

## LEGAL IMPLICATIONS OF STREET ART AS A 'DEMOCRATIZED'/'OPEN' FORM OF ART

### IMPLICACIONES LEGALES DEL ARTE CALLEJERO COMO UNA CATEGORÍA DE ARTE “DEMOCRÁTICO” O “ACCESIBLE PARA TODOS”

### IMPLICAÇÕES LEGAIS DA ARTE DE RUA COMO UMA CATEGORIA DE ARTE “DEMOCRÁTICA” OU “ACESSÍVEL A TODOS”

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#### ABSTRACT

The prestige of street art as an artistic expression has increased year after year. The analysis of its legal implications must take into account the difficulties in reaching a general operative concept of street art and the need to legally frame the creation, preservation and transaction of street art productions. Since the legal concept is not equivalent to the theoretical concept or the history of art, each State and even each municipality can create their own legal concepts, acting in accordance with these specific concepts in order to control production, to punish execution as vandalism or, in contrast, to protect works produced as part of their cultural heritage. Although street art is created in and for open spaces, usually as an ephemeral art, the commercial interest in street art productions raises questions of due diligence during its transaction, such as those related to ownership, authenticity and even provenance. As an expression of an artistic movement started about half a century ago, can street art works be equated with “traditional” works of art (such as “goods” or “merchandises”), being subject to ownership, commercial sale and copyright, or must they be appreciated as artifacts that

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can be preserved as part of the cultural heritage or, alternatively, starting from the specific artistic and creative intent of the artist, be understood as a type of works of art that require the creation of new legal categories and forms of understanding its meaning?

**Keywords:** Purchase and Sale. Due Diligence. Artistic Intentionality. Cultural Heritage. Street Art.

## RESUMEN

El prestigio del arte callejero como expresión artística ha aumentado año tras año. El análisis de sus implicaciones legales debe tener en cuenta las dificultades para alcanzar un concepto operativo general del arte callejero y la necesidad de enmarcar legalmente la creación, preservación y transacción de las producciones de arte callejero. Como el concepto legal no es equivalente al concepto teórico o de la historia del arte, cada Estado e incluso cada municipio pueden crear sus propios conceptos legales, actuando de acuerdo con estos conceptos específicos para controlar su producción, castigar su ejecución como vandalismo o, en contraste, para proteger las obras producidas como parte de su patrimonio cultural. Aunque el arte callejero se crea en y para espacios abiertos, generalmente como arte efímero, el interés comercial en las producciones de arte callejero plantea cuestiones de debida diligencia durante su transacción, como las relacionadas con la propiedad, la autenticidad e incluso la procedencia. Como expresión de un movimiento artístico iniciado hace aproximadamente medio siglo, ¿las obras del arte callejero pueden equipararse con obras de arte “tradicionales” (como “bienes” o “mercancías”), sujetas a propiedad, venta comercial y derechos de autor, o deben ser apreciadas como artefactos que pueden conservarse como parte del patrimonio cultural o, aún, a partir de la intención artística y creativa específica del artista, deben entenderse como un tipo de obras de arte que requieren la creación de nuevas categorías legales y nuevas formas de comprensión de su sentido?

**Palabras clave:** Compra y venta. Debida diligencia. Intencionalidad artística. Patrimonio cultural. Arte callejero.

## RESUMO

O prestígio da arte de rua como expressão artística aumentou ano após ano. A análise de suas implicações legais deve levar em conta as dificuldades em alcançar um conceito operacional geral de arte de rua e a necessidade de enquadrar legalmente a criação, preservação e transação de produções de arte de rua. Como o conceito jurídico não é equivalente ao conceito teórico ou à história da arte, cada Estado e até cada município podem criar seus próprios conceitos jurídicos, agindo de acordo com esses conceitos específicos para controlar a produção, punir a execução como vandalismo ou, em contraste, proteger obras produzidas como parte de sua herança cultural. Embora a arte de rua seja criada em espaços abertos, geralmente como uma arte efêmera, o interesse comercial

nas produções de arte de rua levanta questões de devida diligência durante sua transação, como as relacionadas à propriedade, autenticidade e até procedência. Como expressão de um movimento artístico iniciado há cerca de meio século, as obras de arte de rua podem ser equiparadas às obras de arte “tradicionais” (como “bens” ou “mercadorias”), estando sujeitas a direito de propriedade, venda comercial e direitos autorais, ou devem ser apreciados como artefatos que podem ser preservados como parte do patrimônio cultural ou devem ser apreciadas como artefatos que podem ser preservados como parte do patrimônio cultural ou, ainda, a partir da intenção artística e criativa específica do artista, serem entendidas como um tipo de obra de arte que requer a criação de novas categorias jurídicas e novas formas de entender o seu sentido?

**Palavras-chave:** Compra e venda. Due diligence. Intenção artística. Patrimônio cultural. Arte de rua.

## 1 INTRODUCTION

Many approaches to street art are possible in cultural, social and artistic terms<sup>1</sup>. At one end of the debate, it can be said that street art is pure and simple vandalism, simply damaging public or private property. From that point of view, the practice of street art should be fiercely opposed and its practitioners punished for criminal activity. At the opposite extreme, it is defensible as it can be seen as being a manifestation of artistic creativity that deserves to be safeguarded for the enjoyment of present and future generations. Because it is available for the appreciation of all who use urban spaces, it provides relevant examples of an expression of ‘democratic art’, very different from the art that is almost liturgically on show in the closed, exclusive, and sometimes excluding, space, within the art galleries, the fine art museums and, above all, the private art collections of a minute part of the world’s population<sup>2</sup>.

The existence of guides<sup>3</sup> dedicated to street art in cities scattered across the world shows

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1 See Irvine (2012).

2 On the social relevance of collecting and the social legitimation of collectors, focusing on contemporary art, using the teachings of Pierre Bourdieu to understand the Art Basel fair, see chapter 4 (An art of distinction, Collecting on the appropriation of immaterial goods), p. 95-125, of Schultheis, Single, Egger and Mazzurana, [2015], in particular when they assert that “[o]f all the luxury goods works of art are the purest form of uselessness, of “purposeless” expenditure, of economic “wastefulness” in its socially most distinctive shape. Access to them requires substantial material and cultural resources, means which are extremely unequally distributed in society and in their combination have become the privilege of a tiny minority”, and also that “[a]nyone who “buys” art can hope to acquire the insignia of “cultivatedness” in return for his money; thanks to their collectively attributed authority symbolical goods, above all works of art, bestow social recognition to their owners’ (p. 96).

