

URBAN ART IN MALAYSIA: EXPLORATION OF LEGAL ISSUES AND OPPORTUNITIES

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ABSTRACT

In Malaysia, there has been an increasing interest in arts within the urban spaces. Urban art, also known as public art, street art, graffiti and murals is used as a form of creative expression. However, the legal frameworks and complexities surrounding urban art have been underexplored. This study examines the existing legal frameworks and issues governing urban art in Malaysia through qualitative and doctrinal researches that involves a literature review of primary and secondary sources. The findings reveal a fine line between artistic expression and potentially criminal acts, particularly in cases of unauthorised creation. This highlights the urgent need to strengthen legal protection and recognition for artists. The study also highlights the economic benefits of integrating art into urban planning and policies, such as increased tourism and community development. However, analysis of relevant legal frameworks, including the Copyright Act 1987 and the National Heritage Act 2005, reveals their inadequacy in comprehensively addressing legal issues intrinsic to urban art. Therefore, this study concludes that there is a need for improved legal frameworks that protect artists' rights and support the growth of urban art within the country.

Keywords: Urban Art, Public Art, Street Art, Graffiti, Mural, Regulatory and Legal Frameworks.

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SENI BANDAR DI MALAYSIA: PENEROKAAN ISU-ISU DAN PELUANG-PELUANG PERUNDANGAN

ABSTRAK

Di Malaysia, terdapat minat yang semakin meningkat dalam seni di ruang bandar. Seni bandar, juga dikenali sebagai seni awam, seni jalanan, grafiti, dan mural-mural, digunakan sebagai bentuk ungkapan kreatif. Walau bagaimanapun, kerangka kerja undang-undang dan kompleksiti yang melingkungi seni bandar telah kurang diteroka. Kajian ini bertujuan untuk mengkaji kerangka kerja undang-undang sedia ada dan isu-isu yang mengatur bandar di Malaysia melalui kajian-kajian kualitatif dan doktrinal yang melibatkan kajian literatur dari sumber primer dan sekunder. Dapatan kajian tersebut mendedahkan jurang yang halus antara ungkapan seni dan perbuatan yang berpotensi menjadi jenayah, terutamanya dalam kes-kes penciptaan tanpa kebenaran. Ini menekankan keperluan yang mendesak untuk mengukuhkan perlindungan undang-undang dan pengiktirafan bagi para seniman. Kajian ini juga menyoroti manfaat ekonomi dari penggabungan seni ke dalam perancangan dan dasar bandar, seperti peningkatan pelancongan dan pembangunan komuniti. Walau bagaimanapun, analisis kerangka kerja undang-undang yang berkaitan, termasuk Akta Hakcipta 1987 dan Akta Warisan Kebangsaan 2005, mendedahkan ketidakcukupan mereka dalam menangani isu-isu undang-undang yang berkaitan dengan seni bandar. Oleh itu, kajian ini menyimpulkan bahawa terdapat keperluan untuk meningkatkan kerangka kerja undang-undang yang melindungi hak-hak seniman dan menyokong pertumbuhan seni bandar dalam negara.

Kata Kunci: Seni Bandar, Seni Awam, Seni Jalanan, Grafiti, Mural, Kerangka-Kerangka Peraturan dan Undang-Undang.

INTRODUCTION

Street art represents a cultural innovation aimed at revitalising public spaces through the transformation of urban environments.¹ Hence, it is submitted that an in-depth analysis of the concept of urban arts in Malaysia has significant implications in providing a comprehensive legal perspective of what constitutes vandalism and related issues. In this context, a more precise understanding of the various types of urban art helps to analyse the legal frameworks and policies that govern these arts while analysing the activities of artists and creators of displaying their work in public spaces while also managing the issues of vandalism.

A well-defined and inclusive concept of urban arts can also promote a better understanding of these art forms' cultural and historical significance perspectives. At this juncture, the term "urban arts" is an apt and inclusive designation for the diverse artistic expressions found within urban environments, encompassing various forms such as street art, graffiti, murals, and installations. While the term may evoke a sense of futurism, it accurately reflects the contemporary reality of artistic practices within urban settings. This study aims to explore and define the concept of "urban arts" within the context of contemporary urban environments and the various artistic expressions such as graffiti, street art, and muralism, and among others, this research seeks to provide a comprehensive understanding of how these art forms contribute to shaping urban landscapes and social interactions. Through achieving consensus within an academic discourse on the terminology surrounding urban arts, this research aims to contribute to a clearer understanding of the cultural, social, and legal implications associated with these art forms, thereby providing valuable insights for policymakers, urban planners, and researchers.

¹Chin Tiong Cheng et al., 'Effects of Multifaceted Street Art on Price Premium of Pre War Commercial Buildings: The Case of Georgetown UNESCO World Heritage Site', *Land* 12 (2023): 1, <https://doi.org/10.3390/land12030626>.

URBAN ARTS IN MALAYSIA AND THEIR BENEFITS

Placemaking transcends the mere construction or enhancement of physical spaces; its goal is to cultivate strong connections between individuals and their surroundings.² Public art, situated within accessible public spaces, takes on myriad forms such as sculptures, murals, and mobile installations. Beyond mere decoration, it catalyses social interaction and enriches urban environments by breaking the monotony of everyday surroundings. When integrated seamlessly with the site and the people who inhabit it, public art contributes to the sustainability and vibrancy of urban landscapes.³ Public art consists of three key elements; the artwork, the surrounding urban environment, and the people who experience it. However, these elements often operate independently instead of working together cohesively. It is important to recognise and appreciate different forms of art in public spaces because it has the potential to improve the urban environment and encourage social engagement.⁴

Urban art is a category of art that is created in public spaces and intended for the citizens who inhabit those spaces. It plays a key role in shaping perceptions and fostering social interactions. The definition of urban art should include the wider urban landscape, including the dynamics of bodies, events, and residents' mentalities. Urban art is dependent on the interconnectedness of citizenship society and social space.⁵ Ljiljana Radosevic explains that in urban spaces, diverse forms

²Khalilah Zakariya and Syamim Azhari, 'Eco Public Art Placemaking Framework: A Case Study Of Laman Seni Shah Alam, Malaysia', *Journal of the Malaysian Institute of Planners* 15, no. 4 (2017): 93, https://pdfs.semanticscholar.org/9893/cf9331a10f26473ae06ff56b7997656305d5.pdf?_gl=1*x0x69e*_ga*MTA5ODE0NDg1LjE2OTM0NTU3Mjg*_ga_H7P4ZT52H5*MTY5MzczMjA1My4zLjAuMTY5MzczMjA1NS41OC4wLjA.

