

The Visual Artists Rights Act of 1990

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By Sharon Forscher

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The Visual Artists Rights Act (VARA) protects an artist's moral rights regarding his or her artwork- the right to correct attribution and the right of artistic integrity. These rights are separate from ownership of the work itself and from the copyright to the work, which includes the right to reproduce, broadcast, display and/or perform the work in public. Copyrights are a bundle of rights that can be sold or licensed to different individuals or corporations. Each of these rights can be owned by different people at the same time. An artist's moral rights under VARA can be waived, but unlike title and copyright, cannot be sold or transferred to anyone else- once the artist gives them up, moral rights to the artwork no longer exist.

Which Works Qualify for VARA Protection?

Congress limited the reach of VARA to "visual art" that is meant for public display and not publication, advertising, or any utilitarian purpose. Visual art is defined as:

- A painting, drawing, print, sculpture, or a photograph produced only for exhibition purposes (not a personal album)
- The work must exist in one copy or in a limited edition of no more than 200 copies which are consecutively numbered and signed by the artist

What are the time limits for VARA protection?

- A work of art created on or after June 1, 1990 receives full protection for as long as the artist (or last surviving artist, if it's a collaboration) lives
- A work of art created before June 1, 1990 is only protected if the artist still has the title to the work and the acts that modified the work occurred after June 1, 1990. These protections, however, will last for 50 years beyond the death of the artist.

What Does Not Qualify for VARA Protection?

- Any type of art not named above- movies, books, periodicals, maps, advertising materials, etc.
- Any work for hire, which is:
 - Art you make for your employer as part of your job (not as an independent contractor)
 - Art you contribute to a collective work, such as a textbook, if you sign a contract beforehand expressly saying that the art will be considered work made for hire.

What Rights Does VARA Protect?

- Attribution
 - The right to claim authorship of work you created
 - The right to prevent your name from being attached to art you did not create
 - The right to prevent your own work from being attributed to you if the work has been modified in a way that damages your honor or reputation
- Integrity
 - The right to prevent any intentional modification of your work which would damage your honor or reputation
 - The right to prevent any intentional or grossly negligent destruction of your work if it is of "recognized stature"— that is, if the arts community or a segment of the public thinks the work is significant. This does not include damage that occurs due to the passage of time, non-negligent restoration work, or the inherent nature of the work.

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Waiving Your Rights

If you want, you can give up your VARA rights by signing a document that specifically states the identity of the artwork and which rights you are giving up. If a work was created by more than one artist, they will all lose their VARA rights if one of them decides to waive those rights.

Works Integrated Into Buildings

Works such as murals which are a part of a building have their own specialized set of VARA rules.

- If a work cannot be removed from a building without being modified or damaged, AND:
 - You consented to the installation of the work before June 1, 1990 OR
 - Signed a contract along with the owner of the building after June 1, 1990, acknowledging that the removal of the work may damage it
 - Then you have no VARA rights
- If a work can be removed from a building without being modified or damaged, then you still have your VARA rights unless the building owner makes a diligent, good faith attempt to notify you of the removal in writing within 90 days of the removal. If you then remove the work at your own expense, you will have the title to the work as well as the moral rights.

Filing Suit

You do not have to register a copyright or make some registration of your moral rights in order to file a lawsuit under VARA. However, the remedies you can receive are the same as with copyright, with the exception of criminal penalties, which are not available under VARA. The remedies you can receive are:

- Monetary remedies
 - Actual damages to you and the profits of the violator which result from the infringement, OR

- Statutory damages of \$750-\$30,000 per work, at the court's discretion
 - These damages can be increased to as much as \$150,000 if you can prove that the VARA violation was done with knowledge that it was a violation.
 - But if the violator can prove she did not know or have reason to know a violation was being committed, damages can be reduced to as little as \$200.
 - In order to choose to receive statutory damages rather than actual damages, you must request the change before judgment is rendered
- Attorney and court costs, if the court allows it
- Other remedies
 - A court order to impound and/or destroy any offending copies of the work
 - An injunction to prevent the VARA violation

Any More Questions?

If you still have questions about VARA and the rights it gives to visual artists, please contact:

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For more information on copyrights, you can refer to:

PVLA Resources Page

<http://www.artsandbusinessphila.org/pvla/pvlaresources.asp>

United States Copyright Office

<http://www.copyright.gov/>

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- Fair Use Guide
- An Artist's Guide to Wills and Estates
- Finding a Live/Work Space for Artists
- Censorship, Obscenity, and Indecency
- Guide to Licensing Stock Photography
- Documentaries — A Sample Release Form
- Intellectual Property — An Artist's Primer
- Transformative Works and Copyright for Visual Artists
- Music Licensing
- Nonprofit Incorporation
- Music Performing Rights Organizations
- Music Publishing — A Sample Contract between Composer and Publisher
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