3 An example is the *lonely planet* guide on street art, written by Bartlett, and published in 2017, covering “140 hotspots in 42 cities worldwide”. The guide presents maps and descriptions of places where street art can be enjoyed in cities in Europe (Amsterdam, Athens, Barcelona, Berlin, Copenhagen, Dublin, Kyiv, Lisbon, London, Paris, Reykjavik, Rome), in North America (Chicago, Los Angeles, Miami, New York, San Francisco, Toronto), Latin America (Buenos Aires, Mexico City, São Paulo), and in the Rest of the World (Adelaide, Christchurch, George Town, Istanbul, Johannesburg, Melbourne). It also gives information about 15 festivals around the world (Murals in the Market, Detroit, USA; POW! WOW!, Hawaii, USA; MURAL Festival, Montreal, Canada; Forest for the Trees, Portland, Oregon, USA; Upfest, Bristol, UK; Traffic Design Festival,

that we are in the presence of expressions of creativity which attract the interest of others and which can be regarded as being places of tourist pilgrimage and, therefore, similarly potential as sites of cultural interest. The messages communicated in some works of street art can be seen as being 'anti-system', in terms of the organization of contemporary societies and contrary to an expanding mode of contemporary artistic production organized towards the art market and their consumers. Street artists do not intend to create their work for art galleries, for international art fairs, for contemporary art museums, or for the egotistic enjoyment of multi-millionaire or billionaire collectors<sup>4</sup>, who often confine their artworks within claustrophobic spaces, such as art warehouses or freeports<sup>5</sup>.

Street art has had very famous practitioners. Names like Ayz, Philippe Baudelocque, El Mac, Shepard Fairey, Fauxreel, M-City, Nunca, Roa, and Vhils are household names for the general public (or the 99 % of the population) in a way that contemporary artists<sup>6</sup> are not. Probably the best known and most celebrated of the street artists is Banksy. In the imaginary environment created by mass communication, there are many reasons for his having the status of 'superstar' attached to his name, and for the increasing spread of the iconic status of his work. In the first place, his identity is not known, and this allows him an association with a status close to that of the 'super heroes', endowed with powers of invisibility, omnipresence and omniscience. Secondly, as a contemporary Robin Hood, his creations are intended to defend the weakest, especially the marginalized, of society, those who suffer from the abuse of power and who are the victims of capitalist exploitation. Thirdly, there is no misconception on the part of the public that his work, as its prime objective, intended to be sold in the contemporary art market, in order to create a place for himself within the artistic world, to have his art works commissioned or, in less immediate terms, as part of a search for a place in art history<sup>7</sup>.

According to Banský, in an interview to Mattanza (2017, p. 45-47),

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Gdynia, Poland; Artscape, Gotenburg, Sweden; Grenoble Street Art Fest, Grenoble, France; BLOOP, Ibiza, Spain; Nuart, Stavanger, Norway; Cash, Cans & Candy, Vienna, Austria; St+art Festival, New Delhi, India; HKwalls, Hong Kong, China; MB6: Street Art, Marrakesh, Morocco; and PUBLIC, Perth, Australia).

- 4 According to Clare McAndrew (2017, p. 246), [d]ue to the dominance of the high end of the art market, the buyers that are most influential in shaping trends are the world's wealthiest individuals, plus those with the ability to mobilize purchases in the art market. While the measures used to assets include illiquid assets such as property, an even more core group of potential buyers relevant to the market is those with investable wealth greater than \$1million, or what will be defined here as HNWI's (high net worth individuals). By the end of 2015, the number of HNWI's was approximately 15.4 million, an advance of 5% over the year. After four years of growth since 2011, this was the highest ever recorded population of HNEI's, and more than double the number of individuals globally in this category in 2000'.
- 5 About art storage and freeports in Switzerland, see Steiner (2017, p. 354-360).
- 6 According to data available at *The Art Market 2017. An Art Basel & UBS Report*, prepared by McANDREW (2017, p. 174), the top 20 selling artists in 2016 are: 1) Gerhard Richter; 2) Cui Ruzhuo; 3) Yayoi Kusama; 4) Richard Prince; 5) Christopher Wool; 6) Jeff Koons; 7) David Hockney; 8) Peter Doig; 9) Adrian Ghenie; 10) Yoshitomo Nara; 11) Robert Ryman; 12) Zeng Fanzhi; 13) Rudolf Stingel; 14) Frank Auerbach; 15) Anselm Kiefer; 16) Mark Bradford; 17) Pierre Soulages; 18) Frank Stella; 19) Maurizio Cattelan; and 20) Damien Hirst.
- 7 For an exploration into the evolution of art history and the taste of the 'unsophisticated masses' see Grombrich, (1996, p. 295-330) (text of four talks broadcasted on BBC Radio 3 in 1979).

[t]he people in charge of cities don't understand graffiti, because they think that nothing has the right to exist if it doesn't produce profit, which makes their opinion meaningless. They say that graffiti frightens people and is a symbol of the decline of society, but graffiti is dangerous only in the mind of three types of people: politicians, the managers of advertising agencies and graffiti artists. What really destroys the character of our districts are the large companies that stick enormous advertising slogans on buildings and buses, trying to make us feel inadequate unless we buy their products and services.

Paradoxically, most likely against his more genuine intentions, Banksy appears in mass communication and social networks, repeatedly associated with the art market, the voracious appetite of art collectors for their works, and the adventures of his creations in art auctions where artworks of great economic and cultural value are transacted. In the case of the Sotheby's auction of *Girl with Balloon*, which occurred on 5 October 2018<sup>8</sup>, it is possible to think that it was basically a prank promoted by Banksy, with the clear objective of questioning the presuppositions of the creation of contemporary art and the market mechanisms of the 'show-auctions'<sup>9</sup>. In other cases, however, Banksy's name arises fundamentally because of the various legal issues that result in someone wanting to sell and someone wanting to buy a 'movable thing' that has initially been created on a wall and for public display, as an 'offer' to a particular community, as an example of 'democratic art'<sup>10</sup>.

Street art, therefore, in addition to the cultural, social and artistic aspects previously referred to, also needs a legal approach. It is even possible to stress that it requires that its legal implications be taken fully into account, since we are in the presence of a phenomena of artistic creation where the 'artworks', the 'goods', the 'objects', the 'moveable objects', were not produced with the intention of being 'contemporary works of art', to be displayed and admired in selected places and ready for consumption by the players of the art market.

