), Civil Minutes, 13 January 2016. In chambers order denying motion to dismiss [14][18]; denying motions to strike [13][19]. [↑](#footnote-ref-50)
51. *Tierney v Moschino* (n 26), Memorandum of Points and Authorities in opposition to defendants’ motion for summary judgment, 23 May 2016, 1. [↑](#footnote-ref-51)
52. *Tierney v Moschino* (n 26) Notice of Settlement-in-Principle and stipulation to stay all future deadlines (19 April 2016). [↑](#footnote-ref-52)
53. *Berreau v McDonalds Corp* (2016), Central California District Court, 2:16-cv-07394. [↑](#footnote-ref-53)
54. Jacob Gershman, ‘McDonald’s Has a Graffiti Problem: Graffiti Artists and Their Lawyers’ (12 October 2016, Wall Street Journal) <<https://www.wsj.com/articles/mcdonalds-has-a-graffiti-problem-graffiti-artists-and-their-lawyers-1476278127>> accessed 15 August 2018. [↑](#footnote-ref-54)
55. Nicholas O’Donnell, ‘Is Coopting Graffiti Artist’s Street Cred a Fair Use?’ (1 December 2016, Art Law Report) <<https://blog.sandw.com/artlawreport/is-coopting-graffitis-street-cred-a-fair-use>> accessed 15 August 2018. [↑](#footnote-ref-55)
56. Nicholas O’Donnell, ‘McDonald's Beats Graffiti Copyright Claims in California, But Faces New Threat over New York Street Art’ (26 April 2017, Art Law Report) <<https://blog.sandw.com/artlawreport/mcdonalds-beats-graffiti-copyright-claims-in-california-but-faces-new-threat-over-new-york-street-art>> accessed 15 August 2018. [↑](#footnote-ref-56)
57. Boodle and Hatfield, ‘Bagels And Graffiti: Mcdonald’s In Another Street Art Row; (20 April 2017, Art Law & More) <<https://artlawandmore.com/2017/04/20/bagels-and-graffiti-mcdonalds-in-another-street-art-row/>> accessed 15 August 2018. [↑](#footnote-ref-57)
58. Anna Louise Sussman, ‘Six Street Artists Threaten McDonald’s with Copyright Infringement Lawsuit’ (19 April 2017, Artsy.com) <<https://www.artsy.net/article/artsy-editorial-six-street-artists-threaten-mcdonalds-copyright-infringement-lawsuit>> accessed 15 August 2018. [↑](#footnote-ref-58)
59. *H&M Hennes v Williams,* (n 30). Although copyright is a federal law, the process of precedent between US Federal and State Courts is complex. Nonetheless, it would be at least persuasive precedent in all circumstances. [↑](#footnote-ref-59)
60. ibid. [↑](#footnote-ref-60)
61. See, for example, coverage by the BBC (BBC Arts ‘Graffiti Grievance: When street artists and big brands clash’ (BBC Arts 12 September 2018) <<http://www.bbc.co.uk/programmes/articles/3rP8CyPsyFsYs6QCmXmGGBW/graffiti-grievance-when-street-artists-and-big-brands-clash>> accessed 12 October 2018), Metro (Miranda Larbi, ‘Street artists are calling for a boycott on H&M’ (Metro 15 March 2018) <<https://metro.co.uk/2018/03/15/street-artists-calling-boycott-hm-7388912/>> accessed 12 October 2018), and the Seattle Times (Sonia Rao, ‘H&M’s battle over graffiti fuels debate over street artists’ copyright privileges’ (Seattle Times 19 March 2018) <<https://www.seattletimes.com/business/hms-battle-over-graffiti-fuels-debate-over-street-artists-copyright-privileges/>> accessed 12 October 2018). [↑](#footnote-ref-61)
62. See, for example, Jake Woolf, ‘H&M Tried (and Failed) to Steal Graffiti, (GQ 16 March 2018) <<https://www.gq.com/story/hm-tried-and-failed-to-steal-graffiti>> accessed 06 August 2018, cf Emma Hope Allwood ‘Why that story about H&M stealing graffiti isn’t so simple’ (Dazed Digital 15 March 2018) <<https://www.gq.com/story/hm-tried-and-failed-to-steal-graffiti>> accessed 06 August 2018. [↑](#footnote-ref-62)
