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Fairness, Morality and Ordre Public in Intellectual Property

Paper Abstract

Graffiti, Street Art, and the Purpose of Copyright Law

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This paper explores issues of morality and public policy (or “ordre public”) in copyright law through the application of copyright law to graffiti and street art. This interdisciplinary research project (anthropology, sociology and law) is a continuation of my previous work on the mediation between competing interests in a copyright work: i.e. the interests of the author/right holder, the owner of the copy of the work, and the public (*Copyright User Rights, Contracts, and the Erosion of Property*, OUP, 2017). The specific contextual issues raised by graffiti and street art offer a great opportunity to further our understanding of what copyright should protect and why, as well as the limits of the law. Those issues include the significance of acts of illegality and transgression, thresholds of originality, the scope of protection that copyright and moral rights should confer on graffiti and street art, the scope of property rights in the graffiti or street art work and in the copy of the work (i.e. of the surface owner on which the work was done). One of the main arguments that I develop is that graffiti as acts of illegality and transgression should not be a bar *per se* to copyright protection and explore the extent to which those acts may in fact pursue the purpose of copyright law. Also, due weight should be given to graffiti as “public acts” when evaluating what the public should be entitled to do with graffiti and street art protected by law.