

Course Syllabus- ART AND THE LAW: HOW AESTHETIC CONCEPTS SHAPE AND INFLUENCE LEGAL DEVELOPMENTS

Language of Instruction: English

Professor: Antoni Rubí Puig

Professor's Contact and Office Hours: Wednesdays 11.00-13.00 or by appointment (antoni.rubi-puig@upf.edu)

Course Contact Hours: 30 hours

Recommended Credit: 4 ECTS credits

Weeks: 2

Course Prerequisites: None

Language Requirements: Recommended level in the European Framework B2 (or equivalent: Cambridge Certificate if the teaching language is English, DELE or 3 semesters in the case of Spanish)

Course structure: Workshop

Course classification: Introductory

Course Description:

Sometimes social, political and legal disputes require answers to questions such as “What is art?”, “How should it be interpreted?”, “What is artistic freedom?”, “Who is an author?”, “What is misappropriation?”, or “Is a particular work of art authentic?”. When authorities are involved in such disputes, answering such inquiries involve not only legal or public policy decisions but also artistic judgments which are influenced by aesthetic theories. Besides, law and power may also influence artistic practices and the content of art works. Regulations on censorship, contract law, city planning and plagiarism, among others, and their enforcements by public authorities can impact artists' creative choices.

The course aims at providing an in-depth discussion of the interactions between aesthetics, art theory and art law. The legal notions of, among others, originality, authorship, plagiarism, copying, and transformation will be examined and confronted with these same concepts from the standpoints of aesthetics and art theory. In exploring these issues, specific contemporary art controversies that involve artists such as Marina Abramović, Robert Mapplethorpe, Richard Prince or Joseph Beuys, will be analyzed. Course participants are expected to write a final essay on a case study of their choice

dealing with the relation between the law (or society and politics) and a particular artist or a work of art.

Learning Objectives:

- Understanding how law or politics and aesthetics theories interact in practice.
- Getting acquainted with basic legal categories used in the field of copyright law; contract law; and constitutional law.
- Understanding factual patterns in art law disputes.
- Identifying the main legal contingencies in the artworld and art market.

Course Workload

The course is divided into lectures, discussions, and a field trip. Students should be prepared to read between 50 to 100 pages per week.

Methods of Instruction:

The course includes both lectures and field studies. Three-hour class sessions are normally divided into a 80-minute lecture and a 80-minute seminar. During field studies, students are expected to take notes and treat field studies as a normal lecture class.

The course combines several learning strategies:

- Lectures on the contents described below. At least, a relevant case will be discussed per unit. Other examples will be introduced during the lectures and may be selected by students as the subject of their essay papers.
- Seminar sessions. Students will discuss different cases and questions following each lecture. These sessions will be also used to watch some audiovisual materials and discuss them afterwards.
- Essay papers: students will have to write a final essay dealing with a case study. Students will work in small groups. The instructor will inform students about different case studies that they may select on particular art law controversies. Students are also free to identify and choose

other case studies. The final paper would be submitted some weeks after the course finishes but during classes students would have to briefly present their essay projects and receive feedback from the classmates and the instructor (4 hours would be used for these presentations).

- Field trip (3 hours): a visit to a museum in Barcelona is planned (e.g.: MACBA, CCCB, MNAC,...). If available, during the visit, a legal officer or counsel would participate and discuss usual legal contingencies for a museum. Aspects such as the role of curators and the control of works' meanings in exhibitions will be discussed.

Method of Assessment

Class Participation: 10 percent
 Essay paper in groups: 40 percent
 Final Exam: 50 percent

Absence Policy

Attending class is mandatory and will be monitored daily by professors. The impact of absences on the final grade is as follows:

Absences	Penalization
Up to one (1) absences	No penalization.
Two (2) absences	1 point subtracted from final grade (on a 10 point scale)
Three (3) absences	The student receives an INCOMPLETE for the course

The BISS attendance policy does not distinguish between justified or unjustified absences. The student is deemed responsible to manage his/her absences.

Emergency situations (hospitalization, family emergency, etc.) will be analyzed on a case by case basis by the Academic Director of the UPF Barcelona International Summer School.