The following pages are intended to highlight some of the legal issues that need to be

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8 The artwork was included in a *Contemporary Art Evening Event* sale, with an estimated value of 200,000-300,000 GBP, and ended up being sold for 1,042,000 GBP. According to BBC news, 'Pest Control, a firm acting on behalf of the elusive artist, has titled the new piece Love is in the Bin', and also that the 'European woman who bought the piece, who does not want to be named, said: "At first I was shocked, but I realised I would end up with my own piece of art history"' (BBC News, 11 October 2018, available at <https://www.bbc.com/news/uk-bristol-45829853>).

9 According to Bellingham, (2016, p. 148), the 'notion of the fine art auction as a glamorous evening event was constructed in 1958 by Peter Wilson (1913-84), Chairman of Sotheby's from 1957 to 1980, when, for the first time, a black-tie sale of seven impressionist paintings took place in front of VIP guests and TV cameras'. On auctions as a way of allocating an object or acquiring a service in general see Hubbard and Paarsch (2015, p. 3), stressing that '[w]ith use dating back to at least 500 BC, the auction is among the oldest market institutions. That this institution is ancient does not mean it is obsolete. Rather, the durability of the selling mechanism signals its remarkable flexibility and robustness - its economic fitness'.

10 That is the case of the mural *Slave Labour* that was removed from the wall of a north London shop, in mid-February 2013, appeared for auction in Miami, a week later, was removed from that auction, only to re-appear in another auction, at the beginning of June, this time in London. About the situation, and the legal implications of it, see Frigerio and Khakimova (2013).

taken into account when trying to understand the legal framework of street art. Although street art has been practised for almost half a century<sup>11</sup>, it should be pointed out that its specific recognition by law is much more recent, considering that it was (and still is) often associated with the destruction or defacing of the property of others. We will begin by clarifying a non-legal question relating to an operative concept of street art. Later we will deal with six ideas related to a legal framework for street art and also give three examples of street art regulation.

## 2 STARTING POINT: IN SEARCH OF AN OPERATIVE CONCEPT OF STREET ART

The difficulty with regard to being able to achieve a legal framework for street art can be found, first of all, in the struggle to find a concept or a definition of street art that of practical use for the law. Basically we are not dealing with a legal problem. The answer to the question about what 'street art' is is outside of the legal parameters and should be provided by other areas of knowledge. A tentatively unambiguous answer to that question is, however, absolutely essential if there is to be an appropriate treatment of this matter by legal orders.

The legal discussion of street art as either 'vandalism' or 'artistic creation' considers that it is possible to qualify its production as 'damage' or, alternatively, as 'artworks'. In fact, while the creative intentionality of street art is, by its very nature, against social conventions and established rules, law is based on categories and abstractions in order to achieve the proper functioning of a community. For law systems based on private property, the protection of the legal status of the owner of something implies that any use not authorized by the owner of his property may be subject to a penalty. In simplistic terms, the owner of a building may prefer that it be white or painted in any other colour, as long as that is allowed by the existing regulations on the subject, instead of seeing it transformed into support for an artistic creation, even if the final result can be qualified as adding value to the property. The owner has the prerogative to be totally insensitive to artistic issues, since he has the power to decide what use he wants to give to his property. In these terms, when any disfigurement of a property appears, the owner should be able to reconstruct it to its original condition, unless it is limited by any legal considerations<sup>12</sup>. From a legal perspective, therefore, the issue is not to consider the activity of street artists as either of 'good taste' or of 'bad taste', or whether such artists produce 'good art' or 'bad art, but fundamentally to prevent the violation of property.

If street art is considered to be no more than vandalism, its products can, and should, be erased, and the previous condition of the property restored. There has been damage, an infringement of property rules, and the safeguarding of the legal status of the owner must prevail. If, on the contrary, street art is an artistic creation, then it is possible that the created

11 Some elements of the history of street art can be found in Young (2016, p. 23-29).

12 A situation of this type is reported by FRANCES (2014, online), since a Banksy's work had been done on the wall of a Grade II listed building and it is 'a criminal offense to interfere with a listed building without listed building consent and the perpetrator could face a maximum 2 years imprisonment and an unlimited fine for such an offense'.



artworks can, and should be, preserved as cultural heritage for the enjoyment of present and future generations. In these terms, the interest of the community will prevail in relation to the individual interest of the owner, since the final result of the artistic creation will be more valuable than the structure where it was executed.

The choice of the alternatives under consideration, or any other type of approach, can be adequately resolved only by law when there is a clear constructive answer to the key question of what effectively can be described or defined as ‘street art’. In the same way, it is important to know whether the expressions ‘graffiti’ and ‘street art’ are synonymous, whether they represent categories of the same type of artistic expression, or whether they should be separated in terms of the nature of their artistic or cultural propose<sup>13</sup>. In addition, in artistic but also in legal terms, it is important to determine whether we are in the presence of individual or collective creative works, and in the latter case whether the work is by several people in collaboration or by individuals who individually contribute to a final result that had not been initially designed or planned. And, if it is an act of collective creation, then it must be asked whether there will be a moment when the work is completed, or whether we are permanently in the presence of a potential work, in constant evolution and transformation.

In strictly technical terms, it is possible to state that street art may include very different modes of expression, such as spray paint, stencils, print and poster paste-ups, installations, and pecking (the carving of imagery into walls and buildings). Alison Young, similarly appreciating issues of a stylistic nature, explains the differences between ‘paste-ups’<sup>14</sup>, ‘stencil art’,<sup>15</sup> ‘stickers’<sup>16</sup>, ‘tagging’<sup>17</sup>, ‘throw-ups’<sup>18</sup>, and ‘wild style’<sup>19</sup> in the glossary of terms of her book *Street Art World*.

The difficulties of achieving an operative concept of street art can be demonstrated by

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- 13 In this sense, Campos (2013, p. 6), uses a division amongst letters and tags, images and murals, and street art, warning that ‘[t]hose acquainted with the world of graffiti will know how fickle these divisions can be and how difficult it is to classify a particular work of street art in one category or another’.
  - 14 According to Young (2016, p. 194), ‘paste-ups are sheets of paper featuring a design or drawing that are glued or pasted onto walls and other surfaces. Paste-ups vary greatly in size’.
  - 15 According to Young (2016, p. 195), ‘[s]tencil artists cut templates from cardboard and then affix the template to a wall or other surface, using aerosol paint to spray onto the surface through the cut-out holes in the cardboard. Skilled stencil artists utilize several layers in their compositions; novices tend to produce single-layer stencils’.
  - 16 According to Young (2016, p. 195), ‘[s]tickers may be hand-drawn or commercially printed, and sometimes placed in locations that frame a sticker as a single artwork, or in places that attract other stickers, so that a patchwork or college effect will develop’.
  - 17 According to Young (2016, p. 195), ‘[g]raffiti centres on tag, a name chosen by a graffiti writer. The functions like a pseudonym, nickname or alias, but will also have strong personal meaning for a graffiti writer; it is a self-selected name that bespeaks the writer’s sense of identity within graffiti culture’.
  - 18 According to Young (2016, p. 196), ‘[w]hen a tag is written in large (or ‘fat’), looping, bubble-like letters, it constitutes a throw-up. Often painted in silver, white or black paint, a throw-up is so called because of the swiftness with which the letters can be ‘throw up’ on to a surface’.
  - 19 According to Young (2016, p. 197), ‘[t]his is the most complex version of the graffiti aesthetic. [...] It relies on a range of stylistic devices, in which the letters of a tag name are stretched, distorted and reconfigured, and totemic adornments, such as crows, arrows and smoking joints, are added to the overall design’.

the existence of six possible approaches to this question.