³H. Mohd Fabian, M. T. Osman, and B. Mohd Nasir, 'Towards Integrating Public Art in Malaysian Urban Landscape', *Pertanika Journal of Social Science and Humanities* 20, no. 2 (2012): 251, https://www.researchgate.net/publication/289400407_Towards_integrating_public_art_in_Malaysian_urban_landscape.

⁴Mohd Fabian, Osman, and Mohd Nasir, 'Towards Integrating Public Art in Malaysian Urban Landscape', 251.

⁵Padideh Adelvand, Ashrafosadat Mousavilar, and Seyed Amir Mansouri, "Urban Art" as a Landscape Phenomenon in Today's Society', *The*

of artistic expression have emerged over time, including graffiti, street art, and urban art.⁶ Graffiti, originating in the 1970s as spray-on-subway art, has evolved into a historically accepted urban art form. Street art, a product of the 2000s, encompasses a wider spectrum of visual expressions in urban settings compared to graffiti. Urban art serves as a unifying term for these varied artistic practices, transcending specific genres and reflecting the dynamic evolution of urban creativity. As these terms evolve, achieving consensus within academic discourse is essential to maintain clarity and coherence in discussions surrounding urban art forms.

Street Art and Graffiti

Street art encompasses various forms, such as stencils, graffiti, video projection, and street installation.⁷ Street art is a form of creative art in public spaces that mainly focuses on images rather than letters. This art encompasses various techniques, including graffiti. Street artists utilise numerous tools such as spray cans, brushes, rollers, palettes, marker pens, chalk, and charcoal to create their works of art.⁸ Street art has become an active form of cultural expression worldwide.⁹

Scientific Journal of NAZAR Research Center (Nrc) for Art, Architecture & Urbanism 13, no. 39 (2016): 43–44, https://www.bagh-sj.com/?_action=showPDF&_ob=03b43bd754f26e5e6f23a74407df5b78&article=14940&fileName=full_text.pdf&sc=1.

⁶Liljana Radosevic, 'Graffiti, Street Art, Urban Art: Terminological Problems and Generic Properties', *International Journal of Special Education* 30, no. 2 (2013): 10, <https://jyx.jyu.fi/bitstream/handle/123456789/43965/radosevicgraffiti.pdf?isAllowed=y&sequence=1>.

⁷Norfadilah Kamaruddin and Nik Nor Azidah Nik Aziz, 'Exploration of Malaysian Public Awareness Towards Visual on Street Art Mural as a Medium of Communication', *Malaysian Journal of Social Sciences and Humanities (MJSSH)* 7, no. 7 (2022): 2, <https://doi.org/10.47405/mjssh.v7i7.1595>.

⁸Enrico Bonadio, 'Copyright Protection of Street Art and Graffiti under UK Law', *Intellectual Property Quarterly*, no. 2 (2017): 1, <https://doi.org/10.1017/9781108563581>.

⁹Isabelle Brajer, 'The Problem of Vandalism on Contemporary Outdoor Murals and Street Art', *OpenEdition Journals*, 2018, <https://journals.openedition.org/ceroart/5761#text>.

Street art and graffiti are visually and conceptually diverse art that often share common spaces, artists, and techniques. This ambiguity leads to problematic issues such as street artists being on police wanted lists while also having their works displayed in prestigious galleries and museums.¹⁰ Graffiti involves painting on public or private surfaces, often using spray cans or roll-on paint to produce murals visible to the public view.¹¹ It is an art that involves painting letters and names on various surfaces in urban areas. The word “graffiti” originated from the Italian word “graffiare”, which means to scratch. This term has roots in the ancient Greek verb “grafein”, which means to write.¹² Graffiti refers to markings and drawings on walls and ruins, such as writing, symbols, or graphics. Examples can be found in cities like Rome and Pompeii.¹³

Graffiti can be a form of urban beautification that displays self-identification and cultural elements. It can act as an intervention in daily urban life and can be used to foster a stronger sense of place. Additionally, it has the potential to address issues of identity crisis in specific locations.¹⁴

Mural

Mural art has become a preferred public art over traditional graffiti because of its ability to enhance public spaces, and these large-scale artworks add character and revitalise dull areas and streets.¹⁵ Besides this, murals could create a sense of place and help people remember

¹⁰Radosevic, ‘Graffiti, Street Art, Urban Art: Terminological Problems and Generic Properties’, 4.

¹¹Kamaruddin and Aziz, ‘Exploration of Malaysian Public Awareness Towards Visual on Street Art Mural as a Medium of Communication’, 2.

¹²Bonadio, ‘Copyright Protection of Street Art and Graffiti under UK Law’, 1.

¹³Nor Izana Mohd Shobri, Siti Rasidah Md Sakip, and Noorlida Daud, ‘Public Perception Towards Graffiti Art in Malaysia’, *Advanced Science Letters* 23, no. 7 (2017): 1, <https://doi.org/10.1166/asl.2017.9236>.

¹⁴Shobri, Sakip, and Daud, ‘Public Perception Towards Graffiti Art in Malaysia’, 1; Mohamad Amirul Idham Mohd Ikhrum and Dr Yong Adilah Shamsul Harumain, ‘Mural And Graffiti: Street Art or Vandalism?’, *BERNAMA Thoughts*, 12 May 2023, <https://www.bernama.com/en/thoughts/news.php?id=2186237>.

