

# Street Art as ‘Supervened’ Conformed Property: Civil Law Issues and Hermeneutic Solutions Between Italy and The United States

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### Abstract

This essay examines the phenomenon of street art and its fascinating interconnection with property law. Framed in the complex intersection of law, social, and institutional practices in urban space, non-commissioned street art is characterized by its inherent impact on property law. To suggest possible solutions for the interpretation of the phenomenon, an analysis is proposed aimed at configuring a ‘supervened’ conformed property to further valorize these artworks that, overlooking the urban landscape, ultimately become part of it. To support this attempt, specific cases that have animated the legal debate in both the United States and Italy are examined, highlighting a crucial aspect for understanding the phenomenon: its evolution and the attempts that interpreters must make for its proper legal framing.

### I. Foreword: For a Preliminary Overview of the Phenomenon

The phenomenon of street art is today globally recognized as belonging to the larger category of contemporary art,<sup>1</sup> even though the practice of painting on

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<sup>1</sup> J.C. Foromer and C.J. Springman, *Copyright Law cases and materials* (Sprigman, 4.0 ed, 2022), 335, available at [copyrightbook.org](http://copyrightbook.org). See also A. Sau, ‘Street art: le ragioni di una tutela, le sfide della valorizzazione’ *federalismi.it*, 149-151 (2021), where it is noted how street art has transformed from an act of vandalism to a hot commodity by noting from the famous Art Price database that in 2021 the category represents 15 percent of the world’s secondary art market in the contemporary art sector, 45 percent in the modern art sector and 24 percent in postwar, ‘with an auction turnover of just under two billion dollars’. The author notes how ‘with the entry of street artwork into the secondary art market can be said to have definitively fulfilled the parabola of the movement that from an act of vandalism has become for all intents and purposes hot commodity, the great discovery and the last frontier of contemporary art’. Street artworks, as commodity goods, would therefore not be exempt from the mercantile dynamics peculiar to the art world, and thus the question of the work’s authenticity must also be reflected upon in this regard. See, in this regard, the zealous research on the subject of G. Frezza, ‘Art and Law: Authentication and Assessment Within the Italian Legal System’ *The Italian Law Journal*, 131-147 (2022); Id, ‘Alla ricerca della verità in pittura fra autenticazione e accertamento’ *Persona e Mercato*, III, 421-436 (2023); Id, *Arte e diritto fra autenticazione e accertamento* (Napoli: Edizioni Scientifiche Italiane, 2019); Id, ‘Opere d’arte e diritto all’autenticazione’ *Diritto di famiglia e delle persone*, 1734-1751 (2011); Id, ‘Cultura, arte e diritto. In ricordo di un maestro’ *Actualidad Juridica Iberoamericana*, 216-241 (2022); Id, ‘L’ammissibilità dell’azione di accertamento dell’autenticità di un’opera d’arte come tutela del contenuto intrinseco del diritto di proprietà’ *Diritto di famiglia e delle persone*, I, 145-157 (2022); Id, ‘Sulla condanna all’archiviazione dell’opera d’arte’ *Arte e diritto*, II, 339-

walls and in common spaces has ancient origins – just think of graffiti on Egyptian cliffs, in the remains of the Pompeian civilization,<sup>2</sup> in the Addaura caves in Sicily.<sup>3</sup>

The term ‘graffiti’ summarizes all kinds of original forms of creativity that find support in public space: wall art, street art, post-graffiti, tags, and paste-ups. In the category of urban art graffiti and street art are considered synonymous, they become collectibles, and graffiti takes on commercial value by becoming a consumer product.<sup>4</sup>

The question arises as to whether, as an expression of an artistic movement that began about half a century ago, street artworks can be equated with ‘traditional’ works of art by bringing them back to the ‘simple’ category of goods that enter the market, being subject to ownership, commercial sale and copyright, or whether they should be appreciated as ‘artifacts’ that can be preserved as part of the cultural heritage or be understood as a type of artwork that requires the creation of new legal categories and forms of interpretation of their meaning.<sup>5</sup>

For convenience of exposition, we will refer by the generic designation street art to all the above-mentioned categories of urban art, both commissioned and spontaneous and/or ‘illegal’, with a focus on the latter. The use of vandalism as the very medium of achievement has made street art revolutionary from an artistic as well as a social and political point of view. This subversive aspect, or rather illicitness, ‘elevate’ the violation of the law to more than just a crime, characterizing its existence as an artistic practice.<sup>6</sup>

The tendency to consider unauthorized street art as not only a violation of private citizens’ property, but also a potential threat to urban decorum, the

360 (2023). See also: P. Virgadamo, ‘Autenticità dell’opera d’arte e archiviazione: nessun potere di coazione sull’ente certificatore’ *Giurisprudenza italiana*, III, 611-619 (2022); G. Garofalo, ‘Accertamento dell’autenticità di un’opera d’arte e azione di condanna all’archiviazione’ *Il Diritto di famiglia e delle persone*, II, 544-570 (2023).

<sup>2</sup> See S. Romano and B. Kurtz, ‘Tear down this wall? The destruction of sanctioned street art under US and Italian Law’ 30 *Fordham Intellectual Property Media & Entertainment Law Journal*, 767, 769-770 (2020).

<sup>3</sup> G. Bolzoni, ‘Nuove osservazioni sulle incisioni della grotta Addaura del Monte Pellegrino’ *Atti Società Toscana Scienze Naturali*, 92, 321-329 (1985).

<sup>4</sup> M. Van Fiel, ‘Symbolic Learning in the City. Street Art in the Regeneration of Public Space’ 13(24) *Disegnarecon*, 24.3 (2020). See also P. Bengtsen, *Street Art World* (Granada: Lund University: Alemendros de Granada Press, 2014); U. Blanché, ‘Street Art and related terms-discussion and working definition’ 1(1) *Street Art & Urban Creativity Scientific Journal*, 32-39 (2015); D. Novak, ‘Historical dissemination of graffiti art’ 3(1) *Street Art & Urban Creativity Scientific Journal*, 29-42 (2017).

<sup>5</sup> F.L. Bastos, ‘Legal Implications of street art as a ‘democratized’/‘open’ form of art’ *Revista Opinião Jurídica*, 210-230 (2020); M. Tomassini, *Beautiful Winners, la street art tra underground, arte e mercato* (Verona: Ombre Corte, 2012).

