

# The Artist as Entrepreneur

## VARA-Visual Artists Rights Act

### Lesson Description

In this lesson, students will investigate moral rights (droit morale), the recognition that an artist's work is an extension of himself, and alterations to the work can be a violation of the artist's rights. Students will read case studies of artists' lawsuits under the Visual Artists Rights Act and then will discuss the merits of fictitious cases where artists might consider a lawsuit.

### Concepts

Property rights  
Moral rights

### Related Subject Areas

Law

### Objectives

Students will:

Describe the Visual Artists Rights Act

Discuss the merits of potential lawsuits according to the Visual Artists Rights Act

### Materials

Visual 1, *Property Rights*

Visual 2, *Is VARA Constitutional*

Handout 1, *Visual Artists Rights Act*

Handout 2, *Murals at Risk*

Handout 3, *Does She Have a Case?*

A work of art that has been prominently displayed in the classroom or school building

### Lesson Procedures

1. Draw students' attention to a visual work that has been displayed in your room or the school for an extended period. Suggest a change that you wish to make to the work, such as changing the colors or cutting it into smaller sections and selling it. Ask students to discuss the ethics of this decision. Suggest to them that either of these acts would be unethical but might also be considered illegal under certain circumstances.
2. Display Visual 1, *Property Rights*. Introduce the lesson by stating that having ownership of a building or area of land on which a work of art is displayed does not necessarily give the building or land owner exclusive rights to the disposition of the art. Property rights can be defined as the right to use, control, and obtain

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benefits from a good or service. This could be construed to mean that building owners have the right to use and control art that has been placed in or on the building. However, artists have a type of property right to the art they have created.

3. Provide each student with Handout 1, *the Visual Artists Rights Act*. Explain that this act prohibits alteration or destruction of art work under certain conditions. Allow students time to read the information. Ask the following questions:
  - What are the rights that define “Moral rights?”
  - Must the artist who created the work hold the copyright in order to claim a VARA violation?
  - For how long are an artist’s rights granted under VARA?
4. Display Visual 2, *Is VARA Constitutional?* Summarize the discussion by stating that Congress, in enacting the Visual Artists Rights Act, sought to provide property rights to artists so as to maintain an artist’s credibility and integrity.
5. Explain that students will read about three cases where building owners were challenged by artists. Distribute Handout 2, *Murals at Risk*. After students have read the cases, prompt discussion by asking the following questions.
  - In each case, what happened to the artwork involved? (*It was destroyed or partially destroyed.*)
  - Marta Ayala and Patricia Rose had a Site Agreement with the building owners, the other artists did not. Did this influence the outcomes for the other two cases? (*No, in all three cases, the owners were in some way compensated for the loss of their work.*)
  - What section of VARA covered these cases? (*The artist of a work of visual art shall have the right: “to prevent any destruction of a work of recognized stature, and any intentional or grossly negligent destruction of that work is a violation of that right.”*)
6. Place students in five groups and give each group a situation card from Handout 3. Instruct students to conjecture the outcome of a lawsuit brought by the artist. Instruct them to justify their responses by citing the portion of the law that favors the artist or absolves the city workers.

### Closure

Remind the students that property rights can be defined as the right to use, control, and obtain benefits from a good or service. However, when art is involved, artists have a type of property right to the art they have created. The Visual Artists Rights Act affords artist this right.

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Visual 1

**Property Rights**

Property Rights

are defined as the right to use, control, and obtain the benefit from a good or service.

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Visual 2

### **Is VARA Constitutional?**

The Court has stated that VARA is constitutional as it does not compel property owners to allow an invasion of their property interests. Rather, it only places certain burdens on those who permit the installation of works of visual art on their property.

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Handout 1

### **Visual Artists Rights Act**

106A. Rights of certain authors to attribution and integrity

#### **(a) RIGHTS OF ATTRIBUTION AND INTEGRITY**

The author of a work of visual art –  
shall have the right:

- ◆ to claim authorship of that work, and
- ◆ to prevent the use of his or her name as the author of any work of visual art which he or she did not create

shall have the right to prevent the use of his or her name as the author of the work of visual art in the event of a distortion, mutilation, or other modification of the work which would be prejudicial to his or her honor or reputation; and

shall have the right:

to prevent any intentional distortion, mutilation, or other modification of that work which would be prejudicial to his or her honor or reputation, and any intentional distortion, mutilation, or modification of that work is a violation of that right, and

to prevent any destruction of a work of recognized stature, and any intentional or grossly negligent destruction of that work is a violation of that right.

#### **SCOPE AND EXERCISE OF RIGHTS**

Only the author of a work of visual art has the rights conferred by subsection (a) in that work, whether or not the author is the copyright owner. The authors of a joint work of visual art are co-owners of the rights conferred by subsection (a) in that work.

#### **EXCEPTIONS**

The modification of a work of visual art which is the result of the passage of time or the inherent nature of materials is it a distortion, mutilation, or other modification described in subsection (a)(3)(A)

The modification of a work of visual art which is the result of conservation, or of the public presentation, including lighting and placement, of the work is not a destruction, distortion, mutilation, or other modification described in subsection unless the modification is caused by gross negligence.