Firstly, it is possible to ask whether street art is the equivalent of 'art in the street'. This seems to be a very open and broad concept equal to 'public art'<sup>20</sup>, since works of art exhibited in public spaces, such as gardens or traffic roundabouts, are usually the result of public or private commissions. Even restricting the concept to 'painting' in buildings, it is not possible to identify the two concepts, since there is no coincidence between 'street art' and 'supergraphics'. In fact, according to Sean Adams, the term supergraphics 'encompasses architectural delineation, wayfinding and identifying signage, illustrative murals, and branding elements', to which he adds that '[m] any people can paint stripes on a wall, whereas a designer can use the entire volume, sense of place, and context, and change the environment to create a story with words, colour, and shapes'<sup>21</sup>.

Secondly, it is possible to say that street art and graffiti are simply acts of vandalism. This is a consistent approach since it describes the early manifestations of street art, and that remains very relevant to a present appreciation of it. We can find a recent example of this understanding in a debate on this subject, in 2014, promoted by The New York Times, when Heather Mac Donald states peremptorily that

[t]he question 'When does graffiti become art?' is meaningless. Graffiti is always vandalism. By definition it is committed without permission on another's property, in an adolescent display of entitlement. Whether particular viewers find any given piece of graffiti artistically compelling is irrelevant. Graffiti's most salient characteristic is that it is a crime (MAC DONALD, 2014, online)<sup>22</sup>.

This seems to be a very strict concept and approach, taking into account the positive appreciation graffiti gives rise to in a relevant group of people linked to the art system, and its being viewed by a growing group of amateurs as being works of art. It is important to remember that street art began to be appreciated as 'art' in the early 1970s. The first exhibition devoted to graffiti art took place in 1973 at Razor Gallery, New York, curated by Hugo Martinez. In 2008, street art was even raised to a higher level of artistic legitimacy when the Tate Modern organized the 'Street Art' exhibition.

Thirdly, should a distinction be made between street art as 'art', and graffiti as 'vandalism' and 'crime'? It would surely be an arbitrary distinction with no relation to the artistic intention underlying the activity of its practitioners. In that sense, El Mac (Miles MacGregor), a reputed street artist, states that:

20 About public art and street art see Riggle (2010, p. 253-255).

21 (ADAMS, 2018, p. 9). ADAM presents the following types of supergraphics: typographic (p. 20-113, colour (p. 120-203), graphic (p. 210-297), and vernacular (p. 302-367).

22 The author is identified as the Thomas W. Smith Fellow at the Manhattan Institute, and a contributing editor of City Journal. Available as part of the section The Opinion Pages: Room for Debate of *The New York Times* online (<https://www.nytimes.com/roomfordebate/2014/07/11/when-does-graffiti-become-art/graffiti-is-always-vandalism>).



‘[t]he term ‘street art’ encompasses so much and can be used so broadly. I avoid using the term because of this. ‘Street art’ could include anything from illegal letter-based graffiti to a legal public mural that took an artist months of work to paint with brushes to a photocopy that was pasted on a wall. Some work involves more artistry and originality than others. I would like to think that real art is ultimately recognizable regardless of its context’<sup>23</sup>.

Fourthly, it would be possible to associate street art (and graffiti) with ‘illegal art’ and ‘marginal art’, in contrast to legitimate artwork (‘high’ or ‘fine’ art) when commissioned or authorized. Although the issue of legality may be central to a legal analysis, it does not appear to be a factor of any significant relevance for an especial evaluation or appreciation of the legally produced works. Again, Banksy’s example is demonstrative of how works produced illegally and anonymously can have a superlative artistic aura and generate an interest that goes beyond the circum-limiting boundaries of art lovers.

Fifthly, it is possible to try to understand street art being as ‘traditional’ artworks produced in or for an open space<sup>24</sup>, with the peculiarity of being free to everyone to enjoy, but also to transform, appropriate and destroy. The qualification of works of street art as being appropriable and tradable artworks is possible, and even necessary, when we are dealing with the framework of legal systems based on the private ownership of movable and immovable property and copyrights in relation to intellectual creations. The difference of street art in relation to public art, which can also be appropriated and bought and sold, will be the ephemeral character of the former and the possibility of its being a work in progress and in transition, where several creative expressions can be added and intertwined.

And, finally, sixthly, it is possible to consider street art as being an expression of a new urban model of cities, as a ‘democratized’ or ‘open’ form of art, free to everyone to enjoy, but also deserving specific preservation as part of a cultural heritage. As Nicholas Riggle proposes is a new and a different way of bringing art out of the art world and into everyday life. Or, according to Allison Young, to give an active role to the members of the community, because of the ‘central role that the spectator plays in interpreting a work as a street art, in an encounter that may take place in an alleyway, at a gallery or festival, or when walking home from work’ (YOUNG, 2016, p. 45)

### 3 SIX IDEAS RELATED TO A LEGAL FRAMEWORK FOR STREET ART

A correct understanding of the legal regulation of street art implies taking six basic ideas into account. It is an abstract approach that can be used in general terms for the various legal systems where, as a predominantly urban phenomenon, the practice of street art is happening.

Firstly, is necessity to stress that a legal concept of street art is not equivalent to a theo-

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23 In an interview to Mattanza (2017, p. 114).

