

COMMENT

MORAL RIGHTS IN AMERICA: MITIGATING THE ECONOMIC IMPACT OF THE VISUAL ARTISTS RIGHTS ACT*

ABSTRACT

Moral rights are virtually nonexistent in the American legal framework with one notable exception: the Visual Artists Rights Act. The little-known Act provides visual artists with limited rights regarding authorship and modification of their works, meant to protect their artistic integrity. While litigation involving the Act is relatively sparse, there have been costly battles between artists and property owners, including an award for \$6.7 million. This Comment examines the economic impact of the often-overlooked Visual Artists Rights Act and suggests three ways purchasers of visual art, such as galleries, museums, and even individuals, can protect themselves: smart contracting, documentation, and insurance.

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TABLE OF CONTENTS

I. INTRODUCTION	947
II. A BRIEF PRIMER ON THE HISTORY OF MORAL RIGHTS	948
A. <i>Foreign Copyright Protections and the Berne Convention</i>	948
B. <i>Overview of American Copyright Law Protections</i>	949
C. <i>The Visual Artists Rights Act: American Moral Rights Protection</i>	951
III. THE ECONOMIC IMPACT OF THE VARA.....	954
A. <i>Cady Noland on Both Sides of the Law</i>	955
B. <i>Moral Rights for Transient Art in 5Pointz</i>	958
C. <i>The Mass MoCA and Büchel Debacle</i>	959
IV. MITIGATING THE ECONOMIC IMPACT OF THE VARA.....	961
A. <i>Smart Contracting</i>	962
1. <i>Art Contract Basics</i>	962
2. <i>Buy-Back Clauses</i>	963
3. <i>Title Assurances</i>	963
4. <i>Co-Creator Status</i>	964
5. <i>Requests Made of the Artist</i>	965
B. <i>Documentation: The Legal Version of CYA</i>	966
C. <i>Fine Arts Insurance</i>	969
D. <i>Balancing the Options</i>	972
V. CONCLUSION.....	973

I. INTRODUCTION

The Visual Artists Rights Act (VARA) protects a visual artist's moral rights to their artwork.¹ Before the Act was enacted in 1990, property rights prevailed over the rights of artists, and works such as Richard Serra's *Tilted Arc* could be physically modified and removed without much consideration of the artist's position.² Using the Berne Convention as a model, VARA, in part, allows artists the right to claim or disclaim authorship in a work, as well as limited rights to prevent destruction or modification of works.³ The VARA provides a stark contrast to traditional U.S. values that put property rights on top, providing an unusual and welcomed protection for artists, and frustration for others in the art world and beyond.⁴

This Comment explores the economic implications of VARA and the impact the Act has on institutions like auction houses and art galleries, as well as individuals. Part II provides a legal background on U.S. copyright law, the VARA, and a discussion on the Berne Convention which inspired it. Part III analyzes the economic impact of the VARA on individuals, art dealers and auction houses, and art galleries and museums through various

1. See SHARON FORSCHER, PHILA. VOLUNTEER LAWS. FOR THE ARTS, THE VISUAL ARTISTS RIGHTS ACT OF 1990, at 1 (2008), https://www.cabq.gov/arts/culture/public-art/documents/visualartistsrightsact_philadelphiavolunteerlawyersarts.pdf [<https://perma.cc/Q36Q-LZPA>]. "Moral rights" refer to an author or artist's ability to control the fate of their works and serves to protect the work's personal and reputational value to its creator. Betsy Rosenblatt, *Moral Rights Basics*, HARV. L. SCH. (Mar. 1998), <https://cyber.harvard.edu/property/library/moralprimer.html> [<https://perma.cc/3KRL-KJU5>].

2. See ST. LOUIS VOLUNTEER LAWS. & ACCTS. FOR THE ARTS, ARTIST'S GUIDE TO THE VISUAL ARTISTS RIGHTS ACT: UNDERSTANDING YOUR (LIMITED) MORAL RIGHTS 2 (2005), https://www.sparcinla.org/wp-content/uploads/downloads/DOC_4_SPARC_VARA.pdf [<https://perma.cc/A2CS-S38R>]; FORSCHER, *supra* note 1, at 1; Laura Gilbert, *Why the Visual Artists Rights Act Is Failing*, ARTSY (Feb. 24, 2018, at 13:07 CT), <https://www.artsy.net/article/artsy-editorial-why-the-visual-artists-rights-act-is-failing-to-protect-street-art-and-murals> [<https://perma.cc/TZC8-E7V7>]. *Tilted Arc* was a 120-foot-long, 12-foot-tall sculpture commissioned by the General Services Administration for the Federal Plaza. Backlash was almost immediate after installation in 1981, and in 1989, after a public hearing on the issue, the sculpture was cut into three pieces and moved to a warehouse. Serra classifies this work as destroyed, as "the GSA had made the work 'exactly what it was intended not to be: a mobile, marketable product.'" Jennifer Mundy, *Lost Art: Richard Serra*, TATE, <https://www.tate.org.uk/art/artists/richard-serra-1923/lost-art-richard-serra> [<https://perma.cc/CH2B-C652>] (last visited Jan. 20, 2025).

3. See *Waiver of Moral Rights in Visual Artworks*, U.S. COPYRIGHT OFF. (Oct. 24, 1996), <https://www.copyright.gov/reports/exsum.html> [<https://perma.cc/7AFS-DJBG>]. The Berne Convention is an international agreement to provide protection to literary and artistic works and the rights of their authors. See *Berne Convention for the Protection of Literary and Artistic Works*, WIPO, <https://www.wipo.int/treaties/en/ip/berne/> [<https://perma.cc/9Z26-JFP3>] (last visited Jan. 3, 2026).

4. See Issac Kaplan, *How Much Control Do Artists Have over a Work After It's Sold?*, ARTSY (Sep. 22, 2017, at 14:31 CT), <https://www.artsy.net/article/artsy-editorial-do-artists-have-the-right-to-disown-their-work> [<https://perma.cc/MBS3-VSZR>].

case studies. Finally, Part IV provides insight into how the economic impact may be mitigated, such as through smart contracting and careful documentation.

II. A BRIEF PRIMER ON THE HISTORY OF MORAL RIGHTS

While the VARA brought legitimacy to moral rights in American copyright law, the Act was preceded by a long-held recognition of moral rights in Europe.⁵ This foreign recognition helped form the basis of the VARA.⁶

A. *Foreign Copyright Protections and the Berne Convention*

The Berne Convention, adopted in 1866, provides protection against copyright infringement for original works between contracting states.⁷ It operates on three basic principles: Works must be provided the same protection between contracting states as each state grants to the original works of its own citizens, protection must be automatic (not conditional), and protection is independent of whether the work's country of origin provides protection.⁸ These are known as the principles of national treatment, automatic protection, and independence of protection, and serve to promote the Convention's goal of expanding protections for creators beyond their native land.⁹ While the Convention originated with only eight countries in 1886, today there are 181 contracting parties, including the United States of America, which joined in 1989.¹⁰

The Berne Convention protects "every production in the literary, scientific and artistic domain, whatever may be the mode

5. See *infra* text accompanying notes 16–18; ST. LOUIS VOLUNTEER LAWS. & ACCTS. FOR THE ARTS, *supra* note 2, at 1.

6. *Waiver of Moral Rights in Visual Artworks*, *supra* note 3.

7. Berne Convention for the Protection of Literary and Artistic Works art. 1, Sep. 9, 1886, S. TREATY DOC. No. 99-27; *Summary of the Berne Convention for the Protection of Literary and Artistic Works (1886)*, WIPO, https://www.wipo.int/treaties/en/ip/berne/summary_berne.html [https://perma.cc/K8PR-QDFB] [hereinafter *Summary of Berne Convention*] (last visited Nov. 21, 2024). A contracting state is any nation that has become a signatory to the Convention. See *id.*

8. *Summary of Berne Convention*, *supra* note 7.

9. See e.g., *id.*; *The Berne Convention for the Protection of Literary and Artistic Works*, ABOU NAJA INTELL. PROP. (Dec. 4, 2024), <https://abounaja.com/blog/berne-convention> [https://perma.cc/R8DY-53W8].

10. See Jane C. Ginsburg & John M. Kernochan, *One Hundred and Two Years Later: The U.S. Joins the Berne Convention*, 13 COLUM.-VLA J.L. & ARTS 1, 1 (1988). The original eight contracting parties were Belgium, France, Germany, Italy, Spain, Switzerland, Tunisia, and the United Kingdom. The United States acceded to the Convention in 1988, and it went in force in 1989. *WIPO-Administered Treaties*, WIPO, <https://www.wipo.int/wipolex/en/treaties/ShowResults?> [https://perma.cc/3RSN-KZCP] (last visited Jan. 3, 2026).

or form of its expression.”¹¹ The Convention recognizes certain exclusive rights held by the creator, including the right to translate, to make adaptations and arrangements of the work, to perform or recite in public, and the right to make reproductions in any manner or form.¹² In addition to these rights, the Convention also covers moral rights.¹³ Moral rights are the rights to “claim authorship of the work and . . . to object to any mutilation, deformation or other modification of, or other derogatory action in relation to, the work that would be prejudicial to the author’s honor or reputation.”¹⁴

The Berne Convention helped spread the philosophy of moral rights, but it was not the first time creators had been granted them.¹⁵ France is credited as having originated the doctrine in the nineteenth century, referred to as *Le Droit Moral*, though the common law practice was not codified into French law until 1957.¹⁶ Other laws, such as the Engravers’ Act of 1735 from the United Kingdom, provided an even earlier framework for the recognition of moral rights for the visual arts.¹⁷ From France, the doctrine started popping up in other European countries, particularly in Germany and Italy, though it would be a while before the concept gained traction in the United States.¹⁸

B. Overview of American Copyright Law Protections

When the United States joined the Berne Convention, Congress provided that the Convention would be non-self-executing, meaning “the Berne Convention has no legal effect in the courts of the U.S.; [o]nly the laws passed by Congress to conform U.S. law to the Berne

11. Berne Convention for the Protection of Literary and Artistic Works, *supra* note 7, at art 2; *Summary of Berne Convention*, *supra* note 7.

