

# Conservation And Restoration Of Artworks And Copyright

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For centuries, cherished works of art have been preserved and restored by their owners and custodians. Some of these restoration, however, have resulted in damage due to the techniques and materials applied. A recently reported case was the 1930s restoration of the Elgin Marbles, originally part of the Parthenon, in Athens, Greece, now in the British Museum.

It has been reported that the antique marbles' original paint was "cleaned" with bleach, wire brushes, and even chisels in 1937 and 1938. This irrevocably damaged what remained of the original painted surface. This article highlights some of the legal implications of conducting conservation and restoration works.

**Copyright and moral rights:** Copyright in an artistic work typically gives the owner of the copyright the rights to: (i) reproduce the work in a material form; (ii) publish the work, if the work is unpublished; and (iii)

communicate the work to the public through electronic means.

Ownership of the article in which

an artwork is embodied is distinct from ownership of the copyright in the work.

Accordingly when a buyer purchases a piece of art, in the absence of an agreement to the contrary with the copyright owner (usually the creator of the work), the buyer merely purchases certain rights to the physical article, and not to the underlying copyrights therein.

This is a vital distinction, as the corollary of that principle is that an owner of a piece of art may not necessarily then be able to do with it as he pleases. The purchaser usually acquires only the rights to physical possession of the article; to publicly display the article; and the right to sell the article to a third party. If they wish to otherwise exploit or reproduce the artistic work, they must first seek the written permission of the copyright holder, if copyright has not expired. Such written permission may be obtained either from the artist, the artist's family or estate, or his representative, such as a gallery or his solicitor.



Antique Cambodian silver Buddha after conservation treatment.

As suggested above, copyright confers only a temporary monopoly over a work. Generally, copyright subsists in an artistic work until the expiration of a statutorily prescribed number of years after the expiration of the calendar year in which the creator of the work died. An example of the different terms of copyright in different jurisdictions appears below:

Country	Term
United States of America	70
Europe generally	70
Hong Kong	50
Singapore	70

Besides copyright, a parcel of rights widely known as "moral rights" are also relevant considerations especially in Europe (popularly known as *droit moral*) where these rights are jealously guarded. These rights stem less from economic justifications (cf. copyright) than from issues of an artist's integrity and natural right to attribution. The rights of "attribution" of an artist consist of the right to receive credit for his work as well as to avoid derogating associations with versions of the work that are not truly representative of the artist's efforts. The rights of "integrity" essentially underlies the preservation of the artist's work in its authentic and unadulterated form.

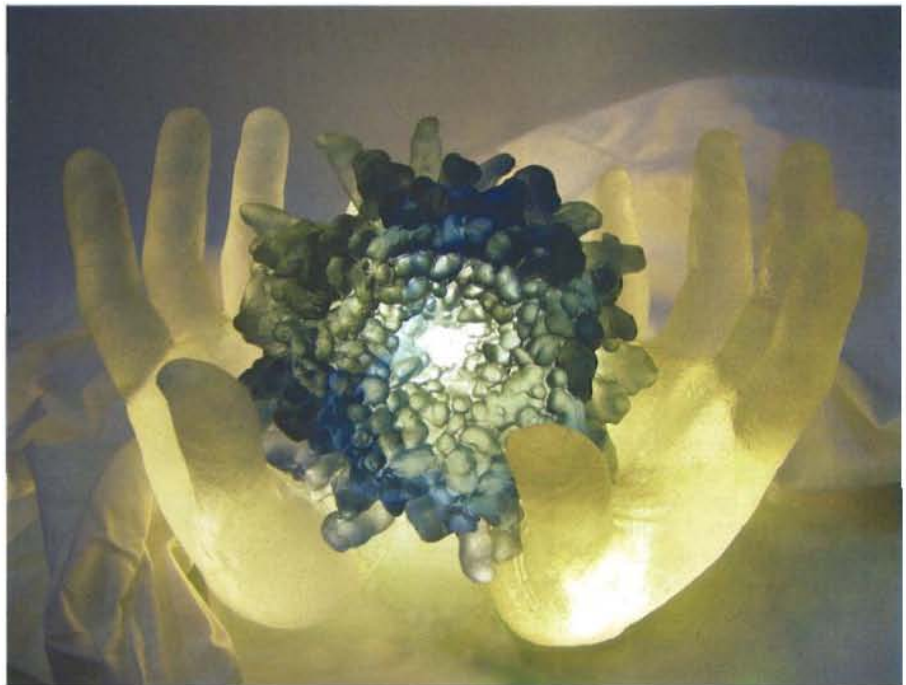
#### Conservation – Restoration:

What are some of the legal implications when buying art or antiques? It has to be understood that artworks will need maintenance and they cannot be altered or reproduced. Frequently in the past, owners, conservators, and restorers applied remedial treatments without considering the legal implications.

In light of the growing emphasis given to moral rights, it is best to have a written contract between owner of the antique and the conservator/restorer. The contract should clearly stipulate the techniques used and the possible consequences of their application to the antique.

Artworks should have a maintenance plan, especially when they are part of a larger private or public collection and displayed indoors or outdoors to the public. The maintenance will include regular checkups and cleaning of the surface of the artwork. As long as the maintenance does not materially alter the artwork, no claim in breach of moral rights may be raised. However, should the artwork be altered due to handling or weathering in the outdoors, the surface or nature of the artwork can change. This alters the intention of the artist and therefore a claim in breach may be commenced by a rights' owner.

Restoration work undertaken on an artwork can result in claims for damages



Steven Hwang (Singapore), **Flower**, glass.

by the artist or the copyright holder. Such restorations might be well intended. However, due to the alterations induced by the materials or techniques, the surface or the body of the artwork might not any longer be as intended by the artist.

Conservation work and its techniques are based on the principal of minimal intervention with the artwork, therefore resulting in little to no alteration of the artwork and the artist's intent. The rights of the artist are hence respected.

Owners, conservators, and restorers of artworks who intend to maintain, conserve, or restore a piece are best advised to acquire the written permission of the rights' holder that the techniques applied are in line with that artist's intention for the artwork.

#### Photography and Publications:

When taking pictures of artworks in which copyright still subsists for catalogues, reports, and publication, the artist's permission needs to be sought. Claims for damages could potentially be filed, should there be an infringement of copyright arising from unauthorized reproductions of the artwork. In most cases, publications for educational or noncommercial activities, such as reviews, do not need the authorization of the artist or copyright holder under the exceptions of fair use in most countries. However, these exceptions vary from country to country.

**Damage and Disposal of Artworks:** Damage to artworks arising from inappropriate handling, packing, and shipping could result in a claim by the artist, due to the resulting devaluation of the artwork. The choice of professional art handlers and movers is therefore very

important, as packaging can result in damage due to movement and environmental conditions during transit and storage.

Vandalism is a deliberate act of damage. The culprit will not only be held liable for the damage to the artwork and the loss in monetary value to the present owner. It is also possible for the artist to claim damages due to the alteration of the artwork and the artist's intention.

**Conclusion:** There have been cases in which artists have claimed damages due to infringement of copyright to their two- and three-dimensional artworks. It is therefore important to consider first before taking any action involving a work of art where the creator or his representative still has copyright. Such actions that can involve an artwork include movement, conservation, restoration, photography, and publication. Δ

#### Note:

1. David Hill, *The Elgin Story and the History of the Parthenon marbles, the Acropolis, the Parthenon, Elgin and the Marbles seminar papers*, Powerhouse Museum, Sydney, Australia, August 26, 2000.

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