

VISUAL ARTISTS RIGHTS ACT (VARA)

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BACKGROUND

US Copyright Law

- US copyright law has historically provided certain exclusive, economically-focused rights to creators:
 - The right to reproduce their work
 - The right to prepare derivative works based on their work
 - The right to distribute and sell copies of their work
 - The right to publicly perform/display their work
 - The right to sue for violations of the rights above, provided that a creator had federally registered a copyright in their work
 - Protection extending for a term (currently 70 years) past a creator's death

Berne Convention

- Since its creation in 1886, most countries in the world (181 out of 195) have become signatories to the Berne Convention, which supplemented the economic rights of creators with a set of moral rights:
 - Ensuring the rights of creators from all member countries would be upheld in all other member countries (copyright reciprocity)
 - The right to claim authorship
 - The right to disclaim false attributions of authorship

- The right to prevent the use of a creator's name on work of theirs that has been distorted, mutilated, or modified in a way that could be harmful to the creator or their reputation
- The right to prevent distortion, mutilation or modification of a creator's work that could be harmful
- The right to sue for violations of the rights above, whether or not the creator has registered a copyright in their work

US JOINS THE BERNE CONVENTION

- In 1989, the US Congress (finally) voted to join the Berne Convention to ensure that the works of US creators are protected internationally
- In order to be admitted as a Berne signatory, the US had to add some moral rights protections for creators, though notably not as many as other Berne signatories. Enter the...

VISUAL ARTISTS RIGHTS ACT OF 1990 (VARA)

Only Applies to creators of:

- Paintings
- Drawings
- Prints
- Sculptures
- Still photos, if:
 - Produced for exhibition
 - In single copies, or
 - Limited editions of less than 200 copies, signed and numbered by the Artist

Grants creators of covered works:

Attribution

- The right to claim authorship
- The right to disclaim false attributions of authorship

Integrity

- The right to prevent the use of a creator's name on work of theirs that has been distorted, mutilated, or modified in a way that could be harmful to the creator or their reputation
- The right to prevent distortion, mutilation or modification of a creator's work that could be harmful
 - Notably, location of the art (sculptures or murals that were initially place-based), is not guaranteed (such works may be moved, so long as they aren't harmed in the move)
- For works of a "recognized stature" - a term which has never been precisely defined - the right to prevent intentional or grossly negligent destruction of said work
- These protections are limited to the lifetime of the creator (so significantly shorter than the term of copyright)
- These rights are not transferrable to any party other than the creator

WHAT HAPPENS IF YOUR RIGHTS ARE VIOLATED?

- A creator whose VARA rights have been violated has the right to sue for monetary damages and attorney fees
 - Note that it may be a challenge to prove monetary damages for public art (*i.e.* what is the value that a creator has been deprived of if a work is removed?)

PRACTICALLY SPEAKING...

- VARA rights are waivable and modifiable via contract, so both creators and those commissioning artworks should be mindful of VARA's implications and their plans for the work (*i.e.* duration of installation, maintenance, modification)
 - Contracts should acknowledge VARA rights, whether they remain in place, are modified by the contract, or voided
 - The party commissioning a work is unlikely to know about or understand VARA rights - this is the opportunity to educate them. If a creator don't raise the issue in a contract, they may have a hard time trying to assert VARA rights later in a claim for damages
- Copyright and VARA rights remain with the creator even if they sell the original work (unless the work is created as a work for hire, or a purchaser buys the copyright)

- This is relevant to which party controls the right to make derivative works (prints, t-shirts, postcards, calendars, etc.)
- VARA sets minimum standards. States may enact laws that grant additional rights (Minnesota has not)