<sup>6</sup> A. Baldini, *A philosophy guide to Street Art and the Law* (Leiden-Boston: Brill, 2018), 86. See also: A. Young, *Street Art, Public City: Law, Crime and the Urban Imagination* (Abingdon: Routledge, 2014); R. Gastman, *Wall Writers: Graffiti in its Innocence* (Berkeley: Gingko Press, 2016); N. Thompson, *The Subversion of Images: Notes on Urban Interventions and Contemporary Art* (Rotterdam: NAI Publishers, 2005); C. Lewisohn, *Street Art: The Graffiti Revolution* (London: Tate Publishing, 2008).

preservation of cultural heritage, and the fight against decay is evident from the extensive body of legislation devoted to the effects of this phenomenon.<sup>7</sup> However, at the same time, the protection of urban artworks is supported by a justification that encompasses not only private interests, such as the moral right of the artist, but also public interests or those that may affect the community, including the preservation of artistic heritage, the protection of cultural property, and the control of the art market. One recent proposal made has been to consider street artworks as common goods.<sup>8</sup> According to this perspective, the artist's intervention ought to be viewed as a collective practice, meaning both as a resource to be managed in common and in particular as belonging to the category of urban commons.<sup>9</sup>

The artistic value of street art emerges more and more often in court proceedings, to the point of eliminating the unlawfulness of the artist's action, elevating the judge to an art critic.<sup>10</sup> A trend certainly not free from criticism as it requires a judge to make an inevitable subjective assessment of the street artist's intention: whether that of intending to create a work of art or that of damaging another's property.<sup>11</sup>

The authorship of the work constitutes an important civil law issue. An analysis of the contrast between Italian and US law concerning the authorship of street art, for example, brings out the potential conflict between the right of the artist and the right of the owner of the medium. Italian law does not offer an unambiguous and specific solution or strict rule on authorship. In contrast, authorship of street art in the United States has been regulated instead by the Visual Artists Rights Act since 1990.

From these premises, a first glance at a *summa divisio* appears. On one hand, official street art (meaning street art where the work is commissioned by public or private entities and may be exhibited in museum spaces or sold to collectors) is a contractual phenomenon regulated by legally relevant agreements and legislation. On the other hand, independent street art, meaning street art where the creation is made illegally and is a violation of the dominant rights of others, carries with it civil and criminal consequences. The complexity of the relationship between legal systems and street art highlights the paradox of rewarding and punishing similar behavior. Street art is globally recognized as contemporary art but is prosecutable

<sup>7</sup> B. Mastropietro, 'Street Art, ovverosia quando la libertà creativa dell'artista incontra la proprietà altrui' *Rassegna di diritto civile*, III, 962, 965 (2021).

<sup>8</sup> See P. Virgadamo, 'La protezione giuridica dell'opera d'arte ai confini Del diritto d'autore (e oltre): dalla logica Mercantile all'assiologia ordinamentale' *Il Diritto di famiglia e delle persone*, XLVII, 1478, 1492 (2018).

<sup>9</sup> M.R. Marella, 'Le opere di Street Art come Urban Commons' *Rivista critica del diritto privato*, IV, 481, 471-496 (2020). See also: U. Mattei and A. Quarta, 'Right to the City or Urban Commoning? Thoughts on the Generative Transformation of Property Law' 1(2) *The Italian Law Journal*, 303 (2015).

<sup>10</sup> See, in this sense, F. Lemme, 'Street art: di chi è il muro? Quanto vale ora?' *Il Giornale dell'arte*, available at <https://tinyurl.com/3en8jdkd> (last visited 30 September 2024).

<sup>11</sup> *ibid.* See also B. Mastropietro, n 7 above, 966.

and punishable due to its illicit nature.<sup>12</sup>

Street artwork is usually created on walls, buildings, or other public or private surfaces, and, without the prior permission of the owner of the medium, exposes the artist to infringement of private property rights. The owner of the medium can legitimately consider the work as damage to his or her property and demand its removal.<sup>13</sup> The illicit and clandestine ways in which the works are made are considered an impediment to copyright protection. The author of the street artwork, however, usually holds the intellectual property rights to the work itself even if the protection of these rights is made difficult by the ephemeral nature of the work and its placement on media in publicly usable spaces. The author retains the right to be recognized as such and to have control over the use and dissemination of the work and, should the owner of the medium decide to remove it without the author's consent, he or she would risk violating the author's rights, who could, in turn, take legal action to obtain compensation for damages suffered.<sup>14</sup>

## II. The Legal Issue in the United States: The Relevant Legislation and Doctrinal Positions

The modern street art movement emerged around the 1960s in the United States as a new form of urban youth expression. The movement reflected economic and social changes brought about by the transition of cities from industrial to post-industrial. During the 1970s, main US cities faced economic and social upheavals, including the displacement of manufacturing employment overseas, suburbanization, and the financial difficulties of municipal governments. This led to the deterioration of urban landscapes, especially in suburban areas. The New York City subway, well known to be plagued in the 1970s by crime and decay, became a visible symbol of neglect. Its trains were used by young people as a canvas for expression, highlighting the sharp economic divisions within the city.<sup>15</sup>

The theorization of street art occurs, via the media, with the 'Taki 183 Spawns Pen Pals' interview with street artist Taki 183 in the New York Times on July 21, 1971.<sup>16</sup> This was followed quickly by the publication of the book 'Subway Art' in 1984 and the film 'Style Wars' in 1983, both of which contributed to spreading

<sup>12</sup> N.A. Vecchio, 'Problemi giuridici della street art' *Il diritto dell'informazione e dell'informatica*, XXXI, 625, 629-630 (2016).

<sup>13</sup> See A. Young, n 6 above; R. Gastman, n 6 above; C. Lewisohn, n 6 above.

<sup>14</sup> N.A. Vecchio, n 12 above, 632-633.

<sup>15</sup> C.F. Bruce, *Painting Publics. Transnational Legal Graffiti Scenes as Spaces for Encounter* (Philadelphia: Temple University Press, 2019), 27.

<sup>16</sup> A. Saltarelli, 'Street Art e diritto: un rapporto ancora in via di definizione' *Businessjus.com*, 1-20 (2017). On the topic, see also A. Riva ed, *Street art sweet art: dalla cultura hip hop alla generazione pop up* (Milano: Skira, 2007); A. Dal Lago, *Graffiti. Arte e ordine pubblico* (Bologna: il Mulino, 2016); M. Corallo, *I graffiti* (Milano: Xenia, 2000).

the movement nationally and internationally.<sup>17</sup>

The conflict between an artist and a property owner represents, even in the United States, a very complicated issue since it involves two rights that are accorded extensive protection: the right to free expression enshrined in the First Amendment and the right to property as consecrated in the last para of the Fifth Amendment.<sup>18</sup>

