

Abstract

Conservators are increasingly concerned with the conservation of modern and contemporary artworks. These artworks pose particular practical and ethical problems; recent legislation may also affect the way conservators think about contemporary works of art. This paper discusses legislation in the United Kingdom and other countries which may have a bearing on the way conservators treat contemporary artworks. The paper is a preliminary exploration of the issues raised as a result of considering the options for the conservation of a textile artwork by Robert Rauschenberg.

Keywords

modern art, artists' moral rights, Rauschenberg

The impact of artists' moral rights legislation on conservation practice in the United Kingdom and beyond

Frances Lennard

Textile Conservation Centre
Winchester Campus
University of Southampton
Park Avenue
Winchester
Hampshire SO23 8DL, United Kingdom
Fax: +44 (0)23 8059 7101
Web site: www.textileconservationcentre.soton.ac.uk
Email: fjl@soton.ac.uk

Introduction

Modern and contemporary artworks present new challenges to conservators. The unstable or transitory nature of many new artworks means that traditional conservation or restoration methods may not be appropriate or desirable, while the range of materials used means that conservators of all specialisms may be called upon to treat such pieces. The conservator has a professional duty to take into account the artist's intent while carrying out the conservation treatment of a work of art; in one sense this becomes easier when the artist is still alive and dialogue is possible, but it undoubtedly raises complex issues of communication, interpretation and implementation (French 2004). Legislation has been passed in many countries giving the artist moral rights to his or her own work; this adds a legal obligation which may also influence the decision-making process. This paper represents the author's understanding and analysis of legislation which may have a bearing on the work of conservators; it has been gathered from personal communication and conservation publications in response to the issues raised by the conservation of an artwork by Robert Rauschenberg.

The 1886 Berne Convention for the Protection of Literary and Artistic Works established that the authors of works (including visual artworks) protected by copyright should also have moral rights over their works. These include the right of attribution, i.e. the right to claim authorship of the work, and the right of integrity, which allows the artist 'to object to any distortion, mutilation or other modification of, or other derogatory action in relation to, the said work, which would be prejudicial to his honour or reputation' (Garfinkle et al. 1997). The Convention has been incorporated into the law of individual countries which have signed up to it; this means that it is interpreted differently around the world in accordance with different traditions and approaches. In continental Europe, in France particularly, great importance has historically been placed on moral rights and modern legislation gives the artist fundamental rights of redress against anyone who presents the work in a way that was not intended or which he or she considers inappropriate. In other countries including the UK, and particularly in the USA, moral rights have not been recognized to the same extent historically, and the requirements of the Berne Convention have been interpreted fairly restrictively. In the UK the artist has to prove that the change to his or her work is actually damaging to his or her honour or reputation (Charles Russell).

Legislation in the USA

Garfinkle et al. (1997) have reported on the legal situation in the USA. The USA signed the Berne Convention through the Berne Convention Implementation Act in 1988, but was more concerned with the economic issues of copyright; moral rights were not adopted within this legislation because Congress argued that moral rights were sufficiently recognized within existing laws. However the Visual Artists Rights Act (VARA) of 1990 gives artists rights of attribution and of integrity. This law applies only to strictly defined works of visual art which are subject to copyright protection. This gives moral rights protection for works created after 1 June 1991 and lasts for the life of the artist. The right of integrity

gives artists the right 'to prevent intentional distortion, mutilation or other modification of their work that is pre-judicial to their honor and reputation; and to prevent any intentional or grossly negligent destruction of a work of recognized stature' (Garfinkle et al. 1997). Other state and federal laws may also be invoked by the artist. The artist Richard Serra took legal action against the United States government in 1986 when his sculpture *Tilted Arc* was threatened with destruction. He had been commissioned to create the curved steel wall in Federal Plaza, Manhattan, but a campaign to remove this site-specific work was eventually successful at law and the piece was dismantled in 1989. Serra invoked the newly incorporated Berne Convention but the US version did not give him sufficient protection to prevent the demolition; VARA would presumably have given him greater legal protection (Weyergraf-Serra and Buskirk 1991).

Legislation in the UK

In the UK the Berne Convention was ratified in 1928, and moral rights were first enshrined in law under the Copyright, Designs & Patents Act 1988, (Part I, Ch IV, ss.77–89). This gave artists specific legal protection: an artist has moral rights in respect of acts carried out since 1 August 1989. The rights are based on the idea of a just reward for labour, both moral and economic. They include the right to be identified as the author of the work, the right of integrity, i.e. the right to object to derogatory treatment of the work, and the right not to have a work falsely attributed to another person (Perry 2003). Moral rights cannot be assigned to anyone else and remain with the artist even when the work is sold. The rights are not extinguished on the death of the artist, but are passed on to his or her heirs. They remain as long as copyright exists, which can often be for more than a century (Charles Russell).