¹⁵Mohamad Amirul Idham Mohd Ikhrum and Dr Yong Adilah Shamsul Harumain, ‘Mural And Graffiti: Street Art or Vandalism?’

locations. Moreover, they also represent the unique background and culture of the artist who created them.¹⁶

Malaysian Scenes

Public art has numerous benefits for communities in Malaysia. It enhances public spaces, promotes sustainability, and creates landmarks that beautify the environment. Examples of public art include street murals, sculptures, and installations. Public art can foster community pride, create safer environments, and reduce vandalism. By integrating public art into the urban landscape, communities can influence the identity of their area and develop a greater sense of ownership and interest in development. Overall, public art contributes to enhanced living environments through aesthetics, community building, and education.¹⁷

Graffiti and street art in Malaysia can trace their origins back to the emergence of the Hip-Hop subculture in the 1990s. The early album art of rap and Hip-Hop groups with featured elements of graffiti, such as ‘throw up’, ‘tag’, and ‘paste-up’, have contributed significantly to the popularity of graffiti in Malaysia.¹⁸ In Malaysia, graffiti is used to

¹⁶Stephen T.F. Poon, ‘Street Murals as a Unique Tangible Cultural Heritage : A Case Study of Artifact Value Preservation’, *International Journal of Cultural and Creative Industries* 4, no. 1 (2016): 50, https://www.researchgate.net/profile/Stephen-Poon-5/publication/310329387_Street_Murals_as_a_Unique_Tangible_Cultural_Heritage_A_Case_Study_of_Artifact_Value_Preservation/links/582bd05008ae102f0720987d/Street-Murals-as-a-Unique-Tangible-Cultural-Heritage-

¹⁷Zakariya and Azhari, ‘Eco Public Art Placemaking Framework: A Case Study Of Laman Seni Shah Alam, Malaysia’, 93; Chang Shu Fun, ‘Street Art Sparkle As a New Economic Driver in Penang’, in *1st International Conference on Creative Media, Design & Technology (REKA) 2014* (Pulau Pinang, Malaysia, 2014), <http://eprints.usm.my/38640/>; Mohd Fabian, Osman, and Mohd Nasir, ‘Towards Integrating Public Art in Malaysian Urban Landscape’, 251; M. Mustafa et al., ‘Questioning Public Art’, *WIT Transactions on Ecology and The Environment* 165 (2012): 109–10, <https://doi.org/10.2495/ARC120101>.

¹⁸Mohamad Amirul Idham Mohd Ikhrum and Dr Yong Adilah Shamsul Harumain, ‘Mural and Graffiti: Street Art or Vandalism?’

beautify urban areas¹⁹ such as Georgetown, Penang and Ipoh. Around Kuala Lumpur, graffiti is visible in areas such as Petaling Street, Bangsar, Bukit Bintang, Central Market, Klang River, Jelatek River, and Pudu. Graffiti art is also a tourist attraction in Malacca along the Bandar Hilir River as part of the Malacca River Art Project.²⁰

Graffiti and street art have transformed public spaces in cities like Batu Pahat, Kuala Lumpur, Ipoh, Seremban, and George Town, making them more dynamic and engaging for locals and tourists.²¹ Graffiti art has gained widespread acceptance in various domains across Malaysia. It has become an integral part of entertainment events, marketing campaigns for numerous brands, and initiatives in arts and recreation. Major corporations like Levi's, Lee Jeans, Nike, Adidas, Hugo Boss, Sunway Lagoon, Pavilion, Cineleisure, Pepsi, The Curve, Hong Kong and Shanghai Bank (HSBC), TV3, DiGi, and ICI Dulux have used graffiti art to promote their products and enhance their branding. Graffiti artists in Malaysia have also been given the chance to showcase their talents on an international scale through events like the Wall Lords competition, which is supported by corporate sponsors like F&N.²²

The study of Chin Tiong et al., reveals the effects of street art on the price premium of pre-war commercial buildings in Georgetown.²³ The United Nations Educational, Scientific and Cultural Organisation (UNESCO) World Heritage Site revealed that sculptures located at the front of pre-war buildings positively impact property prices, with each

¹⁹Shobri, Sakip, and Daud, 'Public Perception Towards Graffiti Art in Malaysia', 1.

²⁰Shobri, Sakip, and Daud, 'Public Perception Towards Graffiti Art in Malaysia', 1; Sarena Abdullah and Norshahidan Mohamad, 'Incorporation and Exploration of Local Imageries and Identities in Malaysia's Graffiti Art', *Journal of Visual Art and Design* 7 (2015): 40, <https://doi.org/10.5614/j.vad.2015.7.1.4>.

²¹Mohamad Amirul Idham Mohd Ikhrum and Dr Yong Adilah Shamsul Harumain, 'Mural And Graffiti: Street Art Or Vandalism?'; Poon, 'Street Murals as a Unique Tangible Cultural Heritage : A Case Study of Artifact Value Preservation', 59.

²²Abdullah and Mohamad, 'Incorporation and Exploration of Local Imageries and Identities in Malaysia's Graffiti Art', 40.

²³Cheng et al., 'Effects of Multifaceted Street Art on Price Premium of Pre War Commercial Buildings: The Case of Georgetown UNESCO World Heritage Site', 1, 21.

additional sculpture unit increasing the price premium by 1.13%. This demonstrates the economic benefit of street art in enhancing property values. Additionally, street art enhances visibility, attracts customer traffic, and can lead to higher sales revenue for businesses. The research emphasises the importance of considering street art's amenity value in heritage settings for informed decision-making by policymakers and real estate professionals. Overall, street art is recognised as a valuable cultural innovation that adds tangible and intangible value to the community and property owners, contributing to urban regeneration and community engagement.

In the context of urban arts in Malaysia, understanding the legal aspects surrounding street art and graffiti is paramount. While these forms of expression contribute significantly to the cultural vibrancy and economic vitality of urban spaces, they often exist within a legal grey area, facing challenges such as conflicting regulations and enforcement measures. The study by Chin Tiong et. al., underscores the economic benefits of street art, particularly its positive impact on property values. This highlights the importance of legal studies in urban art, as they inform policymakers and real estate professionals on how to integrate street art's amenity value into heritage conservation efforts and urban planning strategies, thereby leveraging its potential for urban regeneration and community engagement.

