

COPYRIGHT PROTECTED PLASTIC ARTWORK IN THE LIGHT OF THE EUROPEAN AND ROMANIAN LAWS AND THE ARTWORK VALUE RELEVANCE

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Abstract

The plastic artwork, as a species of the "work of art" genre, is subjected to copyright. However, the law does not define plastic artworks, which are generally included in non-exhaustive listings, in phrases of the types: "plastic or graphical artworks, such as...". This study analytically presents the categories of artworks that may be included in the plastic artwork group, in the light of the European and Romanian law. At the same time, the study analyses the legal relevance of an artwork value, under all its aspects.

Keywords: *artistic work, plastic artwork, sculpture; painting, engraving, lithography, scenography, tapestry, ceramics, glass and metal plastic, design, artwork value, artwork protection.*

1. Introduction

The term "art" broadly designates any human activity relying on knowledge, exercise, perception, imagination, and intuition. More restrictively, art is also characterized by the lack of (practical) functionality, by knowledge, and aesthetics.

In the Age of Enlightenment, arts included the various forms of the so-called fine arts: the classical genres of painting and graphics, sculpture, architecture, and many other secondary genres; dramatic art, having as main genres theatre, dance/choreography; music having as main branches vocal and instrumental music; literature with the epic, dramaturgic, and lyrical genres.

Starting the beginning of Modernism, the forms artistic expression, and the artistic techniques and means expanded significantly. For instance, photography and applied art were included in the category of plastic arts. Dramatic art, music, and literature, and plastic arts are currently supplemented by the so-called new media, such as radio and television, cinematography, etc.

2. Content

The phrase "plastic arts" designates all practices or activities leading to a representation through visual images, using dots, lines, colors, shapes, or volumes. In French, the phrase arts plastiques derived from the Latin ars and from the Greek plastikos and initially defined three-dimensional arts, such as sculpture or architecture, to then include painting, drawing, and engraving. Unlike decorating or applied arts - which were regarded as "minor", especially during the

Neoclassic and Academic Ages (the end of the 17th century and up to the 2nd half of the 20th century) - plastic arts were regarded as "major", being the most appreciated. In the linguistic Anglo-Saxon area, the term plastic arts only defines the arts with three-dimensional manifestation, while the broad meaning of the plastic art notion is rendered through the phrase "visual arts".

Even in Romanian, pursuant to the development of new techniques such as "video art" or "conceptual art" - which are hard to define as "plastic" - the term of "plastic art" - in its broader sense - is increasingly replaced, in the artistic language, with the phrase visual arts.

The equivalent of plastic arts in German is "Bildende Kunst". German did not import an equivalent of the recent English phrase "visual arts".

The term "plastic arts" was traditionally associated to the term of "fine arts" or "belle arte", the equivalent of the French "beaux-arts", and of the Italian "belle-arte"¹.

The plastic artwork, as a species of the "work of art" genre, is subjected to copyright. However, the law does not define plastic artworks, which are generally included in non-exhaustive listings, in phrases of the types: "plastic or graphical artworks, such as...". Thus, the Law no. 8/1996 on copyright and related rights, as republished stipulates, in art. 7, that "original intellectual creation works in the literary, artistic fields, [...] such as: [...] f) photographic works, as well as any other works rendered through a process analogue to photography; g) graphical or plastic artworks, such as: sculpture, painting, engraving, lithography, monumental art, Scenography, tapestry, ceramics, glass and metal plastic, drawing, design, as well as other artworks applied to products with practical use; h)

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¹ Between 1931 and 1942, The Arts University in Bucharest was entitled the "Belle Arte" Institute, and between 1950 and 1990, it was called the "Plastic Arts Institute". Between 1864 and 1931, art universities were called "beaux-arts universities".

architectural artworks, including drawings, mock-ups, and graphical works developed as part of architectural projects; i) plastic artworks, maps, and drawings in the field of printing, geography, and science in general” are subjected to copyright.

In the European Union law, Directive no. 2001/84/EC on the resale right granted to the author of an original artwork, of September 27, 2001, stipulates, in art. 2, entitled "Resale right for the benefit of the author of an original work of art" that "For the purposes of this Directive, "original work of art" means works of graphic or plastic art such as pictures, collages, paintings, drawings, engravings, prints, lithographs, sculptures, tapestries, ceramics, glassware and photographs, provided they are made by the artist himself or are copies considered to be original works of art."

