When Copyright Law Meet Anonymous Street Art

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WHEN COPYRIGHT LAW MEETS ANONYMOUS STREET ART

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I. INTRODUCTION

In the dead of night, working against both the clock and the law, an unknown person fervently creates their newest masterpiece. As the bustling city starts their day, its citizens notice the new graffiti adorning the local building they swore was not there the day before. People take in the
craftsmanship and commentary on the latest controversial topic. Before long, the work of this unknown artist has gone viral. Social media is buzzing about the phantom artist whose identity has eluded the public for so long. The building owner hears of the defacement and questions whether to simply cover the art or sell it for a profit. Should the building owner, despite traditional ownership rules, be allowed to destroy the unknown artist’s hard work? Should they be able to profit from it? Is there another option? What does your gut tell you?

Evidence suggests some street art is eligible for copyright protection. Street art comes in several forms and includes but is not limited to graffiti, stencil, mural, and so on. Street art often satisfies the required copyright elements but is not afforded the same protection as the paintings hanging in the local art gallery. Moreover, street art, typically that falling within the sculpture category, is also likely to satisfy copyright criteria required for protection. Given that street art meets the criteria for legal protection, why might there be hesitancy to grant and enforce legal protection? Perhaps it is the illegality of the art, or maybe because street art rarely falls into the purview of “fine art.” Moreover, when people think of art, they tend to gravitate toward the artist, but what happens when you do not know the mastermind behind your favorite piece? These questions beg a clear answer, but is there one? This Comment aims to unpack this question and find an answer waiting inside.

Section II highlights street art as a whole and the cultural context of anonymity within the street art community. Section III features an overview of the typical legal avenues afforded to street art through traditional copyright law, the Visual Artists Rights Act (“VARA”), and the Digital Millennium Copyright Act (“DMCA”). Section IV tackles the puzzle of copyright and anonymity in an effort to create a clear picture of the struggles experienced by those who intentionally withhold their identity from the audience. Finally, Section V will argue that anonymous street artists of a certain caliber should not be dissuaded from protection nor enforcement of their right against destruction under VARA. Through theory and real-life examples, I suggest a subset of anonymous artists’ art rises to the court-established standard allowing for the exercise of this important right.


II. STREET ART AND THE CULTURE OF ANONYMITY

Street art is a broad term encompassing a laundry list of potential forms and mediums. For most, the street art form comes to mind as murals and even the occasional sculpture. For others, street art is seen in graffiti, sidewalk chalk designs, and even posters. Regardless of the form or size, street art has taken root in local communities throughout the country and showcases tremendous talent and creativity.

A. Street Art Examples

1. Graffiti

Graffiti is an art form that elicits numerous images, emotions, and definitions. Celia Lerman brilliantly stated graffiti possesses two meanings: broad and narrow.3 Beginning with the former, “[t]he broad meaning refers to an artistic movement that includes several different styles (spray-paint graffiti, street art and stencils), which, in turn, are associated with different sociocultural groups. The narrow meaning only refers to spray-paint graffiti.”4 For the purposes of this Comment, both definitions are acceptable.

Graffiti Painting5

4. Id.
2. Sculptures

For fear of stating the obvious, a sculpture is simply a two- or three-dimensional object comprised of stone, wood, metal, or plaster. Freedom of placement beyond a building wall, street sculpture artists create incredible pieces that speak volumes for ready ears.

![Image of sculpture](https://example.com/photograph.jpg)

*Sculpture*

3. Murals

One of the oldest art forms, a mural is broadly defined as “a painting or other work of art executed directly on a wall, ceiling, or other permanent surface.” More often than not, the placement of such painting or other work of art is carefully picked and even incorporated into the art itself. As time passed, the art of murals has grown into a movement some refer to as “the modern graffiti movement,” a movement that has swept across not only the United States of America but seemingly the world. While many artists are

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8. See Id.
9. Id.
commissioned to paint their masterpieces, some continue to showcase their skill out of sight or under the cover of anonymity.

