

ArtFBI

ArtFax

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A Faxazine of Arts Information from Cyberspace to the Mid-Atlantic Community

KNOW YOUR RIGHTS! THE VISUAL ARTISTS RIGHTS ACT

Editor's Note: In the last year the illegal alteration of numerous artists' work has come to our attention. In an effort to educate and illuminate artists about our legal rights we are beginning a two part article on the Visual Artists Rights Act. This article, by Cynthia Esworthy of the NEA Office of the General Counsel, originally appeared on the NEA web site.

You are a sculptor. On commission, you create a bronze frieze for a city park. A year later, you discover that the center of the frieze has been covered by a copy of the city seal. Can you force the city to remove the seal?


You have just purchased an office building. In the central lobby there is a large, permanently fixed sculpture that you find aesthetically displeasing. Can you remove it?

You are a well-known painter. You discover that a company that has purchased one of your canvasses is advertising one-inch square portions of it so that buyers can "own an original painting" by you. Can you stop them?

You are an airport. You commission a giant mobile, specifically designed for the interior of your central terminal. You would like to relocate the mobile to the front exterior entrance of the terminal, which will require weatherproofing, removal of the motor and rendering the mobile stationary, and repainting it to match the color scheme. Can the artist prevent the move or modifications?

You are a photographer. You discover that a limited edition triptych you created and sold has been separated into three pieces for resale. Can you require that the piece be sold as a whole?

You are a county arts agency. You commission a mural for the side of a county building. You later discover that a state law requires you to build a handicapped access ramp blocking the lower part of the mural. Can you paint over the lower part of the mural?

You are a printmaker. A collector has just sold one of your prints for 100 times the 

NEA ANNOUNCES
FIRST 1998 GRANTS

original cost. Are you entitled to a royalty on the sale?

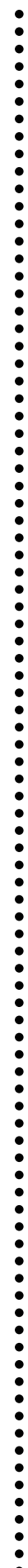
What rights does an artist have once the work is sold? Until 1990, with rare exceptions — such as Monty Python, which won a lawsuit preventing broadcast of edited programs — artists in the United States had virtually no power to protect their work from mutilation, misattribution, or destruction. For example, in 1966, Maryland commissioned William Smith to create nine murals highlighting the state's history, subsequently installed but altered the central panel, and then refused to remove his name from the piece. He had no recourse. In 1980, the Bank of Tokyo commissioned and then removed Isamu Noguchi's 1,600 pound sculpture, Shinto, from its Manhattan lobby, sliced it into pieces, and warehoused it, without notifying the artist. He had no recourse. In 1979, the General Services Administration commissioned and then, after office workers complained about it, removed Richard Serra's Tilted Arc, a site-specific sculpture bisecting Manhattan's Foley Square. He had no recourse.

With the 1990 passage of the Visual Artists Rights Act (VARA), protecting the moral rights of attribution and integrity, the successors of Smith, Noguchi, or Serra have a far greater ability to protect against similar threats to their work. But, as three artists who spent several years creating a massive sculptural installation learned after Helmsley-Spear purchased the

building, these rights are not absolute: the Supreme Court recently ruled that VARA does not prevent the removal and destruction of their work. VARA applies only to a restricted category of visual artworks, extends only limited rights, and is subject to loopholes, exclusions, and waiver provisions that substantially erode its powers.

What are moral rights? Property ownership does not necessarily convey absolute rights over the thing bought. Real estate ownership, for example, is restricted by zoning legislation. Preservation legislation recognizes society's interest in preserving its architectural treasures, despite private ownership. Similarly, moral rights legislation recognizes that art ownership is not an absolute property right.

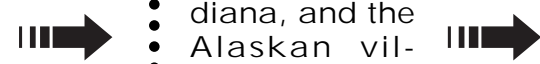
The term moral right itself comes from the French *le droit moral*, an 18th century French concept referring to rights of a non-economic but spiritual or personal nature, existing independently of an artist's copyright. Such rights are based on what the court in *Carter v. Helmsley-Spear, Inc.* explained as "a belief that an artist in the process of creation injects his spirit into the work and that the artist's personality as well as the integrity of the work, should therefore be protected and preserved." Moral rights include (1) disclosure or divulgation, which allows the artist to determine when a work is complete and may be displayed; (2) paternity or



On December 17, in the first round of its new funding cycle, the National Endowment for the Arts announced more than 400 grants totaling nearly \$14.5 million, according to the NEA website. The bulk of these initial Fiscal Year 1998 grants will be awarded through the Endowment's Heritage & Preservation and Education & Access categories.

Funds will help organizations across the country launch projects which preserve America's folk and traditional arts and provide opportunities in arts education. Many grants will increase access to the arts through multi-state tours of dance and theater, national radio and television broadcasts, and new technology initiatives.

In Heritage & Preservation, 140 grants totaling \$4.2 million were approved out of 236 applications. The funds will help museums, local arts agencies, folk arts centers, and other groups conserve significant works of public art, or protect unique cultural traditions. For example, a grant was awarded to conserve Thomas Hart Benton's 1933 epic murals in Indiana, and the Alaskan vil-



lage of Sitka will commission Tlingit carvings for a new community house — the first Native-designed project built in the city in nearly 100 years.