CHALLENGES, LEGAL ISSUES AND FRAMEWORKS FOR URBAN ART IN MALAYSIA

Conceptualisation Of Urban Arts in Malaysia: An Analysis of Past Studies on Malaysian Public Perceptions and Misconceptions

Muhizam revealed that public art is a relatively new discipline in Malaysia but lacks a precise definition.²⁴ Due to Malaysia's post-colonial history, the country has historically borrowed artistic influences and definitions from the Western world. This is further supported by Norfadilah and Nik Nor Azidah, who revealed that the majority of the public still has limited knowledge and understanding of street art murals. Therefore, they recommended that further research be

²⁴Muhizam B. Mustafa, 'Public Sculpture in Malaysia: A Case Study of Putrajaya' (Birmingham City University, 2009), 103, <https://www.open-access.bcu.ac.uk/4930/>.

conducted to provide a deeper understanding of urban art and increase public awareness that they are not acts of vandalism.²⁵ A study by Nor Izana et.al. found that 77% of Malaysians have a positive perception of graffiti art, viewing it as a form of expression rather than vandalism. Additionally, 57% of respondents appreciate graffiti art because it makes the riverfront more inviting and safer, even though 62% of respondents reported having limited knowledge about graffiti art.²⁶ Graffiti is frequently associated with negative perceptions, such as concerns about public safety, crime rates, and problems related to juvenile delinquency and disengagement. If done without permission or following proper guidelines, it can be vandalism rather than beautification.²⁷

In general, cultural production processes within a city can sometimes remain unnoticed or imperceptible to its residents; however, they can also become points of contention, leading to planning disputes, legal interventions, and shifts in public opinion. One specific instance of such intervention that frequently results in criminalisation and societal disapproval is the emergence of commissioned art in urban spaces, notably graffiti writing and street art. While these forms of artistic expression have distinct receptions, graffiti is often met with criminalisation and criticism, and street art receives a more mixed response; they share a standard legal status. Both street artists and graffiti writers face potential legal consequences for any artwork displayed in public without the property owner's consent, regardless of whether it is a tag, a mural, a poster, a stencil, or a political slogan.²⁸ The relevance of citing this passage for the context of Malaysia lies in

²⁵Kamaruddin and Aziz, 'Exploration of Malaysian Public Awareness Towards Visual on Street Art Mural as a Medium of Communication', 7.

²⁶Shobri, Sakip, and Daud, 'Public Perception Towards Graffiti Art in Malaysia', 5.

²⁷Shobri, Sakip, and Daud, 'Public Perception Towards Graffiti Art in Malaysia', 2; Mohamad Amirul Idham Mohd Ikhrum and Dr Yong Adilah Shamsul Harumain, 'Mural And Graffiti: Street Art Or Vandalism?'; Cathay Y. N. Smith, 'Street Art: An Analysis under U.S. Intellectual Property Law and Intellectual Property's Negative Space Theory', *DePaul Journal of Art, Technology and Intellectual Property Law* 24 (2014): 260.

²⁸Alison Young, 'Criminal Images: The Affective Judgment of Graffiti and Street Art', *Crime, Media, Culture*, 2012, 1-3, <https://doi.org/10.1177/1741659012443232>.

its examination of the multifaceted public's perceptions of the distinct types of urban arts and whether they are commissioned or un-commissioned. Understanding these dynamics is also crucial for policymakers, urban planners, and researchers seeking to identify the complexities of urban cultural production, the real issues, public perceptions and the legal framework for these distinct types.

Legal Challenges to The Protection of Urban Arts For Artists

Theft by detachment is a trending type of vandalism in the street art world. Murals that are valued as tourist attractions or cherished by communities are being stolen for their commercial value, and even famous artists like Banksy have become popular targets.²⁹ Around the world, the rise in the popularity of street art and graffiti has led to the unauthorised exploitation of this art form. Street art is often sold in galleries and reproduced on various products without the artists' permission. This has attracted the attention of advertisers and marketing gurus eager to capitalise on the urban art scene. Street artists acknowledge that their work will eventually deteriorate or be destroyed, but street art's impermanence also threatens its cultural value. Unpredictable weather conditions, vandalism, lack of appreciation, shifting societal tastes, and a lack of commitment from authorities have all contributed to the need to preserve street murals.³⁰

It is worth noting that UNESCO and the body that administers the Berne Convention jointly made the following general statement about copyright for works of architecture in a joint meeting of the World Intellectual Property Organisation (WIPO) and UNESCO, Principle WA.7, 22 Copyright 401, 411 (Dec. 1986):

The reproduction of the external image of a work of architecture by means of photography, cinematography, painting, sculpture, drawing or similar methods should not require the authorisation of the

²⁹Brajer, 'The Problem of Vandalism on Contemporary Outdoor Murals and Street Art'.

³⁰Bonadio, 'Copyright Protection of Street Art and Graffiti under UK Law', 3-4; Smith, 'Street Art: An Analysis under U.S. Intellectual Property Law and Intellectual Property's Negative Space Theory', 287; Poon, 'Street Murals as a Unique Tangible Cultural Heritage : A Case Study of Artifact Value Preservation', 48.

author if it is done for private purposes or, even if it is done for commercial purposes, where the work of architecture stands in a public street, road, square or other place normally accessible to the public.³¹

In Malaysia, artists may not retain copyright ownership of their work. This can occur if the artwork was commissioned or purchased by a third party, who subsequently acquires the copyright. This situation can pose challenges, especially if the copyright holder is not the artist. However, it is important to note that the artist retains moral rights to the work, even if they do not hold the copyright.³²

Section 3 of Copyright Act 1987 (CA 1987) defines “graphic work” and “artistic work”, encompassing various forms such as paintings, drawings, sculptures, photographs, and architectural works, regardless of their artistic quality. Section 26 establishes that the initial ownership of copyright belongs to the author, except in cases where a work is commissioned by someone who is not the author’s employer or is created during employment, in which case copyright may be transferred to the commissioner or the employer, subject to any agreements between the parties. Section 27 outlines provisions regarding the assignment, licensing, and testamentary disposition of copyright, including the recognition of co-ownership when multiple parties share an interest in the copyright.³³

In the United States of America (USA), street art is now widely commercialised, seen on clothing, posters, and various products, and featured in television commercials and music videos. However, artists often face unauthorised reproduction of their work for profit without compensation. Additionally, the increasing value of street art has led to its removal from original locations and sale in galleries and auction

³¹David E. Shipley, ‘Architects, Artists, Photographers, Property Owners, the Public and Their Rights: Reconciling VARA, the AWCPA, and Copyright Fundamentals’, *University Of Georgia School of Law Research Paper Series Paper 2* (2023): 35, 36.