4. Sidewalk Chalk Art/Street Painting

Sidewalk chalk, or street painting, balances on an interesting edge. On one hand, the chalked masterpiece could be seen by countless people on their commute. However, on the other hand, it could be washed away, ignored by the hustle of daily life, or simply overlooked. Regardless, the street artists who create these stunning pieces do so with a level of skill beyond belief.

Sidewalk Chalk Art

B. Culture of Anonymity

When staring one of these masterpieces in the face, one can hardly believe the artists responsible would not want praise. While the artists’ reasons are their own, several reasons have been hypothesized and even discussed by anonymous artists themselves. First, anonymity protects the artists against repercussions related to the illegality of their street art. Second, focus on the artist’s identity could distract viewers from absorbing the intended message. Australian street artist Lushsux substantiates this guess in an interview response stating, “I’d rather have people who follow the work to be more interested in it than what pair of $800 sunglasses I wear or how twirled my mustache is [sic].” Daniel Weintraub, also known as halopig, also summed up his reason for anonymity when stating, “I think a lot of it has to do with the culture coming from graffiti and coming from a place where you didn’t show everybody what you were doing. You just kept it to a very close circle of friends and then once that culture met the Internet, you have everybody reacting in different ways.”

III. Typical Avenues of Art Protection

In a world where artistic expression is highly valued and potentially controversial, graffiti and other forms of street art have found a concrete and

12. Teran Powell, Painted Koi Fish Have Been ‘Swimming’ On Milwaukee’s Sidewalks for Over a Decade, WUWM.COM (July 13, 2018) https://www.wuwm.com/post/painted-koi-fish-have-been-swimming-milwaukees-sidewalks-over-decade/#stream/0 (photograph by Teran Powell) [https://perma.cc/2MD5-BG3F].
14. Id.
ever-growing importance in the greater art world. Nowadays, graffiti can be found around every corner—trains, streets, sides of buildings, even sidewalks—but rarely do we think about its copyrightable nature. Likewise, murals are a beautiful, sometimes controversial, way to express emotions held by a community. While many street artists choose to express their work in an arguably temporary manner, understanding the eligible copyright protection through multiple legal avenues is crucial.

A. Basic Copyright Protection

At its core, copyright law seeks to “promote the progress of science and useful arts”\(^\text{15}\) as established in the “Copyright Clause” of the United States Constitution. For art to receive copyright protection, it must comply with three basic statutory requirements: (1) a work of authorship (2) that is original and (3) fixed in any tangible medium of expression.\(^\text{16}\) In addition, the work must show the minimum degree of creativity.\(^\text{17}\) For clarification, the work must originate with the author, by or under the authority of the author, and be sufficiently permanent or stable to be perceived, reproduced, or otherwise communicated for a period of more than a transitory duration period.\(^\text{18}\) The types of work protected by copyright include literary works, musical works, dramatic works, pantomimes and choreographic works, pictorial, graphic and sculptural works, sound recordings, and architectural plans, drawings and actual buildings.\(^\text{19}\) Understanding the basic criteria of copyright law is one thing; however applying copyright law sometimes requires a little imagination.

B. Visual Artists Rights Act (“VARA”)

The Visual Artist Rights Act of 1990 (“VARA”) finds its foundation in moral rights.\(^\text{20}\) This act was created in response to growing concerns regarding artists’ reputation and value of their work.\(^\text{21}\) VARA provides artists with the following:

(a) Rights of Attribution and Integrity—Subject to section 107 and independent of the exclusive rights provided in section 106, the author of a work of visual art—

