

Of Murals and Morals: Recent Art Controversies and What They Signify for the Visual Artists Rights Act (VARA) of 1990

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A number of recent controversies involving the treatment of artworks have highlighted weaknesses in the regime for the protection of art and cultural heritage set out in the Visual Artists' Rights Act of 1990. In particular, the VARA framework, as it currently stands, fails to support the public interest in culture in at least two important ways: it has difficulty accommodating new kinds of artworks within its definition of works of "recognized stature," and it maintains an awkward and dramatic distinction between old and new artworks, potentially providing different terms of protection to works created before and after the date of entry into force of the statute. This paper offers an in-depth examination of some striking recent illustrations of these issues. The examples considered will include case studies of a mural by Picasso and a renowned centre of graffiti art, both based in New York City, and both raising concerns about the preservation of city landmarks. This paper argues that the policy bases of VARA should be clarified, so that VARA may become a more effective instrument for the protection of valuable cultural heritage. In particular, VARA sets out a framework for legislative protection of the "moral rights" of artists, but this individualistic language obscures the complex interplay of individual rights and the public interest that is implicated in art preservation statutes. VARA should acknowledge, and affirm as one among its fundamental policy objectives, the protection of the public interest in artworks. The reforms necessary for the accomplishment of this goal deserve the attention of U.S. legislators.