

“The body as a “modified ready-made”: what type of legal protection for ORLAN’s Carnal art”.

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A significant number of contemporary performative practices have embraced new techniques and new disciplines in recent years in order to transgress the traditional notion of artwork and to establish an alternative interactive dialogue with artistic creativity and technology. New processes of cultural hybridization have questioned the traditional perception of medium and have thus given the creative process a completely different and more essential meaning than the result itself. The work has enlarged the frontiers of its representation to include the experience of life as to make increasingly difficult opposition between art and non-art.

This paper discusses one exceptional legal case that has addressed the question “is carnal art protected by Copyright law? What are the inspiration limits of one’s creativity?”. The case raises ethical and legal concerns regarding the comparison of two works of French performer artist ORLAN and Lady Gaga’s album “Born This Way.” What is the intersection between copyright law and body art perceived as “modified ready-mades”? Could an artist practicing this artistic genre defend successfully his rights? Should this artistic transgression be legally protected?

These are only some of the key questions that are going to be explored during the course of this paper. I will highlight the ORLAN legal case’s facts and I will try to analyse to what extend is civil law countries’ system of *droit d'auteur* capable of protecting expressions and material transgressions related to the physical embodiment of an artistic work. I will point out the challenges that artists face when enforcing their rights in their body art and will showcase some of the unsolved controversies that plague the possibilities for legal protection of current contemporary body artistic practices. Last but not least I will try to suggest certain changes from a legal perspective that might allow current legal systems to better apprehend these contemporary artistic genres.

Methodology of Research

In this article I will consider the copyright legal history leading to ORLAN’s case, including a series of suits brought against other contemporary artists, as well as strategies proposed by academics, trying to apprehend body artistic practices within the law. I will analyze and reflect upon the key issues involved in this French Court ruling in this case and to examine its impact on the uncertain legal situation with regards to civil law countries’ system of *droit d'auteur*. I will then suggest some legislative proposals that are both compatible with the existing legal framework and can achieve the desire balance between freedom of expression and copyright protection.

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