\(^{15}\) U.S. Const. art. 1, § 8, cl. 8.  
\(^{17}\) Id.  
\(^{19}\) 17 U.S.C. § 102(a) (2019).  
\(^{21}\) See Id.
(1) shall have the right—
(A) to claim authorship of that work, and
(B) to prevent the use of his or her name as the author of any work of
visual art which he or she did not create;
(2) shall have the right to prevent the use of his or her name as the author
of the work of visual art in the event of a distortion, mutilation, or other
modification of the work which would be prejudicial to his or her honor
or reputation; and
(3) subject to the limitations set forth in section 113(d), shall have the
right—
(A) to prevent any intentional distortion, mutilation, or other
modification of that work which would be prejudicial to his or her honor
or reputation, and any intentional distortion, mutilation, or modification
of that work is a violation of that right, and
(B) to prevent any destruction of a work of recognized stature, and any
intentional or grossly negligent destruction of that work is a violation
of that right.22

This Act provides artists the right of authorship, integrity, and right against
destruction, respectively.23 While scholars have discussed the arguments for
rights24, few have addressed them regarding affirmative success for graffiti or
street artists.

C. Case Law Establishing the Legal Application of VARA

Courts throughout the country have tackled whether street art should be
protected when copyright infringement is no longer an option. From
commissioned murals to illegal graffiti, the courts have varied in their
acceptance of claims based on VARA rights.

1. Problem in the Lobby

Carter v. Helmsley-Spear came into existence after a dispute arose
concerning sculptures in a Queens building.25 The plaintiffs sought a temporary
restraining order to prevent defendants from acting against the artwork.26 In

23. Id.
24. See Maribeth A. Smith, Tagging the Lanham Act: Protecting Graffiti Art from Willful
Infringement, 81 BROOK. L. REV. 813; See also Celia Lerman, Protecting Artistic Vandalism: Graffiti
26. Id.
addition, the plaintiffs filed several claims for relief, of which VARA was one.\textsuperscript{27} Here, the court was tasked with determining if the art was subject to VARA protection,\textsuperscript{28} if it fell into the “works for hire” category,\textsuperscript{29} and if the plaintiff was entitled to the right “to prevent any destruction of a work of recognized stature.”\textsuperscript{30} The court concluded VARA did apply, the work was not a work for hire, and turned its attention to the language “recognized stature;” language that was ambiguous at best.\textsuperscript{31} In an effort to clarify, the court determined the language had two levels: “(1) that the visual art in question has ‘stature’ . . . and (2) that this stature is ‘recognized’ by art experts, other members of the artistic community, or by some cross-section of society.”\textsuperscript{32} Applying this new two-tiered standard, in addition to evidence of reputational harm, plaintiff’s work did fall under VARA protection.\textsuperscript{33} This new standard created by the court provides but the first clarification for street artists seeking protection.

2. Battle Over the Wolkoff Graffiti Collection

In a case of first impression, \textit{Cohen v. G&M Realty} tackled whether the artwork of a graffiti artist is worth protection under VARA.\textsuperscript{34} The art at issue was featured on the defendant’s property known as the Wolkoff buildings.\textsuperscript{35} The property became the largest collection of graffiti art in the United States, which caused an obvious uproar when plans to tear down the buildings came to light.\textsuperscript{36} The court found itself struggling to balance the honor and reputation of the artists with the conventional property rights of the defendant.\textsuperscript{37} Following the precedent set forth in \textit{Carter v. Helmsley-Spear}, the court added another layer to the “recognized stature” analysis.\textsuperscript{38} In short, the \textit{Cohen} court found expert testimony is not required to establish recognized stature for a work of visual art.\textsuperscript{39} The court accepted that plaintiff’s work reached the appropriate level through extensive exhibits, credible testimony, and further evidence showing cameos in films, television, and other social media platforms.\textsuperscript{40} In