In the absence of a legal definition, but starting from the listing of "works of art", it may be summarized that the notion designates all artistic practices of activities generating a representation through visual means, using dots, lines, colors, shapes, or volumes. Hereinafter, we shall analyze the plastic art genres listed in the relevant laws in the field of copyright.

Sculpture is a branch of plastic arts dedicated to the development of three-dimensional artistic images, by carving or shaping a piece of material. As an art of three-dimensional shapes, sculpture in general, and stone sculpture in particular, represents one of the oldest means of visual expression of human thoughts and feelings - older than cave painting - the significations and themes whereof - initially exclusively zoomorphic and anthropomorphic - are common to both artistic genres.

Hence, practiced since immemorial times, stone carving has known, along the millennia, periods of maximum and complex boost in Ancient Egypt and Classical Greece, in the Hellenic countries, and in the Roman Empire, in ancient India and in pre-Columbian America, in Gothic, Renaissance, Neo-Classical, and Romantic Age Europe, or in the contemporary world everywhere, characterized through unprecedented diversification of working styles and techniques. Ever since ancient times, stone carving manifested in all currently known fundamental aspects: as an independent, autonomous art or as an auxiliary art, subordinated to and integrated in, architecture; as transfigured reflection of reality or, quite on the contrary, as non-figurative creation, with purely decorative function².

Painting is the branch of plastic arts representing reality in two-dimensional artistic images, using colors (oil, aquarelle, gouache, acryl, ink, etc.) applied on a surface (canvas, paper, wood, glass, etc.). In the theory of modern art, painting is regarded as a universal

category including all artistic creations rendered on surfaces. However, the types of paintings vary depending on the materials and supports used and on the artist's working technique: frescos suppose the painting of a freshly plastered wall, while still wet (colors chemically combine with the support surface and they finally set after drying); stained glass is obtained through the combination of differently colored or painted pieces of glass; the pointillist technique is characterized by the combination of small dots, which the viewer can individually join, if he watches the support from the correct distance.

Engraving is a plastic art genre including as techniques the digging, incision, perforation, or shuttering of a generally flat surface using various physical or chemical procedures, for the subsequent printing and multiplication of the image, or in order to obtain an individual artistic object. Individual engraving is used for the inscription or decoration of the various items with shapes or decorating motifs. If engraved on precious, semi-precious metals or moulds for coins or medals, they belong to the glyptic art.

Lithography represents a technique consisting of the printing of the image from a flat typographic surface directly onto the paper passed through the press. The typographic surface is developed on a lithographic stone (dense chalk) or on a metallic board (zinc, aluminum). Developed by the German Alois Senefelder in 1796, the lithographic technique quickly expanded in Europe and America due to the less complex process and to the quality of materiality and expressiveness effects, similar to those of drawing.

Monumental art is the field of plastic arts that relates to large-sized works³, generally carved. Mosaic, painting (fresco) and stained glass are monumental art genres, each having their specific features in terms of the plastic procedures used. The term "monumental sculpture" is frequently used in art history to determine, on the one hand, the category of a concrete oversized work, and on the other - simple in concept, virtuously performed, rigid and stable, with timeless qualities. In general, monumental sculpture is directly related to the surrounding environment (architecture or landscape), marking a space with a memorial, religious, funerary value or one that is consecrated to illustrious historical personalities who played an important role in certain geographical areas. Monumental sculpture has been known ever since ancient times (Colossi of Memnon, Egypt, 25th century BC; the colossal statues of Ramesses II, 15th century BC; the Pergamon Altar, 2nd century BC); and importantly developed along several centuries (the Statue of Liberty in New York, 1886; the Statue of Christ the Redeemer, 1931, Rio de Janeiro, etc.). Another monumental art genre is the mosaic, which creates images using colored glass or ceramic

² Similarly to wood or other material carving, regardless of the indicated situations, stone carving of all times fall - depending on their technique and purpose - into two large categories: free-standing (in the round) and attached (in relief). The former are referred to as such because they can be viewed from all sides, a *tutto rondo*, according to an Italian phrase or *ronde-bosse*, according to the French one, both consecrated as such in our specialised literature (available at www.putna.ro).