In the context of the Constitution of the United States, traditional common law categories of property law such as loss, abandonment, donation, and accession (which represent not a few points of contact with the same categories in the Italian legal system) are not considered convincing, as noted by some scholars, to settle disputes on the subject.<sup>19</sup> For example, on the topic of accessions (a category quite similar to that in Italian law), US doctrine also distinguishes depending on whether the work is authorized or not. In fact, under the law, a willful trespasser generally acquires no right to another's property from any changes made to that property through the trespasser's labor or skill, since a party can neither obtain any right nor derive any benefit from his or her wrongdoing.<sup>20</sup>

It should also clarify the differences in how damage to private property related to street art is punished by the laws of each state in the United States. San Francisco has a very strict graffiti ban policy, other cities restrict the sale of spray cans to minors, and still others require property owners to bear the cost of erasing or removing street art, regardless of whether they find aesthetic or commercial value in the works.<sup>21</sup>

Symmetrically, concerning the rights of the owner, copyright, protected by the Visual Artists Rights Act (VARA) of 1990, is of great importance in the United States. Under VARA, the moral right of authorship is distinguished from copyright by providing the right to prevent the destruction of works of art if they are of 'recognized stature'<sup>22</sup> and also by guaranteeing (in a completely similar way to the Italian system) the right to object to any distortion, mutilation or modification of the work that may cause harm to the author's reputation.<sup>23</sup>

VARA finds its application in removable works only.<sup>24</sup> A work of visual art is 'removable' if it can be removed from a building without being destroyed, distorted, mutilated, or otherwise damaged, and the author of the work has the right to prevent

<sup>17</sup> C.F. Bruce, n 15 above.

<sup>18</sup> Translated US Constitution available at <https://tinyurl.com/2hyx9nca> (last visited 30 September 2024).

<sup>19</sup> P.N. Salib, 'The Law of Banksy: Who Owns Street Art?' 82 *University of Chicago Law Review*, 2293-2329 (2015).

<sup>20</sup> 1 Am Jr 2d Accession and Confusion para 1 at 497 (2005).

<sup>21</sup> L. Carron, 'Street Art: Is Copyright for "Losers©™"? A comparative perspective on the French and American legal approach to street art' *Association* available at <https://tinyurl.com/54axhbuc> (last visited 30 September 2024).

<sup>22</sup> S. Romano and B. Kurtz, n 2 above, 798. Citing *English v BFC&R E. 11th St. LLC*, 97 CIV. 7446 (1997). About VARA, see also R.J. Sherman, 'The Visual Artists' Right Act of 1990: American artists burned again' *Cardozo Law Review*, 373-390 (1995); D.E. Shipley, 'The empty promise of VARA: the restrictive application of a narrow statute' 83 *Mississippi Law Journal*, 985-1048 (2014).

<sup>23</sup> 17 USC § 106A (a).

<sup>24</sup> *Pollara v Seymour*, 150 F. Supp. 2d 396 (2001).

its alteration or change in any case (Section 113 VARA). Despite this, ‘removability’ is, to date, a requirement that has proven far from peaceful. VARA stipulates that before proceeding with the destruction of an artwork, the property owner must notify the artist with at least ninety days’ notice. If the artist does not remove the work or pay for its removal within that period, the property owner has the right to proceed with the removal. In addition, VARA releases the owner from any liability if he or she has made a good-faith attempt to send the notice to the author’s address registered with the Register of Copyrights.

Finally, subsection 3 of Section 113(d) foresees the registration with the Copyright Office of artworks on buildings. This provision gives authors of works of visual art, that have been incorporated into or are part of a building, the opportunity to register their identity and address with the Copyright Office. Section 113 (d)(3) also provides that:

‘The Register of Copyrights shall establish a system of records whereby any author of a work of visual art that has been incorporated in or made part of a building, may record his or her identity and address with the Copyright Office. The Register shall also establish procedures under which any such author may update the information so recorded, and procedures under which owners of buildings may record with the Copyright Office evidence of their efforts to comply with this subsection’.

The provisions of Section 113(d) are extremely relevant to the rights of street artists who create artwork on other people’s property and to the procedure parties must follow to protect their rights.<sup>25</sup>

### **III. USA Case Law: The Delicate Balance Between Economic Interests and the Moral Rights**

The substantial body of case law in the United States has played a key role in settling the interests at stake, given also how respect for judicial precedent represents one of the cardinal principles in common law systems. Regarding the conflict between artists and the owners of the supports, since the enactment of VARA, some courts have had to rule on the statute’s ambit of application.<sup>26</sup>

The seminal case of *5Pointz* highlights many of the issues that have arisen

<sup>25</sup> S. Romano and B. Kurtz, n 2 above, 773-776.

<sup>26</sup> For instance, see the cases Citing *Pollara v Seymour*, 150 F. Supp. 2d 393 (2001) and *English v BFC&R. E. 11th Street LLC*, 97 Civ., 7446 (1997). Cf S. Romano and B. Kurtz, n 2 above, 773-776. More generally, on the pivotal role of judicial precedent in the US, see *Marbury v Madison*, 5 U.S. (1 Cranch) 137 (1803) (establishing the principle of judicial review); *Planned Parenthood of Southeastern Pennsylvania v Casey*, 505 U.S. 833 (1992) (affirming the doctrine of stare decisis and the importance of precedent in upholding constitutional rights); *Citizens United v Federal Election Commission*, 558 U.S. 310 (2010) (demonstrating the Court’s approach to precedent in cases involving First Amendment rights).

concerning VARA's application when the owner of a building destroys street artwork. The 5Pointz building was an old, unused warehouse located in Long Island City, New York, 'curated' since 2002 by street artist Meres One. The 'Mecca of Graffiti', soon became a hub for world-renowned street artists and recognized by the community as a place of artistic interest. The building's owner, real estate developer Jerry Wolkoff, initially welcomed the artists into the building and tolerated their activity, only to express a desire to demolish the building in 2013.<sup>27</sup> The tangled case involving the artists' request for an injunction, and the unfair action of the owner who whitewashed the building before waiting for the outcome, resulted in the award of the maximum amount of statutory damages under VARA, totaling six point seventy-five million. Despite the sum awarded by the judge's sentence, the building was demolished soon after.<sup>28</sup>

Despite the significant victory won by street artists in damages, the position that economic compensation is sufficient to satisfy artists' moral prerogatives has been emphasized with demolition. However, looking closely, VARA para 106A first recognizes the right of artists to prevent any intentional distortion, mutilation, or other modification that would be prejudicial to their honor or reputation, specifically protecting works of recognized stature from destruction. Economic compensation is considered only if the violation of these moral rights occurs, prioritizing the