24 In this sense, Versteeg (2017, p. 22), writing as an introduction to Mattanza, *Street Art. Famous artists talk about their vision*, affirms that ‘street art – as the name clearly says – is made in the streets, on walls or other public surface. As soon as it goes indoor, it becomes ‘art inspired by street art’, stencil art or illustration design’.

retical or to an art history concept of street art<sup>25</sup>. Legal regulation can be made by reference to non-legal realities or, alternatively, it can opt for the use of legal definitions of the matters or activities concerned. Any of these options has both its advantages and disadvantages, since life situations are often more imaginative and more complex than the legislator can initially foresee or the enforcer of the law later succeed to in solving adequately. Regarding the first alternative, proper law enforcement is dependent on the use of experts who can help to determine the exact contours of a given situation. Regarding the second alternative, the legislator proceeds with a standard parameter of performance, an abstract model of conduct, based on the description of a specific type of behaviour or way of behaving.

In any case, although a legal concept of street art cannot ignore the contributions that can be given by art theory and art history, the truth is that these are not synonymous, and they may not even present any coincidence. The issues that those approaches seek to clarify are diverse, and the concerns relevant to them are addressed equally differently. Legal regulation of street art is concerned, above all, with safeguarding the integrity of property, whether public or private. The first question it seeks to answer is whether or not the activity of the street artist in a particular area was duly authorized prior to execution. The assessment of the result, depending on an artistic or cultural perspective, becomes important only if there are identical legal rules expressly assigning it a potential cultural value. And, according to the assumptions of one of the contenders of the debate on the subject, the activities of street artists can be appreciated, valued and punished only as pure and simple vandalism<sup>26</sup>.

Secondly, it is necessary to take into consideration that every state and even every municipality can create its own legal concept of street art and can act in accordance with that legal concept in order to control street art production or to protect it. In the absence of an explicit international framework for this activity, States, and consequently smaller administrative bodies such as municipalities, have a large margin of autonomy and self-organization to regulate the matter. In these terms, it is possible to affirm, from a juridical perspective, that it is identically legitimate to control this type of activity, in order to reach its eradication, as to promote a radically alternative attitude, in order to stimulate the creativity of the members of a determined community.

The starting point for regulation is always the same, the protection of public and private property, and the safeguarding of its adequate use when dealing with public equipment. The attitudes towards street art can be very distinct, precisely because of the presumed connection of street art to criminal activities, namely to organized crime or gangs, or as manifestations of

25 For an in-depth analysis of a definition of street art see Riggles (2010, p. 244-251), who affirms that '[a]n artwork is *street art* if, and only if, its material use of the street is internal to its meaning' (p. 246). According to this author the practice of street art is a response to modernism 'not by hosting the everyday [...] but by making art in the streets for all to see. Street art is neither postmodern, nor *post-postmodern*. It is the other response to the Modern separation of art and life' (RIGGLES, 2010, p. 243).

26 A glimpse of the debate in Asia can be found in the answers to the question *What is Street Art? Vandalism, graffiti or public art - Part I*, formulated on January 21, 2010 on the website of *Art Radar - Contemporary Art Trends and News from Asia and Beyond* (<http://artradarjournal.com>).

‘undisciplined’ and ‘rebellious’ creativity that requires large outdoor spaces to have adequate expression.

Thirdly, in order adequately to understand and regulate street art it is essential to establish an artistic or creative intentionality of the activities pursued by street artists, in order not to qualify them as vandalism deserving punishment. The question of the intentionality of the practised act is absolutely decisive when analysing the matter from a legal perspective.

It is, in fact, radically different to qualify the intention to cause damage to another’s property, even if it can be seen as an act of social rebellion, possibly justifiable in times of tension and crisis, from the intentionality that guides an artistic creation<sup>27</sup>, even if it constitutes a fierce negative criticism of the system of social and economic organization in power. In that sense, M-City, the Polish artist Mariusz Waras, with a study in Gdansk, affirms that ‘[i]t is precisely the artists who can contribute to changing the world, especially street artists, who have the chance to express themselves freely and create works accessible to everybody’<sup>28,29</sup>.

An appreciation of the intention underlying street art activities can be relatively easy when dealing with the issue of obtaining authorization for creations requiring the use of structures, such as the elaboration of large panels in building gables, high walls or industrial structures, owing to the possible existence of projects prefiguring the final result to be produced. In the same way the creation of works in spaces specifically dedicated to street art allows one to presume that they were intended to generate an artwork. Banksy’s work, however, demonstrates that this artistic intention can arise from very different circumstances, characterized by anonymity, surprise and illegality<sup>30</sup>.

Fourthly, it is necessary to distinguish between legal and illegal street art, what relates to interventions created with or without the authorization of the owner of the private or public building, wall or urban space or the utility where the artwork was created.

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27 In a similar sense Riggle (2010, p. 245), ‘affirms that ‘[f]or a work to use an artistic resource, it is necessary that the creator of the work intentionally use it in the creation of the work [...] When this material is the street, a further commitment is at least implicitly (but normally explicitly) incurred. This is a commitment to *ephemerality*. In using the street, artists willingly subject their work to all of its many threats – it might be stolen, defaced, destroyed, moved, altered, or appropriated. This is not to say that all street artists *expect* their work to be short-lived [...]. It is to say that, in using the street, they relinquish any *claim* on the work’s integrity, or on the integrity of the part of the work that contributes to its being street art’.

28 In an interview to Mattanza (2017, p. 176).

29 For the intention of street artists see the interviews available at the websites *I support Street Art (The motherland of street art, your favorite daily updates, check the latest walls, books and much more. The world is one)* - <http://www.isupportstreetart.com>), and ii) *Le MUR association (Le M.U.R. (Association Modulable, Urbain, Réactif)* – <http://www.lemur.fr>).

30 The existence of an aura is manifest in the case of a work attributed to Banksy sold at an auction in Alicante, Spain, on June 17, 2018. With No. 143, it was described as ‘Spray paint, partly stencilled on metal panel, circa 2000-2002. Stencilled signature Banksy on the front. Dimensions: 45x45. Provenance: Private collection’, had an estimate of between € 6,000 and € 7,000, and was sold for € 4,500, notwithstanding its description being accompanied by the following note: ‘[t]he Object cannot be authenticated by Pest Control. Pest Control authenticates only works of Street Art that are still located in the place of origin. This work was removed from its original site London and according to Pest Control it was not made for trade, therefore Pest Control rejects to authenticate the work’.

From a legal point of view the authorization of the owner is absolutely decisive for the type of applicable legal framework, taking into account that the starting point of the various legal systems is the safeguarding of the property and the status of ownership. In general terms, where there is no prior authorization, regardless of its artistic value, the conditions for the work to be destroyed are created<sup>31</sup>. Only in special situations, when a specific legal status for street art has been recognized, can the expression of creativity of the street artist be maintained and may override the defence of property integrity. The examples of legal regulation that will be presented later fully demonstrate the importance of the owner's consent and to better understand the assumptions of the legal perspective more effectively.

