

# Heritage protection for street art?

Susan Hansen,  
Middlesex University  
London

## The case of Banksy's Spybooth

In April 2014, two works by Banksy – **Mobile Lovers** and **Spybooth** – appeared overnight, 40 miles apart, in the Southwest of England. They each set a precedent for the preservation, safeguarding and ownership of street art. However, while **Mobile Lovers** achieved this by subverting legal strictures in favour of a socio-moral course of action (see Hansen, 2018) the disruption effected by **Spybooth** lay in its appropriation and co-option of existing heritage frameworks. Through their site-specific placement, these pieces subverted the recent trend for the removal of street art for private auction without the consent of either the artist or the community in which the work is located. This controversial trend has sparked debates reminiscent of the illegal trade of antiquities (Merrill, 2014). The tension at the basis of this lawful yet morally problematic practice is grounded in the legal recognition of the rights of property owners to the tangible works on their walls over the moral rights of street artists to control the first distribution of their work; the rights of communities to assert ownership over works they regard as public art intended for their enjoyment, and the until now unrealized potential for the recognition of the value of such works to their communities of origin through heritage protection. This research note explores the case of **Spybooth**, and in particular, the precedent this work set for the protection of street art *in situ*, and the community debate this generated.<sup>3</sup>

Banksy's *Spybooth* (see Figure 1) was located on the exterior wall of a Grade II listed property in Cheltenham.<sup>1</sup> It represents the first case (in the United Kingdom) of a work of street art being extended heritage protection to prevent its removal for private profit and sale on the art market, and to enable the maintenance of the work *in situ* for the benefit of the community to whom it had been 'gifted'. Although it was granted heritage protection, *Spybooth* survived *in situ* for a period of just 28 months (14 April 2014 –

20 August 2016). The intervening period witnessed a series of attempts, by various parties, to either remove and profit from, protect and preserve *in situ*, or vandalise and destroy, the work.

In response to the efforts of the property owner to remove *Spybooth* from the external wall of his house for private sale, the local community lobbied for it to be retained as a community asset, and even engaged in DIY conservation efforts, and overnight

vigils, after the work was vandalised. In June 2014, the local council initially intervened in this dispute by issuing a temporary stop notice that effectively prevented the work's imminent removal by a private company (under the instructions of the owner) and in September of that year announced an application to include *Spybooth* in the existing Grade II heritage listing of the property, which would indefinitely prohibit the work's removal. This novel application was granted in February 2015 (BBC, 2015a).



Figure 1: Banksy: *Spybooth*. April 2014. Photograph ©Butterfly Art News.

Although street art and graffiti is yet to be awarded listed protection in its own right in the United Kingdom, there are some existing cases of historical graffiti being extended heritage status. English Heritage (who more often advise on the removal of unwanted graffiti from heritage sites) notes that "finely carved" graffiti at Carlisle Castle (dating from 1480) receives heritage protection as it is considered to be an integral part of this historical site of significance. There are also some instances of older murals being included in heritage listings, but these are protected as they form part of the original design of these buildings (BBC, 2015b; English Heritage, 1999). Internationally, however, there are some successful examples of works of street art receiving protection as cultural heritage in their own right. Merrill (2014) notes that these include murals by Keith Haring and Mike Brown, which are listed as heritage in Australia (Smith, 2016). In Germany, authorities recently debated the application of protective measures to a series of works by Blek le Rat and granted heritage protection to murals by Klaus Paier (Schilling, 2012). It should be noted, however, that these works were all well established and had survived *in situ* for over 20 years prior to them being listed as heritage. Banksy's *Spybooth* represents the first case, internationally, of heritage protection being almost immediately extended to a *new* work of street art. Prior to this case, this strategy – of the immediate extension of heritage protection to new works of street art – had been argued for (but not accomplished in practice) by scholars who asserted that works of merit should be listed as heritage due to the artistic and social value of such pieces to the communities within which they are located (e.g., Edwards, 2009; Webster, 2012).

The ultimate fate of *Spybooth* currently remains uncertain. On the 20<sup>th</sup> of August 2016 reports on social media suggested that it had been destroyed, although the owner claimed that this was an accidental

consequence of necessary renovations conducted on the external wall of the building (BBC, 2016a). However, some media commentators speculated as to whether *Spybooth* had in fact been secretly removed for sale on the art market, and indeed in March 2017, fragments of the work surfaced on social media, and were offered for private sale (The Guardian, 2017). Notwithstanding these divergent claims about the work's disappearance or destruction, and the widespread community condemnation of the property owner for permitting the work's demise, after reviewing the case, the council ruled that "any feasible action against the owner in relation to the Banksy would not be proportionate nor in the public interest." (BBC, 2016a).