Impact on conservators

Conservators in all countries have an obligation to the owner of an object undergoing treatment; a conservator's contract with the client will establish a legal duty to take reasonable care not to cause any damage to the object. The legal framework giving moral rights to artists may have an additional impact upon conservators, particularly in the area of the artist's moral right of integrity in respect of the work. Infringements of this right would include altering the work, including adding to it or taking away from it, or distorting or mutilating the work; the degree of change which would lead to the threat of legal action clearly differs from country to country. This may, in theory, affect conservators treating a work of art, although, in the UK at least, an artist would have to prove that the work had been changed or damaged. This may be difficult to prove if the conservator was trying to preserve the work to the best of his or her ability. There is no case law yet in the UK but lawyers who specialize in this area feel that it is only a matter of time before these issues will be tested in the British courts (Perry 2003). Cases in the USA so far appear to relate to negligence leading to damage to an object, rather than the more subtle changes brought about by conservation (Garfinkle et al. 1997). Under UK law conservators can protect themselves from legal action by drawing the client's attention to the artist's rights; they can renounce personal responsibility in writing and so require the client to waive any rights. Conservators have questioned whether they need the artist's permission to treat a work of art; the answer is that the artist's permission is not needed. However, fears have been expressed that the conservation community has taken over artists' moral rights, provoking a potential reaction.

Garfinkle et al. (1997) list several safeguards which they recommend conservators implement when treating contemporary works in the USA. To avoid legal liability they recommend that conservators should always follow the Code of Ethics of the American Institute for Conservation of Historic and Artistic Works (AIC); they should always test for the likely effects of different treatment options on works of art; they should try to obtain as much relevant information about the construction of the piece from the artist as possible to aid the conservation process; they should always get the artist's permission to treat a work. These

recommendations demonstrate extreme caution and probably reflect the increased risks of litigation in the USA. However, it is obviously sensible to do everything possible to understand the artist's intent before treating a piece, and to be aware of the potential hazards. It is now fairly common practice in the UK and elsewhere for galleries to routinely interview the artist when acquiring a piece of work. Papers delivered at the Bilbao Congress of the International Institute for Conservation of Historic and Artistic Works in 2004, *Modern Art, New Museums* (Roy and Smith 2004) underline the importance of discussion between the artist and the conservator when making decisions about conservation intervention. A conservator who acts in accordance with the Code of Ethics of their professional organization is not automatically protected against legal action, but through adherence to professional standards (such as working to the highest standard according to current knowledge, being aware of the limits of their own skills and abilities, and fully documenting their work), will presumably already be working in such a way as to minimize the risks of legal action. The Rules of Practice of the United Kingdom Institute for Conservation of Historic and Artistic Works (UKIC) state that 'each member has an obligation to document work by recording all essential details of the conservation of an object using text and images as appropriate... No conservation should be undertaken without appropriate examination having first been carried out and without an evaluation of proposed treatments, of the condition of the cultural property and of its future role and use... Each member must not undertake any treatment on cultural property without first assessing and establishing the necessity and suitability for such intervention. He/she must also have clear aims and purpose for the conservation and restoration' (UKIC 1996).

Insurance law is a separate but related area and may also become relevant when dealing with modern and contemporary artworks where the object's lifespan is likely to be much shorter than that of traditional paintings and sculptures. In the UK works of art, like other objects, are generally insured under an All Risks policy. Only accidental damage is covered, not any damage which could have been foreseen, or was inevitable. 'Inherent vice' is an insurance term; it refers to the fact that iron will eventually rust, for example, or that silk will fade and deteriorate when exposed to light. As with life insurance it is known that an event will occur, it is only the timescale that is unknown. Damage caused in transit will not be covered if the artwork was inadequately packed and the damage could have been foreseen. 'Latent defect', another insurance term, means that an error of some sort has been made; for example, it could be interpreted to mean that an artist has used materials which deteriorate faster than others he or she could have chosen. Perry (2003) suggests that contemporary art pushes back the boundaries of materials and techniques whereas insurance law is rather rigid; he believes that the transient nature of some contemporary art and the unstable materials now sometimes used will undoubtedly lead to increasingly complex insurance claims and appeals to law.

The major impact of legislation for conservators seems to lie in what is in any case a fundamental principle guiding the work of conservators and which is already addressed by professional standards: namely how far should a conservation intervention change an object. This is something which can only be addressed on a case by case basis. Works which are inherently unstable or are temporary in nature pose additional problems. If an object was not intended by its maker to be permanent, can it be conserved without altering it? In many cases the artist intends the work to be ephemeral and a conservation intervention might therefore be considered inappropriate.