Fifthly, an adequate legal regulation of street art necessarily needs signed and unsigned street art to be distinguished. The legal status of the artworks created by a recognized street art artist, even when the identity of the artist is not known, could be very different from works created by an anonymous street art artist. In this context, the legal discussion focuses primarily on the legal status of artistic creation and the possibility of recognizing the moral rights and copyrights of street artists. The possibility of street art artworks being the subject of an economic transaction will in the same way raise the need to address and solve legal issues related to the ownership of artworks, their authenticity and the existence of resale rights (*droit de suite*).

The issue is particularly relevant in relation to the maintenance of the integrity of the work produced, although this approach seems to be central to traditional works of art but contrary to the spirit underlying street art<sup>32</sup>. In fact, in terms of the international framework, in accordance with Article 6 bis (1) of the 1886 Berne Convention for the Protection of Literary and Artistic Works, as amended on 28 September 1979, '[i]ndependently of the author's economic rights, and even after the transfer of the said rights, the author shall have the right to claim authorship or the work and to object to any distortion, mutilation or other modification of, or other derogatory action in relation to, the said work, would be detrimental to his honour or reputation'.

Although the issue of street art artworks being subject to copyrights also seems to be contrary to the essence of the street artists' artistic creation endeavour<sup>33</sup>, this will be possible when in the presence of the expression of an idea, that could be considered an original work

31 Martinez (2017, online), gives an illuminating example of this situation with respect to Banksy when she refers that '[o]ther artists, however, continue to thrive on the illegality of their work. Banksy is one such example. Often engaged in very public projects – such as a New York City endeavor in which he created 17 works throughout various neighborhoods – Banksy is often pursued by law enforcement. Despite the aesthetic value of Banksy's work, Banksy is often viewed as a vandal and a menace, and the vandal squad of the NYPD has reportedly spent hours of surveillance footage looking for clues to Banksy whereabouts. Mayor Bloomberg has said that any Banksy works on public property will be removed, and has kept his work'.

32 About the right to integrity see Iljica (2015); and Franca Filho ([2016]).

33 In this sense, about street art normative rules and procedures, Smith (2013, p. 277-281), affirming that '[i]ntroducing intellectual property laws into a community that is self-reliant and self-governed through established norms and rules could create unintended and damaging consequences'. About the protection of unsanctioned street art under United States intellectual property see also this author, op. cit., p. 263-272.

of authorship and, in some jurisdictions, where the work is fixed in a tangible medium of expression<sup>34</sup>. The existence and safeguarding of copyright rights infringement could be particularly significant when a street art artwork can generate economic benefits for others, namely through its reproduction or its inclusion in commercial photography.

As regards ownership of a signed piece of street art artwork, the distinction between legal and illegal street artworks is particularly important, since the owner of a building or wall is the owner of an illegal street art piece<sup>35</sup>. When the work is legal, and especially if it has been commissioned, there will always be a possibility of providing contractual clauses relating to the sale in the secondary market. In any case, when the legal system regulates it<sup>36</sup>, there will always be the possibility of resale rights being invoked insofar as the legitimate author of the work can be identified.

The issue of authenticity is more relevant to the buyer of a street art artwork than to its creator. In this sense, the example of the *Pest Control* website for the control of artworks of Banksy's artworks is relevant. In accordance with the mission expressly and publicly assumed, 'Pest Control is a handling service acting on behalf of the artist Banksy', which has as its fundamental objective to 'answer enquiries and determine whether it was responsible for making a certain piece of artwork and issue paperwork if this is the case. This process does not make a profit and has been set up to prevent innocent people from becoming victims of fraud'<sup>37</sup>.

Sixthly, and to conclude, it is necessary to distinguish between street art created for urban spaces and works of supposedly 'street art' created for commercial art galleries or to be commercialized without having been previously exposed to an urban space. This approach does not correspond to an artistic evaluation of the artwork, like qualifying it as 'good art' or 'bad art', but it is a warning to the fact that we are not dealing with street art artworks in their strictest sense. From a legal perspective, the question is only genuinely relevant in terms of assessing the authenticity of the object in so far as there is an intention to deceive potential buyers. In all other situations, however, its assessment will be in accordance with extra-legal values and with consequences that are not legal but rather fundamentally artistic<sup>38</sup>.

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34 About street art copyright protection see Rychicki (2008); Lerman (2013); Prowda (2013, p. 55-100); Bonadio (2017). For a synthesis of the practice in the subject, organized as a question-and-answer resource for artists, see Ralstin (2014).

35 For an in-depth approach of the various sources of private property that could be used to regulate the ownership of street art artworks, see Salib (2015, p. 2297-2309).

36 For an overview about resale rights see Lerner and Bresler (2012, p. 1125-1165); and Prowda (2013, p. 118-132), concluding that '[t]he artist's resale right has been considered and adapted in a number of different ways, but its merits are still hotly debated. Legislation has been established in more than 30 countries throughout the world, including the EU member states, but its implementation varies. In the US, the California resale royalty statute is being constitutionally challenged, has been introduced at the federal level. The notion and practice of an artist's resale right brings to the forefront difficult questions about artists' continuing attachment to their work, and whether art and artists merit special protection' (p. 131-132).

37 The *Pest Control* website (<https://www.pestcontroloffice.com>) consists of only one page, designed to publicize the contact available for potential interested parties in clarifying doubts of authenticity.

38 In a similar sense Riggle (2010, p. 246), affirms that '[w]hen a work is moved into an artspace, the one thing



#### 4. THREE EXAMPLES OF STREET ART ACTIVITY LEGAL REGULATION

As an example, we will briefly refer to three different ways of regulating street art, ranging from combating the activity to adopting an approach that allows the artistic appreciation of works created by street artists.

An approach based on the fight against street art and the prevention of the activity of street artists can be found in § 117, inserted in Chapter 1 (Public Safety) of the Title 10 (Public Safety) of the 2006 New York Code, entitled 'Defacement of Property, Possession, Sale and Display of Aerosol Spray Paint Cans, Broad Tipped Markers and Etching Acid Prohibited in Certain Instance'. In accordance with its subparagraph (a), it is provided that '[n]o person shall write, paint or draw any inscription, figure or mark or affix, attach or place by whatever means a sticker or a decal of any type to any public or private building or other structure or any other real or personal property [...] unless the express permission of the owner or operator of the property has been obtained'<sup>39</sup>. Simultaneously, pursuant to subparagraph (b), it is established that '[n]o person shall possess an aerosol spray paint can, broad tipped indelible marker or etching acid in any public place, any public building or any public facility with the intent to violate the provisions of subdivision of this division'. Information delivered to police forces which made an effective contribution to the fight against the criminal activities that are pursued in scope of this regulation can be monetarily rewarded, as a result of the application of § 10-117.2. Pursuant to this provision, entitled "[r]ewards for providing information leading to apprehension, prosecution or conviction of a person for crimes involving graffiti vandalism', rewards of up to five hundred dollars may be paid to anyone providing relevant information in this field.