Many funded projects such as LET THE GOOD TIMES ROLL, a national radio series documenting the history of rhythm and blues, will help ensure the long-term preservation and availability of various types of music.

In Education & Access, 265 grants totaling \$9.3 million were approved out of 488 applications. Education projects funded will support a range of learning activities — from instruction and training for people of all ages to field research and the delivery of public information. Access projects will support distinct approaches to making the arts more widely available.

For example, an Education & Access grant will help Artrain, a mobile museum based in Ann Arbor, MI, travel to an estimated 36 communities in 18 states exhibiting artworks and offering lectures, residencies, and print-making workshops.

In this first granting round of FY 1998, the Endowment also awarded 32 Creative Writ-



• attribution, which allows an artist to protect the identification of his name with his own work, and to disclaim it when applied to another's; (3) the right of withdrawal, which permits the artist to modify or withdraw a work following publication; and (4) integrity, which allows the artist to prevent his work from being displayed in an altered, distorted, or mutilated form.

• **Works covered by VARA:** VARA covers only limited, fine art categories of "works of visual art": paintings, sculptures, drawings, prints, still photographs produced for exhibition. Within this group, only single copies or signed and numbered limited editions of 200 or less are actually protected. VARA does not apply to any of the following: works made for hire, posters, maps, globes or charts, technical drawings, diagrams, models, applied art, motion pictures, books and other publications, electronic publications, merchandising items or advertising, promotional, descriptive, covering, packaging material or container, nor does it cover any work not subject to general copyright protection.

• *Next month we will cover rights conferred by VARA, exceptions to the law and the duration of coverage.*

• Source: NEA (<http://arts.endow.gov>)

• **Exhibit Of Censored Works Is Censored Again**

• **CONTAINED/CONTROLLED**, an exhibition of previously censored artwork and works by censored artists about being censored,

was canceled last week, just days before its scheduled opening, according to an alert from The National Campaign for Freedom of Expression. (NCFE)

The exhibit was to have opened at Manatee Community College in Bradenton, Florida on Friday, January 16. According to NCFE, it was canceled by John James, chairman of the MCC Art Department apparently under pressure of MCC president Sarah H. Pappas. Pappas had earlier objected to images of erect penises that appeared in a panel of a multi-panel work by Barbara Jo Revelle. There was no objection to images of female breasts and genitalia and flaccid penises.

Revelle, chairwoman of the art department at the University of Florida, told the First Amendment Center she was shocked, according to an article on the First Amendment Center's website. "It's unconscionable that they are actually censoring a censorship show," Revelle said. "What did they think they were going to get?"

The First Amendment Center reports that David Greene, program director for the NCFE, said the purpose of such an exhibit is to spark dialogue, but without pieces such as Revelle's, such discussion cannot happen.

This is the second time **CONTAINED/CONTROLLED** has been censored, according to the NCFE. The exhibit was to have been displayed two public galleries in Orlando in April 1998. The city hall gallery was to house the works that were deemed not likely to of-



fend municipal employees and an alternative space was found for the rest of the exhibit. Orlando officials backed out after seeing six samples of the work to be included in the show.

NCFE reports that Exhibit organizers, Roxie Thomas and Trina Nicklas, were careful to obtain approval for each piece in the exhibit prior to installation. In fact, they had a separate exhibition contract for each piece. As late as New Years Day they were assured that the college administration had approved all of the pieces.

However, Thomas and Nicklas learned last week that Joe Locciscno, the gallery director and James, the art department chair, had removed the erection panel from Revelle's piece when the piece was shown to the administration. Thomas and Nicklas insisted that the president see and approve the entire work, and James and Locciscno relented. After viewing the disputed panel, the president noted her reservations and eventually ordered the panel removed.

Last week, Thomas and Nicklas were told the exhibit was canceled. According to the NCFE, the stated reason was that the exhibit was "not what MCC expected." However, Thomas and Nicklas believe that MCC preferred to cancel the exhibit rather than face heat from both sides. (the free speech people complaining about the censorship of the panel, and the censorship crowd complaining that MCC housed any part of the exhibit) Thomas, Nicklas, and Revelle are considering legal action.

CONTAINED/CONTROLLED enjoyed a successful run at Art 1037 in Miami in November 1997.

Sources/resources:
David Greene on Arts Wire

"Florida college bars artwork from censorship exhibit" FIRST AMENDMENT CENTER — <http://www.freedomforum.org/speech/news/980112.asp> contains information about the exhibition as well as legal details

ing Fellowships totaling \$640,000 for prose and prose translation. In addition, an Endowment Leadership Initiative of \$350,000 will continue support for the Theatre Communications Group's residency program for playwrights. The Education and Access funds awarded also include a \$150,000 contribution by the H. J. Heinz Company Foundation to support children's arts programs.

Additional grants through the Creation & Presentation, Planning & Stabilization, and Partnership categories, and Endowment Leadership Initiatives will be announced in the spring of 1998. Contact: Cherie Simon 202.682.5570

Source: Posted on Arts Wire. NEA website: <http://arts.endow.gov>

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Transmission