12. See *Summary of Berne Convention*, *supra* note 7. Also covered are the rights to communicate to the public the performance of works, the right to broadcast, and the right to use the work as a basis for an audiovisual work. *Id.*

13. *Id.*

14. *Id.*

15. See Samuel Jacobs, *The Effect of the 1866 Berne Convention on the U.S. Copyright System’s Treatment of Moral Rights*, 23 MICH. TELECOMS. & TECH. L. REV. 169, 171–72 (2016).

16. Elizabeth Schéré, *Where Is the Morality? Moral Rights in International Intellectual Property and Trade Law*, 41 FORDHAM INT’L L.J. 773, 775 (2018); Susan P. Liemer, *On the Origins of Le Droit Moral: How Non-Economic Rights Came to Be Protected in French IP Law*, 19 J. INTELL. PROP. L. 65, 69 (2011).

17. For a more in-depth discussion on the history of moral rights, see Susan P. Liemer, *How We Lost Our Moral Rights and the Door Closed on Non-Economic Values in Copyright*, 5 J. MARSHALL REV. INTELL. PROP. L. 1, 14–15 (2005).

18. Schéré, *supra* note 16, at 776.

Convention carry any weight.”¹⁹ As such, American copyright law provides for all copyright protections for American citizens within the country.²⁰ The protection of intellectual property, including copyright, is enumerated in the Constitution, providing Congress with the power to “promote the Progress of Science and useful Arts, by securing for limited Times to Authors and Inventors the exclusive Right to their respective Writings and Discoveries.”²¹ Copyright law is intended “to secure a fair return for an ‘author’s’ creative labor. But the ultimate aim is, by this incentive, to stimulate artistic creativity for the general public good.”²²

Generally, copyright protects against certain unauthorized uses of “original works of authorship fixed in any tangible medium of expression.”²³ There are many types of works of authorship covered under the Copyright Act of 1976, including, literary works; musical works; audiovisual works; and pictorial, graphic, and sculptural works.²⁴ Ideas cannot be protected by copyright law, nor can principles, processes, or methods of operation.²⁵ Rather, the expression of the idea is protected, and even then, only the original elements are protected.²⁶ As part of the protection tradeoff, underlying ideas remain free to the public to encourage further creation and experimentation.²⁷

The Copyright Act entitles copyright owners to the exclusive right to reproduce the work, prepare derivative works, distribute copies to the public by sale or transfer of ownership, and to perform or display the work publicly, as well as to authorize another to do any of these things.²⁸ These exclusive rights are balanced with

19. Gregory Gerard Greer, *U.S. Copyright Law, Statutory Damages, and Berne Convention Nationality*, 22 UIC REV. INTELL. PROP. L. 273, 283 (2023) (alteration in original).

20. *See id.* at 282.

21. U.S. CONST. art. I, § 8, cl. 8.; *ArtI.S8.C8.1 Overview of Congress’s Power Over Intellectual Property*, CONST. ANNOTATED, https://constitution.congress.gov/browse/essay/artI-S8-C8-1/ALDE_00013060/ [<https://perma.cc/67BX-CQS3>] (last visited Jan. 2, 2026).

22. *Twentieth Century Music Corp. v. Aiken*, 422 U.S. 151, 156 (1975); *see Copyright Basics*, U.S. PAT. & TRADEMARK OFF., <https://www.uspto.gov/ip-policy/copyright-policy/copyright-basics> [<https://perma.cc/RKL5-M85L>] (last visited Dec. 27, 2025).

23. 17 U.S.C. § 102(a); *see Copyright Basics*, *supra* note 22.

24. 17 U.S.C. § 102(a)(1)–(2), (a)(5)–(6). The Act also protects dramatic works including accompanying music, pantomimes and choreographic works, motion pictures, sound recordings, and architectural works. *Id.* § 102(a)(2)–(4), (a)(7)–(8).

25. *Copyright Basics*, *supra* note 22; 17 U.S.C. § 102(b).

26. *See* 17 U.S.C. § 102(a)–(b).

27. *See id.* § 102(b).

28. *Id.* § 106. In addition to the rights stated above, the Act also covers the exclusive right to perform by means of digital audio transmission, and the right to “distribute copies or phonorecords of the copyrighted work to the public by sale or other transfer of ownership, or by rental, lease, or lending.” *Id.* § 106(3); *Copyright Basics*, *supra* note 22.

limitations, including fair use, library or archival reproduction, and the first sale doctrine.²⁹

Noticeably absent from the Copyright Act is protection for moral rights, a requirement of the Berne Convention.³⁰ To help bring the United States into compliance with the Convention, the VARA was passed.³¹

C. *The Visual Artists Rights Act: American Moral Rights Protection*

The VARA expands traditional American copyright law to include protection of moral rights, bringing protections in the United States more in line with countries that have long recognized and protected moral rights, particularly countries in Europe.³²

The VARA protects the moral rights of visual artists, affording “protection for the author’s personal, non-economic interests in receiving attribution for [their] work, and in preserving the work in the form in which it was created, even after its sale or licensing.”³³ In the Act’s own terms, the VARA codifies an artist’s right of attribution and right of integrity.³⁴ First, visual artists “shall have the right—

- (A) to claim authorship of that work, and
- (B) to prevent the use of [their] name as the author of any work of visual art which [they] did not create.”³⁵

29. 17 U.S.C. §§ 107–109. Fair use is a defense to copyright infringement, and it covers reproduction for uses such as critiques, commentary, and research purposes. *Id.* § 107; *What Is Fair Use?*, COPYRIGHT ALL., <https://copyrightalliance.org/faqs/what-is-fair-use/> [https://perma.cc/H6TY-FCPJ] (last visited Dec. 30, 2025). The first sale doctrine “provides that an individual who knowingly purchases a copy of a copyrighted work from a copyright holder receives the right to sell, display or otherwise dispose of *that particular copy*, notwithstanding the interests of the copyright owner.” 1854. *Copyright Infringement—First Sale Doctrine*, U.S. DEPT OF JUST., <https://www.justice.gov/archives/jm/criminal-resource-manual-1854-copyright-infringement-first-sale-doctrine#> [https://perma.cc/B75L-HXAC] (last visited Jan. 2, 2026).

30. See 17 U.S.C. § 106; Schéré, *supra* note 16, at 776.

31. Liemer, *supra* note 17, at 6.

32. See *supra* text accompanying notes 13–18; Cyrill P. Rigamonti, *Deconstructing Moral Rights*, 47 HARV. INT’L L.J. 353, 359 (2006). See generally 17 U.S.C. § 106A (codifying “[r]ights of certain authors to attribution and integrity”).

33. *Marc Jancou Fine Art Ltd. v. Sotheby’s, Inc.*, No. 650316, 2012 WL 7964120, at *3 (N.Y. Sup. Ct. Nov. 13, 2012) (quoting *Pollara v. Seymour*, 344 F.3d 265, 269 (2d Cir. 2003)). Also note that the Act uses the copyright language of “author,” whereas this Comment uses the term “artist” since VARA is about visual *artists*. In the context of the Act, the two terms have the same meaning. See generally 17 U.S.C. §§ 101, 106A (failing to define “author” but providing context for its use being equivalent to the term “artist”).

34. 17 U.S.C. § 106A(a).

35. *Id.* § 106A(a)(1).

Next, visual artists “have the right to prevent the use of [their] name as the author of the work of visual art in the event of a distortion, mutilation, or other modification of the work which would be prejudicial to [their] honor or reputation.”³⁶ Finally, visual artists shall have the right

- (A) to prevent any intentional distortion, mutilation, or other modification of that work which would be prejudicial to [their] honor or reputation, and any intentional distortion, mutilation, or modification of that work is a violation of that right, and
- (B) to prevent any destruction of a work of recognized stature, and any intentional or grossly negligent destruction of that work is a violation of that right.³⁷

These rights are only afforded to a work’s creator, regardless of the creator’s status as copyright owner of the work; for collaborative works, the artists are co-owners of the rights.³⁸

The Act does outline some exceptions, namely that changes to a work due to “the passage of time or the inherent nature of the materials is not [considered] a distortion, mutilation, or other modification.”³⁹ Neither is modification resulting from conservation or from public presentation of the work.⁴⁰ Rights also do not apply to reproductions of a work.⁴¹

The types of work protected by the VARA include paintings, drawings, prints, sculptures, and photographs.⁴² These are limited to singular works or limited editions.⁴³ The definition of protected

36. *Id.* § 106A(a)(2).

37. *Id.* § 106A(a)(3).

38. *Id.* § 106A(b).

39. *Id.* § 106A(c)(1).

40. The full language of this exception is as follows: “The modification of a work of visual art which is the result of conservation, or of the public presentation, including lighting and placement, of the work is not a destruction, distortion, mutilation, or other modification described in subsection (a)(3) unless the modification is caused by gross negligence.” *Id.* § 106A(c)(2).

41. Rights under VARA also do not apply to “depiction[s], portrayal[s], or other use[s] of a work.” *Id.* § 106A(c)(3).

42. *Id.* § 101 (defining a “work of visual art”).

43. The full definition provides for:

(1) . . . painting[s], drawing[s], print[s], or sculpture[s], existing in a single copy, in a limited edition of 200 copies or fewer that are signed and consecutively numbered by the author, or, in the case of a sculpture, in multiple cast, carved, or fabricated sculptures of 200 or fewer that are consecutively numbered by the author and bear the signature or other identifying mark of the author; or
 (2) . . . still photographic image[s] produced for exhibition purposes only, existing

works is further limited to exclude posters, maps, models, movies, books, magazines, and other similar publications, as well as advertising materials.⁴⁴ Another notable exception is for works made for hire, such as works commissioned as part of a larger collection or created as part of the artist's employment.⁴⁵

The duration of rights under the Act depends on when a work was created.⁴⁶ Works created on or after the effective date of the Act last for the life of the artist.⁴⁷ Works created before the effective date are protected so long as the author still had title as of the effective date.⁴⁸ Rights may not be transferred but may be waived, and ownership of copies or of copyright may be transferred, but this transfer is not a waiver of the artist's rights under the Act.⁴⁹

Copyright law governs damages under the VARA, which can come in the form of actual damages or statutory damages.⁵⁰ Statutory damages range from \$750 to \$30,000 per work and can be increased to as much as \$150,000 per work for willful violations of the Act.⁵¹

in a single copy that is signed by the author, or in a limited edition of 200 copies or fewer that are signed and consecutively numbered by the author.