³²NNISA, ‘Murals and the Copyright Act’, *New Straits Times*, 19 October 2021, <https://www.nst.com.my/opinion/letters/2021/10/737712/murals-and-copyright-act>.

³³‘Copyright Act 1987 [Act 332]’, Pub. L. No. (Act 332), Intellectual Property Corporation of Malaysia (1987), <https://www.myipo.gov.my/wp-content/uploads/2016/08/Copyright-Act-1987-Act-332.pdf>.

houses without the artist's consent or compensation.³⁴ Street artists commonly use pseudonyms to safeguard their identity, but this can hinder copyright infringement lawsuits since the artist's real name must be disclosed. Moreover, anonymity is often maintained by street artists to evade prosecution for creating unauthorised work, yet this prevents them from asserting copyright protection. Street artists typically avoid relying on intellectual property (IP) laws to safeguard their work, created without permission on public or private property, as enforcing such laws may lead to legal repercussions and contradict their artistic ethos. Despite limited legal remedies under IP law, artists tend to refrain from utilising them due to their impracticality.³⁵

Jimmy Anak Salau et.al., aims to develop a conceptual framework for street art projects in Malaysia to preserve Malaysian culture in the tourism sector. The study identifies cultural content, audience, guidelines, and demographic factors as the research framework's independent, moderator, and dependent variables.³⁶ The study suggests that targeted locations in city areas would be best for street artists to showcase their artwork by considering four aspects. They are: interesting landscape to showcase their artwork, the surrounding infrastructure, structure of the building, and behaviour of society and the majority ethnic group in the area.

Upon thorough examination of extant literature, Stephen T. F. Poon has discerned notable lacunae in comprehension concerning indigenous street art. Key determinants influencing the conservation of Malaysian murals are inadequately investigated, with scant documentation available on the viewpoints of local authorities and stakeholders regarding mural preservation.³⁷ Additionally, the extent of involvement and consequential effects of local artists in mural inception have yet to be comprehensively evaluated. Consequently, it

³⁴Smith, 'Street Art: An Analysis under U.S. Intellectual Property Law and Intellectual Property's Negative Space Theory', 264–65.

³⁵Smith, 'Street Art: An Analysis under U.S. Intellectual Property Law and Intellectual Property's Negative Space Theory', 283–84.

³⁶Jimmy Anak Salau et al., 'Developing A Conceptual Framework Of Street Arts Project In Preserving The Malaysian Culture', *Journal of Business and Social Development* 6, no. 1 (2018): 91, <https://jbsd.umt.edu.my/wp-content/uploads/sites/53/2018/03/6.1.8.pdf>.

³⁷Poon, 'Street Murals as a Unique Tangible Cultural Heritage : A Case Study of Artifact Value Preservation', 50.

is hypothesised that persistent initiatives aimed at recognising, safeguarding, promoting, and advocating for street art, including murals, hold the potential to cultivate an appreciation for the distinct and tangible cultural heritage embedded within communities.

In the USA, the rights of artists are protected under the Visual Artists Rights Act of 1990 (VARA), 17 U.S.C.S. § 106A, which has been portrayed in the case of *Castillo v. G&M Realty L.P.*, 950 F.3d 155.³⁸ The case involved a lawsuit filed by a group of artists who had painted murals on the walls of a building complex called 5Pointz in Queens, New York. The owner of the building, G&M Realty, had decided to demolish the complex in the year 2013 to make way for new development, and the artists sued to prevent the destruction of their works. The case focused on whether the artists' works were protected under the VARA, which grants certain moral rights to artists, including the right to prevent the destruction of their works of "recognised stature". The district court ruled in favour of the artists and awarded them statutory damages, and the building's owner appealed. The Second Circuit affirmed part of the decision, holding that the artists' works were protected under VARA and that they had recognised stature. However, the court also held that the district court had erred in denying the building's owner's motion for summary judgment on the issue of damages and remanded the case for further proceedings on that issue. The case was significant in establishing important precedents regarding the protection of temporary artwork, the wilfulness of infringing actions, and the tension between property rights and artistic expression. The ruling emphasised the need for courts to balance these interests fairly and equitably.

Through VARA, street artists have the opportunity to intervene against the destruction of their work, as governed by moral rights laws, as delineated in both federal US legislation and state moral rights acts. VARA was established to safeguard the moral rights of artists, granting creators of specific visual arts works the rights of attribution and integrity. For works deemed of "recognised stature", this extends to the artist's authority to prevent the destruction of their creations. Notably, VARA stipulates that property owners must make genuine efforts to inform artists before dismantling their work, and if the artist fails to relocate or finance the removal of their artwork within ninety days, the

³⁸*Castillo v. G&M Realty L.P.*, 950 F.3d 155 (2020).

property owner may proceed with destruction. Unlike copyright law, an artist's moral rights under VARA endure irrespective of their ownership of the copyright or the physical copy of the work.³⁹

The applicability of CA 1987 in the context of urban arts, particularly street art, presents significant challenges and complexities. Under Section 3 of the CA 1987 “graphic work” and “artistic work” are broadly defined to encompass various forms of visual expression, including paintings, drawings, sculptures, and architectural works. However, the issue arises when considering the ownership of copyright in street art, especially in scenarios where artworks are commissioned or created in public spaces without explicit authorisation. According to Section 26(1) of the Act, copyright initially vests in the author of the work. Nonetheless, Section 26(2) provides exceptions to this rule, particularly in cases where works are commissioned or created in the course of employment. In such instances, copyright may be deemed to transfer to the person commissioning the work or the author's employer, subject to any agreements between the parties. This provision raises questions regarding the ownership of copyright in street art, especially when artworks are created without formal contracts or explicit agreements, as is often the case with unauthorised street art. Moreover, Section 27 of the Act addresses the assignment, licenses, and testamentary disposition of copyright. Section 27(5) stipulates that persons sharing a joint interest in a copyright are deemed to be co-owners. This provision may be relevant in cases where multiple individuals contribute to the creation of a street art piece or where legal disputes arise over ownership rights.