An approach based on the legality of the activity and the need for a sufficiently broad legal regulation, which could be the framework for the factual reality of street art, can be found in Portuguese national legislation on the subject<sup>40</sup>. Law 61/2013, of August 23, approved by

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that changes is the very thing that made it street art; at best it looks like street art. One could experience it as street art only by imagining what its use of the street might have been. At best, then, one could imagine how the work seen in the gallery might have been street art'.

39 Similarly, within the UK legal system, in the answer to the question 'I am a graffiti artist. Is there any law I need to be aware of?', the website *In Brief - Helping With Life's Legal Issues* (<https://www.inbrief.co.uk/offenses/graffiti/>), assuming that 'by the members of the general public it is often seen as a nuisance', and that 'recent estimates put the clean-up costs for graffiti in the UK at more than £ 1 bn', accounts for its legal framework referring to the following legislation: (i) the Criminal Damage Act 1971; ii) The Clean Neighbourhoods and Environment Act 2005; (iii) the Public Order Act 1986 ('if the graffiti includes words or images which could, for example, incite racial hatred'); and the Anti-Social Behaviour Act 2003 (according to which is an offense to 'sell spray paint to people under the age of 16').

40 About the activity of the department of the municipality of Lisbon dedicated to the promotion of legal street art see Galeria de Arte Urbana (GAU) or Urban Art Gallery, with information in English (<http://gau.cm-lisboa.pt>), and *Galeria de Arte Urbana 3 anos*, Câmara Municipal de Lisboa, 2012. The main mission of GAU is 'the promotion of graffiti and Street Art in Lisbon, in an official and authorized scope and in the pathway of respect for the patrimonial and landscaped values, in opposition with the illegal acts of vandalism that harm the City'. The GAU website features several public places in Lisbon where it is possible to develop street art

the Assembly of the Republic, has the title ‘Establishes the regime applicable to graffiti, postings, pecking and other forms of alteration, even if temporary, of the original characteristics of buildings, pavements, walks, walls and other infrastructures’. The starting point of this legislation is the use of certain techniques for changing the characteristics of movable and immovable property. In this sense, Article 1 (1) refers to ‘graffiti, posting, pecking and other forms of change, even if temporary’ of the characteristics. Article 2 defines what is to be understood by ‘affixation’ (paragraph [a]), ‘graphite’ (paragraph [b]), and pecking (paragraph [d]). The result of the activities covered by the legislation is the ‘alteration, even if temporary, of the original characteristics of the exterior surfaces of buildings, pavements, sidewalks, walls and other infrastructures, in particular from roadways and railways, fences, furniture and urban equipment, as well as the interior and exterior surfaces of trains and carriages for passengers or goods’, in accordance with Article 1 (1). The essential aspect of the Portuguese legislation is not, however, the use of the abovementioned techniques or the result that can be obtained with them, but rather the fact that these changes have not been the subject of the consent of the property owner. Accordingly, the same legal provision states that this is the ‘applicable regime’ when ‘changes are not authorized by the respective owners and licensed by the competent entities as defined therein’. The criteria for the application of legislation is the existence or not of the owner’s consent, the use of the distinction between legal or illegal activity, even in presence of interventions that are ‘artistic, decorative, informative or other in nature (paragraphs [a], [b] and [d]). That said, the characterization of the artistic nature of the intervention may be relevant in extra-legal terms but it does not constitute a relevant criterion for an initial or subsequent assessment of the acts of defacement that have been committed.

A different approach from that of Portuguese legislation, incorporating an aesthetic evaluation of the results of the street artists’ activities, can be found in the Toronto Municipal Code, Chapter 485, about Graffiti, adopted by By-Law nº 1218-2011, on 25 October 2011. In § 485.1. a distinction is made between ‘mural art’, ‘graffiti art’, and ‘graffiti vandalism’, and § 485-3 (A) determines that ‘[n]o person shall place or cause or permit graffiti vandalism to be placed on any property’.

According to the definitions provided in § 485.1:

a) art mural’ is ‘[a] mural commissioned or approved prior to its creation by a property owner or occupant, where the primary purpose is to aesthetically enhance the surface it covers and the general surroundings;

b) graffiti art’ is ‘[m]arkings made or affixed to property that are approved by the property owner or occupant, where the markings aesthetically enhance the surface they cover and the general

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activity legally. The authorization is dependent on the presentation of a descriptive memory, mentioning: i) desired location (address, site plan, photography); ii) intervention’s characterization (motifs, colour, scheme, materials); (iii) timings for the art piece execution; iv) small personal portfolio, with most important artworks (or a link to a website, where they can be seen); v) model of the artwork to be; and (vi) visual mock-up (photo montage), than can show what the final work will look like and its integration into the surrounding context.

surroundings, having regard to the community character and standards; and

- c) graffiti vandalism' is '[a]ny deliberate markings or affixed on property that is not currently exempted or regularized by the Graffiti Panel, Executive Director of Council and: A. was made or affixed without the permission of the owner; B. is considered by the Executive Director to be a tag<sup>41</sup>; C. for which there are reasonable grounds to believe that it may incite hatred or violence against any person or identifiable group; or D. contains profane, vulgar or offensive language. (TORONTO, 2011, online).

The Executive Director is competent to decide on the qualification of a creation as 'graffiti art' or as 'graffiti vandalism', allowing for the possibility of being artistically advised by the Graffiti Panel in case of uncertainty (when the 'Executive Director is not able to ascertain whether the piece in question constitutes graffiti vandalism', according to § 485-5 (A)). Pursuant to § 485-5 (D), the Graffiti Panel shall take into account 'the community character and standards' in order to determine' whether the markings should be in accordance with § 485-5 (A). (1)), or alternatively, 'the markings should be prohibited as graffiti art and direct that a notice to remove the graffiti vandalism be given' (§ 485-5 (D) (1)), or alternatively, 'the markings are graffiti art or an mural to be registered in a municipal database with the condition that the markings are either maintained in a state of good repair '(§ 485-5 (D) (2)). It is interesting to note that the works of street art that are protected by the city must be regularized and safeguarded in a static way as a 'traditional' work of art, since § 485-6 (D) expressly provides that '[g]raffiti art and art murals that [...] have not been considered to be prohibited and shall be regularized as long as the substantive changes are made to them'. (TORONTO, 2011, online).