<sup>27</sup> See *Cohen v G & M Realty L.P.*, 320 F. Supp. 3d 421 (E.D.N.Y. 2018). There had even been a proposal to preserve the building and declare it a city monument advanced to the NY-City Landmarks Preservation Commission, although it was supported by online protest petition of 13,000 signatures, which was rejected on the grounds that the works painted on the building had been done less than 30 years earlier and meanwhile New York City Planning was giving the green light to the building plan for new construction. At this point, all conditions had been met to proceed with the demolition of the building. On 10 October 2013, a group of artists who had helped create the murals at 5Pointz took legal action against Wolkoff, accusing him of violating VARA. The artists also sought an injunction, known as a 'preliminary injunction', to prevent the demolition of the building, invoking the moral right of integrity contemplated by para 106A of the Copyright Act, which allows for the avoidance of destruction of a work of visual art. This was the first occasion in which a court had to determine whether a work of street art could enjoy legal protection. In November 2013, Judge Block of the US Eastern District Court for the Eastern District of New York denied the artists' request for injunctive relief based on assessments relevant to what in the Italian civil proceedings would be called 'fumus boni iuris', ie, likelihood of success on the merits, and 'periculum in mora', ie, whether the plaintiffs demonstrated that they were likely to suffer irreparable harm. Indeed, despite acknowledging that some of 5Pointz's graffiti was likely to be of recognized stature, Judge Block used its ephemeral nature and marketability to exclude its status as art worthy of VARA's protection from destruction and to conclude that, in balancing the interests of the parties, the issuance of an injunction was inappropriate. Only a few days after the preliminary injunction was denied and before the grounds were even filed, Wolkoff had all the surfaces of the building whitewashed, effectively precluding the possibility of appealing the denial of the preliminary injunction. The unexpected and overnight action was considered extremely improper by the art community and the public and was in fact later used as the basis for claims by the artists. Cf C. Leman, 'Protecting Artistic Vandalism: Graffiti and Copyright Law' 2 *NYU Journal of Intellectual Property and Entertainment Law*, 295, 332, 304-305; L. Giordani, *Graffiti, street art e diritto d'autore: un'analisi comparata* (Trento: Trento Law and Technology Research Group, 2018), 84.

<sup>28</sup> R. Chused, 'Moral Rights: The Anti-Rebellion Graffiti Heritage of 5Pointz' 41 *Columbia Journal of Law & the Arts*, 583, 596-597 (2018).

preservation of the artist's moral rights over their creations before addressing any potential economic compensation.<sup>29</sup>

The 5Pointz court case has, therefore, raised important questions regarding artists' rights and the value of street art. It highlights the need to balance property rights with the protection of artists' interests and stimulates a broader debate on the definition and protection of street artworks.

#### **IV. The Legal Issue in Italy: The Relevant Legislation and the Positions of Italian Doctrine**

In Italy, the modern street art movement that arrived in the late 1980s is now present in many Italian cities and is seen as representing an important form of artistic and cultural expression.<sup>30</sup> Promoted and valued by local governments with the specific goal of redeveloping degraded spaces and enhancing suburbs, street art is also exhibited and musealized in settings far removed from the spaces where it was originally conceived.<sup>31</sup>

The conflict between an artist and a property owner is among the most interesting issues involving two rights of constitutional importance in Italy: the right to free expression (Art 21 Italian Constitution) and the property right (Art 42 Italian Constitution). Italian courts are called upon to balance these two rights; to attempt to strike a balance between protecting creativity and artistic freedom, while also protecting the rights of property owners whose property serves as the medium for street artworks.

Limiting the analysis to the relationship between the artist and private citizen, it is of fundamental importance to distinguish whether the work was created with the permission of the owner of the medium. In the case where the work is authorized (under Art 936 of the Italian Civil Code), in the absence of any agreement to the contrary, the owner of the building also becomes the owner of the work, while the artist remains the owner of the copyright, including the corresponding economic rights and moral right, unless he decides to transfer the economic rights to a third party. However, the owner of the building would be within his or her rights not to appreciate the artistic quality of the work and its market value and may wish to remove it or destroy the building on which it is located. The owner may choose, then, to keep the work in exchange for a payment paid to the artist for the use of materials, tools, and labor or an amount equal to the increase in value enjoyed by the building due to the work; or (Art 936, para 5), he may require the person who

<sup>29</sup> L. Giordani, n 27 above, 86.

<sup>30</sup> S. Romano and B. Kurtz, n 2 above, 785.

<sup>31</sup> B. Mastropietro, n 7 above, 965-967. See, in this sense F. Falchini, 'Street Art, verso la musealizzazione' available at <https://tinyurl.com/ycxnu9ks> (last visited 30 September 2024); see also M. Berto, *Street Art: l'arte della strada verso la musealizzazione, tra legge penale e diritto d'autore* (Venezia: Università Ca' Foscari, 2017); F. Benatti, 'La Street Art musealizzata tra diritto d'autore e diritto di proprietà' *Giurisprudenza commerciale*, V, 781-822 (2017).

made the works to remove them, at his own expense, within six months from when he has notice of the incorporation of the work in the building (Art 936, para 6), subject also to compensation for damages.

Another possible scenario is one in which the owner understands the value of the work and wishes to profit from it by recognizing a significant property enhancement to the building. In this case, a legal problem would arise regarding the unjust enrichment of the owner himself, who would have no property title to the artwork.<sup>32</sup>

In the matter of copyright on the unlawfully made work, Italian doctrine is divided on whether or not to use the US ‘unclean hands’ theory, according to which the plaintiff obtains the protection of his right only if he acted in good faith and no wrong has been committed. Indeed, some consider it contrary to Art 1 of the Copyright Act, which does not consider the lawfulness of the work to be a requirement aimed at copyright protection, but merely grants protection to a list of categories of creative works regardless of the medium or form of expression by which they are made.<sup>33</sup> Despite its frequent mention, it is very rarely received in our field of inquiry.<sup>34</sup>

Although there is no specific legislation in Italy that can regulate the conflict of interest between owner and artist,<sup>35</sup> the most recent trend is to grant protection to street artworks, regardless of the lawfulness of their creation.<sup>36</sup>

## V. Italian Case Law: The Debate on the Artistic Value of Street Artworks

Among the most recent cases involving Italian jurisprudence is the case of the famous Banksy in Venice – a street artwork depicting a child ‘in the rushing wind of a landing, wearing a life jacket and holding a flare, fluorescing in the night’.<sup>37</sup>

<sup>32</sup> N.A. Vecchio, n 12 above, 669-670.

<sup>33</sup> S. Romano and B. Kurtz, n 2 above, 796.

