

When Copyright is a Civil Right: Prison Art and Prisoner Artists

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Abstract

Prison art and writing programs are regularly credited with contributing to the rehabilitation of inmates, and even in the American system, which seems to focus primarily on the retributive aspects of criminal punishment, many federal and state prisons host such programs. Prisoners write, compose, draw, design, and otherwise create. But, while all of this creation is commonplace, prisoners who create works of art – paintings, sculpture, fiction, musical compositions, and so on – are rarely referred to as artists, their work is often not called art, and they are not generally understood to be copyright owners. In disputes over their works, copyright arguments and claims are not raised.

Developing a robust understanding of copyright issues in the prison context makes clear that copyright is in this instance a civil right, and copyright provides a foundation for the claims of prisoners to be able to control the products of their creative endeavors, a fundamental aspect of self-expression. This article describes and defines the rights that incarcerated persons possess – which are the same as those that free persons possess – and discusses how those rights should be raised and discussed in the prison context. As a default matter, prisoners should be able to exercise copyright rights, and the government should be required to articulate reasons for curtailing those rights. Currently, many prison rules, regulations, and practices limit the exercise of copyright rights with no legitimate penological justification. In fact, there are few instances in which restrictions or limitations on the exercise of copyright is justified. Acknowledging and vindicating prisoner copyright rights would be significant, both in advancing the legal rights of incarcerated persons (who do not forfeit copyright rights when they are convicted) and in furthering the dignifying and humanizing aspects of artistic creation and expression.

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