Id.

44. The full definition of what "visual art does not include" covers:

- (A) (i) any poster, map, globe, chart, technical drawing, diagram, model, applied art, motion picture or other audiovisual work, book, magazine, newspaper, periodical, data base, electronic information service, electronic publication, or similar publication;
- (ii) any merchandising item or advertising, promotional, descriptive, covering, or packaging material or container;
- (iii) any portion or part of any item described in clause (i) or (ii);
- (B) any work made for hire; or
- (C) any work not subject to copyright protection under this title.

Id. (defining what a "work of visual art does not include").

45. *Id.* (defining what works are not included and what constitutes a work made for hire).

46. *See id.* § 106A(d).

47. *Id.* § 106A(d)(1). For collaborative works, the rights "shall endure for a term consisting of the life of the last surviving author." *Id.* § 106A(d)(3). The effective date of the Act is June 1, 1991. 3 MELVILLE B. NIMMER & DAVID NIMMER, NIMMER ON COPYRIGHT § 8D.06 (2023).

48. 17 U.S.C. § 106A(d)(2).

49. *Id.* § 106A(e).

50. *See Amy Nicotra, Can't Touch This: Visual Artists' "Moral Rights" and Real Estate Implications*, SMITH GAMBRELL RUSSELL, <https://www.sgmlaw.com/cant-touch-this-visual-artists-moral-rights-and-real-estate-implications/> [<https://perma.cc/MA5D-2EB2>] (last visited Jan. 24, 2025); 17 U.S.C. § 504(a)–(c).

51. 17 U.S.C. § 504(c).

Moral rights began to gain more traction and popularity as the internet became more accessible and online art journals like *The Arts Newspaper* and *Hyperallergic* disseminated information about the concept.⁵² Despite efforts to read the VARA broadly, rights under the Act remain limited due to the private-property-focused nature of American law and ideals.⁵³

III. THE ECONOMIC IMPACT OF THE VARA

The limited VARA case law provides insight into the VARA's actual economic impact.⁵⁴ The following case studies focus on different relationships and situations in which VARA may be implicated. Cady Noland's cases involve her disowning two works, one right before it went to auction and the other before a private sale.⁵⁵ The 5Pointz case involves the destruction of graffiti in the name of property redevelopment.⁵⁶ Finally, the Büchel case involves a museum and an artist battling head-to-head in court.⁵⁷

52. Telephone Interview with Sergio Muñoz Sarmiento, Att'y (Mar. 4, 2025). Sarmiento is an arts lawyer and lecturer focusing on copyright and moral rights. *See CV / BIO*, SERGIO MUÑOZ SARMIENTO, <http://www.sergiomunozsarmiento.com/pagecv> [https://perma.cc/SME3-9RGS] (last visited Mar. 9, 2025). *See generally* About The Art Newspaper, ART NEWSPAPER, <https://www.theartnewspaper.com/information/about> [https://perma.cc/W8DG-JD3B] (last visited Mar. 9, 2025) (describing The Art Newspaper as an international art-world publication available online and in print, founded in 1990); *About*, HYPERALLERGIC, <https://hyperallergic.com/about/> [https://perma.cc/HC2T-J49B] (last visited Mar. 9, 2025) (providing online art news since 2009).

53. *See* Mass. Museum of Contemp. Art Found., Inc. v. Büchel, 593 F.3d 38, 56 (1st Cir. 2010); Harvey M. Jacobs, *U.S. Private Property Rights in International Perspective*, in LINCOLN INST. OF LAND POL'Y, PROPERTY RIGHTS AND LAND POLICIES 53–54 (Gregory K. Ingram & Yu-Hung Hong eds., 2009).

54. *See* RayMing Chang, *Revisiting the Visual Artists Rights Act of 1990: A Follow-Up Survey About Awareness and Waiver*, 13 TEX. INTELL. PROP. L.J. 129, 138–39 (2005) (noting that there had been very few cases invoking VARA as of publication in 2005, and even fewer had been successful for the artist); Isaac Kaplan, *Cady Noland Sues Seeking Destruction of Artwork "Copy" She Disavowed*, ARTSY (July 23, 2017, at 11:19 CT), <https://www.artsy.net/article/artsy-editorial-cady-noland-sues-collector-galleries-destroy-artwork-copy-disavowed> [https://perma.cc/W97J-D2X2] (noting VARA cases are "rarely litigated to verdict").

55. *See* Marc Jancou Fine Art Ltd. v. Sotheby's, Inc., 967 N.Y.S.2d 649, 649 (App. Div. 2013); Noland v. Janssen, No. 17-CV-5452 (JPO), 2019 WL 1099805, at *1–2 (S.D.N.Y. Mar. 8, 2019).

56. *See* Castillo v. G&M Realty L.P., 950 F.3d 155, 162–63 (2d Cir. 2020).

57. *See* Mass. Museum of Contemp. Art Found., Inc. v. Büchel, 565 F. Supp. 2d 245, 247 (D. Mass. 2008), *aff'd in part, rev'd in part*, 593 F.3d 38 (1st Cir. 2010).

A. Cady Noland on Both Sides of the Law

Cady Noland is a well-known visual artist whose works focus on the dark inner workings of the American psyche.⁵⁸ Noland has created works from found objects since the 1980s, crafting sculptures on the masculine American dream and mixed media works on the glorification of criminals.⁵⁹ Noland is no stranger to the VARA and has been on both sides of legal disputes surrounding her art and use of the Act.⁶⁰

In 2011, art dealer Marc Jancou had contracted with Sotheby's auction house to auction off Noland's *Cowboys Milking*.⁶¹ Noland disavowed her work shortly before the auction, citing an "unacceptable degree of damage," and requested that Sotheby's withdraw the work from the auction.⁶² Sotheby's obliged, citing its standard consignment agreement, which in part allowed it to withdraw the work due to doubts regarding the work's authenticity or attribution.⁶³ Noland based her disavowal on her rights under the VARA, declaring "that her honor and reputation would be prejudiced . . . in light of [the] material and detrimental changes to the work."⁶⁴ In response, Jancou filed a \$26 million lawsuit for tortious interference.⁶⁵

58. See *Cady Noland*, GUGGENHEIM N.Y., <https://www.guggenheim.org/artwork/artist/cady-noland> [<https://perma.cc/MTZ4-ZZDS>] (last visited Dec. 30, 2025); Kaplan, *supra* note 4.

59. See *Cady Noland*, *supra* note 58.

60. See *Marc Jancou*, 967 N.Y.S.2d at 649 (positioning Noland as a defendant in the case); *Janssen*, 2019 WL 1099805, at *1 (positioning Noland as the plaintiff).

61. *Marc Jancou's Case Against Artist Cady Noland Dismissed*, CTR. FOR ART L. (June 3, 2013) <https://itsartlaw.org/2013/06/03/marc-jancous-case-against-artist-cady-noland-dismissed/> [<https://perma.cc/Q3JU-LCN5>]; *Marc Jancou*, 967 N.Y.S.2d at 649.

62. *Marc Jancou's Case Against Artist Cady Noland Dismissed*, *supra* note 61; *Marc Jancou*, 967 N.Y.S.2d at 649. The damage to the piece consisted of "[s]ome bending of the aluminum at 3 of the corners [and] . . . some small areas of bending/indentation in the aluminum," and even Jancou's conservator stated that despite restoration efforts, some of the deformations in the work will always be noticeable. *Marc Jancou Fine Art Ltd. v. Sotheby's, Inc.*, No. 650316/2012, 2012 WL 7964120, at *2–3 (N.Y. Sup. Ct. Nov. 13, 2012) (first alteration in original).

63. Judd B. Grossman, *Suit Against Sotheby's Dismissed Based on Artist's Disclaimer of Authorship*, GROSSMAN LLP: ART L. BLOG (May 29, 2012), <https://www.grossmanllp.com/suit-against-sothebys-dismissed-based-on-artists-disclaimer-of-authorship> [<https://perma.cc/M8HW-CUFY>].

64. *Marc Jancou*, 967 N.Y.S.2d at 649.

65. *Marc Jancou's Case Against Artist Cady Noland Dismissed*, *supra* note 61. The disavowal likely tanked the value of the work. Kaplan, *supra* note 4. The day before *Cowboys Milking* was pulled from the auction, another Noland work was sold for \$6.6 million, more than doubling its \$3 million estimate. See *Marc Jancou's Case Against Artist Cady Noland Dismissed*, *supra* note 61; *Marc Jancou v. Cady Noland, Sotheby's*, ARTNET (Feb. 16, 2012), <http://www.artnet.com/magazineus/news/artnetnews/marc-jancou-v-cady-noland.asp> [<https://perma.cc/2E7A-APJA>]; Kaplan, *supra* note 4.