63. H&M also posted on their Twitter that they did not intend to ‘set a precedent concerning public art’ H&M [hm]. (15 March 2018). https://t.co/NMLCiv4iSt [Tweet]. Retrieved from <https://twitter.com/hm/status/974384097316491264> accessed 25 June 2018. The tweet consists of an image of the following text:
H&M respects the creativity and uniqueness of artists, no matter the medium. We should have acted differently in our approach to this matter. It was never our intention to set a precedent concerning public art or to influence the debate on the legality of street art. As a result, we are withdrawing the complaint filed in court. We are currently reaching out to the artist in question to come up with a solution. Thank you for your comments and concerns, as always, your voice matters to us. [↑](#footnote-ref-63)
64. *Robbins and others v Oakley, Inc and others*, (2018) Central Californian District Court 2:18-cv-05116. [↑](#footnote-ref-64)
65. Ibid, Complaint For Copyright Infringement And Related Claims Demand For Jury Trial, 4. [↑](#footnote-ref-65)
66. Tribunal de grande instance de Paris, Chambre civile 3, 14 novembre 2007, 06/12982 [translation author’s own].

Certains aspects de l'oeuvre de M. X... sont protégeables par le droit d'auteur. Il en est ainsi de la transposition sous forme de carreaux de piscine des pixels du jeu vidéo préexistant, cette formalisation portant l'empreinte de sa personnalité et il importe peu que d'autres artistes aient pu transposer dans d'autres matériaux des créatures pixélisées extraites de jeux vidéo. De même la nature des supports urbains des dits carreaux de piscines scellés dans les murs, et le choix de leurs emplacements portent l'empreinte de la personnalité de leur auteur. [↑](#footnote-ref-66)
67. Code de la Propriété Intellectuelle Article L.112-1. [↑](#footnote-ref-67)
68. Directive 2001/29/EC of the European Parliament and of the Council of 22 May 2001 on the harmonisation of certain aspects of copyright and related rights in the information society. [↑](#footnote-ref-68)
69. Maev Kennedy, ‘Sotheby’s cleans up on Banksy at £500k a time’ (6 June 2014, The Guardian) <<https://www.theguardian.com/artanddesign/2014/jun/06/sothebys-banksy-artist-exhibition-street-art>> accessed 25 June 2018. [↑](#footnote-ref-69)
70. The Artist’s Resale Right Regulations 2006, s 3. [↑](#footnote-ref-70)
71. Visual Artists Rights Act of 1990 (VARA), 17 USC § 106A. [↑](#footnote-ref-71)
72. Aislinn O’Connell, ‘The 5Pointz Case: Damages awarded against property owner for whitewashing street art’ (2018) 7(1) Journal of Intellectual Property Law and Practice 529. [↑](#footnote-ref-72)
73. Banksy, *Wall and Peace* (Century 2005) 1. [↑](#footnote-ref-73)
74. *Mitchell Bros Film Group v Cinema Adult Theater* (1979) 5th Circuit Appeals Court, 604 F.2d 852, [1]. [↑](#footnote-ref-74)
75. ibid, [6]. [↑](#footnote-ref-75)
76. *Belcher v. Tarbox*, (1973) 9th Circuit Appeals Court, 486 F.2d 1087, 1088; See also Thomas W McEnerney, ‘Fraudulent Material is Entitled to Copyright Protection in Action for Injunctive Relief and Damages; (1974) 74(7) Columbia Law Review 1351. [↑](#footnote-ref-76)
