

# ***Is Preservation Destruction?***

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In this essay, a contribution to a volume on comparative international approaches to intellectual property and cultural heritage law, I seek to unsettle our assumptions about the value of preserving works of art. My focus will be on U.S. copyright law's weak approximations of cultural property protection as accomplished through both the Visual Artists Rights Act and the prohibition on unlicensed copying. My argument is that sometimes acts of destruction or modification serve to preserve works of art, and sometimes acts of preservation destroy them. (Adorno called museums "sepulchers." Claude Pissarro called them "necropolises.") I analyze a series of case studies on the preservation of works of art, focusing on controversies over Eva Hesse, Claes Oldenburg, and others, to explore these questions under the Visual Artists Rights Act. I then turn to copyright law to argue that sometimes violating an artist's copyright through unauthorized reproduction and modification can also serve (surprisingly) to preserve that artist's legacy.