

1- The news that a Valentine's Day mural by world-renowned graffiti artist Banksy was "vandalised" has attracted substantial media interest. The image of a girl firing red flowers from her catapult was defaced by spray paint within hours of appearing on a house wall in Bristol. News reports said measures would be taken to protect the artwork from further damage, but the incident has raised the question as to whether an unsolicited piece of street art can be vandalised.

2- "Vandalism" is not a legal term – in UK law, it equates to criminal damage and may amount to an offence under section 1 of the Criminal Damage Act 1971 if it were to be an intentional or reckless destruction or damage of property belonging to another.

3- The law does not, however, draw a clear distinction between great works of street art that have been thoughtfully applied and the casual tagging of a wall. In both cases, if permission has not been sought, then an offence may be committed regardless of the merit of the artwork in question. The Anti-social Behaviour Act 2003 defines graffiti as "the painting or writing on, or the soiling, marking or other defacing of, any property by whatever means" and graffiti artists may be subject to a fine or may be subject to prosecution under the Criminal Damage Act 1971 where more substantial damage has been done.

4- Several Banksy artworks have been removed or defaced. The Gorilla in a Pink Mask, one of Banksy's first works on a Bristol social club, and his No Future mural on a Southampton wall were painted over – the first accidentally, and the second in an act of apparent vandalism.

5- What amounts to damage to property is broadly construed and includes where that damage is both temporary and minor. For example, the courts have previously held that painting a pavement with water-soluble paints amounted to damaging the pavement despite the fact this could be easily removed. Damaging typically means property has been rendered unusable, a cost will be incurred in repairing the property, or the property has been otherwise been reduced in value.

6- Though we can normally assume that graffiti amounts to criminal damage, graffiti of artistic merit or monetary worth may instead enhance the value of that property. So much so that homeowners who had Banksy on the side of their home offered that mural for sale in 2007 "with a Victorian house attached".

7- Where graffiti has been applied to the wall of a property, that physical piece of “art” belongs to the owners of the property, who may choose to lawfully remove it or to protect it. If the property is rented – as is reportedly the case for the Valentine’s mural – the graffiti becomes part of the fabric of that building and belongs to the property owner, not the tenants. Ownership of the intangible rights to the artwork (the copyright), however, will remain the property of Banksy as the artist.

8- The question of ownership will remain hotly contested as more Banksy artworks appear and the nature of the property – whether it remains land or becomes personal and intellectual property – will continue to enthuse property lawyers for some time to come.

Adapted from The Conversation by Mark Thomas and Samantha Pegg (2020)