\begin{itemize}
  \item \textsuperscript{27} Id. at 313.
  \item \textsuperscript{28} Id. at 314–16.
  \item \textsuperscript{29} Id. at 316–23.
  \item \textsuperscript{30} Id. at 325.
  \item \textsuperscript{31} Id. at 324–25.
  \item \textsuperscript{32} Id. at 325.
  \item \textsuperscript{33} See Id. at 329.
  \item \textsuperscript{34} Cohen v. G&M Realty L.P., 320 F. Supp. 3d 421, 427 (2018).
  \item \textsuperscript{35} Id.
  \item \textsuperscript{36} Id.
  \item \textsuperscript{37} See Id.
  \item \textsuperscript{38} Id. at 437–39.
  \item \textsuperscript{39} Id. at 438.
  \item \textsuperscript{40} Id. at 438–39.
\end{itemize}
addition, while not required, the plaintiffs did produce expert testimony that sealed the deal regarding its qualification for VARA protection.\textsuperscript{41} Cohen serves as an incredible example of the coveted stature status being attainable through community affirmation.\textsuperscript{42}

3. To Keep the Spillway Mural or Not to Keep the Spillway Mural?

In \textit{Kammeyer v. Oneida}, the District Court had the tricky task of deciding whether keeping a well-known mural was worth enjoining its removal.\textsuperscript{43} The defendants planned to destroy the mural after concerns of graffiti and lead paint.\textsuperscript{44} Plaintiffs sought a preliminary injunction and relief under VARA and a state art preservation act.\textsuperscript{35} Following the standard for preliminary injunction relief,\textsuperscript{46} plaintiffs were able to satisfy all requirements to ensure injunction was granted. Interestingly, the court upheld the notion that, “[p]roperty is always unique under general principles of the law of equity and its possible loss or destruction usually constitutes irreparable harm.”\textsuperscript{47} In doing this, the court stated public art with arguable historical significance rises to the level of property.\textsuperscript{38} The court also relied on section 113(d)(2) of VARA which provides that the property owner may remove a work of art if they provide the author notice of their intention to remove the art and given a ninety (90) days grace period for the author to act.\textsuperscript{49} The lack of notice in conjunction with the preliminary injunction analysis resulted in victory for the plaintiffs. This case provides several factors that must be considered in an anonymous street artist’s potential for success in a VARA claim.

These cases suggest various hurdles ahead for street artists hoping to protect their art. The applied standard has interesting complexities that fall within a subjective realm that many do not like to find themselves. While the outlook

\textsuperscript{41} Id.

\textsuperscript{42} In addition, there is case law suggesting art that “exhibits the concerns of the community” may also fall within VARA protection. See Hanrahan v. Ramirez, No. CV 97-7470 RAP(RCx), 1998 U.S. Dist. LEXIS 24179 (C.D. Cal. June 3, 1998).


\textsuperscript{44} Id. at *2.

\textsuperscript{45} Id.

\textsuperscript{46} Id. at *7 (quoting Winter v. Natural Res. Def. Council, Inc., 555 U.S. 7, 20 (2008), (“a plaintiff seeking a preliminary injunction must establish he is likely to succeed on the merits, that he is likely to suffer irreparable harm in the absence of preliminary relief, that the balance of equities tips in his favor, and that an injunction is in the public interest.”)


\textsuperscript{48} Id.

\textsuperscript{49} Kammeyer, 2015 U.S. LEXIS at *17.
may not be entirely hopeful, there is plenty to suggest VARA protections will apply to a certain subset of street artists.

D. Digital Millennium Copyright Act (“DMCA”)

The internet is a tricky beast that has brought new and creative ways for distributing just about every known thing in the universe. With this newfound sharing ability comes a threat to an artist’s ability to regulate or monitor how their creations are being accessed. In response, Congress passed the DMCA in 1998. Its primary goal was to address the inevitable relationship between copyright and the Internet. The following three points were included to supplement copyright law:

1. establishing protections for online service providers in certain situations if their users engage in copyright infringement, including by creating the notice-and-takedown system, which allows copyright owners to inform online service providers about infringing material so it can be taken down; (2) encouraging copyright owners to give greater access to their works in digital formats by providing them with legal protections against unauthorized access to their works (for example, hacking passwords or circumventing encryption); and (3) making it unlawful to provide false copyright management information (for example, names of authors and copyright owners, titles of works) or to remove or alter that type of information in certain circumstances.