## 5 ELEMENTS FOR CHOOSING A LEGAL FRAMEWORK SUITABLE FOR GENUINE STREET ART

The analysis of the legal implications of street art as a 'democratized' or 'open' form of art implies that this text be completed by presenting three different approaches to a legal framework suitable for street art.

Street art, in accordance with the intention of its creators, is an art form created in the street, taking into consideration the urban space that surrounds it and in permanent and close dialogue with the members of a determined community. In essence, considering that it is exposed to the elements of nature, it is an art form that accepts that is ephemeral as one of its defining characteristics. Streets artists aim to connect and communicate with the community of a certain location, open and urban, without being reduced to the closed space of an art gallery, a museum space<sup>42</sup> or a private collection. Moreover, when we are in the presence

41 According to the definition available at § 485-1 a 'tag' is '[a] stylized signature or logo that is intended to identify an individual or group or any other marking used for a like purpose or effect'.

42 In very critical terms, Young (2016, p. 141), argues that it makes no sense for ephemerality to be used by museums to depreciate the artistic value of street art, by arguing that '[e]phemerality is a key element of street art and something that we expect (and often accept) from the street. But when a museum removes an artwork,

of manifestations of genuine street art, production on the street and into urban space is not intended to be a trampoline for the art market, international art fairs, artistic residences, or museum exhibitions.

In a first approach, it is possible to look at street art as ‘traditional’ artwork that can be protected, depending on the artist’s interest, and prepared for market circulation through purchase and sale. The only peculiarity of this type of art would be the place of its creation and the ‘canvas’ in which it is produced. Although this does not correspond to the intentionality of the creativity and artistic expression of its performers, this model of legally regulating street art is perfectly compatible with the legal systems based on private property. The potential appropriation of the works created, and their transformation into a tradable commodity, allows these goods to be individually enjoyed and alienated, even if they were not initially produced for the market of contemporary art. It is a form of normalization of street art artworks, contrary to the perspective of genuine streets artists, in order to integrate them into the very social and economic structure they are criticizing.

The possibility of submitting street art artworks to the copyright protection system emphasizes the option of reducing street art to the traditional nature of a work of art created to be enjoyed in closed spaces, frequented by select and exclusive groups of people, and the generator of economic benefits to its creator. The right to the integrity of the artist can be understood as a safeguard of creative individuality, a way of guaranteeing a firm grip on artistic creation, just as property rights guarantee the exclusion of use by non-owners.

In a second approach, it is possible to understand street art as a form of a gift of street art artists to a community or an urban space. This is an approximation to the matter centred on artistic and cultural appreciation, where the artist’s intention is central to the assessment of its creation. In these terms, not being produced for the art market, nor for individual appropriation, the crux assumption will be to preserve those artworks for the collective enjoyment of present and future generations.

In this approach, more important than the right to the integrity of the artist, it is fundamentally a duty of preservation of the artwork for the local community or even for a larger and global community of street art amateurs (or ‘fans’). Preservation can be promoted and carried out by private entities<sup>43</sup>, public bodies, at local or national level<sup>44</sup>, or even within an

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using the same high-pressure hose that a council cleaning crew would employ, it suggests that the art has less value than the Hirsts and Maleviches and Lichtensteins stored inside, works that are painstakingly conserved and protected from the depredations of time. Since nothing was brought indoors or added to the Tate Modern’s permanent collection, and since the building’s exterior returned to looking ‘normal’, there was nothing to show that it had ever held a street art exhibition’.

43 In this sense, on *Art Crimes. The Writing on the Wall* website (<https://www.graffiti.org>), collecting data since September 1994, refers that ‘[o]ur main goals are to provide cultural and scholarly information and resources and to help preserve and document the constantly disappearing paintings’. In the same sense, the *Wooster Collective* website ([www.woostercollective.com](http://www.woostercollective.com)), founded at 2001, refers that ‘is dedicated to showcasing and celebrating ephemeral art placed on streets in cities around the world’.

44 In this sense, Frigerio and Khakimova (2013), ‘Shaping the street art framework...’, op. cit., with the objective

international framework. At the international level it will be possible to have as a reference the UNESCO heritage conventions, such as the Convention concerning the Protection of the World Cultural and Natural Heritage, done at Paris, 16 November 1972 (entry into force 17 December 1975) and the Convention for the Safeguarding of the Intangible Cultural Heritage, done at Paris, 3 November 2003 (entry into force 20 April 2006).

In similar terms to the previous approach, it is a way of appreciating street artworks as static objects, frozen at the time of their creation, and requiring preservation and conservation identical to any other type of museum object.

The question will be whether the appreciation of street artworks as an 'artefact' ready for cultural heritage preservation cannot be as limiting as normalizing their existence and intention to simply being 'traditional' artworks ('goods'), subject to ownership, commercial transactions and copyright.

This leads to a possible third approximation, according to which the specific artistic and creative intention of the street art artist demands the development of new legal categories and new forms of understanding the meaning of street art. According to the results of a field observational research conducted by Mulchany and Flessas (2015, p. 8), "[r]ather than being understood as discrete pieces produced by individual artists, site visits encouraged an understanding of street art as a multi-authored process of constant creative evolution." According to Mulchany and Flessas (2015, p. 13), therefore,

street art is best understood as ongoing performance and experience rather than artefact', since [s]treet artists may rely on similar concepts of creation and authentication as artists in more conventional art forms, but they are frequently reluctant to partake in the same traditions of display, commodification and collecting that are the center of capitalistic art projects and the legal regimes that facilitate the legitimation of its ways of thinking.

The third approach does not thus far have any legal use which could allow one to test its operability for an adequate legal regulation of street art, but it is surely an excellent starting point for a stimulating debate on the matter. This means that an adequate understanding of the legal implications of street art as a democratic or open form of art can be as complex and provocative as the genuine artworks of street art certain are.

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of reaching 'a national list aimed to safeguard outstanding urban artworks', propose that 'a bottom up approach should be preferably adopted in the listing process: local communities might be encouraged to propose selected street artworks to be enrolled in the list (for example, by collecting a certain number of signatures) and local council should then evaluate the conformity of the suggested artworks with pre-fixed mandatory parameters (for example, they should not be offensive, discriminatory, dangerous for the public or the surrounding environment) before proceeding with their enrollment'.



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