In the context of urban arts protection, particularly street art, the current legal framework may not adequately address the unique challenges and nuances inherent in this form of artistic expression. The ambiguity surrounding ownership, especially in cases of unauthorised street art, underscores the need for comprehensive legal frameworks and policy interventions to safeguard the rights of artists and promote cultural enrichment.

Furthermore, the juxtaposition of the Malaysian legal landscape with the provisions of the VARA in the US, as exemplified by the *Castillo v. G&M Realty L.P.* case, highlights disparities in the

³⁹Smith, ‘Street Art: An Analysis under U.S. Intellectual Property Law and Intellectual Property’s Negative Space Theory’, 267, 268.

protection afforded to street artists in different jurisdictions. While VARA provides robust moral rights protections for artists, including the right to prevent the destruction of their works, the Malaysian legal framework lacks similar provisions.

In light of these considerations, there is a need for legislative reforms and policy initiatives in Malaysia to address the legal challenges surrounding urban arts protection. This includes clarifying ownership rights, enhancing moral rights protections, and fostering a conducive environment for artistic expression while balancing the interests of property owners and the public. Collaborative efforts between policymakers, legal experts, artists, and stakeholders are essential to develop a comprehensive and equitable legal framework that promotes the preservation and appreciation of urban arts in Malaysia.

Unauthorised Artistic Activities and Acts of Vandalism: Legal Implications

Graffiti adorning the walls and streets of Malaysia can evoke discomfort for some individuals, resembling acts of vandalism or protest. This perception stems from graffiti's association with rebellious culture and its frequent depiction as illegal or provocative.⁴⁰ Determining the location of public art is a significant concern in Malaysia. In this country, public art is often commissioned to occupy vacant spaces, which runs counter to its intended purpose as objects for public engagement. Many public artworks are positioned in isolated areas, which unfortunately encourages vandalism and limits public interaction.⁴¹

According to a news report from the year 2014, the local council in George Town, Malaysia, was planning to remove illegal murals and street artworks at 46 spots within the core and buffer zones of the city. These artworks had been painted without the approval of the Penang Island Municipal Council (MPPP) or other relevant departments. The process for identifying which artworks would be allowed to remain

⁴⁰Mohamad Amirul Idham Mohd Ikham and Dr Yong Adilah Shamsul Harumain, 'Mural And Graffiti: Street Art or Vandalism?'

⁴¹Mohd Fabian, Osman, and Mohd Nasir, 'Towards Integrating Public Art in Malaysian Urban Landscape', 256–57.

involved a Public Arts Review Panel, which the George Town World Heritage Incorporated had set up. This panel consisted of art specialists who assessed the street and wall art in the city, especially those not authorised by the local authority. They recommended to the MPPP the artworks deemed detrimental to George Town's heritage value and also recognised works of high quality, advising the MPPP to retain those with their approval.⁴² This incident sheds light on the ongoing tensions between unauthorised street art and heritage preservation in George Town. This example adds depth to the analysis of street art governance and policymaking in Malaysia.

The COVID-19 pandemic has prompted many communities worldwide to honour and recognise the tireless efforts of healthcare workers and other essential personnel. One such tribute was a mural in Taman Cahaya Alam, Shah Alam, Malaysia, depicting COVID-19 heroes. Unfortunately, the mural was defaced with vulgar graffiti in red paint. An observant restaurant employee discovered the vandalism at 8 a.m. and promptly acted to prevent the situation from escalating by reporting the incident to the Shah Alam City Council (SACC). The SACC has pledged to hold the perpetrators accountable, and the police station in Shah Alam has filed a police report and is investigating the matter.⁴³ Dzulrifli Abdul Razak has expressed concern about this incident. He emphasised that such actions are irresponsible and unacceptable in the Malaysian society. Razak stressed the importance of recognising that vandalism only breeds negativity and reflects poorly on those involved.⁴⁴

The criminalisation of graffiti can be seen in an Australian case, *Director of Public Prosecutions v Noam Jason Shoan* [2007] VSCA

⁴²Phuah Ken Lin, 'Street Artists Get the Thumbs Down', *New Straits Times*, 26 August 2014, <https://www.nst.com.my/news/2015/09/street-artists-get-thumbs-down>.

⁴³Bernama, 'Selangor Sultan Describes Vandalism of "Covid-19 Heroes" Mural as Uncivilised', *Malaymail*, 20 July 2020, <https://www.malaymail.com/news/malaysia/2020/07/20/selangor-sultan-describes-vandalism-of-covid-19-heroes-murals-as-uncivilise/1886300>.

⁴⁴Dzulrifli Abdul Razak, 'Vandalism a Form of Hatred That Must Be Eliminated', *New Straits Times*, 23 July 2020, <https://www.nst.com.my/opinion/columnists/2020/07/610799/vandalism-form-hatred-must-be-eliminated>.

220,⁴⁵ which was heard in the Supreme Court of Victoria, Court of Appeal. It involved an offender who engaged in unauthorised graffiti, which caused considerable damage to publicly owned property in public view. The Court of Appeal found that the offender's conduct was severe and persistent and that he unilaterally imposed his notions of art and decoration on the rest of the world. The Court emphasised the importance of fair procedure and the need to draw essential considerations to the notice of the parties affected. The Court also noted that the offender's conduct was a criminal act that defaced and rendered ugly a great deal of the scenery that people pass by. The Court ultimately convicted the offender and sentenced him to imprisonment, highlighting the issue of unauthorised graffiti as a crime that can cause significant harm to public property and the community.