³ From Lat. *monumentalis-grandios*.

cubes glued with mortar onto the wall. The mosaic art has been known ever since Antiquity (Ishtar Gate, the New Babylon, 6th century BC), and has importantly developed in the Roman and Byzantine art (San Vitale Church, Ravenna, 5-6th century, Saint Sophia's Cathedral in Constantinople, 9th-11th century, etc.). Finally, the term of stained glass designates decorative compositions made of colored glass, joined between lead elements, to obtain specific images. Generally, the metal structure frame for which the glass shapes are created is dictated by the geometrical, segmented shape of the details, which forms the visual integrity of the composition. Stained glass, as monumental art, attained its peak in the Gothic age, being almost omnipresent in European cathedrals. To conclude, we can state that the phrase "monumental art" includes works of art belonging to other plastic art genres, which, however, stand out through sizes and functions.

Scenography was traditionally defined as the "art of painting and setting the scene in theatre", or as the "art of creating the plastic ambiance (scenery, props, lighting) in theatre, cinematography, etc.". In other words, the scenography character of a work of art is given by its very destination. If a board is painted to create an atmosphere as part of a performance, the painting will be regarded as a scenography work of art. However, the scenography work of art is unitary, and it is not only a mere combination of pre-existing plastic works of art. Most of the time, the scenography work of art includes elements with no artistic value if taken individually - a certain type of scene lights; the management of the space on a scene; the costumes of the performing artists etc. -, but when combined by the scenographer, they render a certain image on the space and the theatre or cinematographic work to the public. Thus, scenography is an autonomous art, which aims at triggering a certain type of emotion, by creating artistic images and, more broadly, an "artistic atmosphere".

Tapestry is a form of textile art, which consists of weaving a piece of fabric on a vertical or horizontal loom. The fabric is made up of braids called woof and warp. The warp is parallel to the vertical of the fabric (if the weaving is performed on the vertical loom) and represents the bearing element of the fabric, while the woof is crosswise, being introduced between the warp braids during weaving. Tapestry is generally used in interior design, either hung onto the wall or on a vertical surface. Tapestry originates in Ancient Egypt, and it greatly developed in Medieval Europe, but it still is much spread.

Ceramics is the art of processing the plastic mixture made of common clays, kaolin, quartzite, talc, graphite, and coke in various percentages, through the homogenization, shaping, decoration, glazing, drying or burning thereof. Depending on the composition and

on the artist's working procedure, ceramic may be gross (unbaked or baked pottery – terra cotta) and fine (porcelain, faience, etc.).

Glass and metal plastic is a type of plastic art involving the three-dimensional shaping of the two materials. Glass plastic works can be clear, opaque, or can include colors obtained from various pigments. Metal plastic works are achieved through the shaping of the various metal types (platinum, gold, silver, bronze, iron, alloys, etc.).

Drawing is the graphical representation of an object, a face, or a landscape on a two-dimensional, flat, or curve surface, generally, using lines, dots, spots, symbols, etc. Drawing may be monochromatic or colorful.

Collage is a form of plastic art characterized through the combination of different shapes (with or without artistic content) in order to obtain a new unitary artistic form. Previous shapes are glued together on a base. The term "collage" originates in the French "coller" ("to glue"). Though it has a quite lengthy history, collage mainly became a modern art genre starting the beginning of the 20th century, having as representatives Georges Braque⁴ and Pablo Picasso.

The works of art applied to practical use products are dedicated both for the individualization - through plastic art-specific aesthetic elements and the industrially ("batch") manufactured utility goods. This category of works of art benefits from a double protection system, both in relation to copyright, and under the laws on "industrial drawings and designs". This added protection derives from the very fact that, due to their destination and reproduction manner, applied works of art fall under the scope of industrial copyright, and, in the light of the way they were developed, they fall under the scope of copyrighting.

Design was defined as a "multidisciplinary field interested in the overall factors (socio-economic, technical, ergonomic, aesthetic, etc.) that contribute to the aspect and quality of the large batch product." In other words, design is a creative activity, which takes into account the development of new forms for practical use items. However, unlike the industrial model or drawing - where the applied shape or drawing aim at individualizing the product through its aesthetic aspect – design aims at "facilitating and rationalizing the manufacture of the product"⁵.