Case study: *Preview: Hoarfrost Edition*

Several modern textile artworks have been treated at the UK's Textile Conservation Centre (TCC) in recent years, including works by Matisse, Lurçat and Henry Moore. A modern artwork by Robert Rauschenberg, which was donated to the TCC in 2003, encapsulates these issues. *Preview: Hoarfrost Edition*, dated 1974, was given to the TCC's Reference Collection after being 'written off' by the insurers AXA Art Insurance when it was damaged in transit. It depicts

Kronos, the Greek God of Time, and is made in two sections: a horizontal panel of heavy satin-weave silk fabric and a vertical panel of fine semi-transparent silk fabric. The unstretched fabric was printed using a lithographic pressbed, a solvent transfer technique, and three brown paper bags were adhered to the reverse side of the sheer vertical panel. The piece measures approximately 2 m wide \times 1.75 m high. It now forms the focus of a research project investigating whether it is possible to stabilize it without changing its properties or compromising the artist's intent.

Rauschenberg printed 150 original 'Hoarfrosts' and from these produced a further series of 'Hoarfrost Editions', in collaboration with Gemini G.E.L. of Los Angeles. In total 32 of this particular Hoarfrost were produced. The Hoarfrost series is characterized by the materials and techniques used to construct the pieces, in which Rauschenberg explored the draping qualities of transparent and opaque fabrics. He is known for his use of different materials and techniques; in his artworks he combined textiles, wood, stone, steel and plastic and often added collage material including paper bags, cardboard and rope (The Smithsonian Institute 1977, Kotz 1990). Figure 1 depicts the piece lying flat, but it is designed to hang from the upper corners resulting in a very three-dimensional appearance; the drape of the fabric is central to its interpretation.

The way the piece is made and the materials it is made from have had an obvious effect on its condition. It was probably already deteriorating as a result of hanging on display and from exposure to light; it was then damaged by being packed into a box. It is difficult to pack it safely; it cannot be rolled because the paper bags are too stiff. The main panel is sound although it is soiled; the curved line of soiling along the top edge indicates the way the panel drapes when hanging. The sheer silk fabric is weak and damaged; the printing may have had a deleterious effect. It is creased where it was folded; this has led to splitting, particularly around the edges of the adhered paper bags (Figure 2).

There are several possible options for conservation treatment but all pose practical and ethical dilemmas. Artists have differing views on whether their works should be conserved or whether they should be subject to the processes of decay (Lennard and Dew 2004). Attempts have been made to contact Rauschenberg to gain his views but so far these have been unsuccessful, so it is only possible to speculate. The least interventive conservation option is to leave the piece as it is, allowing it to hang as the artist intended; however further damage would inevitably occur and the lower section would ultimately become detached. Another possibility is to make and display a replica of the piece; as it was originally made as part of a series this might be the most appropriate option.

The textile could conceivably be pressure-mounted. This would allow it to be



Figure 1: 'Preview: Hoarfrost Edition', 1974, by Robert Rauschenberg. Textile Conservation Centre



Figure 2: Detail of damage: splitting around paper bag. Textile Conservation Centre

displayed and would keep it safe from further damage but would change its nature completely, removing any textile qualities of drape and three-dimensionality; it seems unlikely that the artist would approve this option. Probably the only way to make the piece strong enough to hang safely is to support the sheer silk onto a new semi-transparent fabric, such as silk crepe, using an adhesive technique as the silk is probably too brittle to stitch. However access to the reverse of the silk is very difficult because the damage occurs close to the edges of the paper bags. Suitably coloured crepe could potentially be adhered to the front surface although this would dull the image and the sheen of the fabrics slightly. Adding another layer of fabric, particularly an adhesive-coated fabric, would inevitably affect the drape of the textile. Other Rauschenberg pieces have been treated in this way (Tallent and Domergue 1991, Perkins 2003). In this case the change would not be great, but it might be significant enough to be disturbing to the artist, particularly as the drape is so central to the interpretation of the piece.

Conclusion

The practical and ethical difficulties of treating this type of object illustrate the problems conservators increasingly face when treating works of modern art. Conservators are continually making judgements when treating objects; a range of factors connected with ownership, role and context have to be taken into account in each case (Eastop 1998). The legislation giving moral rights to artists does not appear to threaten conservators acting with the best of intentions; it is one more factor to take into account when making decisions about conservation interventions. However, it does emphasize that communication is vital; a continuing dialogue between artists and curators, collectors and conservators is the best way of avoiding the involvement of lawyers.

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