In Malaysia, there is no specific legislation that deals with vandalism. The Malaysian Penal Code (Act 574) (PC), under Section 425 defines "mischief" as;

"Whoever, with intent to cause, or knowing that he is likely to cause, wrongful loss or damage to the public or any person, causes the destruction of any property, or any such change in any property, or in the situation thereof, as destroys or diminishes its value or utility, or affects it injuriously, commits "mischief".⁴⁶

In light of the aforementioned instances of vandalism, Section 425 of the PC becomes pertinent as it delineates the concept of "mischief", characterising it as the deliberate or probable causation of wrongful loss or damage to public or private property. Such actions encompass the alteration or destruction of property, resulting in its depreciation in value or utility. The defacement of the mural in Taman Cahaya Alam, Shah Alam, through the application of vulgar graffiti, unequivocally falls within the ambit of mischief as defined by Section 425. This act not only led to the degradation and devaluation of public property but also inflicted inconvenience and potential financial losses upon the general populace and relevant authorities. Notably, the term

⁴⁵Director of Public Prosecutions v Noam Jason Shoan [2007] VSCA 220 (2007).

⁴⁶Penal Code [Act 574]' (2018), <http://www.agc.gov.my/agcportal/uploads/files/Publications/LOM/EN/Act 15.pdf>.

“any property” enshrined within this provision underscores its applicability to both public and private domains, thereby encompassing acts of mischief perpetrated against public property. Drawing parallels to the legal precedent set forth in the Australian case of *Director of Public Prosecutions v Noam Jason Shoan [2007] VSCA 220*, the severity and criminal nature of unauthorised graffiti are elucidated, emphasising its adverse repercussions on communal assets and societal well-being. Consequently, the actions of the offenders in Malaysia, particularly concerning unauthorised artistic endeavours in any property, uncommissioned artistic works, and acts of vandalism, unequivocally qualify as unlawful mischief under Section 425. Such transgressions necessitate judicial recourse and individual accountability to maintain public order and safeguard the collective interests of the community.

The Role of Malaysian Local Authorities

Local authorities play a crucial role in regulating urban arts by issuing permits and authorisations, establish regulations and guidelines. They are responsible for taking action against inappropriate or illegal public art. Local authorities’ regulatory powers over public art are derived from various laws and regulations, including the Local Government Act 1976 [Act 171] (LGA 1976) and the National Heritage Act 2005 [Act 645] (NHA 2005).⁴⁷ Section 2(1) of the NHA 2005 stipulates the preservation and protection of artworks, encompassing a wide range of items, including “historical object” which encompasses of carvings, sculptures, paintings, architecture, textiles, musical instruments, weapons, and other handmade crafts, that hold historical, religious, traditional, artistic, or historical significance. Section 48(1) of the Act establishes that any object discovered after the Act’s commencement date becomes the absolute property of the Federal Government. However, if the object is found on alienated land, the landowner may receive compensation. Therefore, Section 48 refers to “any object discovered” which encompasses historical objects as defined in Section 2(1) of the Act.⁴⁸ The enlargement of urban areas also means an

⁴⁷Mustafa, ‘Public Sculpture in Malaysia: A Case Study of Putrajaya’, 143–145.

⁴⁸National Heritage Act 2005 (Act 645) (2005), https://doi.org/10.4324/9780203203330_chapter_6.

increase in the problems, needs and complexities relating to urban governance. To help the local authorities control and assist with any form of decision-making, LGA 1976 was introduced and is responsible for public health and sanitation, waste removal and management, town planning, environmental protection and building control, social and economic development and general maintenance functions of urban infrastructure.⁴⁹ Based on Section 6 of the LGA 1976, a local authority is likely a governmental body established under Section 3 or through a merger under Section 5 of the Act. It inherits the rights, liabilities, and obligations of previously existing local entities like Town Councils, Municipal Councils, or City Councils.⁵⁰ Local authorities have the power to create new public places under Section 64(a) and improve existing ones under Section 64(b), with compensation required for those affected. They can also design and construct these spaces with ornamentation and structures as specified under Section 101(e) and establish or support institutions like libraries, museums, gardens, and zoos according to Section 101(g)(i) and (ii) within or outside their jurisdiction. Finally, Section 102 grants them the general power to make bylaws.⁵¹

It is worth noting that the Malaysian government implemented the National Key Result Area (NKRA) almost a decade ago to combat urban crime and reduce vandalism. The NKRA included several initiatives, including the promotion of public art. One such initiative was the Urban Art Festival KUL SIGN 2011, organised in Kuala Lumpur to promote graffiti as an urban phenomenon. This move was supported by the Kuala Lumpur City Hall and the Ministry of Youth and Sports, who designated a special place for graffiti artists on the walls of the Klang River and organised international events such as the KUL Sign Festival since the year 2010 with other corporate sponsors. These initiatives aimed to reduce vandalism and encourage the arts among adolescents.⁵² The National Visual Arts Gallery (NVAG) also boosted the development of graffiti art through events like the 2009

⁴⁹Mustafa, 'Public Sculpture in Malaysia: A Case Study of Putrajaya', 143.

⁵⁰Local Government Act 1976 (Act 171)' (2012), <https://www.ppj.gov.my/storage/7423/171---LOCAL-GOVERNMENT-ACT-1976.pdf>.

⁵¹Local Government Act 1976 (Act 171).

⁵²Shobri, Sakip, and Daud, 'Public Perception Towards Graffiti Art in Malaysia', 2.