Architecture was defined as the "science and art of the organization and building of spaces required for human life and activity"⁶ or as the "art of designing and constructing buildings and building complexes based on certain proportions and rules, depending on the nature and destination of the structures"⁷. Because it has both a functional, and an artistic value, the evolution of architecture depends upon the types of

⁴ Georges Braque (1882–1963), French painter, initiator of the artistic style referred to as "cubism", along with Pablo Picasso.

⁵ A. Bertrand, *La propriete intellectuelle*, Livre II, Belfond, Paris 1995, p. 26, quoted by V. Roş, D. Bogdan, O. Spineanu-Matei, *Dreptul de autor și drepturile conexe*. Tratat, All Beck Printing House, Bucharest, 2005, p. 147.

⁶ *Dicționar Enciclopedic*, Enciclopedică Printing House, Bucharest, 2009.

⁷ *Marele Dicționar de Neologisme*, Saeculum Printing House, Bucharest, 2006.

materials used in a certain age (wood, stone, brick, concrete), the destination of the building (dwellings, religious buildings, industrial, military buildings, etc.), and on the spiritual environment it is developed in. The basic architecture elements volume, surface, and plan – organized based on a certain pace, characterize architectonic styles. Depending on the perception of the time (i.e., towards the functional or the spiritual), architecture accentuates either the structure of the buildings (classical Greek, Renaissance, or 20th century architecture), or the general shape and the decor, in order to trigger an emotion or accentuate national specificity (Egyptian, Baroque architecture, etc.). Depending on the destination of the building, architecture is divided into: civil, religious, military, industrial, etc. A new architectural genre is landscaping, defined as the art of intervening over the landscape in order to obtain an aesthetic space. The destination of the architectonic work is, however, irrelevant in terms of copyright protection, according to the provisions in art. 7 from the Law no. 8/1996 on copyright and related rights, as republished.

Being both an artist, and a technician, "the architect is, however, protected as the developer of original forms, and not as a technician using purely engineering processes"⁸. According to art. 7 lett. h from the Law no. 8/1996 on copyright and related rights, as republished, "even the plans, the mock-ups, and the graphical works that are part of the architecture projects" are protected. Art. 84 from the aforementioned law also concerns the "architecture and urbanism studies and projects exhibited in the vicinity of the architectural work site". Pursuant to the analysis of the two articles, it follows that architectural works of art play a double role: on the one hand, the plans, the mock-ups, the graphical works making up the architectural projects, and, on the other hand, the structure built. Or, even if the plans are not followed by the actual development of the project, the architectural work will be copyright-protected. This also is the conclusion that follows from the formulation of the Romanian legislator which, in paragraph 2 from art. 84, stipulates: "the building of a work of art, whether fully or partially developed based on another project, can only be performed with the approval of the holder of the copyright over the respective project."

Due to the relativity of art assessment criteria in general, the legal protection granted to works of art ignores their value. However, in our opinion, it is the just solution, because in social evolution, artistic and aesthetic standards have significantly developed, and the granting of legal protection only to the works of art regarded as valuable at a certain point, would deprive

subsequent generations from the access to the works of art rejected by a certain socio-aesthetic circumstance.

The solution is also adopted *expressis verbis* by the Romanian legislator, which, in art. 7 paragraph 1 from the Law no. 8/1996 on copyright and related rights, as republished, stipulates that "original intellectual creation works in the literary, artistic, or scientific works, regardless of the creation method, the expression manner or form, and independently of their value and destination [...]" are protected.

We believe that the legislator understood to include in the notional scope of the term "value" both the aesthetic value of the work, and other elements characterizing the work, such as: the content of the work; the sizes thereof, and its commercial value.

In so far as the aesthetic value of the plastic work of art is concerned, it should be stated that, despite the commonly attributed meaning, the term "aesthetics" does not only designate the category of "beauty", but it also supposes the capacity to trigger and communicate emotions that are specific to the receiver's senses. Or, in order to achieve this goal, the mere contemplation of "beauty" does not suffice. A series of contemporary artistic movements actually focus on the rejection of the conventional notion of "beauty".