<sup>34</sup> See *Villa v Pearson Education, Inc*, 03 C 3717 (N.D. Ill. Dec. 9, 2003). As referred by G.M. Riccio, ‘Arte negli spazi pubblici e superamento delle logiche proprietarie: suggerimenti e suggestioni dall’analisi comparatistica’ *Rivista di Diritti Comparati*, I, 5, 8 (2020). It should be emphasized, in fact, that the objection regarding the illegality of an abusive street art work, which forms the basis of the crime of defacement, is overcome by taking into account the autonomy of the different regulatory areas. In this way, the unlawfulness of the graffiti author's behavior would not be relevant to the protection of the copyright of the work itself. This is done by virtue of the principle of neutrality, which implies the indifference of the legal system to the manner in which the work of art was created. This principle is also confirmed indirectly by Art 6 of the Copyright Law, which recognizes the mere creation of the work as the original title for the acquisition of related rights. Moreover, to deny authorship protection would be tantamount to imposing a double penalty against the same infringing conduct, violating the principle of proportionality. See also, in this regard, B. Mastropietro, n 7 above, 989. Further, Corte di Cassazione 14 September 1912, *Giurisprudenza italiana*, 280 (1913), as referred by A. Sau, n 1 above, 159.

<sup>35</sup> C. Cosentino, ‘La tutela delle opere di “street art” tra diritto d’autore e regole proprietarie’ *Rivista critica di diritto privato*, IV, 529, 540-541 (2017).

<sup>36</sup> S. Romano and B. Kurtz, n 2 above, 796.

<sup>37</sup> Available at <https://tinyurl.com/cj8vxka7> (last visited 30 September 2024).

The artwork was the subject of a complaint to the Public Prosecutor's Office by the Venice Superintendent's Office pursuant to Art 169, para 1, lett a of the Italian Code of Cultural Heritage and Landscape since it was illegally executed on Palazzo San Pantalon, a building subject to cultural restrictions and owned by a private individual. Indeed, the cited article prohibits unauthorized demolition, removal, modification, restoration, or any works on cultural properties, as well as the unauthorized detachment of frescoes and other decorations, and the execution of urgent temporary works without notifying the Superintendent. Nevertheless, the complaint did not fail to specify the artistic character of the work, which implied that the property owner would have to have the painting removed by experts should he wish to remove it. It was precisely the artistic character of the painting that contributed, along with the impossibility of tracing the author, to the request for the case to be dismissed, 'since, although the crime is alleged, it is, in fact, a work of art that does not deface or damage the building'.<sup>38</sup> The case is of legal interest since it was precisely the artistic nature of the work that contributed to the non-feasibility of constituting the matter as a crime. In acknowledgment of the artistic value of Banksy work, Banca Ifis acquired Palazzo San Pantalon to preserve the painting and renovate the space for public use. Supported by the Ministry of Culture and the Superintendence, this project aims to establish an exhibition area for both established and emerging artists. Launched in October 2023, the effort seeks a public-private collaboration to protect the painting, highlighting important themes and fostering societal reflection.<sup>39</sup>

Among the most recurrent grounds for the acquittal of urban artists in similar lawsuits is the contribution of improvements to buildings and walls, countering the inherent nature and meaning of vandalism, which refers to a pejorative alteration of other people's property. However, this trend is truly a more recent one. Artist Alice Pasqualini was sentenced in 2016 to a fine of eight hundred euros for defacing some walls in Bologna, having seen no benefit from this jurisprudential orientation. In fact, in that case, the Bologna judges did not consider the artist's reputation or the already degraded condition of the walls, choosing instead to focus specifically and objectively on the illegality of the action, having considered the assessment of the artistic character of the work to be an excessively subjective operation for the judicial interpreter.<sup>40</sup>

Also famous is the case of artist Sqon who painted his iconic brightly colored cats in some Venetian alleyways that had peeling walls. The artist was acquitted of the charge of defacing another's property (Art 639 of the Italian Criminal Code, that punishes who defaces or soils others' property) thanks to the testimony of some residents who claimed the work was a 'beautification' of the walls that were

<sup>38</sup> cf <https://tinyurl.com/ycyd5ee9> (last visited 30 September 2024).

<sup>39</sup> B. Mastropietro, n 7 above, 962-963. See <https://tinyurl.com/u2frr7cy> (last visited 30 September 2024).

<sup>40</sup> Tribunale di Bologna 15 February 2016 no 674, available at <https://tinyurl.com/mwj6scd8> (last visited 30 September 2024).

in a state of disrepair.<sup>41</sup>

Another similar case was that of the artist Blu, who had painted on a concrete wall of a railway underpass. In the ensuing lawsuit, the judge upheld the nonexistence of defacement, instead considering Blu's painting as ameliorative, bringing 'ornament, value and visibility to a gray, and anonymous public work'.<sup>42</sup>

In the case of the conflict between the artist's copyright and the property owner's right, the progressive tendency developing has been for courts to consider the crime of defacing other people's property as non-existent if the artistic character of the work and the artist's intent to make improvements are recognized; these were pivotal elements considered in the case of a well-known Sardinian artist who case later reached the Italian Supreme Court.<sup>43</sup>

After all, this trend espouses the increasingly recent validation of urban artworks as assets in public spaces belonging to the community. The work 'Tuttomondo', by renowned artist Keith Haring, painted on the back wall of the convent of the church of Sant'Antonio in Pisa in 1989, was bound by the Ministry of Cultural Heritage and Activities and Tourism, Regional Directorate for Cultural and Landscape Heritage of Tuscany by Decree no 335 of 2013, as it was considered worthy of protection. Its detachment was forbidden under Art 50 Legislative Decree no 42/2004<sup>44</sup> and the historical artistic interest of the mural was recognized according to Art 10 para 3 letter d) and 11 para 1 letter d) of the aforementioned decree. The decree described the importance of safeguarding, preserving, and enhancing the work as an 'artistic testimony of our time', declaring it to be of cultural interest, and regardless of its qualification as a work of street art.<sup>45</sup>

## **VI. Possible Hermeneutic Solutions in Light of an Initial Comparison of the Two Legal Systems. Toward a 'Supervened' Conformed Property**

In both Italy and the United States, courts find themselves balancing the interests of street artists and the owners of the properties serving as a canvas for these works. As illustrated by the 5Pointz case, US federal law under VARA provides certain protections for artists' works, but these protections are more

<sup>41</sup> See <https://tinyurl.com/fjyjejcc> (last visited 30 September 2024).

<sup>42</sup> See <https://tinyurl.com/57uw23v2> (last visited 30 September 2024). It is noted how the artist, moreover, in protest against the musealization of urban artworks has erased with chisel most of his paintings in Bologna, putting the spotlight on the great proprietary paradox of urban art: to whom does the painting belong, and to what extent? The artist's act was, not surprisingly, placed in correspondence with the opening of the exhibition 'Street Art Banksy & Co. Art in the Urban State' at Palazzo Pepoli, with works 'detached' from the walls they belong to under permission of the owners of the walls themselves. See <https://tinyurl.com/2x6u2a5p> (last visited 30 September 2024).