The trial court granted summary judgment to dismiss the claims asserted against Sotheby's.⁶⁶ While Noland invoked the VARA in her disavowal, the case itself did not require the court to interpret the VARA, dealing rather with the contractual relationship between Sotheby's and Jancou.⁶⁷ The grant of summary judgment was affirmed on appeal, and as such, the court managed to avoid creating any VARA case law.⁶⁸

The Jancou case provides an example of how an artist invoking the VARA may create issues in other areas, such as contracts.⁶⁹ Jancou, as owner of a work (through his gallery), was not able to recover for the loss in value of the work when the artist disowned it.⁷⁰ Sotheby's, on the other hand, was able to successfully dismiss the case against it due to its standard consignment agreement.⁷¹

In 2017, Noland found herself on the other side of the law when she sued Galerie Michael Janssen (Janssen Gallery), in part for copyright infringement and violations of her moral rights under the VARA over her 1990 work *Log Cabin Façade*.⁷² The work was purchased by a German art collector, who exhibited the work around Germany, including a ten year stint outdoors with Noland's permission.⁷³ The collector also received Noland's permission to stain the work.⁷⁴ In 2010, a conservator recommended replacing all of the logs due to deterioration from outdoor display, and based on this advice, the Defendants replaced the entire edifice of the piece and discarded the original.⁷⁵ The collector and museum then worked to sell the sculpture with the help of Janssen Gallery.⁷⁶ The eventual contract for the sale of the work included a clause protecting the buyer in the event Noland sought to disassociate herself from the work within twelve months

66. See *Marc Jancou*, 2012 WL 7964120, at *5.

67. The contractual relationship between the parties was that of owner and auctioneer, where Jancou had contracted with Sotheby's to put the work up for auction. See *id.* at *1–2.

68. *Marc Jancou*, 967 N.Y.S.2d at 649; see Grossman, *supra* note 63.

69. See *Marc Jancou*, 2012 WL 7964120, at *3; *supra* text accompanying notes 61–67.

70. The work was originally estimated at \$250,000–\$350,000. It is unclear what became of the work after this suit, but it is probably safe to say Jancou was not able to value the work nearly that highly again. See *Marc Jancou v. Cady Noland, Sotheby's*, *supra* note 65.

71. See *Marc Jancou*, 2012 WL 7964120, at *5; Grossman, *supra* note 63.

72. See *Noland v. Janssen*, No. 17-CV-5452 (JPO), 2019 WL 1099805, at *1–2, *4–5 (S.D.N.Y. Mar. 8, 2019); Kaplan, *supra* note 54.

73. *Janssen*, 2019 WL 1099805, at *1.

74. *Id.*

75. Kaplan, *supra* note 54; *Janssen*, 2019 WL 1099805, at *1–2.

76. *Janssen*, 2019 WL 1099805, at *1–2.

of purchase.⁷⁷ In such an event, Janssen Gallery would agree to buy the work back.⁷⁸ And that is exactly what happened.⁷⁹

Noland claimed the work they sold was no longer hers and was instead an unauthorized copy.⁸⁰ As such, she disassociated herself from the conserved piece, disapproving of the “copy” and claiming her rights under the VARA had been violated.⁸¹ The district court granted the Defendant’s motion to dismiss the VARA and copyright claims due to issues with the international nature of the case.⁸² The case was reheard in 2020 after Noland repleaded her case.⁸³ Ultimately, the court found that the United States’ copyright laws, including the VARA, did not apply as the alterations to the work took place outside of the United States.⁸⁴ Additionally, the VARA did not apply to *Log Cabin Façade* as it was created before the Act’s effective date, in addition to the issue of Noland’s copyright application for the piece never being approved.⁸⁵

The sales contract for *Log Cabin Façade* provides an example of how individuals can protect themselves when buying works of visual art. The contract provided an out for the buyer in the event the artist disavowed their work.⁸⁶ For some people, an artist’s disavowal may not be too much of an issue if they bought the work because they liked it, but for many others a disavowal could be devastating. The value of the work could virtually disappear overnight.⁸⁷

77. *Id.* at *2. This clause was likely added to the sale contract due to Noland’s past disavowals, including *Cowboys Milking*. See Kaplan, *supra* note 54.

78. *Janssen*, 2019 WL 1099805, at *2.

79. See *id.* *Log Cabin Façade* was sold in July 2014 to an American collector for \$1.4 million. The collector opted to use the buy-back clause following Noland’s complaint. Unfortunately for the collector, he only received a \$600,000 refund, and his suit for the remaining funds was dismissed for being time-barred. Kaplan, *supra* note 54.

80. *Janssen*, 2019 WL 1099805, at *2.

81. See Kaplan, *supra* note 54.

82. *Janssen*, 2019 WL 1099805, at *3–6.

83. *Noland v. Janssen*, No. 17-CV-5452 (JPO), 2020 WL 2836464, at *2 (S.D.N.Y. June 1, 2020).

84. Daniel Grant, *Court Dismisses Cady Noland’s Lawsuit Against Collector and Dealers Who Conserved Log Cabin Sculpture*, ART NEWSPAPER (June 3, 2020), <https://www.theartnewspaper.com/2020/06/03/court-dismisses-cady-nolands-lawsuit-against-collector-and-dealers-who-conserved-log-cabin-sculpture> [https://perma.cc/XLL8-72L2].

85. *Janssen*, 2020 WL 2836464, at *6; *Janssen*, 2019 WL 1099805, at *1; Grant, *supra* note 84.

86. See *supra* text accompanying notes 77–78.

87. Kevin P. Ray, *When Artists Disavow Their Work*, BEST LAWS (Mar. 27, 2017, at 11:15 CT), <https://www.bestlawyers.com/article/artists-disavow-work/1246#> [https://perma.cc/LX8P-KKH9].

B. Moral Rights for Transient Art in 5Pointz

In 2018, twenty-one graffiti artists were awarded \$6.7 million after their works were painted over when the building the works were on was slated for redevelopment.⁸⁸ A jury found that the owners of the building violated the artists' rights under the VARA, thus affirming that graffiti (aerosol art) is considered a work of visual art and is protectable under the Act.⁸⁹ While aerosol works are typically temporary, they may reach recognized stature to the point of being protected under the VARA.⁹⁰

The owner of a series of rundown New York City warehouses known as 5Pointz turned the buildings into a graffiti art exhibit space in 2002.⁹¹ 5Pointz became a "global epicenter for graffiti art," attracting tons of visitors, celebrities, and media attention.⁹² In 2013, the owner moved to demolish the buildings.⁹³ A temporary restraining order was issued against the owner, but that did not stop him from "set[ting] out in the dark of night' to whitewash all the artwork in 5Pointz 'using the cheapest paint available, . . . urging [his workers] to 'keep painting' and 'paint everything.'""⁹⁴

88. Laura Ly, *Judge Awards \$6.7 Million to Graffiti Artists Whose Work Was Destroyed to Build Condos*, CNN (Feb. 13, 2018, at 21:41 ET), <https://www.cnn.com/2018/02/13/us/5pointz-graffiti-artists-award-trnd/index.html> [<https://perma.cc/8AXV-PFXXR>].

89. *Id.*; see *supra* notes 42–43 and accompanying text. The artists were awarded the maximum legal penalty under the Act, \$150,000, for each of the works destroyed due to the owner's willful conduct and to deter him from violating VARA in the future. Eileen Kinsella, *A Stunning Legal Decision Just Upheld a \$6.75 Million Victory for the Street Artists Whose Works Were Destroyed at the 5Pointz Graffiti Mecca*, ARTNET (Feb. 20, 2020), <https://new.s.artnet.com/art-world/5pointz-ruling-upheld-1782396> [<https://perma.cc/D4M8-HHQ3>]; 17 U.S.C. § 504(c) (statutory damages may be increased to a maximum of \$150,000 for willful violations); see *supra* text accompanying note 51.

90. See *Castillo v. G&M Realty L.P.*, 950 F.3d 155, 163–64, 169–70 (2d Cir. 2020).

91. Patrick J. Rodgers & Margaret A. Esquenet, *In a Bittersweet Victory, Second Circuit Affirms \$6.75 Million in Damages to Artists for Destruction of Graffiti Art*, FINNEGAN: INCONTESTABLE BLOG (Apr. 8, 2020), <https://www.finnegan.com/en/insights/blogs/incontestable/in-a-bittersweet-victory-second-circuit-affirms-dollar675-million-in-damages-to-artists-for-destruction-of-graffiti-art.html> [<https://perma.cc/M635-D73G>].

92. *Id.*

93. *Id.*

94. *Id.* (quoting *Castillo*, 950 F.3d at 172).

In this case, the art at issue was often not purchased by the building's owner; aerosol artists simply began adorning the space in graffiti art.⁹⁵ Eventually, the space became curated, and artists "paid" to have their work displayed in the complex.⁹⁶ Now, moral rights have been recognized "in public murals created with permission and other public or transient works."⁹⁷ As such, this case is a better warning for property owners, including museums and galleries, than for individual purchasers. While in this case the owner acted almost maliciously, owners who act more appropriately may be able to better protect themselves.⁹⁸ Documentation will become a more prominent solution to protect property owners, as permission or notice of removal will affect the property owner's outcome.⁹⁹

C. The MASS MoCA and Büchel Debacle

Christoph Büchel, a critically acclaimed Swiss installation artist known for his political and provocative works, was collaborating with the Massachusetts Museum of Contemporary Art (MASS MoCA) on a large installation piece titled *Training Ground for Democracy*, when the relationship between the parties began to dissolve.¹⁰⁰ The parties had

95. See Geoff Cobb, *The Tragic Death and Lasting Legacy of Five Pointz*, GREENPOINTERS (Apr. 30, 2019), <https://greenpointers.com/2019/04/30/the-tragic-death-and-lasting-legacy-of-five-pointz/> [<https://perma.cc/6KMC-LV3H>].

96. Whether artists paid directly through donations or through other means, 5Pointz became more transactional as the owner saw a chance to profit. See *id.*; Comment posted by u/K_Knight, REDDIT (r/NYC), *Judge Awards 5Pointz Graffiti Artists \$6.7M After Works Destroyed*, (Feb. 13, 2018), <https://www.reddit.com/r/nyc/comments/7x4bh6/comment/du6dnyg/> [<https://perma.cc/NDH7-PXWT>] (on file with the Houston Law Review).