The rights described in paragraphs 1 and 2 of subsection a shall not apply to any reproduction, depiction, portrayal, or other use of a work in, upon, or in any connection with any item described is A or B of the definition of “work of visual art” in section 101, and any such reproduction, depiction, portrayal, or other use of a work is not a destruction, distortion, mutilation, or other modification.

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### Handout 2

#### **Murals at Risk**

##### Case 1

In 1995, Marta Ayala, a renowned muralist in San Francisco, received a grant from the Mayor's Office of Community Development to create a mural in the Mission District of San Francisco. The mural, *The Ancestor's Gift*, depicted the blending of the Asian culture into the long-time Latino culture of the Mission District. Marta Ayala and Patricia Rose entered into a Site Agreement with the owners of a commercial building in the Mission District. The agreement named the building owner as caretaker for the mural and stipulated that the mural could not be altered, defaced or destroyed for five years. The building owner was also obligated to notify the artists if the building were to change ownership, as well as inform any new owners of the Site Agreement conditions. Ayala and Rose proceeded to paint the 1,155 square foot mural on the front wall of that building. It was widely respected and admired – so much so that even graffiti artists avoided defacing it.

In 1998, the building was leased to restaurateurs establishing a Chinese restaurant, and in 2000, the building was sold to new owners. Shortly after the change in ownership, the restaurant owners painted over the mural. Ayala happened to be passing the area and noticed that the mural had been covered. She took her copy of the Site Agreement to the restaurant owners and asked that they refrain from further painting, but they disregarded her request and added more coats of paint to the wall, thoroughly destroying the mural.

Ayala and Rose brought suit against the former building owners, the current building owners, and the tenants who operated the restaurant. Among the complaints registered by the artists was that the mural had never been professionally photographed, so a quality depiction of the mural did not exist. This denied the artists future opportunities to license reproductions of the work.

The artists asked for \$100,000 in damages; payment for attorneys fees; the costs of pressing the suit; compensatory damages for the loss of future income that might have been possible through licensing; and punitive damages. The case was settled for an undisclosed amount.

##### Case 2

In 1986, Jesus Campusano was awarded a grant by the City of San Francisco to create a mural on the Lilli Ann Building in the Mission District of that city. Elias Rocha assisted in the design, consulted on colors, and painted the mural, along with three other painters. This admired abstract, the city's first, covered an area of the wall nearly four stories in height and one-half of the city block wide. It was featured in news articles, on postcards, and had been reproduced in books.

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Shortly after the Lilli Ann Corporation sold the building to Robert Cort in 1998, Cort contracted to have the mural covered with a thick whitewash known as Kel-Bond.

Campusano had died but his partner, Rocha, and Campusano's children brought suit against Cort for covering the "Lilli Ann" mural. Cort's contention was that the wall had become susceptible to moisture which was damaging interior walls. However, the plaintiffs alleged that Cort intended to sell advertising on the space that had been whitewashed.

The plaintiffs claimed that their rights had been violated under the Visual Arts Rights Act in that they had not been notified of Cort's intention to cover the mural. Had they been notified, the plaintiffs claimed that the mural could have been removed from the building using a method where the paint is lifted from the surface and reapplied on another surface. An expert witness for Cort testified that this method would likely not have worked because the original wall surface was too irregular to lift the fragile paint. The witness further stated that even if the paint had been removed from the wall and adhered to another surface, the mural would have had a "jigsaw" appearance.

Regardless of whether the mural could have been moved, the plaintiffs contended that their VARA rights had been violated because Cort had not notified them of his intentions and, therefore, had denied the artists the ability to attempt to move the mural. The case was settled for \$200,000.

### Case 3

In 1997, two Ventura liquor store owners partially whitewashed the mural, "It's Not Cool to Target Kids." The store owners then painted a sign of their own depicting an American Flag (with 57 stars) and the wording, "Fourth of July Independence Day, Welcome to Avenue Liquor." This action was particularly galling to some community members because the mural had been in response to the numerous liquor stores on the street. Hanrahan explained the situation, "The mural was painted in my neighborhood on an avenue disproportionately exposed to liquor stores, as well as alcohol and tobacco advertising. The images depict youth 'taking back' public spaces with messages of their own – stopping the violence, reaching out to the homeless, reconnecting to cultural and historical roots, encouraging positive, enriching activities." The creation of the mural itself had been an enriching activity for local youth who had helped develop the mural's theme and content.

Hanrahan had attempted to stop the whitewash, asking the store owners to stop until she had time to determine her rights. They continued to paint, and Hanrahan sued. In court, the work was determined to be of "recognized stature," and Hanrahan's reputation was found to have been harmed by the actions of the store owners. It was ruled that Hanrahan would restore the mural. She received \$15,000 for harm done to her, \$15,000 to restore the mural, and \$18,000 to cover the costs of the trial and attorneys' fees.

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### Handout 3

#### Situation Cards

Well-respected local artist, Mena Tolliver, won a design competition sponsored by the city. The 12-foot bronze sculpture was placed on a downtown corner near the football stadium. The sculpture received a lot of notice and was often included in television news shots and in the newspaper when reporters were covering the local team. To her amazement, she picks up the paper to find a report that the sculpture has been painted to match the football team uniform colors. City workers at the stadium painted her work.

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