<sup>43</sup> Corte di Cassazione-Sezione penale II 20 April 2016 no 16371, *Diritto e Giustizia* (2016).

<sup>44</sup> S. Romano and B. Kurtz, n 2 above, 793.

<sup>45</sup> Decreto no 335/2013, Ministero dei beni e delle attività culturali e del turismo. Direzione Regionale per i Beni Culturali e Paesaggistici della Toscana.

likely to apply if the street artists have obtained permission from the property owner before creating their work. At the same time, property owners must notify artists of their intention to destroy their works and give them ninety days to remove them to avoid claims for damages.

Italian law, on the other hand, is currently unclear on the scope of protection for street art. Based on the various Italian sources that lend themselves to regulating the matter and the few judicial decisions to date, there appears to be a tendency to prefer the interests of owners over those of street artists, unless there is a formal authorization or contract between the two parties, or the work is declared a cultural interest.

In criminal cases, however, street artists can point to the uncared-for or ruinous condition of the walls or surfaces as they existed before the artistic intervention as a potentially winning argument to protect their artworks and avoid criminal consequences. Although there is general skepticism about recognizing the artistic value of a work of art to absolve an artist from criminal consequences (because it would be the result of a judge's subjective assessment), some courts are becoming more open to the use of this valuable exemption. In both Italy and the United States, however, it is appropriate for artists to seek express written permission from property owners before painting on their property. Obtaining such authorization seems to be the only practical means of protecting the artist's moral rights. Without this permission, the artist risks losing the work with no recourse beyond facing lengthy and costly litigation.<sup>46</sup>

The main conflict between the rights involved, which is the most intriguing legal issue, concerns the destruction of street artwork that is indeed recognized as a work of art. The question arises whether the right to the integrity of the work, as the moral prerogative of the artist, includes the right to object to its destruction.

In the United States, this possibility is expressly provided only for works of 'recognized stature' as in the case of *5-Pointz*. In the Italian context, over time, there has been a tendency for the courts not to consider such behavior as criminal if the artistic character of the work and the artist's intent to make improvements are recognized during the trial. It is precisely this tendency that also reflects a recent recognition of urban artworks as assets belonging to the community in public space.

While in the United States, VARA underscores a distinction between vandalism and works deserving of protection, with the criterion for that being a 'recognized stature', under the Italian legal system such a distinction could only be delineated by the Ministry of Cultural Heritage and Activities and Tourism with a specific declaration of cultural interest of the work, certifying it, if the requirements set forth in Art 10 Italian Code of cultural heritage and landscape are met, which include the work's historical, artistic, archaeological, or ethno-anthropological significance, and its importance for public interest due to its cultural value. In any case, the criterion of 'recognized stature' proves difficult to use both because of the inevitable

<sup>46</sup> S. Romano and B. Kurtz, n 2 above, 803-804.

subjectivity of any aesthetic evaluation and because of the role its implementation requires of judges – to act as arbiters of disputes among art critics. In the case of 5-Pointz, the ‘recognized stature’ of those works ultimately allowed the artists to achieve a historic judicial victory, but not to save the place housing those artistic interests, with the presiding judge preferring instead to safeguard the economic interests of the owner.<sup>47</sup>

Italian copyright law offers protection to all works that show even a modicum of creativity, adopting a rather low threshold of significance on this point, but without providing clear guidance on which ones fall under this privileged treatment. One could extend protection from destruction only to works of particular value, as is the case in the United States. However, when trying to introduce a judgment of artistic value into the legal framework, several difficulties emerge.<sup>48</sup> These include, for example, the subjective nature of artistic value, the potential for inconsistent evaluations, and the difficulty of establishing objective criteria for what constitutes ‘particular value’. For instance, experts may diverge in their assessments of the cultural significance of contemporary street art compared to classical paintings.

It is easier, indeed, to address this issue for works that fall into the category of cultural property, since in those cases a value judgment has already been provided through official recognition of artistic value.

One interesting proposal is to introduce at the legislative level the obligation for owners, before taking action on the work, to apply to the Superintendency with jurisdiction over the area, requesting prior authorization to which a response should be provided within a defined period.<sup>49</sup> After that period has elapsed, a mechanism similar to silent consent could come into operation, which would allow the owner to take action on the work, including the possibility of destroying it. This process could see the involvement of precisely those bodies in charge of the process of declaring a cultural interest, hopefully, joined by experts in the field of street art.<sup>50</sup> This approach would have the advantage of relieving the owner of the

<sup>47</sup> L. Giordani, n 27 above, 126.

<sup>48</sup> *ibid*

<sup>49</sup> G.M. Riccio, n 34 above, 18-19; After all, there is already such a mechanism in Art 50 of the Italian Code of cultural heritage and landscape, which regulates the prohibition, ‘without the permission of the superintendent, [to] arrange for the detachment of frescoes, coats of arms, graffiti, gravestones, inscriptions, tabernacles and other decorative elements of buildings, whether or not exposed to public view. It is forbidden, without the permission of the superintendent, to order and carry out the detachment of coats of arms, graffiti, tombstones, inscriptions, tabernacles as well as the removal of memorial stones and monuments, constituting vestiges of the First World War within the meaning of the relevant regulations’. The main purpose of the rule, which is rooted in several provisions found in the edicts of the pre-unification era for the preservation of city ornamentation and in some regulations in force in the Grand Duchy of Tuscany, is to provide specific protection to certain types of heritages that, although not falling into the category of cultural heritage in the strict sense, are nonetheless deserving of special forms of protection. Cf F. Astone, ‘Art. 50’, in M.A. Sandulli ed, *Codice dei Beni Culturali e del Paesaggio* (Milano, Giuffrè Francis Lefebvre, 2019).