97. Eileen Kinsella, *Cementing a \$6.8 Million Win for Artists, the US Supreme Court Declines to Hear the Landmark Case Over the Destruction of Graffiti Mecca 5Pointz*, ARTNET (Oct. 7, 2020), <https://news.artnet.com/art-world/supreme-court-declines-5pointz-appeal-1913903> [<https://perma.cc/BM4R-NZCS>] (quoting the artist's attorney, Eric Baum).

98. Sarah Cascone, *'Appalled' by 5Pointz Developer, a Judge Upholds the Massive \$6.75 Million in Damages Awarded to Graffiti Artists*, ARTNET (June 14, 2018), <https://news.artnet.com/art-world/judge-landmark-5pointz-ruling-1302872> [<https://perma.cc/EU24-GH9G>].

99. See Gilbert, *supra* note 2.

100. Virginia Rutledge, *Christoph Büchel and Mass MoCA*, ARTFORUM, <https://www.artforum.com/columns/christoph-buchel-and-mass-moca-187592/> [<https://perma.cc/WTV2-MA2G>] (last visited Jan. 4, 2025); *Christoph Büchel*, ARTSY, <https://www.artsy.net/artist/christoph-buchel/about> [<https://perma.cc/5J38-YMVJ>] (last visited Mar. 8, 2025). *Training Ground for Democracy* was roughly the size of a football field, and included:

[A] run-down movie theater, a replica of the "spider hole" where Saddam Hussein was captured, . . . a looted convenience store, a blown-up police car . . . an eerie full-size Cape-style house, a watchtower, a torture area, a messy school room with the remnants of an interrupted lesson on the Second Amendment's right to bear arms, . . . a children's carousel featuring large black bombs, and much more.

an oral agreement to collaborate on the piece, and “[f]or most of 2006 MASS MoCA, at its own expense, acquired and installed nearly all the components of the mammoth exhibition, attempting to follow the largely-absent artist’s general instructions.”¹⁰¹ Büchel was unhappy with how the piece was coming together and felt MASS MoCA was “compromising his artistic integrity,” while MASS MoCA was growing tired of the financial and logistical demands of Büchel.¹⁰² The project was abandoned in the spring of 2007, and in May, MASS MoCA announced a new exhibition in the same building, titled “Made at MASS MoCA.”¹⁰³ To access “Made at MASS MoCA,” visitors would have to walk past the unfinished *Training Ground for Democracy*, leading MASS MoCA to partially obscure the work with tarps.¹⁰⁴ In a first-of-its-kind lawsuit, MASS MoCA sought legal sanction to present the unfinished work against Büchel’s wishes, claiming it was “entitled to present to the public the materials and partial constructions assembled in connection” with Büchel’s work.¹⁰⁵ Büchel invoked the VARA in his defense, arguing that MASS MoCA had harmed his reputation through its display and violated his moral right to control his work and its presentation.¹⁰⁶

VARA case law is relatively sparse, and it had not yet been tested whether the VARA would apply to unfinished works of art.¹⁰⁷ MASS MoCA argued that “the materials . . . do not contain sufficient original expression on the part of Büchel to be protected under the Copyright Act,” and in the alternative that they are joint owners in the work’s copyright due to the collaborative nature of the project.¹⁰⁸ The district

Mass. Museum of Contemp. Art Found. v. Büchel, 565 F. Supp. 2d 245, 246, 255 (D. Mass. 2008), *aff’d in part, rev’d in part*, 593 F.3d 38 (2010).

101. *Büchel*, 565 F. Supp. 2d at 246–47. The details of the agreement were never formalized in writing, though there were some discussions between the Director of MASS MoCA and Büchel’s U.S. representative on terms. Neither side assented to the terms proposed by the other, and arrangements “were negotiated on an *ad hoc* basis.” *Id.* at 250.

102. *Id.* at 247; see Rutledge, *supra* note 100. MASS MoCA may have also suffered from a lack of understanding of the artist by not performing due diligence in researching Büchel’s past works and understanding his artistic process. Telephone Interview with Sergio Muñoz Sarmiento, *supra* note 52. Sarmiento was part of Büchel’s legal team on appeal but was not representing Büchel as his attorney during this interview. Mass. Museum of Contemp. Art Found. v. Büchel, 593 F.3d 38, 41 (1st Cir. 2010).

103. *Büchel*, 593 F.3d at 45–46.

104. *Id.* at 46. The district court noted the tarps provided “no significant access to, or any reliable sense of, the partially completed installation,” and that “no reasonable person, looking at these bulges and protrusions, could fairly claim that he or she had viewed an artistic creation by Christoph Büchel.” *Büchel*, 565 F. Supp. 2d at 255.

105. See Rutledge, *supra* note 100; *Büchel*, 593 F.3d at 46.

106. *Büchel*, 593 F.3d at 46–47, 49.

107. See Rutledge, *supra* note 100; *Büchel*, 565 F. Supp. 2d at 257.

108. Rutledge, *supra* note 100 (omission in original).

court found that the VARA did not apply to this particular set of circumstances, and that MASS MoCA was within its rights to exhibit the unfinished work.¹⁰⁹ The case was remanded on appeal however, as the Fifth Circuit held that the VARA extends to unfinished works, and as such, Büchel was entitled to protection of his moral rights over *Training Ground for Democracy*, creating a genuine question as to whether MASS MoCA violated that right.¹¹⁰

This case raises the question of how to balance an artist's rights with those of institutions and is considered one of the most significant moral rights cases in recent years.¹¹¹ While it is unfortunate that the collaboration did not work out, MASS MoCA had invested significant funds and significant space in the project.¹¹² It is not surprising they would want to display the work after all they had put into it. On the other hand, Büchel should have a say in how his creative work is displayed. A contractual agreement between the parties should have saved them from the headache of litigation, but any agreement was likely insufficient to protect the parties in as drastic a fallout as what occurred here.

IV. MITIGATING THE ECONOMIC IMPACT OF THE VARA

While the VARA generally has limited impact, it is still important for purchasers of artworks, particularly of works by well-known artists, to understand how to protect themselves.¹¹³ Making smart contracting decisions may be the most effective way for owners to protect themselves, with VARA waiver clauses being a popular option.¹¹⁴ Careful documentation and fine art insurance are other options to prevent real harm.¹¹⁵

109. The district court reasoned that

[w]hen an artist . . . [uses] someone else's property, someone else's materials, someone else's money, someone else's staff, and, to a significant extent, someone else's suggestions regarding the details of fabrication . . . nothing in the Visual Artists Rights Act . . . gives that artist the right to dictate what that "someone else" does with what he has left behind, so long as the remnant is not explicitly labeled as the artist's work.

Büchel, 565 F. Supp. 2d at 248.

110. *Büchel*, 593 F.3d at 42, 65–66.

111. See SIMON J. FRANKEL, COVINGTON & BURLING LLC, LEGAL ISSUES IN MUSEUM ADMIN., RECENT MORAL RIGHTS CASES 2 (2011) (presentation cosponsored by The Smithsonian Institution and American Association of Museums).

112. MASS MoCA had spent roughly \$300,000 on materials and labor for the project by the time it stopped work in May of 2007, and it occupied a large portion of MASS MoCA's Building 5. *Büchel*, 565 F. Supp. 2d at 254.

113. See generally Gilbert, *supra* note 2 (arguing property rights are much stronger in the American system than moral rights).

114. See *infra* Section IV.A.5.

115. See *infra* Sections IV.B–C.

A. *Smart Contracting*

Smart contracting is arguably the most important way both artists and art purchasers can protect themselves from future VARA-related harm. For example, art museums may include clauses requiring the artist to provide specific repair instructions to prevent the artist from invoking VARA and requiring removal of the piece should damage occur.¹¹⁶

1. *Art Contract Basics.* At its most basic, a standard contract for the purchase of a piece of artwork will include all the basic information about the piece, such as its name, dimensions, and medium; the agreed-upon price and payment information; and each party's information.¹¹⁷ Standard form contracts used by galleries and museums will generally also include a section for the seller's representations, warranties, and indemnification, as well as sections for documentation and the work's provenance.¹¹⁸

While a basic contract will protect against purchase-related issues, such as payment issues and basic legal issues like authenticity, the more specific a contract can be, the more protection it can provide.¹¹⁹ Contracts require balancing the interests of both parties. Artists do not have as much bargaining power as institutions like museums or galleries unless they are very famous, so such

116. Video Interview with Carlotta Ramirez, Gen. Couns., Museum of Fine Arts, Hou. (Nov. 12, 2024).

117. Other standard information includes the date the work was created, framing specifications, edition number if applicable, and signature information. *See, e.g.*, GYST, CONTRACT FOR THE SALE OF AN ARTWORK, <https://static1.squarespace.com/static/530bb4e2e4b00fa2f729a05d/t/55357e5de4b0e68395f56d50/1429569117781/Contract+for+Sale+of+Artwork.pdf> [<https://perma.cc/MWL5-ZK23>] (last visited Jan. 16, 2025) (providing a very basic example of a purchase contract for an artist to sell to a purchaser).

118. Representations and warranties in this context generally cover that the seller has ownership of the work and that it is not subject to rights or claims by others, that the condition of the artwork is as listed, that the work is authentic, and that the work has been imported or exported legally. *See, e.g.*, FORM OF ART PURCHASE AGREEMENT, U.S. SEC. & EXCH. COMM'N, <https://www.sec.gov/Archives/edgar/data/1809772/000149315220006617/ex6-3.htm> [<https://perma.cc/Y9ZM-AMCQ>] (last visited Jan. 16, 2025) (providing an example of a purchase contract between two galleries); UNION COLL., PURCHASE AGREEMENT, <https://www.union.edu/sites/default/files/finance/202204/art-work-purchase-agreement-fillable.pdf> [<https://perma.cc/VM5X-JQL3>] (last visited Jan. 16, 2025) (providing an example of a purchase contract between an institution and a seller).