77. *Mitchell Bros* (n 74), [9-10]. [↑](#footnote-ref-77)
78. *The College of Charleston Foundation v Benjamin Ham* 585 F. Supp. 2d 737 (D.S.C. 2008). [↑](#footnote-ref-78)
79. See, for example, *Williams v. Gaye*, (2018) 9th Circuit Appeals Court, No. 15-56880; *Ludlow Music Inc v Williams & Others* [2001] EMLR 155; [2001] FSR 271. [↑](#footnote-ref-79)
80. *Ralph v Mediaset and Others*, decision 14635/2018 (2018) (Italian Supreme Court). [↑](#footnote-ref-80)
81. For more information see Criminal Prosecution Service, ‘Proceeds of Crime’ (undated) <<https://www.cps.gov.uk/proceeds-crime>> accessed 25 June 2018. [↑](#footnote-ref-81)
82. For an examination of moral rights associated with copyright see Elizabeth Adeney, *The Moral Rights of Authors and Performers: An International and Comparative Analysis* (OUP 2006). [↑](#footnote-ref-82)
83. Copyright Designs and Patents Act 1988, s 77. [↑](#footnote-ref-83)
84. ibid s 80. [↑](#footnote-ref-84)
85. [1787] EngR 39, (1787) 1 Cox 319, (1787) 29 ER 1184. [↑](#footnote-ref-85)
86. [2016] UKSC 24. [↑](#footnote-ref-86)
87. *Holman v Johnson* (1775) 1 Cowp 341, 343. [↑](#footnote-ref-87)
88. *Nelson v Nelson*, (1995) HCA 24, 1995 CLR 538. [↑](#footnote-ref-88)
89. (1997) HCA 17, 189 CLR 215. [↑](#footnote-ref-89)
90. *Nelson* at 612. [↑](#footnote-ref-90)
91. [1993] 3 RCS 159 (Canada). [↑](#footnote-ref-91)
92. *Patel* (n 86) [100]. [↑](#footnote-ref-92)
93. [1993] UKHL 3, 1 AC 340. [↑](#footnote-ref-93)
94. *Patel* (n 86)[108]. [↑](#footnote-ref-94)
95. Magistrates' Courts Act 1980, s 22, sched 2. [↑](#footnote-ref-95)
96. ibid, s 33(1)(a). [↑](#footnote-ref-96)
97. ibid, s 32(1). [↑](#footnote-ref-97)
98. ibid, s 32(9). [↑](#footnote-ref-98)
99. Sentencing Council, Criminal Damage (other than by fire); Racially or religiously aggravated criminal damage (2008) <<https://www.sentencingcouncil.org.uk/wp-content/uploads/criminal-damage.pdf>> accessed 10 October 2018. [↑](#footnote-ref-99)
100. Anti-Social Behaviour Act 2003, ss 43-47. [↑](#footnote-ref-100)
101. Such as Banksy’s works: Kennedy (n 69). [↑](#footnote-ref-101)
102. *Creative Foundation v Dreamland Leisure Ltd*, [2015] EWHC 2556 (Ch). [↑](#footnote-ref-102)
103. ibid 2. [↑](#footnote-ref-103)
104. Schwender (n 43), 257 [↑](#footnote-ref-104)
105. Jamison Davies, ‘Art Crimes?: Theoretical Perspectives on Copyright Protection for Illegally-Created Graffiti Art’ (2012) 65 Maine Law Review 27., 36 [↑](#footnote-ref-105)
106. Sara Cloon, ‘Incentivizing Graffiti: Extending Copyright Protection to a Prominent Artistic Movement’ (2016) 92(1) Notre Dame Law Review 54, 65. [↑](#footnote-ref-106)
107. Celia Lerman ‘Protecting Artistic Vandalism: Graffiti and Copyright Law’ (2013) 295(2) NYU Journal of Intellectual Property & Entertainment Law 295. [↑](#footnote-ref-107)
108. Bonadio (n 11). [↑](#footnote-ref-108)
109. Enrico Bonadio, ‘Street Art, Graffiti and Copyright’ in Enrico Bonadio and Nicola Lucchi (eds) Non-Conventional Copyright (Edward Elgar 2018). [↑](#footnote-ref-109)
110. Marta Iljadica, ‘Graffiti and the moral right of integrity’ (2015) 3 IPQ 266. [↑](#footnote-ref-110)
111. Marta Iljadica, *Copyright Beyond Law* (n 11), in which she argues that copyright does apply to street art, but fails to encompass the normative structures which regulate the graffiti subculture. [↑](#footnote-ref-111)