Classroom Norms:

- No food or drink is permitted.
- There will be a ten-minute break during the class.
- Students must come to class fully prepared.

Course Contents:

Session 1 (Mo, Jul. 17th)

What is art? Legal definitions of art and aesthetic theories. The problem of aesthetic neutrality. Case study: Constantin Brancusi's *Bird in Space*.

Session 2 (Tu, Jul. 18th)

What is a work of art (I)? Moral rights for visual artists. Destruction, site-specificity, and integrity of art. Case study: Richard Serra's *Tilted Arc*.

Session 3 (Wed, Jul. 19th)

What is a work of art (II)? Ideas and expression. Limits in protecting conceptual and ephemeral art. Case study: Joseph Beuys' *Das Schweigen von Marcel Duchamp wird überbewertet*.

Session 4 (Th, Jul. 20th)

Appropriation Art. Transformative uses and intentional theories of art. Fair uses. Case study: Richard Prince's use of Patrick Cariou's photographs *Yes, Rasta*.

Session 5 (Fr, Jul. 21th)

Field trip to a museum

Session 6 (Mo, Jul. 22th)

Art, censorship and free speech. Interpretation of meaning and intentions. The problem of community standards. Case study: Robert Mapplethorpe's *The Perfect Moment* show at the Cincinnati Contemporary Arts Center.

Session 7 (Tu, Jul.23st)

Who is the author? Attribution. Teams and joint works. The role of the audience. Case study: Legal dispute between Marina Abramović and Ulay.

Session 8 (Tu, Jul.24nd)

Art value. Authenticity. Forgeries. Aesthetic merit. Recognized stature. Street art. Case study: 5Pointz and integrity in graffiti art.

Session 9 (Th, Jul.25rd)

Copyright infringement. Tests to assess infringements: experts vs. lay observers. Case study: Maurizio Cattelan's *Comedian*.

Session 10 (Fr, Jul.26th)

Social norms and community practices. Danto's "artworld". Case study: Non-fungible tokens from Jean Michel Basquiat's works.
Final exam

Required Readings: The professor will assemble a coursepack/or indicate mandatory textbooks.

Recommended bibliography:

Students are encouraged to consult the following sources on their own.

Amy ADLER, "Fair Use and the Future of Art", 91 *New York University Law Review* 559 (2016).

Amy ADLER, "Against Moral Rights", 97 *California Law Review* 263 (2009).

Amy ADLER, "Why Art Does Not Need Copyright", 86 *George Washington. Law Review* 313 (2018).

Randall P. BEZANSON, *Art and Freedom of Speech*, University of Illinois Press, 2009.

Laura BIRON and Elena COOPER, "Authorship, aesthetics and the artworld: reforming copyright's joint authorship doctrine", 35 *Law and Philosophy* 55 (2016).

Kate DARLING and Aaron PERZANOWSKI, *Creativity without Law. Challenging the Assumptions of Intellectual Property*, New York University Press, 2017.

Christine Haight FARLEY, "Judging Art", 79 *Tulane Law Review* 805 (2005).

Brian L. FRYE, "Art Law & the Law of the Horse (December 10, 2017). Available at SSRN: <https://ssrn.com/abstract=3085632>

Lidia Pallas LOREN, "Law, Visual Art, and Money", 22 *Lewis & Clark L. Rev.* 1335 (2018).

Guy A. RUB, "Owning Nothingness: Between the Legal and the Social Norms of the Art World", *Brigham Young University Law Review* (2019) (forthcoming).

Zahr K. SAID, "Copyright's Illogical Exclusion of Conceptual Art That Changes Over Time", 39 *Columbia Journal of Law and the Arts* 335 (2016).

Brian SOUCEK, "Aesthetic Judgment in Law", 69 *Alabama Law Review* 381 (2017).

Mark TUSHNET, “Art and the First Amendment”, 35 *Columbia Journal of Law and the Arts* 169 (2012).

Alfred C. YEN, “Copyright Opinions and Aesthetic Theory”, 71 *Southern California Law Review* 247 (1998).

Robert Kirk WALKER and Ben DEPOORTER, “Unavoidable Aesthetic Judgments in Copyright Law: A Community of Practice Standard”, 109 *Northwestern University Law Review* 343 (2015).

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