119. Katie Carey, *Art Business Essentials: Commission Contracts for Artists*, ARTWORK ARCHIVE (July 13, 2023), <https://www.artworkarchive.com/blog/art-business-essentials-commission-contracts-for-artists#> [<https://perma.cc/BYL5-WLXG>].

purchasers will likely be able to add contract clauses to protect them against the artist's federally provided protections.¹²⁰

2. *Buy-Back Clauses.* As in the *Log Cabin Façade* example, a contract may include a clause allowing the purchaser to sell the work back to the seller in the event the artist disassociates their name from it.¹²¹ While in that particular case the clause was likely added due to the artist's VARA-invoking reputation, the clause could be used more generally without such motivation.¹²² Inclusion of the clause can be balanced by placing a time limit on its use, such as the twelve month period used by the sellers of *Log Cabin Façade*.¹²³ For works with less risk of an attribution issue, longer periods may be more appropriate, such as twenty-four months.¹²⁴

3. *Title Assurances.* In *Jancou v. Sotheby's*, Sotheby's was saved from extensive litigation due to its standard consignment agreement, which provided that "Sotheby's could withdraw [a] [w]ork at any time before sale if, 'in its sole judgment,' 'there is doubt as to [the work's] authenticity or attribution.'"¹²⁵ This language allowed the auction house to withdraw the work in compliance with the artist's wishes after disavowing it, as any issues with the artist's attribution, such as those caused by the VARA, would fall within this provision of the agreement.¹²⁶ Auction houses in general, and particularly those dealing with works of high value and stature such as Sotheby's and Christie's, can benefit from this type of language and other clauses that generally protect against issues raised by the

120. See Isabelle De Voldere et al., Directorate-Gen. for Educ. and Culture, Directorate D – Culture and Creativity, *Mapping the Creative Value Chains: A Study on the Economy of Culture in the Digital Age*, at 54, (2017) ("[T]here are only few museums that can buy and exhibit artworks, compared to numerous artists . . . Museums thus have a strong bargaining power over (emerging) artists."); *What Are the Rights of Visual Artists*, SCHROEDER & SIEGFRIED P.A., <https://www.schroederpatlaw.com/intellectual-property-faq-archives/what-are-the-rights-of-visual-artists/> [<https://perma.cc/7C76-HB5T>] (last visited Feb. 14, 2026).

121. See *Noland v. Janssen*, No. 17-CV-5452 (JPO), 2019 WL 1099805, at *2 (S.D.N.Y. Mar. 8, 2019); *supra* text accompanying notes 77–78.

122. See Kaplan, *supra* note 54.

123. *Supra* text accompanying note 77.

124. Ray, *supra* note 87.

125. Grossman, *supra* note 63 (third alteration in original); *Exhibit A: Contract With Sotheby's*, SCRIBD, <https://www.scribd.com/document/367013820/Exhibit-A-Contract-with-Sotheby-s> [<https://perma.cc/77RE-SWLS>] (last visited Jan. 22, 2025) (providing an example of a consignment agreement between Sotheby's and a museum).

126. See *Marc Jancou's Case Against Artist Cady Noland Dismissed*, *supra* note 61; *Marc Jancou Fine Art Ltd. v. Sotheby's, Inc.*, No. 650316, 2012 WL 7964120, at *3–4 (N.Y. Sup. Ct. Nov. 13, 2012).

VARA, without ever mentioning the Act by name.¹²⁷ This is particularly true for clauses protecting against the artist disavowing a work and the fallout that may follow.

The usefulness of the consignment agreement is relatively limited to entities such as auction houses, but this type of language may be included in any contract for the purchase of artwork, albeit in a narrower capacity.¹²⁸ Museums often already include language in their purchase agreements requiring the seller to warrant the provenance and the basic facts of the work, including authorship.¹²⁹ Such warranties provide a contract remedy for the purchaser should issues with the provenance or title arise.¹³⁰ Individuals may also be able to negotiate for similar language in a purchase agreement, particularly for works of high status.¹³¹

4. *Co-Creator Status.* While MASS MoCA was ultimately able to display the unfinished Büchel work, they did so at the expense of litigation.¹³² This likely could have been avoided had the two parties stipulated in a contract that MASS MoCA was a co-creator of the work, thereby providing the entity with its own protections under the Act.¹³³ Whether this would have worked would be a question of bargaining power, but it is something museums, galleries, property owners, and even individuals may consider depending on the specifics of their situation.

127. See Jacqueline Martinez, *Sotheby's and Christie's: A Comparison of the Biggest Auction Houses*, COLLECTOR (July 4, 2024), <https://www.thecollector.com/sothebys-and-christies-a-comparison-of-the-biggest-auction-houses/> [https://perma.cc/3XE6-DZ3V]; Kate Lucas, *Appeals Court Affirms Summary Judgment for Sotheby's in Lawsuit Involving Artists Disclaimer of Authorship Under VARA*, GROSSMAN LLP: ART L. BLOG (July 1, 2013), <https://www.grossmanllp.com/appeals-court-affirms-summary-judgment-for-sothebys> [https://perma.cc/KFY5-PLBB]. Large auction houses will have more power to use stronger language in their agreements compared to smaller, lesser-known entities. However, this language should be standard for all auction houses to best protect themselves from issues regarding attribution and provenance.

128. See Gary D. Sesser & Judith Wallace, *What They Never Told You About Consigning Your Art*, SPENCER'S ART L.J., Summer 2014, at 2, 2–3.

129. Video Interview with Carlotta Ramirez, *supra* note 116.

130. See, e.g., MUSEUM OF MOD. ART., SAMPLE TEMPLATE: PURCHASE AND NON-EXCLUSIVE LICENSE AGREEMENT 2, https://static1.squarespace.com/static/5835fd7c15d5db57b19535bd/t/5c00353803ce649ee671e31b/1543517496372/_Purchase+and+NEL+Agreement+Template+2018.pdf (last visited Mar. 7, 2026). [https://perma.cc/8KTR-J7N7].

131. See Martha Lufkin, *Rule of Law: Legal Tips for Art Lovers*, ART NEWSPAPER (Dec. 9, 2018), <https://www.theartnewspaper.com/2018/12/09/rule-of-law-legal-tips-for-art-lovers> [https://perma.cc/TS44-5UU3].

132. Rutledge, *supra* note 100.

133. Recall that cocreators of works have the rights to the work split between them. See *supra* text accompanying note 38.

Co-creator status may also be helpful for commissioned works, as it provides the commissioner with rights they would not otherwise have.¹³⁴ However, this may prove hard to bargain for, as artists may have strong reservations about approving such a clause. Ultimately, it will be up to the bargaining power of the parties, and factors such as whether the commissioner *really* wants a particular artist to create a work will affect the outcome.

5. *Requests Made of the Artist.* Purchasers may also consider including a clause requiring the artist to provide installation or repair details, and may even include clauses directly requiring the artist to waive their rights under the VARA.¹³⁵ A waiver should include explicit identification of the work in question, the uses of the artwork the waiver applies to, and that the “installation of the work may subject the work to destruction, distortion, mutilation, or other modification, by reason of its removal.”¹³⁶ While waivers may not be popular for the artist as part of negotiations, many big names would not be where they are today without taking unfavorable deals at the beginning of their careers.¹³⁷ Purchasers have more power compared to small artists and can simply find a different artist who is willing to sign the waiver.¹³⁸

134. See 17 U.S.C. §§ 101, 201(a).

135. Cf., e.g., UNION COLL., *supra* note 118 (providing an example of a purchase contract including an installation details clause); ASS'N OF PRO. ART ADVISORS, SAMPLE FABRICATION AGREEMENT para. 4.3, <https://www.artadvisors.org/sample-art-advisor-agreement> [<https://perma.cc/FTB9-3R5G>] (last visited Jan. 26, 2025) (providing an example of a contract including a moral rights waiver clause).

136. The waiver and rights of the artist will both survive sale of a property for an installation piece. Additionally, only one artist for a collaborative work needs to waive their rights for the rights of all the collaborating parties to be waived. See THOMAS D. KEARNS & CAROLYN SHA, WHEN ART MEETS BUILDING: A PRIMER ON THE VISUAL ARTISTS RIGHTS ACT 1 (2014), <https://www.olshanlaw.com/printpilot-flex-text-when-art-meets-building.pdf?1775262079> [<https://perma.cc/U4VV-FHG8>].

137. Telephone Interview with Sergio Muñoz Sarmiento, *supra* note 52.

138. *Id.*

Contracts for purchasing artwork are not the only ones in which these clauses may be beneficial. They may also come in handy when a work is being loaned out or when commissioning a work. While commissioned works do not fall under the VARA umbrella as “work[s] made for hire,” general moral rights waivers will also protect against state-specific moral rights laws, which may include commissioned works.¹³⁹ Guidance within the museum community recommends executing agreements with commissioned artists to clearly identify each party’s responsibilities and to establish a budget and timeline, guidance that would have served MASS MoCA well.¹⁴⁰

Smart contracting can make or break the relationship between the buyer and seller of a piece of artwork. The above suggestions are by no means exclusive and merely provide a starting point for purchasers of artwork. For example, museums may want to require as a condition of sale that sellers provide evidence and warrant that a piece has not been altered without the artist’s consent, particularly in situations where the artist has a history of disavowing works.¹⁴¹ This suggestion relies on both contracting and documentation, another mitigation technique that museums and other owners of artworks can employ against invocation of the VARA.

B. Documentation: The Legal Version of CYA

Carefully documenting interactions with a work’s artist may also help avoid future issues with ownership and authorship of the work. Documentation may help discredit an artist’s claim of prejudicial modifications if there are communications indicating assent to the changes, as occurred in the *Log Cabin Façade* case, or acknowledgment that any damage is acceptable.¹⁴² Documentation may also protect property owners by showing they provided adequate notice to an artist before removing the work from public display.¹⁴³

139. See 17 U.S.C. § 101. *Cf.*, e.g., SAMPLE FABRICATION AGREEMENT, *supra* note 135, at para. 4.3 & n.1 (providing for the inclusion of state-specific language).