The relatively brief lifespan of *Spybooth* would be entirely unremarkable had it not been extended a heritage listing which should have protected it from destruction or removal. The typical 'lifespan' of a work of street art is ordinarily far more fleeting than art or artifacts located in gallery or museum space. Indeed, street art and graffiti, by their very placement in outdoor public sites open to the elements, are ever vulnerable to degradation and decay, and to being painted over (or buffed) by local authorities or property owners, or reworked by other artists or writers. Some street artists (e.g., Swoon) work with the processes of degradation and decay to produce temporal works that disintegrate and meld into the urban landscape over time. Others (e.g., Mobstr) engage in practices of participatory authorship, by encouraging agents of the local council and members of the general public to materially interact with their work, thus constantly altering the original piece. Indeed, Young asserts that, "street art's ephemerality is one of its defining features... [and thus] viewing and documenting street art takes on an urgency because spectators are aware that it might disappear." (Young, 2016: 190).

During its transient physical existence, *Spybooth* was the subject of considerable media and social media commentary. This 'community conversation' about whether a new work of street art could – or should – be regarded as a heritage object is important to examine, as shifts in community attitudes and socio-moral norms are part of the conditions of possibility for the emergence of new heritage objects. This debate contains a number of divergent standpoints with regard to the work's controversial receipt of heritage protection. Within this public discourse, the affective states invoked in either defending or dismissing *Spybooth* as a potential heritage object as such are heightened and conflicting. *Spybooth* was described both as a source of civic pride, and, via the discourse of vandalism, as a source of civic shame.

### Pro-heritage standpoints

Two closely related standpoints were used to argue for the protection of the work. The first was primarily grounded in the discourse of community and nationhood. This pro-heritage position represents street art as a "community asset" that warrants protection and preservation *in situ*.<sup>2</sup> Media depictions of the case employed rhetoric that described it more broadly as a "national treasure" that should be preserved for the benefit of the entire nation (The Mirror, 2014a):

Local residents and business groups... say the removal of the artwork would be a "huge loss"... "It has been a great asset, a lot of people have been coming to the town to see it. We want to keep it in the town." (Daily Mail, 2014a)

[We need] to ensure the long-term survival of this special and very important piece of art." (Evening Standard, 2014)

Categorising *Spybooth* as worthy of heritage listing also effectively repositioned the property owner as the steward of the work, with a consequent duty to safeguard it for the benefit of the community. A second, interrelated position also supported heritage protection, but this tended to be constructed as a defensive measure, against acquisitive removal for private sale, and secondarily against destruction, vandalism or degradation. Local politicians warned of the penalties for disregarding any such measures:

If they breach that they're in trouble. It's... a serious breach of listed building consent. It's a criminal offence (Councillor Colin Hay, Cheltenham Borough Council).

Indeed, according to English Heritage, the maximum penalty for carrying out work to a listed building without listed building consent is two years imprisonment or an unlimited fine (BBC, 2014a).

### Anti-heritage standpoints

Standpoints against the heritage protection of the work include a position grounded in the categorisation of the work as vandalism (akin to graffiti) which, as such, should be removed or destroyed. This anti-heritage position was evident in the rhetoric of some sections of the community, and in the discourse of some members of the local council. It represented *Spybooth* as an "eyesore" that detracted from the value of the property and the community:

It's an outrage for anyone to be permitted to graffiti the home of another person without the owner's permission and then have the local authority prevent removal of the graffiti under pain of prosecution. In a more rational place and time Banksy would be in prison (Daily Mail, 2016).

Why are the council not prosecuting Banksy for vandalism as that is all this it really (Daily Mail, 2016).

A second position against the heritage protection of the work was grounded in an appeal to the rights of property owners. Heritage protection was positioned as an action that would constrain property owners from the profit they were entitled to, and as curtailing their freedom to renovate their properties (Rushmore, 2014):

By having a Banksy on your wall you run the real risk of having a grade 2 listing put on your building which affects your resale value. These building owners don't want the pieces on their walls. They don't want the issues surrounding the pieces (Statement from the Sincura Group. The Mirror, 2014b).

I pity the householder. He hardly deserves such an intrusion (Daily Mail, 2016).

The council's decision has been criticised for being 'short-sighted' by Robin Barton of the Bankrobber gallery... who tried to assist the owner of the house to sell the work: "It will very likely result in the terminal decay of the wall. There is nothing to protect the wall now. Now that it's listed no-one can apply any protection to it. It's absolutely vulnerable to the elements" (BBC, 2015b).

The owner of the house argued for the application to be rejected: "The Banksy was created without permission... it was not just unauthorised, it involved the commission of a criminal offence" (Evening Standard, 2015).

Notably, this discourse also often referred to conservation and preservation of the work as an aim, and employed the rhetoric of "saving art for the nation", but this was achieved via proposals for the removal of *Spybooth* for protection/conservation under private ownership, rather than via government

protection of the work *in situ*. Indeed, this rhetoric was often deployed as a counter to the pro-heritage standpoint that also positioned *Spybooth* as a "national treasure":

We are preserving Banksy's legacy... removing the artwork would protect it and stop it being vandalised. (Statement from the Q Company who attempted to remove the work under the owner's instructions in June 2014. BBC, 2014b).