<sup>50</sup> It is emphasized as ‘a similar mechanism’ because as known in para 4 of Art 20 Legge no 241/1990 important exceptions are typified concerning which silence cannot count as assent but

medium of the costs and uncertainty associated with identifying the author since works are often signed with a pseudonym. It would also resolve the long-standing diatribe regarding the right to destroy works potentially worthy of protection.<sup>51</sup>

In the Italian legal system, there are already limitations to the right of ownership based on the artistic character of certain assets: for example, the assets recognized as having an artistic character are regulated by the Code of Cultural Heritage, for which the owner’s freedom of disposition is limited by the public interest aimed at protecting the asset. Art, then, in this sense, takes on a social function. Indeed, some authors bring it back to the category – not exempt from criticism by authoritative doctrine<sup>52</sup> – of the ‘beni comuni’ (common goods), and even if the property belongs to one individual, everyone’s interest in its preservation within the cultural heritage is protected.<sup>53</sup>

Among all the issues noted emerges the need to go beyond the attempt to interpret street art events exclusively from a private perspective, renouncing an individualistic approach and adopting one that is attentive to the generality of the interests involved, recognizing the intangible value of this type of art that goes, in fact, far beyond the materiality.<sup>54</sup>

If we exclude the individual interest of the author or owner of the work, it is important to recognize that the legal system protects works not only for their aesthetic or artistic value but also as cultural and historical records that deserve to be preserved for future generations as

‘things that express utilities functional to the exercise of fundamental rights as well as to the free development of the individual’ and that must be protected and safeguarded by the legal system ‘also for the benefit of future generations’.<sup>55</sup>

– except in cases of silence rejection – should be qualified as silence-fulfillment, and precisely among the exceptions cultural and landscape heritage is noted. About the need to involve qualified parties in the discussion on the artistic value of street art, a commission of experts was formed and has already been presented as part of the Icomos Italy Ordinary Members’ Meeting at the Ministry of Culture in Rome in 2023 available at: <https://tinyurl.com/2wdawpms> (last visited 30 September 2024).

<sup>51</sup> G.M. Riccio, n 34 above, 18-19.

<sup>52</sup> The notion of ‘beni comuni’ has been questioned as ambiguous: ‘Instead of proposing uncertain and dangerous changes to the Civil Code, it would be necessary to take seriously – without prejudice, distrust or conservatism – principles and general clauses already offered by the current legal system’. G. Perlingieri, ‘Criticità della presunta categoria dei beni c.dd. «comuni». Per una funzione e una «utilità sociale» prese sul serio’ *Rassegna di diritto civile*, I, 136, 161 (2022).

<sup>53</sup> L. Giordani, n 27 above, 126. On ‘beni comuni’, see the insightful analysis of: U. Mattei, E. Reviglio and S. Rodotà eds, *Invertire la rotta. Idee per una riforma della proprietà pubblica* (Bologna: il Mulino, 2007); M.R. Marella ed, *Oltre il pubblico e il privato. Per un diritto dei beni comuni* (Verona: Ombre Corte, 2012); D.G. Ruggiero, *Destinazione culturale e proprietà dei beni* (Napoli: Edizioni Scientifiche Italiane, 2019).

<sup>54</sup> G.M. Riccio, n 34 above, 12-13.

<sup>55</sup> See ‘Relazione Commissione Rodotà’ available at <https://tinyurl.com/4j6wez3> (last visited 30 September 2024).

This perspective goes beyond the traditional dichotomy between public and private<sup>56</sup> and overcomes the logic of urban space oriented toward individual and neoliberal interests. On the contrary, artworks can play a unifying role and be a cohesive element for entire urban communities. Think of projects involving numerous neighborhoods, with artworks that recall the history of such places. Often these works are commissioned by local governments, but specific regulations are often lacking. This situation opens the possibility that a future administration of a different political orientation may intervene and infringe on those same works commissioned by earlier governments and even remove them over differences of opinion.<sup>57</sup>

In this direction attentive doctrine has formulated the reconstructive hypothesis of street art as an asset for public use, configuring its legal regime as ‘dictatio ad patriam’ where the artist voluntarily makes his work available to the community, subjecting it to the corresponding use, which contributes to the refinement of the object itself to satisfy a common need ‘uti cives’ and this regardless of the motives behind such behavior, its spontaneity or the motivation that animates it.<sup>58</sup>

It seems undeniable that some street artworks because they often have an actual connection to the history, art, and culture of a place, represent a significant asset for the community where it is located, so much to theorize a genuine ‘right of public use to enjoy the cultural value of the asset’.<sup>59</sup> In this sense, in the case of works of street art whose artistic value can be equated with that of cultural property, Art 90 Italian Code of Cultural Heritage and landscape could be considered functional to their discovery, which, concerning fortuitous discoveries of cultural property with prompt reporting, could offer the interpreter a possible solution if applied to the finding of works of street art.<sup>60</sup> One could assimilate the position

<sup>56</sup> It is argued that ‘the notion of the common goods does not deserve special attention, to the point of justifying the call to go ‘beyond the public and the private’, both because history already delivers us the category of the so-called *res in usu pubblico* and Marciano’s *res communes omnium*, as well as public state property (which, unlike ‘common goods’, appropriately enhances the role of institutions), and also because it seems ambiguous, to say the least, to discuss ‘common’ goods concerning very heterogeneous cases ... whose legal statutes, indeed, deserve the utmost attention, but are necessarily to be reconstructed case by case, in relation to the nature and peculiarity of the function and interests specifically involved. After all, the problem is not the creation of one category rather than another, nor is it to establish whether or not *res communes omnium* are to be excluded from the list of goods, but to understand that the legal connection between ‘things’ and ‘persons’ can take place in the most disparate ways and must not be analyzed only in terms of belonging; so that the notion of good must be rethought precisely in the light of function and social utility and prescind from the problem of appropriability’. Cf G. Perlingieri, n 52 above, 141- 143. See also: P. Perlingieri, *Introduzione alla problematica della «proprietà»* (Napoli: Edizioni Scientifiche Italiane, 1<sup>st</sup> ed, 1971); Id, ‘Normazione per principi: riflessioni intorno alla proposta della Commissione sui beni pubblici’ *Rassegna di diritto civile*, IV, 1184-1190 (2009).

<sup>57</sup> G.M. Riccio, n 34 above, 15-16. See also, on this topic, E. Pellicchia, ‘Valori costituzionali e nuova tassonomia dei beni: dal bene pubblico al bene comune’ *Foro italiano*, I, 573 (2012); A. Dani, ‘Il concetto giuridico di “beni comuni” tra passato e presente’ *historiaetius.eu*, 1-48 (2014).

<sup>58</sup> cf A. Sau, n 1 above, 180.

<sup>59</sup> cf B. Graziosi, ‘Riflessioni sul regime giuridico delle opere della street art’ *Rivista giuridica dell’edilizia*, IV, 423, 440, (2016)

<sup>60</sup> See G. Pistorio, ‘Art. 90’, in M.A. Sandulli ed, *Codice* n 49 above. The art specifies that

of the owner who accidentally discovers a cultural asset to that of the owner of the wall on which an uncommissioned work of street art appears. The main objective should always be the preservation of works that represent significant evidence of a historical era, along the line of what is enshrined in Art 9 of the Italian Constitution, which states that the Republic promotes the development of culture and scientific and technical research. It also safeguards natural landscape and the historical and artistic heritage of the nation.<sup>61</sup>

In conclusion, one could hypothesize about the perspective of reform, a conformed property of an innovative character, that is the one of being 'supervened', where the conformation of the ownership of property insisting (in our case the wall painting) on real estate is operated directly by the state or regional law, in compliance with the reservation of law provided by Art 42 Italian Constitution to which is entrusted the task of determining the modes of acquisition, modes of enjoyment and the relative limits of private property.