140. Christine Steiner & Amanda Rottermund, Presentation on the VARA Update: Artist Disavowal at the American Law Institute, Legal Issues in Museum administration 110 (Mar. 29–31, 2017) (on file with the Houston Law Review); see *Mass. Museum of Contemp. Art Found. v. Büchel*, 565 F. Supp. 2d 245, 246–47 (D. Mass. 2008), *aff’d in part, rev’d in part*, 593 F.3d 38 (2010) (“MASS MoCA, at its own expense, acquired and installed nearly all the components of the mammoth exhibition, attempting to follow the largely-absent artist’s general instructions.”).

141. See Steiner & Rottermund, *supra* note 140.

142. See *Noland v. Janssen*, No. 17-CV-5452 (JPO), 2020 WL 2836464, at *1, *6 (S.D.N.Y. June 1, 2020).

143. See KEARNS & SHA, *supra* note 136, at 2.

Documentation may come in a variety of forms, from saved emails to physical letters to voice recordings. The kind of documentation available, and what information is important to document, will be wholly situation-dependent.¹⁴⁴ A museum or gallery dealing with a piece will likely have more resources available to ensure proper documentation of all interactions and more incentive to do so, while an individual may not have the same capacity or foresight.

The simplest type of documentation will likely come in the form of written correspondence with the artist, either by physical mail or by email. While the gold standard for written correspondence is certified mail, for the purpose at hand here, as long as copies are saved of every communication, it does not matter how they are sent back and forth.¹⁴⁵ This type of documentation will ensure any agreements made with the artist can be backed up should any issues arise, and it is generally a good idea even without concerns that the VARA may be implicated. Keeping a thorough paper trail to provide a complete account of what information is known and expressed by each party will be greatly beneficial in working out any issues that may arise, either as a result of the VARA, or otherwise.¹⁴⁶

Phone conversations may be harder to document, but there are options, including voice recording and simply taking notes during the conversation. When recording the conversation, the relevant state's privacy laws should be consulted, as nonconsensual recording of telephone calls may constitute wiretapping or be otherwise illegal.¹⁴⁷

144. Documentation is "the act or an instance of furnishing or authenticating with documents," and in context, means keeping a record of interactions and activities relating to a specific piece of work for future reference. See *Documentation*, MERRIAM-WEBSTER, <https://www.merriam-webster.com/dictionary/documentation> [https://perma.cc/4AYT-8QWN] (last visited Mar. 9, 2025).

145. See, e.g., *USPS Certified Mail Guide: Basics, Benefits, Use Cases*, FSSI, <https://www.fssi-ca.com/is-your-company-getting-the-most-out-of-certified-mail/> [https://perma.cc/P4DG-452X] (last visited Dec. 30, 2025).

146. See Beverly M. Tompkins, Judah Lifschitz & Laura C. Fraher, *Ten Steps to Keep Your Clients Out of Court*, ACC: CORP. COUNS. NOW (May 1, 2018), <https://corporatecounselnow.com/ten-steps-keep-your-clients-out-court> [https://perma.cc/GSW4-79MH] (suggesting that counsel "ensure that contracts or other documents governing the transaction or project are as clear as possible" and, if a dispute arises, "locate and collect relevant documentation and any information concerning verbal communications about the issue").

147. Very basically, one-party consent states such as Texas only require one party to consent to the call being recorded, including the one doing the recording. Two-party consent states, on the other hand, like Pennsylvania, require all parties to the conversation to consent. The law is a little muddled when calls are between one- and two-party consent states, so it is wise to always ask for permission to record unless you are sure of the law and have a genuine reason not to. See Luke Daugherty, *Phone Call Recording Laws: What You Need to Know*, REV (Nov. 1, 2025), <https://www.rev.com/blog/phone-call-recording-laws-state> [https://perma.cc/UHU2-2PH7].

Despite the risks, a voice recording may better indicate the artist's true feelings, including by showing any hesitation or confidence in the artist's voice, and would better indicate the buyer's feelings as well. The same considerations come into play should correspondence with the artist be in person. Again, the conversation could be recorded, or notes could be taken.

There are a few key areas where documentation will be most helpful, namely for conservation or condition reports and for communication with the artist. Conservation or condition reports will note any areas of damage a piece may have sustained and any prior attempts at restoration.¹⁴⁸ These types of reports are not done regularly and mostly occur when a piece of work is being considered for purchase, before an auction, or when a piece is being appraised.¹⁴⁹ These are also the times it is most likely an artist may invoke the VARA on account of "distortion, mutilation, or other modification" having occurred.¹⁵⁰ A log of each report and accompanying images may help the owner argue that any changes to the piece fall under one of the Act's exceptions, including modification due to the passage of time, "the inherent nature of the materials," or conservation efforts that did not constitute gross negligence.¹⁵¹

The other key area in which documentation will be beneficial is in proving that an owner provided adequate notice to the artist before removing a work. The VARA requires owners to provide artists with ninety days' notice at their last known address to allow artists a chance to remove the piece on their own.¹⁵² This provides the owner with a legal way around the Act protecting against the destruction or intentional mutilation of a work.¹⁵³ The 5Pointz owner, for example, could have avoided a whole lot of trouble if he had provided notice to the artists, allowing them to salvage what they could, but his hostile actions meant all of the works were destroyed and the damages were increased due to his intent.¹⁵⁴

148. See *What Is a Art Condition Report and How We Use It in Restoration?*, JOHN CANNING & CO. (Aug. 4, 2022), <https://johncanningco.com/blog/art-condition-report-what-it-is-how-to-use-it/> [<https://perma.cc/HL7D-GD4Y>].

149. See, e.g., *Marc Jancou Fine Art Ltd. v. Sotheby's, Inc.*, No. 650316/2012, 2012 WL 7964120, at *2 (N.Y. Sup. Ct. Nov. 13, 2012) (noting proximity between report date and execution of consignment agreement); *Condition Report*, SOTHEBY'S, <https://www.sothebys.com/en/buy-sell#glossary> [<https://perma.cc/D292-L4WA>] (last visited Feb. 15, 2026).

150. See, e.g., *Marc Jancou*, 2012 WL 7964120, at *4–5; 17 U.S.C. § 106A(a)(2).

151. 17 U.S.C. § 106A(c)(1)–(2).

152. Gilbert, *supra* note 2.

153. See 17 U.S.C. § 106A(a)(3).

154. See Rodgers & Esquenet, *supra* note 91.

Documentation is not a foolproof plan to protect against the negative economic impacts of the VARA. Artists can still invoke the VARA for changes to the work, but documentation may provide the owner with a stronger argument should the issue end up in court or arbitration.¹⁵⁵ Cady Noland provided permission to *Log Cabin Façade*'s owners to stain the piece, and such documentation would likely ensure the owner's victory if this had been the issue in court.¹⁵⁶ The documentation the owners did have was ultimately not helpful to the case and was not the saving grace during litigation.¹⁵⁷ Documentation is simply not a stand-alone solution, and owners and purchasers of artworks, whether they be a gallery, museum, or individual, should employ other mitigating techniques in conjunction.

C. Fine Arts Insurance

Another way subsequent owners may protect themselves from the economic harm of an artist's disavowal under the VARA is by buying insurance. An artist removing their name from a work may be considered a title defect, and title insurance may provide the most relevant coverage.¹⁵⁸

Many museums already have insurance policies to protect themselves if anything happens to a piece of art, and insurance is not just limited to things like burst pipes or damage by patrons.¹⁵⁹ Museum insurance can also cover pieces in storage, on loan, and

155. See 17 U.S.C. § 106(a)(2), (e).

156. *Noland v. Janssen*, No. 17-CV-5452, 2020 WL 2836464, at *1 (S.D.N.Y. June 1, 2020); see *supra* text accompanying notes 73–74.

157. *Janssen*, 2020 WL 2836464, at *6.

158. Title insurance protects against financial losses stemming from defects in title to a property. Examples of defects include fraud, liens, document errors, and most relevant to VARA, missing owners. Title insurance is most prominently used for houses, but it can also apply to other forms of personal property, including art works. See Adam Hayes, *Title Insurance Explained: Protect Your Property and How to Buy It*, INVESTOPEDIA (Oct. 18, 2025), https://www.investopedia.com/terms/t/title_insurance.asp [<https://perma.cc/DAX8-V2FF>]; *What Is Title Insurance and Why Do I Need It?*, FIRST AM. FIN. CORP (May 17, 2024), <https://www.firstam.com/home-buying-guide/what-is-title-insurance-and-why-do-i-need-it/> [<https://perma.cc/Q98T-MEEL>]; Telephone Interview with Adrienne Reid, Senior Vice President, Huntington T. Block Ins. Agency, Inc. (Mar. 7, 2025).

159. Video Interview with Carlotta Ramirez, *supra* note 116. See, e.g., *Cultural Organizations & Museum Insurance Coverage*, THE HARTFORD, <https://www.thehartford.com/business-insurance/museum-insurance-coverage> [<https://perma.cc/W7YY-TSFQ>] (last visited Jan. 11, 2026); *Inland Marine Insurance for Fine Arts and Museums*, TRAVELERS, <https://www.travelers.com/business-insurance/inland-marine/fine-art> [<https://perma.cc/4SMC-YP2J>] (last visited Jan. 4, 2026).

in transit, and may even provide protection should the museum be sued for acts such as libel, slander, or misrepresentation.¹⁶⁰

Museum insurance policies typically only cover physical loss, not title issues, but some insurance companies offer small and restricted title coverage.¹⁶¹ This restrictive title coverage is typically an additional coverage option, providing that the insurer will pay legal costs relating to claims made against the museum arising from the title defect.¹⁶² This type of additional coverage is generally limited monetarily, and may be a one-time use plan.¹⁶³ Relevant coverage will also vary by institution size, and is more nuanced than car or homeowners insurance, so museums pursuing title insurance may benefit from seeking an insurance company that regularly deals with a wide variety of museum types and sizes.¹⁶⁴

While museum insurance is great for museums and is a good point of reference for galleries, individuals may instead benefit from personal property coverage plans. This type of coverage is typically included as part of a home or renters insurance policy, or it may be employed separately.¹⁶⁵ For the kinds of artworks covered under the VARA, those of “recognized stature,” individuals will likely need to obtain additional coverage.¹⁶⁶ Many insurance companies offer fine art insurance as part of valuable personal property insurance plans.¹⁶⁷ These plans may cover the

160. See, e.g., *Inland Marine Insurance for Fine Arts and Museums*, *supra* note 159; *Cultural Organizations & Museum Insurance Coverage*, *supra* note 159.