Builder Martin Burnett, 48, said he was "furious" the Banksy had not been removed from the building. "It should have been taken off the wall and put in a museum for everyone to view it there," he said. "It should have been taken away instead of being left here for this idiot to come and do this [vandalism]." (Daily Mail, 2014b)

A final standpoint against the heritage protection of the work seems paradoxically to have more in common with the pro-heritage positions in that it appears to also position *Spybooth* as art of intrinsic value to the community. However, this anti-heritage position highlights the importance of the ephemerality or natural life of street art, and resists heritage protection and conservation as antithetical to this form of expression:

There is a certain fly by night aspect to Banksy's work, the medium of graffiti, its slightly subversive and transitory nature, no matter how well crafted. Not for others to cash in. So I'm all for it to be graffitied over or erased, destroyed itself as a subversive act. The message is made, the photographs taken. Removing it for profit, undermines it for me, transforms it into a consumable artifact to be traded (The Guardian, 2014).

Environmental art isn't supposed to last forever. (Daily Mail, 2016)

This stance is also evident in the material interventions made to the site – which were deemed 'vandalism' by the local press (see Figure 2, below) and which could, following Rancière (2004) be regarded as instances of aesthetic protest.

By examining community discourse alongside scholarly debate – without privileging either – we can more democratically apprehend the emergence of new heritage objects. Indeed, these very debates about what should count as cultural heritage are arguably part of the conditions of possibility for the appearance of previously unthinkable objects of

heritage. Indeed, the final anti-heritage standpoint discussed above – which prioritises the ephemerality or natural life of street art – echoes a position recently taken by some scholars of public art and critical heritage studies. For instance, Smith (2016: 377) asks whether, "a community [should] have a right to artificially preserve public art against not only a property owner's wishes, but also against the artist's intent when s/he created the work?" Here, Smith characterizes the artist's intent in producing a work designed to have only a temporary life as being oppositional to the wishes of a community in wanting to "artificially preserve" their work, rather than let it "naturally" degrade, or be painted over, as per the artist's wishes – or to be removed, as per the property owner's wishes. Smith thus positions preservation as an artificial and unwanted imposition that is contrary to both the artist's intentions and the homeowner's wishes. Merrill (2014) has previously offered a similar line of argument to Smith. However, his emphasis was not on the assumed intentions of individual artists, nor the wishes of property owners, but was rather on the living traditions of street art and graffiti 'as a subculture that places a high value on the ephemerality

of its material traces.' He asserted that, if considered as such, any resultant works should perhaps not be protected or preserved, as this may undermine the defining ephemeral and site-specific authenticity of this 'living' form of cultural heritage (Merrill, 2014: 17).



Figure 2. Banksy, *Spybooth*. August 2014. Photograph © Gloucestershire Live.

The rhetoric and logic of these divergent standpoints is also underpinned by different areas of law. Mulcahy and Flessas (2018) note that the first relevant area of law relates to property, and that, by English law, the owners of buildings automatically become the owners of any additions or alterations to their property. Thus, when an uncommissioned work of street art 'appears' on the external walls of a privately owned building, even if this is street facing, and considered by the community to represent part of 'public space' (Young, 2014), the work is considered to be a 'contained artifact' that as such will be treated as the property of the landowner, who may thus legally remove and sell the work. The second relevant area of law is heritage-related. Standpoints drawing on heritage tend to emphasize the rights of the community over the rights of the property owner, and consider street art to "belong" to its local environment, and to thus warrant *in situ* protection (Hansen, 2016). Some scholars note that parallels have even been drawn between contemporary works of street art and ancient artifacts – as forms of heritage that should ideally remain in their original context in order for them to retain their cultural significance (Mulcahy and Flessas, 2018; Merrill, 2014).

As this research note has demonstrated, these conflicting standpoints are evident not just in critical scholarship and law, but also in ground-level community discourse and debate. This perhaps reflects an emergent socio-moral code that may provide the conditions of possibility for future, community-driven challenges to the status quo. Arguably, street art often defies existing aesthetic, legal, and heritage conventions, and indeed may provide the impetus for shifts in the socio-moral order, which may contribute to eventual legislative and policy

change (Mattless, 1994; McAuliffe, 2012). Thus, it may be fruitful to study both the socio-moral and the legal precedents set by particular works of street art, such as the novel, albeit ultimately unsuccessful, heritage protection extended to Banksy's *Spybooth*, as these may be instrumental in challenging, transgressing, or otherwise disrupting established conventional regulatory boundaries and other aspects of our commonsensical 'division of the sensible' (Rancière, 2004).

- 1 In England and Wales, listed buildings are classified into three grades: Grade I: buildings of exceptional interest; Grade II\*: particularly important buildings of more than special interest; Grade II: buildings of special interest, warranting every effort to preserve them (Historic England, 2018).
- 2 More recently, this socio-moral logic appeared informed a High Court judge's decision to order the owners of the wall featuring Banksy's *Art Buff* to return the artwork to the UK, after they cut it from the wall and shipped it to the US for auction.
- 3 For a more detailed discussion of these and other cases, and others, see MacDowall, Merrill and Hansen (forthcoming).

Susan Hansen is Head of the Visual and Creative Methods Group and Chair of the Forensic Psychology Research Group at Middlesex University, London. She is also the convenor of Art on the Streets, an annual symposium held at the ICA, London.

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