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PROFESSOR KRISTELIA GARCÍA

CLASS 15: THE RIGHT TO PREPARE DERIVATIVE WORKS; MORAL RIGHTS
Class Outline

• 106(2) – Derivative Works
• 106(A) - Moral rights
  – Integrity
  – VARA
“...the owner of copyright under this title has the exclusive rights to do and to authorize any of the following...

(2) to prepare derivative works based upon the copyrighted work...”
“A ‘derivative work’ is a work based on one or more preexisting works, such as a translation, musical arrangement, dramatization, fictionalization, motion picture version, sound recording, art reproduction, abridgement, condensation, or any other form in which a work may be recast, transformed, or adapted.”
• Rights of Attribution and Integrity.—… independent of the exclusive rights provided in section 106, the author of a work of visual art—

• (1) shall have the right—
  – (A) to claim authorship of that work, and
  – (B) to prevent the use of his or her name as the author of any work of visual art which he or she did not create;

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

• (3)… shall have the right—
  – (A) to prevent any intentional distortion, mutilation, or other modification of that work which would be prejudicial to his or her honor or reputation, and any intentional distortion, mutilation, or modification of that work is a violation of that right, and
  – (B) to prevent any destruction of a work of recognized stature, and any intentional or grossly negligent destruction of that work is a violation of that right.
“Green Mother Earth” by Sandra Fabara (“Lady Pink”)
“Drunken Bulbs”
by Jonathan Cohen (“Meres One”)
7-Angle Time Lapse, Jonathan Cohen
“Manga Koi”
by Akiko Miyakami (“Shiro”)
“Dream of Oil”
by Francisco Fernandez
17 USC 101 on “work of visual art”

A ”work of visual art” is--

(1) A painting, drawing, print, or sculpture, existing in a single copy, in a limited edition of 200 copies or fewer that are signed and consecutively numbered by the author, or, in the case of a sculpture, in multiple cast, carved, or fabricated sculptures of 200 or fewer that are consecutively numbered by author and bear the signature or other identifying mark of the author; or

(2) A still photographic image produced for exhibition purposes only, existing in a single copy that is signed by the author, or in a limited edition of 200 copies or fewer that are signed and consecutively numbered by the author.
A "work of visual art" does not include--

(A)(i) any poster, map, globe, chart, technical drawing, diagram, model, applied art, motion picture or other audiovisual work, book, magazine, newspaper, periodical, database, electronic information service, electronic publication, or similar publication;
(ii) Any merchandising item or advertising, promotional, descriptive, covering, or packaging material or container;
(iii) Any portion or part of an item described in (i) or (ii);

(B) Any work made for hire; or

(C) Any work not subject to copyright protection under this title.
“recognized stature” = “one of high quality, status, or caliber that has been acknowledged as such by a relevant community . . .”

“... the “relevant community” would consist of “the artistic community, comprising art historians, art critics, museum curators, gallerists, prominent artists, and other experts.”

Aside from the rare case where an artist or work is of such prominence that the issue of recognized stature need not be tried, expert testimony or substantial evidence of non-expert recognition would generally be required to establish recognized stature.
113(d)(1) – an unremovable work incorporated in a building is protected by VARA unless the artist waives their rights in a writing signed by both the artist and the building owner.

113(d)(2) – artists are entitled to 90 days’ written notice to allow them to salvage their removeable works.