Graffiti at the Pavilion Kuala Lumpur, graffiti arts participation in the 2009 Great Anatolian Meeting of Cultures and Youth World in Turkey, and the recognition of graffiti art as part of the Susurmasa Exhibition in the same year. These initiatives helped to legitimise graffiti art as a form of acceptable and visual art in Malaysia.⁵³

The increasing commercialisation of street art as a visual art form is evident in the success of local art and related industries. The Made in Penang Interactive Museum, a private museum that showcases three-dimensional wall and floor murals, which is a prime example of the potential for business in the art museum industry.⁵⁴ Another example is the Shah Alam City Council (SACC), a local authority that leads the Public Art Placemaking (PAPP) process for the Laman Seni 7 project in Shah Alam, Selangor. It is a back-lane revitalisation project that utilises public art as part of its placemaking approach. The council initiates ideas, approves plans and budgets, and appoints key committees and consultants. The PAPP Committee, responsible for proposals, artist selection, and funding sources, organises the project. Khznh Studio, a non-governmental organisation (NGO), manages installations and programs, oversees publicity, and collaborates with local authorities and the public. The artist initiates and executes the artwork. The PAPP process is a collaboration with the local authority playing a significant role and the NGO and artist playing supporting roles.⁵⁵

Khalilah Zakariya and Syamim Azhari in their study in the year 2017 argued that the absence of a framework for public art and placemaking projects in Malaysia hinders landscape architects' engagement in such initiatives despite the significance of public involvement.⁵⁶ Chang Shu Fun suggested Penang's practical guideline or policy is essential to regulate, preserve, maintain, facilitate, and support public and street art projects. The approach or policy should address questions such as how to differentiate public or street art from vandalism, who is entitled to install public or street artwork and what

⁵³Abdullah and Mohamad, 'Incorporation and Exploration of Local Imageries and Identities in Malaysia's Graffiti Art', 41.

⁵⁴Fun, 'Street Art Sparkle As a New Economic Driver in Penang'.

⁵⁵Zakariya and Azhari, 'Eco Public Art Placemaking Framework: A Case Study Of Laman Seni Shah Alam, Malaysia', 97–100.

⁵⁶Zakariya and Azhari, 'Eco Public Art Placemaking Framework: A Case Study Of Laman Seni Shah Alam, Malaysia', 92.

are the limitations or restrictions, who owns the public artwork, who is responsible for public liability associated with the painting, and who will be responsible for maintaining and preserving the artworks.⁵⁷ Smith suggested that one of the most effective ways to protect street art seems to be to utilise community action.⁵⁸

In an interview with a representative from the Ministry of Tourism and Culture (MoTAC), Stephen T.F. Poon discussed the potential of street murals to bolster Malaysia's cultural promotion efforts. The interviewee emphasised the importance of addressing international image concerns by utilising murals to showcase cultural heritage. However, they also stressed the need for stricter enforcement to combat vandalism and unauthorised graffiti. Increasing the presence of murals in tourist areas was proposed as a means to stimulate creativity and bolster participation in the tourism and travel sectors.⁵⁹ In his research, Stephen T. F. Poon also suggested that the implementation of national-level cultural exchange initiatives and the government's commitment to establishing clear guidelines and regulations for classifying aesthetic murals contribute to fostering greater local involvement in aspects related to cultural identity and shared heritage.⁶⁰ The same scholar carried out research in the year 2023 and argued that while there is no clear legal or policy framework for graffiti art in Malaysia, a shift in perception could lead to its acceptance. Poon suggested that if graffiti is seen as a positive art form it could be incorporated into urban beautification projects. This would require collaboration between artists, local authorities and the public.⁶¹

It is suggested that graffiti should not be seen simply as vandalism. The rise of graffiti culture in Malaysia is a legitimate way for young people to express themselves. Local authorities are

⁵⁷Fun, 'Street Art Sparkle As a New Economic Driver in Penang'.

⁵⁸Smith, 'Street Art: An Analysis under U.S. Intellectual Property Law and Intellectual Property's Negative Space Theory', 274.

⁵⁹Poon, 'Street Murals as a Unique Tangible Cultural Heritage : A Case Study of Artifact Value Preservation', 57–58.

⁶⁰Poon, 'Street Murals as a Unique Tangible Cultural Heritage : A Case Study of Artifact Value Preservation', 59.

⁶¹Stephen T.F. Poon, 'Talent & Tagging in Harmony: A Study of Graffiti Art as Subculture & Aesthetic Expression of Urbanization in Malaysia', *Journal of Urban Culture Research* 26 (2023): 5,21,22, <https://doi.org/10.14456/jucr.2023.1>.

encouraged to work with graffiti artists to find legal places for them to create their work.

CONCLUSION

In conclusion, this research underscores the multifaceted nature of urban arts in contemporary Malaysia. The current legal landscape presents a complex interplay between challenges and opportunities for both regulatory frameworks and cultural enrichment. The lack of a definitive legal or policy framework governing public and graffiti art creates ambiguity. Ownership, responsibility, and maintenance of these artworks remain unclear.

However, these challenges coexist with significant potential and benefits. These arts offer a powerful tool to enhance urban aesthetics and promote cultural initiatives. The burgeoning success of local art industries and the growing recognition of graffiti as a legitimate form of visual expression highlight the economic and cultural benefits associated with embracing these art forms.

Scholarly recommendations advocate for the establishment of practical guidelines and policies. These would differentiate between various forms of urban art while ensuring stricter enforcement against vandalism and unauthorised graffiti. Additionally, proposals for integrating graffiti into urban beautification projects, achieved through collaboration between artists, authorities, and the public, suggest a shift in perception towards recognising its artistic value. However, the current Malaysian copyright framework inadequately addresses the specific needs of urban art artists. A more comprehensive regulatory framework is necessary to establish ownership rights, address issues of moral rights, and determine appropriate compensation for commissioned works, while simultaneously balancing the rights of property owners and considering the distinction between vandalism, a criminal act, and authorised street art. A collaborative approach involving local authorities, graffiti artists, landscape architects, and other stakeholders is crucial. Such collaboration would facilitate the establishment of clear guidelines and regulations, designate legal spaces for graffiti art, and encourage greater community participation in preserving cultural identity and shared heritage.

It is, however, essential to acknowledge dissenting viewpoints. Concerns regarding vandalism, property rights, and urban aesthetics highlight the need for a balanced approach that recognises the cultural value of street art while upholding public order and property rights. As the discourse surrounding the urban arts continues to evolve, addressing the existing legal and policy gaps in Malaysia becomes imperative. A nuanced understanding and implementation of regulations is necessary to foster cultural enrichment while safeguarding the integrity of urban spaces.

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