Indeed, to preserve real estate that possesses special historical, urban, or environmental characteristics, constraints on the property may be established through a specific plan or act, for example, precisely as a result of a declaration of cultural interest. As a consequence of such a constraint, there will exist a reduction of the faculties attributed to the owners, imposing, for example, obligations of doing (preservation of the property, carrying out maintenance work) and not doing (alteration, destruction, damage, modification). This would be a conforming constraint since the affixing of the constraint follows the ascertainment of the existence in the property of pre-existing characteristics defined in general by law. Specifically, in our case, the result would be a 'supervened' conforming property (or a supervening conforming property), since the property does not come into existence already 'restricted' in terms of possible use, as the imposition of constraints on the property is not original, that is, native concerning the property itself, but arrives with the act of creating the artistic work.<sup>62</sup>

anyone who fortuitously discovers immovable or movable objects as indicated in Art 10 must report it within twenty-four hours to the superintendent, mayor, or public security authority, and ensure their temporary preservation in the same condition and location as found. The superintendent also notifies the Carabinieri responsible for cultural heritage protection.

<sup>61</sup> G.M. Riccio, n 34 above, 20.

<sup>62</sup> Indeed, if we intended the property in its materiality, conforming property would indeed arise because the object was already there before, and was limited by the act of creating the artistic work. But if we consider that concurrently with the creation of the new work an *ex novo* property came into being, a new legal entity would in fact be born already 'limited'. On conformative constraints, see E. Casetta, *Manuale di diritto amministrativo* (Milano: Giuffrè Francis Lefebvre, 2023), 317-318. See also: F. Longobucco, 'Beni culturali e conformazione dei rapporti tra privati: quando la proprietà "obbliga"' *Politica del diritto*, 47, 547-562 (2016); G. Alpa et al, 'La proprietà, le proprietà. Materiali in tema di proprietà conformata e proprietà vincolata' *Diritto&Diritti*, 2004. On conformed property see: F. Gazzoni, *Manuale di diritto privato* (Napoli: Edizioni Scientifiche Italiane, 20<sup>th</sup> ed, 2021), 218-219; A. Gambaro and U. Morello eds, 'Proprietà e possesso', in *Trattato dei diritti reali* (Milano: Giuffrè, 2008), I, 300-304. S. Pugliatti, 'Interesse pubblico e interesse privato in diritto di proprietà' *La proprietà nel nuovo diritto*, (Milano: Giuffrè, 1964), 3.

We do not omit to reflect further on the cases in which acclaimed street artists place their works precisely on an already listed cultural asset, thus wondering which work ‘prevails’ in this case for its preservation. Consider the hypothesis in which a renowned artist creates a work on a cultural asset, although this eventuality, at the moment, does not seem to be documented in Italy.

This eventuality would be considered rare because of the tendency of well-known street artists to show marked sensitivity to cultural goods, usually avoiding intervening in them. However, if such a situation were to occur, a discussion could be opened on the legal category of supervened conformed property. In this context, it could be argued that the cultural property hosts a new contemporary work, thus generating a unique and complex entity. This raises the need to develop new approaches and strategies for legal protection and cultural valorization.

As was with the case of Banksy in Venice, the Superintendence could not avoid reporting the graffiti to the prosecutor’s office since it was an intervention on a restricted property. The dismissal that ‘settled’ the case, however, cannot satisfy the interpreter. If Banksy’s painting is itself declared to be of cultural interest, in this case, resolving the conflict would require a thorough analysis and balance between preserving the existing cultural heritage and recognizing the added value brought by Banksy’s work. Specific legal and institutional mechanisms would therefore be required to deal with such unique situations, and indeed the acquisition of Palazzo San Pantalon by Banca Ifis to preserve the artwork and create an exhibition space for artists indicates a recognition of the collective value of such works.

One could hypothesize as an abstract solution the aforementioned ‘supervened’ conformed property, where the legal system protects the intermingling of the street artwork and the ‘hosting’ medium according to the ‘new’ nature of its object.

This is a conceptual conjecture, and perhaps a bold one, but one that, upon reflection, enjoys illustrious precedents in the history of art, dense with the layering of various works superimposed in different periods into a single artifact that, today, represents in its unicum ‘the’ protected artistic asset.<sup>63</sup>

<sup>63</sup> Cultural heritage has always been the subject of ‘perturbing itinera’, especially in the case of architectural assets, which are almost never made in one go and by a single author. If St Peter’s in Rome owes its definition to Michelangelo, it certainly cannot be considered his work, not so much because of the Bramantean premises as because of the extension made by Maderno, the later interior decoration and the changes made to the domes. In the course of time many architectural goods have been the subject of actions of various kinds aimed at their completion, modernization or restoration. Interventions on architectural works already built or in progress take on aspects conspicuous in their frequency and paradigmatic in their significance. In many examples new interventions have given new life and new functions to even ‘modest’ works. The artist’s own potential and the incidence of the culture of the time are the constants that characterize interventions on pre-existing structures. It is often in the history of art and architecture the overlapping of various personalities in the same work: a factory may continue over time (Santa Maria del Fiore), it may undergo radical modernization once completed (Basilica of Santa Maria degli Angeli on the Baths of Diocletian, Cathedral of Syracuse), or it may receive a restoration aimed at its enhancement (St Peter’s in Rome or Palermo Cathedral). See G. De Angelis D’Ossat, ‘Restauro: architettura sulle

The aforementioned proposals and observations highlight the inevitable need to carefully consider the phenomenon of street art as belonging to the intangible cultural heritage (which accurately coordinates with the ephemeral nature of the works under consideration), a category that is still not supported by a sufficiently organic discipline.<sup>64</sup>

The 'supervened' conforming property, then, would be an innovative category, but, at the same time silently present in the very history of art both near and far and deserving, most simply, of legal emergence.

preesistenze, diversamente valutate nel tempo' *Palladio*, III, XXVII, 2, (1978), passim; S. Boscarino, 'Storia e storiografia contemporanea del restauro' in G. Spagnesi ed, *Storia e restauro dell'architettura, proposte di metodo* (Roma, Istituto della enciclopedia italiana fondata da G. Treccani, 1984), 51-62.

<sup>64</sup> See, in this regard, the meticulous examination of the issue conducted by M. Timo, *L'intangibilità dei beni culturali* (Torino: G. Giappichelli Editore, 2022), passim. Indeed, it is noted that the process of adapting the concept of 'cultural heritage' to the so-called 'intangible cultural heritage' is still in progress since the Italian legal system does not currently provide a precise definition of intangibility in relation to cultural interest.