Naturally, the nearly inevitable necessity that is the internet has led to artists leaning on the DMCA for support against their work being used without permission.

The court in Daar v. Oakley provided insight into a different claim for artists regarding their copyrightable subject matter. In that case, the court had to determine whether a mural featured in a marketing campaign rose to the level of copyright infringement. This claim relied on the Digital Millennium Copyright Act (“DMCA”). Daar, a highly acclaimed, well-known artist in the graffiti art world, claimed Oakley used his mural in a 2017 campaign.

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51. Id.
52. Id.
54. Id.
55. Id. at *3.
56. Id. at *1–2.
This marketing campaign included retail stores, advertising materials, and product catalogues, which all included portions of Daar’s mural.\textsuperscript{57} In addition, Daar stated Oakley intentionally altered the mural, which removed copyright management information.\textsuperscript{58} Oakley’s motion to dismiss the copyright infringement and DMCA claims both failed.\textsuperscript{59}

The motion to dismiss the copyright infringement claim failed because Daar already had a pending application for copyright of the mural.\textsuperscript{60} The court relied on Ninth Circuit precedent that receipt of a completed application by the Copyright Office provided sufficient standing for an infringement case.\textsuperscript{61} When addressing the motion to dismiss the DMCA claim, the court gave more insight.\textsuperscript{62} Oakley argued Daar could not state a DMCA claim for lack of sufficient facts.\textsuperscript{63} In response, the court held Daar had in fact provided sufficient facts pursuant to the \textit{Twombly} pleading standard.\textsuperscript{64} This case gives relative hope to street artists hoping to protect their artwork through both an infringement claim and the DMCA.

\textbf{IV. COPYRIGHT AND THE PUZZLE OF STREET ART ANONYMITY}

Copyright protection, at its core, hinges on three points: (1) authorship of (2) an original work (3) fixed in any tangible medium of expression.\textsuperscript{65} Often, we check the authorship box without realizing its significance. Artists offer a part of themselves to the world through their art whether or not they choose to share their identity. So, how do we proceed when a street art masterpiece is not formally claimed? We start with the puzzle box picture of course.

\textit{A. Application of Copyright Law to Street Art}

In theory, it would seem any work of art that satisfies the three requirements would receive protection under copyright law. Few could argue against street art as an original work of the author and its fixation upon the chosen “canvas.” In the world of street art, originality is king. Understandably so, street artists aim to leave their unique mark and response to their life circumstances. One requirement down, two to go. Issues do arise when addressing the “fixed” requirement of a seemingly temporary art piece. By nature, graffiti and other

\textsuperscript{57} Id. at *2.  
\textsuperscript{58} Id.  
\textsuperscript{59} Id. at *8.  
\textsuperscript{60} Id. at *5.  
\textsuperscript{61} Id.  
\textsuperscript{62} Id.  
\textsuperscript{63} Id. at *7.  
\textsuperscript{64} Id. at *9.  
\textsuperscript{65} 17 U.S.C. § 102(a) (2019).
street art is not meant to last forever. For example, a mural could be removed due to harsh weather conditions or a retaliatory building owner. One could argue that a mural cannot be sufficiently permanent or stable to be perceived by the time required by section 101.66 While this argument holds weight, the widespread influence of social media may provide just the counterargument. While a mural or piece of graffiti may be easily removed, it can just as easily be spread throughout the internet resulting in permanent or stable perception, reproduction, or otherwise communication of the art. For argument’s sake, we will say two requirements have been satisfied, but what about when an artist, i.e., the author, chooses to remain anonymous? United States copyright law has undergone several amendments since its inception in 1790. Beginning in 1976, anonymous or pseudonymous work has been given the option of copyright protection.67 However, research does not suggest this protection is given automatically given the law in its current iteration.

