

EVENTS AND CONFERENCES

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*Cultural Assets Law, Reproductive
Photography, Street Photography:*
The Eleventh Heidelberg Days
of Art Law (XI. Heidelberger
Kunstrechtstage: “Kulturgüterrecht,
Reproduktionsfotografie,
Streetphotography”)
Heidelberg, 20-21 October 2017

Every autumn the Institute of Art and Law (Institut für Kunst und Recht) in Heidelberg organizes an international conference concerning the current topics in the area of legal aspects of art. As with every year, the gathering together of some of the most prominent German-speaking scholars specializing in matters related to the law and art attracted over 100 people who deal with these issues on a daily basis – either academically or practically. This year the conference covered a variety of topics connected mainly with the range of the ownership of cultural assets and its limits, especially with respect to those related to photography.

The first day’s session of the conference (which took place at the building of the Heidelberg Academy of Sciences and Humanities – Heidelberger Akademie der Wissenschaften) began

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with a welcoming of all the participants by Dr. Nicolai B. Kemle, the chairman of the Institute of Art and Law, and Prof. Thomas Dreier (Karlsruhe Institute of Technology). They gave the floor to the first speaker, Prof. Andreas Bergmann from the University of Hagen. In his presentation “Property, Time and Guilt. The Nazi Plundered Art in the 21st Century”¹ he dealt with the private law aspects of the famous Gurlitt case (which is also presented thoroughly in his book *Der Verfall des Eigentums. Ersitzung und Verjährung der Vindikation am Beispiel von Raubkunst und Entarteter Kunst (Der Fall Gurlitt)*²). The main issue addressed in his paper was the applicability of limitation periods in cases of Nazi plunder, such as presented in the Gurlitt case. Beginning with the Neratius’s statement “*ut aliquis litium finis esset*” (D.41.10.5), Prof. Bergmann led the audience through the German regulations and jurisprudence on vindication and period of limitations in a comparative perspective. In his opinion, the limitations period has to be applied to vindication also in the cases of the Nazi plunder – and there seems to be no constitutionally acceptable way to override the general rules of limitation periods in those cases. In order to attain the sought after effect, it must be obtained with tools other than private law amendments in that respect.

The next speaker, Prof. Matthias Weller, the deputy chairman of the Institute of Art and Law, in his presentation “Provenance as a Defect. A Carracci in Cologne” discussed the case of the painting *Saint Jerome with the Lion and Two Angels* by Ludovico Carracci, adjudicated by the Higher Regional Court (Oberlandesgericht, OLG) in Cologne.³ After presenting the previous jurisprudence on both the legal (Germ. *Rechtsmangel*) and material (Germ. *Sachmangel*) defects in the German Civil Code (BGB), he stated that the sole issue of provenance (unless it is connected with a claim other than only “moral” title by a third party) of a piece of art cannot be a legal defect. It may be, however, according to the current German jurisprudence, a material one.

The protection of archaeological cultural assets was the topic of the next paper by Prof. Frank Fechner from the Technische Universität Ilmenau: “The Legal Impact of the Act on Protection of Legal Assets on Archaeology”. He gave an overview of the recently amended Act in respect of archaeological assets, presenting such issues as the regulations concerning exporting and importing archaeological assets, placing them on the market, or restitution of the archaeological assets unlawfully imported to Germany or exported therefrom. The broad discussion following his presentation deliberated over, for example, the question of how to subordinate correctly and fairly the historical assets to the currently existing States.

The majority of the speakers, however, focused their attention on photography. The paper “Artworks in the Public Domain: Exploitation Right of the Owner – Reflections on the Judgement of the Higher Regional Court (OLG) in Stuttgart of 31 May 2017”⁴ by Prof. Erik Jayme from the Heidelberg University was the first

¹ This and all following presentation titles translated by Krzysztof Grzegorzcyk.

² Mohr Siebeck, Tübingen 2015.

³ Verdict of 8 July 2016, 1 U 36/13.

⁴ 4 U 204/16.

presentation directly connected with this topic. The Stuttgart Court ruled that, on the one hand a reproductive photo is not a “Photo” (Germ. *Lichtbild*) within the meaning of § 72 of the German Copyright Law (Urhebergesetz, UrhG), and on the other that a museum which is the owner of a photographed object may – in a case of a photographer publicizing a photo of the art piece owned by the museum – make use of the rights of the owner granted in § 1004 BGB. Both views are willingly espoused by Prof. Jayme. He followed with some comparative observations and with a remark on the possibility of forbidding museum-guests to take photos of exhibits, which in his opinion is certainly a legitimate action.

The second day of the conference was hosted by the Heidelberger Kunstverein. Greeted by the Director of the Kunstverein, Ursula Schöndeling, and accompanied by a photography exhibition presented in the room, the participants listened to the next two papers concerning the legal aspects of reproductive photography: “Museum Reproductive Photography and the Right to the Image of One’s Own Thing” by Dr. Gernot Schulze from Munich; and “The Legal Status of the Reproductive Photography” by Dr. Ansgar Koreng from Leipzig. Dr. Schulze presented the German jurisprudence in this area up to now and outlined the dogmatic shape of the “right to the image of one’s own thing”. Dr. Koreng mainly examined the issue of the applicability of § 72 UrhG to reproductive photographs. According to him, that rule has to be reduced teleologically based on a number of arguments, such as the practical lack of a creative effort by taking such a photo, difficulties in distinguishing reproductive photos from each other and from scans, or the danger of monopolizing a photographed public domain piece of art by the back door, by protecting the rights of an author of a reproductive photo.

The conference was closed by a final panel: “The Death of Street Photography or the Death of the Right to One’s Own Image?”, moderated by Prof. Felix Michl from SRH University Heidelberg. Firstly Hans-Michael Koetzle, a journalist specializing in the history of photography, presented a brief overview of the history of street photography. Then Prof. Thomas Dreier, Dr. Ruben Engel, and Sebastian Graalfs shared their reflections on the legal status of street photography and on the consequences of previously presented legal views on the relationship between the rights of an owner (in this case: an owner of a building) and of an author of a street photo. This was followed by an open discussion.

The opportunity to listen to the above-mentioned speeches, as well as the opportunity to meet with fellows and experts of these areas of law and art during side events, provided the participants with some valuable and inspirational ideas and discussions. Those who wish to acquaint themselves with the delivered presentations can look forward to the publication of the conference contributions in the form of a book, as has been the case for the last ten years (see, e.g., M. Weller, N. Kemle, Th. Dreier (eds.), *Kunst und Recht – Rückblick, Gegenwart und Zukunft. Tagungsband des Zehnten Heidelberger Kunstrechtstags am 21. und 22. Oktober 2016*⁵).

⁵ Nomos, Baden-Baden 2017.