Or, if the aesthetic value of the work were accepted as a criterion for the legal protection thereof through copyright, the law courts – called upon to rule on the fulfilment of the aesthetic criterion – would make an arbitrary decision affecting "the author's legal security. The law does not hold the capacity to decide whether a work of art is valuable or not, to distinguish between art and pseudo-art. The law has to treat all works equally, whether perfect or not, so as to avoid arbitrary decisions. The courts should only fulfil their mission of telling the truth, while leaving it to the academies to grant prizes and to the history to decide whether the work survived the author and the times when it was created, through its value, the only guarantor of immortality"⁹.

In so far as the content of the work of art is concerned, it concerns the approached theme, which, in our opinion, may not be regarded as a criterion in deciding whether copyright protection is to be granted or not. "The protection of the work cannot be rejected because it does not comply with good manners, it is sacrilegious or anticlerical"¹⁰. Even if the work is, through its content, against the good manners of the time, it cannot be deprived of legal protection. The morality of society is a relative and changing notion, and a valuable work, regarded as obscene at a certain time, could be accepted, or even appreciated by subsequent generations. Such an example is the work of the painter Edouard Manet¹¹, "The Luncheon on the

⁸ Colombet Cl., *Propriété littéraire et artistique et droits voisins*, Dalloz, Paris, 1999, p. 64.

⁹ V. Roş, *Dreptul proprietăţii intelectuale. Curs universitar*, Global Lex Printing House, Bucharest, 2000, p. 76.

¹⁰ Bertrand A., *La propriété intellectuelle*, Livre II, Belfond, Paris 1995, p. 152.

¹¹ Edouard Manet (1832(1832-01-23) – 1883(1883-04-30)), French painter, precursor of Impressionism. Starting from the great artists' tradition, Manet was able to join the old time suggestions with modern elements, which brought him the title of "Painter of Modern Times" (Charles Beaudelaire).

Grass". Featuring a group made up of two men wearing suits and two naked women, having a picnic, the scene scandalized the public and the critics of the time, because of the usual ambiance in which the female nude - only approved of at the time to evoke mythological themes - was presented. Regarded as shameless and challenging, the work was rejected from the "Official Salon" - an exhibition yearly held in Paris. In 1906, 23 years after the painter's death, the painting was exhibited at the Louvre, the largest and most prestigious art museum in France.

The dimensions of the work should not be a criterion in deciding whether to grant legal protection or not. A huge painted canvas, or a miniature the artistry whereof is hard to perceive at first sight; the Sistine Chapel, painted by Michelangelo over several years, or one of Da Vinci's unfinished drafts, are equally protected. Obviously, the works of art involving various author involvement levels will be differently appreciated by the public, critics, or the works of art market, but, as already shown, this appreciation is not relevant in terms of copyright protection.

Finally, legal protection is granted to a work of art regardless of its commercial value. The commercial value of works of art, set on the specialized market as the relation between demand and offer, may differ based on various criteria, but especially pursuant to the aesthetic value thereof as acknowledged by the public or the specialized critics. Generally, the commercial value of a work of art is only set after the work is "achieved" and disclosed, when it already is - if original - subject to copyright. However, especially in the case of works of art belonging to widely known authors, the commercial value of a future or still undisclosed work of art can be estimated based on the author's market

share - set based on the commercial value of previous works belonging to the same author. In these cases, the commercial success of a work of art is the very granting thereof to a certain author. An eloquent example to this end is the case of the portrait entitled "Bearded Young Man" - attributed to Rembrandt - from the famous Thyssen collection, evaluated by Christie's auction house in 1986 to approximately ten million dollars. Immediately after the publication of the conclusions of "Rembrandt Research Projekt" - where Dutch experts stated that the work might have been painted by one of Rembrandt's students, but in a very similar style - the market value of the work dramatically decreased, to no more than \$ 800,000. Similarly, in the case of a living painter, the value of an unfinished work may be evaluated according to his market share. Or, regardless of this aspect, as already shown, the future work will be copyright-protected, immediately after it was completed.

3. Conclusions

Romanian legal regulations concerning the plastic works are compliant with the ones provided in the European laws.

The article presents in a complex and historical manner the subjects of the plastic works, their definitions and characteristics.

The commercial value of the plastic works it is very important both for the authors, public and clients, especially for the specialized market. Also, the commercial value of the plastic works has an important topic as regards the aesthetic value thereof as acknowledged by the public or the specialized critics.

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