At present, in its basic form, most street art meets the bare minimum requirements set forth in U.S. copyright law. In addition, scholars have discussed the existence of policy considerations and arguments in favor of granting copyright protection to graffiti.68 The most notable arguments revolve around artist recognition, progression of art, and encouraging future artistic expression without fear.69 Despite qualifying for copyright protection, the registration and exercise of such is not always black and white.

B. Potential Issues Facing Anonymous Street Artists

Anonymity is a double-edged sword. On one side, it provides a shield of protection against prosecution for vandalism. On the other, it leaves everyone wondering just who created the art. This reliance on hidden identity could raise serious issues for street artists who want to register their artwork. While it is true copyright is established after the first last stroke of the paintbrush or aerosol can, a copyright holder cannot enforce their rights without a valid and registered copyright. Registering for a copyright may prove to be a questionable decision for some anonymous artists. Artists will likely want to

register because of the numerous benefits doing so provides.70 Currently, the form accompanying copyright registration for visual arts states: “[n]ame of [a]uthor: [t]he fullest form of the author’s name should be given. . . .”71 Now, the law does allow for an author to choose “anonymous” as their name.72 However, this raises an issue when attempting to enforce copyright protection rights without threatening an identity reveal during a lawsuit. What comes off initially as black and white quickly becomes grey for those artists adamant about remaining an enigma.

Another valid issue facing anonymous artists is the fair use doctrine as demonstrated in Seltzer v. Green Day.73 Fair use of a copyrighted work is allowed after the following four factors have been considered:

(1) the purpose and character of the use, including whether such use is of commercial nature or is for non-profit educational purposes; (2) the nature of the copyrighted work; (3) the amount and substantiality of the portion used in relation to the copyrighted work as a whole; and (4) the effect of the use on the potential market for or value of the copyrighted work.74

Under this theory, anyone could use any graffiti, mural, stencil, or other readily accessible street art for their own gain so long as they can prove it was done in compliance with fair use. Unfortunately for the artists, it does not seem like litigation through copyright infringement is the easy route to take. Fortunately for those same artists, there is another avenue to explore.

70. Circular 1: Copyright Basics, UNITED STATES COPYRIGHT OFFICE, https://www.copyright.gov/circ/circ01.pdf (last visited Mar. 15, 2020) (stating registration offers statutory advantages including, “[b]efore an infringement suit may be filed in court, registration (or refusal) is necessary for U.S. works, [r]egistration establishes prima facie evidence of the validity of the copyright and facts stated in the certificate when registration is made before or within five years of publication. [w]hen registration is made prior to infringement or within three months after publication of a work, a copyright owner is eligible for statutory damages, attorneys’ fees, and costs, and [r]egistration permits a copyright owner to establish a record with the U.S. Customs and Border Protection (CBP) for protection against the importation of infringing copies.) [https://perma.cc/YX2M-3YK8].
73. Seltzer v. Green Day, Inc., 725 F.3d 1170 (9th Cir. 2013) (This case is not discussed at length in this Comment; however, is an interesting read for those interested in a modern musical application of the fair use doctrine.).
C. Current Anonymous Artists’ Approach to Potential Copyright Issues

Anonymous artists understand, arguably more than other artists, how important it is to be adaptable. Choosing to create their work without formal recognition requires creative solutions to all sorts of problems. Two artists, one known for their recognizable artwork and the other an enigma, have both faced instances of copyright infringement. The first has attempted to tackle the situation head on, while the other remained quiet, prompting others to act.

Setting the bar for anonymous street artists everywhere is the United Kingdom’s own, Banksy. Starting in 2019, the elusive artist created an online store that caused quite a buzz in the art world. Understanding the world today and general interest in his work, Banksy knew people would likely use his designs. In response to this likelihood, he released the following statement:

The artist would like to make it clear that he continues to encourage the copying, borrowing and uncredited use of his imagery for amusement, activism and education purposes. Feel free to make merch for your own personal entertainment and non-profit activism for good causes. However, selling reproductions, creating your own line of merchandise and fraudulently misrepresenting knock off Banksy products as “official” is illegal, obviously a bit wrong and may result in legal action.