161. Telephone Interview with Adrienne Reid, *supra* note 158.

162. *Id.*; see, e.g., Fine Arts Ins. Pol’y, Huntington T. Block Ins. Agency, Inc. (on file with author).

163. For example, Huntington Block’s standard museum insurance form provides an option of coverage for defective title with the following limitation: “Insurers’ maximum liability under this section is subject to the limit of \$100,000 any one loss and in the annual aggregate.” Fine Arts Ins. Pol’y, *supra* note 162 (basic fine arts insurance policy offered by Huntington T. Block).

164. Telephone Interview with Adrienne Reid, *supra* note 158. For a more significant title coverage plan, museums may need to find an insurer who provides art title coverage on a case-by-case basis, such as Lloyd’s of London. *Id.* See generally LLOYD’S, <https://www.lloyds.com/> [<https://perma.cc/R8RB-7UP9>] (last visited Mar. 9, 2025) (“Lloyd’s is the world’s leading insurance and reinsurance marketplace . . .”).

165. See e.g., *What Is Personal Property Insurance?*, PROGRESSIVE, <https://www.progressive.com/answers/personal-property-coverage/> [<https://perma.cc/45GC-E4VX>] (last visited Dec. 30, 2025); *What Is Personal Property Coverage?*, ALLSTATE (Mar. 2026), <https://www.allstate.com/resources/what-is-personal-property-coverage> [<https://perma.cc/2HB7-4Y36>].

166. 17 U.S.C. § 106A(a)(3)(B). Policies have coverage limits, and such works are likely to exceed these limits in their value, therefore requiring additional coverage. See ALLSTATE, *supra* note 165.

167. See, e.g., *Art Insurance*, USAA, <https://www.usaa.com/insurance/property/personal/art/> [<https://perma.cc/YUS4-LF3Q>] (last visited Dec. 27, 2025); *Fine Art Insurance*, HTB, <https://www.huntingtontblock.com/Coverages/Fine-Art-Insurance> [<https://perma.cc/94AF-MTQL>] (last visited Dec. 27, 2025).

decrease in a work's value, but coverage will vary by plan and insurance company.¹⁶⁸ Artwork owners may have the best luck using insurers who specialize in fine art and who will be the best versed in providing the most relevant coverage for a piece.

The downside of this protection method is that insurance policies covering the VARA disavowals may be hard to come by. In 2010, only one firm, ARIS, specialized in art title insurance.¹⁶⁹ ARIS aimed to make title insurance a standard part of major art sales, but some in the art world questioned the need for title insurance, as most reputable dealers and auction houses provide protection for buyers through purchase agreements.¹⁷⁰ ARIS aimed to get ahead of the transaction by researching public records for liens and stolen art databases, looking for gaps in provenance and other ownership issues, and giving potential purchasers a better idea of the risks associated with their purchase.¹⁷¹ Buyers paid a one-time premium, with the rate dependent on the severity of the risk determined by ARIS.¹⁷² ARIS ultimately failed, as the underwriting process it used was so intense that if it offered a quote, that effectively meant it did not find any major title concerns, thus reassuring potential buyers that title insurance was not needed.¹⁷³

While an insurance company focusing entirely on art title coverage did not work out, there are still insurance companies that provide such coverage on a limited basis.¹⁷⁴ Insurance coverage is ultimately about what someone is willing to pay for the risk, so someone with particular concerns and enough money can certainly obtain an insurance policy to meet their needs.¹⁷⁵ Individuals or

168. *Art Insurance*, *supra* note 167; *Fine Art Insurance*, *supra* note 167.

169. The small insurance firm ARIS started selling art title insurance in 2006, and insures entities such as dealers, galleries, museums, and private collectors. See Kate Taylor, *Title Insurance Concept Spreads into Art Sales*, N.Y. TIMES (Nov. 10, 2010), <https://www.nytimes.com/2010/11/11/arts/design/11title.html> [<https://perma.cc/7QL3-GUJ5>]; Jill A. Ellman, *Spotlight: ARIS Title Insurance Corporation*, CTR. FOR ART L. (Oct. 28, 2014), <https://itsartlaw.org/2014/10/28/spotlight-aris-title-insurance-corporation/> [<https://perma.cc/BP9B-S9MY>].

170. Dealers tend to guarantee clear title in the contract, and auction houses warrant clear title within their agreements. Taylor, *supra* note 169.

171. *Id.*; Telephone Interview with Adrienne Reid, *supra* note 158.

172. Rates started at one percent of the artwork's price and went up to five or six percent of the price for works with World War II-era gaps in provenance. Taylor, *supra* note 169.

173. Telephone Interview with Adrienne Reid, *supra* note 158. See *Argo ARIS*, ARGO GRP., <https://www.argolimited.com/aris/> [<https://perma.cc/9SG6-H6PD>] (last visited Dec. 30, 2025) (website noting "Argo Group is no longer underwriting business through ARIS").

174. See *supra* notes 163–64 and accompanying text.

175. Telephone Interview with Adrienne Reid, *supra* note 158.; Video Interview with Carlotta Ramirez, *supra* note 116.

galleries with larger collections may desire more robust insurance policies, but policies will look different depending on the focus of the collection.¹⁷⁶ Due to its limited reach, insurance is not the strongest mitigation technique and will not be reasonable for many private buyers. As such, insurance may best be used as a supplemental option for those with more pressing title concerns or by entities such as museums or galleries that may deal with title issues on occasion.¹⁷⁷

D. *Balancing the Options*

Smart contracting is arguably the most important mitigation technique discussed, as it provides the most opportunity to customize protection against VARA claims.¹⁷⁸ Contracting is also one of the earliest opportunities to establish protection for each party and may set up a contractual relationship for success or failure. Any kind of entity can engage in smart contracting, from auction houses like Sotheby's in the *Cowboys Milking* case, to museums and individual owners.¹⁷⁹

Documentation is a great supplement to strategies like smart contracting but will not provide significant protection on its own. This type of protection may come into play even earlier than the contracting phase, such as when a museum produces a curatorial or conservation report before deciding to purchase a work.¹⁸⁰ Documentation requires additional effort throughout the ownership of a piece, or at least throughout the artist's life.¹⁸¹ The ongoing effort required by this method may mean owners will not keep up with it, and a method is only effective if owners will actually practice it.

176. For example, for collections with works by deceased artists, owners do not need to worry about title insurance protecting against VARA claims. Such collections may still benefit from title insurance, however, particularly if there are known gaps in provenance stemming from World War II or from improper importation. 17 U.S.C. § 106A(d)(1) (noting rights under VARA last for the life of the artist); see Taylor, *supra* note 169.

177. See *supra* note 170 and accompanying text. In the context of VARA, title concerns would be most relevant in the case of purchasing a work by an artist with a history of invoking the Act. Having insurance is not a replacement for practicing due diligence in provenance and title history research, but doing such research may help decrease the amount of coverage that is appropriate. See, e.g., Taylor, *supra* note 169.

178. See *supra* Sections IV.A.2–5. (discussing various ways contracts can provide protection, such as through buy-back clauses, title assurances, and requiring VARA waivers).

179. See *supra* text accompanying notes 117–18, 125–26, 129 (providing examples of entities that may benefit from smart contracting).

180. See *supra* text accompanying notes 148–49.

181. VARA rights last for the life of the artist, so documentation past this point will no longer be of benefit for VARA claims. See *supra* note 47 and accompanying text. Documentation may still be beneficial for other reasons though, such as for insurance purposes. See Taylor, *supra* note 169; *supra* note 170 and accompanying text (stating dealers and auction houses often include guarantees of clear title and other purchaser protections in their agreements).

Fine arts insurance proves beneficial in a different stage of ownership, namely after purchasing or contracting has occurred, and ownership is relatively settled. This is somewhat of a final effort for protection after the time for contracting with the artist or previous owner has passed. Insurance policies protecting against art title defects are limited in availability and are likely one-and-done coverage, making insurance a less practical option for individuals compared to entities like museums.¹⁸² Insurance has its place, but ultimately cannot be relied on alone for title-related issues.

V. CONCLUSION

While the VARA provides important and welcome protection for visual artists, the costs for purchasers should be balanced. An artist's disavowal of a work, though rare, may cause the value of a piece to effectively vanish overnight, and subsequent owners of works must be able to protect themselves from this possibility.¹⁸³ Owners of works, or properties housing works, can protect themselves by not only having an awareness of the Act, but also by taking steps to prevent or mitigate the economic harm associated with a VARA claim.¹⁸⁴

One of the best ways to protect against economic harm from artists invoking their rights of attribution and integrity under the VARA is to contract smart: purchasers should advocate for clauses requiring the seller to buy back a disavowed piece, require installation and repair guides from the artist, and above all else, explicit VARA waivers may be implemented when purchasing directly from the artist.¹⁸⁵ Documenting interactions with artists regarding a piece, compiling conservation reports, providing notice, and obtaining fine art insurance or title insurance are other ways owners and purchasers may protect themselves.¹⁸⁶

Kelly A. Willis

182. See *supra* notes 161–63, 174, 177 and accompanying text.

183. See *supra* notes 54, 65.

184. For example, the 5Pointz owner could have avoided the \$6.7 million verdict had he acted in accordance with the Act instead of choosing to ignore it. See *Ly*, *supra* note 88; *Kinsella*, *supra* note 89; *supra* text accompanying notes 91–94.

185. See *supra* Section IV.A.

186. See *supra* Sections IV.B–C.