

## Legal Issues in 'IP in Drawings'

### Issue: Whether Street Art & Graffiti can be Protected as Artistic Works Under Copyright Law?

## Understanding ‘Street Art’ & ‘Graffiti’

- ❖ The Oxford Dictionary defines ‘Graffiti’ as:  
*‘drawings or writing done on a wall, etc. in a public place without permission’*
- ❖ ‘Street Art’ is defined as:  
*‘artwork that is created in a public space, typically without official permission’*
- ❖ The Indian Copyright Act confers protection to ‘drawings’ as artistic works.
- ❖ The Copyright Act, 1957, however, does not define the term ‘drawing’
- ❖ Unlike various other art forms ‘Street Art’ & ‘Graffiti’ are currently not protected under any legal framework in India.



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## Relevant Provisions

### ❖ **Practice and Procedure Manual for Artistic Work** by the Copyright Office:

Section 2: Artistic Work- *“Any work which is an **original** creation of an author, or an owner **fixed in a tangible form**, is capable of being entered into the Register of Copyrights, irrespective of the fact that whether such work possess any artistic quality or not.”* [Emphasis supplied]

### ❖ **Section 2(c) of the Copyright Act, 1957:**

*“artistic work” means,—*

*(i) a painting, a sculpture, a drawing (including a diagram, map, chart or plan), an engraving or a photograph, whether or not any such work possesses artistic quality;*

*(ii) a [work of architecture]; and*

*(iii) any other work of artistic craftsmanship; [Emphasis supplied]*

## Relevant Provisions of the Copyright Act, 1957

### ❖ Section 14 of the Copyright Act, 1957:

**Meaning of Copyright.**— *For the purposes of this Act, “copyright” means the exclusive right subject to the provisions of this Act, to do or authorise the doing of any of the following acts in respect of a work or any substantial part thereof, namely:—*

*(c) in the case of an artistic work,—*

*[(i) to reproduce the work in any material form including—*

*(A) the storing of it in any medium by electronic or other means; or*

*(B) depiction in three-dimensions of a two-dimensional work; or*

*(C) depiction in two-dimensions of a three-dimensional work;]*

*(ii) to communicate the work to the public;*

*(iii) to issue copies of the work to the public not being copies already in circulation;*

*(iv) to include the work in any cinematograph film;*

*(v) to make any adaptation of the work;*

*(vi) to do in relation to adaptation of the work any of the acts specified in relation to the work in sub-clauses (i) to (iv); [Emphasis supplied]*

## Relevant Provisions of the Copyright Act, 1957 (Contd.)

### ❖ Section 57 of the Copyright Act, 1957:

*Author's special rights.— [(1) Independently of the author's copyright and even after the assignment either wholly or partially of the said copyright, the author of a work shall have the right—*

*(a) to claim authorship of the work; and*

*(b) to restrain or claim damages in respect of any distortion, mutilation, modification or other act in relation to the said work [\*\*\*] if such distortion, mutilation, modification or other act would be prejudicial to his honour or reputation. [Emphasis supplied]*

## Relevant Judicial Decisions

### ❖ ***Maqbool Fida Husain v. Raj Kumar Pandey* [2008 CriLJ 4107]**

- *“A liberal tolerance of a different point of view causes no damage. It means only a greater self restraint. Diversity in expression of views whether in writings, painting or visual media encourages debate. A debate should never be shut out. ‘I am right’ does not necessarily imply ‘You are wrong’. Our culture breeds tolerance- both in thought and in actions.”*

### ❖ ***R.G. Anand v. Deluxe Films and Ors* [AIR 1978 SC 1613]**

- *“It is always open to any person to choose an idea as a subject matter and develop it in his own manner and give expression to the idea by treating it differently from others.”*
- *“There can be no copyright in an idea, subject matter, themes...copyright in such cases is confined to the form, manner, arrangement and expression of the idea by the author of the copyright work.”*
- *“What is protected is...**the original expression of thought or information in some concrete form.**”*

[Emphasis supplied.]

## Noteworthy Instances in Other Jurisdictions

### ❖ **McDonald's**

- Accused of copyright infringement for unauthorized use of the artwork of New York City graffiti artists in a promotional video

### ❖ **H&M**

- Accused of copyright infringement for unauthorized use of the artwork of graffiti artist Jason Williams, popularly known as Revok as a backdrop to shoot the brand's promotional video.
- H&M had filed a lawsuit claiming that there was no copyright in the artwork as the same was created illegally without authorization from the concerned department in Brooklyn.
- H&M received backlash from various artists & on social media forcing it to withdraw the suit eventually.

### ❖ **Roberto Cavalli**

- A group of graffiti artists had accused Roberto, founder of Italian luxury brand, of copying their graffiti art
- His brand "Just Cavialli" had introduced a clothing and accessories range which had the graffiti's painted all over them without any authorization or credit given to its artists.
- Moreover, the brand name was added to each of the items thus creating the false impression that Roberto was the artist of the graffiti art himself.

## Noteworthy Instances in Other Jurisdictions (Contd...)

### ❖ Walmart & Ellen DeGeneres

- A street artist, Julian Rivera, best known for his artwork - signature heart symbol surrounding the word 'love'
- He accused the American multinational retail company, Walmart, and celebrity TV show host, Ellen DeGeneres, that had collaborated to release a clothing line called 'EV1' to have infringed his copyright in his famous artwork
- Julian claimed that each apparel featured a heart logo which had a striking resemblance to his famous 'love' artwork
- Julian filed a complaint against them and demanded monetary damages & removal of all items featuring his artwork.

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## Conclusion

- It is important to clarify the legal position on whether street artists have rights in their own creation and whether they can claim copyright protection in such artworks in India.
- Indian copyright law must be amended to recognize ‘street art’ & ‘graffiti’ as artistic works as they are rightfully recognized in other jurisdictions.
- Copyright law exists to protect the ‘expression of ideas’ and must not exclude these moderns from of art which are gaining tremendous popularity all over the globe.
- There exists a wrong notion that street art located in public spaces are in the public domain and can be freely photographed and exploited.
- There exists ample evidence to prove that street art and graffiti are constantly being copied and reprinted for commercial gains and rights of artists needed to be safeguarded.

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# THANK YOU!

## Questions?

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