Banksy seems to take an affirmative stance regarding copyright infringement; however, one must wonder if his lack of known identity would create an issue with a successful cease and desist. The language in this warning suggests Banksy is confident in his ability to enforce copyright protection.

Bringing discussion closer to home, we find the interesting occurrence of the Toynbee Tiles. These tiles are an interesting phenomenon with an infuriatingly unknown origin. These tiles, roughly the size of an American license plate, have popped up in cities ranging from Pittsburgh to St. Louis. The first known tiles featured the ominous phrase, “TOYNEBEE IDEA IN MOVIE 2001 RESURRECT DEAD ON PLANET JUPITER.” There have been several instances where people have created nearly identical tiles or


78. Id.
substantially similar versions that could amount to copyright infringement. Because the original author of these tiles has not come forward, protection and preservation has fallen on the cities, which one would assume most current artists would not readily rely on for their art.

V. PROPOSED SOLUTIONS

Research suggests anonymous street artists are disadvantaged when it comes to copyright infringement. Luckily for these artists, another legal option is available with some clever interpretation. As the cliché goes, “when at first you don’t succeed, dust yourself off and try again.” If copyright infringement is no longer an option, looking elsewhere is vital to protecting the hard work of those invisible men, and women, making the world a little brighter.

A. Proposed VARA Interpretation and Application to Present-Day Artists

Nowadays, many anonymous artists choose to keep their identities secret to avoid arrest following their illegal, and often controversial, activity. Evidence of these artists can be seen throughout the world and often in response to political, social, or otherwise controversial circumstances affecting their area. In the United Kingdom, Banksy reigns supreme when it comes to anonymous street art. He is known for politically charged artwork that packs quite a punch. Iran is home to anonymous artist, Black Hand, while Spain is graced with the work of Escif. These two artists produce unbelievable commentary on the current situations in their homeland. Not to be left out, Egypt hosts the anonymous artists called Keizer. Bringing this all back home, walls in California are donned with artwork from a collective known as Skid Robot, which aims to “solve the issue of homelessness through art.” These

79. Id.
artists put everything at risk to create exquisite works, so should they not have protection against those who would use their art wrongfully?

As seen, relevant case law provides evidence that must be shown to assume VARA protection. For starters, artists must show their work is that of “recognized stature.” I argue street artists who provide commentary—whether it be political, social, or what have you—should automatically satisfy the first prong of the Carter test. Following automatic stature, these artists would then rely more likely on accolades from the general art community. I strongly suggest these street artists should be allowed to rely on extrinsic evidence to further support their claims of recognition by “art experts,” other members of the artistic community, or by some cross-section of society. By virtue of social media and other reporting, street artists find themselves among the greats in the street art community. One glaring issue with VARA protection as it relates to anonymous artists is the requirement of notice prior to art removal or destruction. Stating the obvious, notifying an unknown person would prove to be quite difficult. I advocate for a caveat to this requirement in relation to anonymous artists. On a final note, I highly suggest local governments take a moment to discuss the societal impact of taking down the work of anonymous street artists. This could easily resolve serious push back before it has a chance to begin. Overall, the protection of anonymous street artists provides an interesting conversation that would benefit all involved to start having soon.

VI. CONCLUSION

With this Comment, I sought to discuss and understand the copyright protections, or lack thereof, afforded to street artists. This goal was met after affirming the copyrightable nature of street art, discussing how anonymity does, or does not, affect a street artist’s ability to establish authorship, and arguing certain artists’ work to fall under VARA protection. The creativity and braveness of street artists should not be punished; it should be celebrated with assumed protection by the law.