

# Inf2-SEPP Coursework 3 ProP Essay

## A discussion of copyright infringement of Dalí17 Museum

Copyright and trademark disputes between the artwork copyright owner and the museum that displays it are worth discussing. While the copyright owner has exclusive right to show the work in public, the museum has defence of fair use, by claiming that exhibitions of artwork has educational purpose. In this essay, we will analyse the extent of copyright and trademark infringement around Dalí17 Museum incident. The incident involves Dalí Foundation, who reserves the copyright ownership of artist Salvador Dalí, sues Dalí17 Museum for showing Dalí's artwork online and using Dalí's likeness in the museum's logo [6]. The essay will discuss infringement in twofold: copyright and trademark. First, although Dalí17 infringes copyright by reproducing and displaying artworks online, Dalí17 has a reasonable defence: the exhibition not only has an education purpose to the public (a reasonable purpose of the use) but also lacks the intention to provide pictures of artwork for distribution or private use (an appropriate amount and substantiality of the use). Second, Dalí17 violates the image of Salvador Dalí and apply unauthorized trade mark to the museum even though the museum transforms its use of trade mark to signify the content of the museum but not the expressiveness or artistry of the artist himself.

This essay discusses these two concepts extensively: Copyright is referred as "a written document, a picture or photograph, a piece of music" that include intellectual property rights of copying and distribution. Trade mark is any words, designs, letters, numerals that identify a service or product[2].

At first glance, Dalí17 infringes the intellectual property rights of Dalí Foundation. Because Salvador Dalí himself transfers his copyright ownership to the foundation, and the 70 years expiration time for the copyright still have not passed. Thus Dalí Foundation has exclusive rights of the artwork pertaining to the copyright law. Since the federal government of US has jurisdiction of *Dalí17 v. Dalí Foundation* case, it is worth examining its copyright law in this context. *17 U.S. Code § 501* clearly shows that a display of work constitutes as an infringement [1]. In addition, Dalí17 issues a copy of the artwork to the public online, which is clearly an infringement of the Foundation's copyright. The artwork chosen by Dalí17 are also pieces of artistic work with originality, thus constitutes copyright violation. This is corroborated by *Bridgeman Art Library, Ltd. v. Corel Corp*, a legal case where the judge rules that public domain artwork are not copyrightable because they lack originality [3]. Last but not least, the Dalí Foundation also does not provide permission to any of the distribution right to the public. In fact, the Foundation explicitly lists out a term of condition for the copyright on its website, and it claims that any copying, distributing, or downloading of the pictures on its website is forbidden [4]. In conclusion, Dalí17 does not have a good standing in gaining explicit permissions from the Foundation.

Although Dalí17 infringes the exclusive copyrights of the artwork, the museum has a certain degree of defence, and this is showcased in both reasonable purpose of the use

and appropriate amount and substantiality of the use. First, Dalí Foundation enjoys permitted acts of copyright as the public can learn from a multitude of Dalí's work through the exhibition, gains an insight toward the artist's life story, accomplishment and creativity. This idea can also be seen in another copyright case. In *Marano v. Metro. Museum of Art*, the judge favours the museum for using the photos by Marano on its online catalogue [5]. The museum's action does not constitute as a copyright infringement because it is fair use and educational with "cultural and academic reach". By the same token, online use of artwork photos by Dalí17 is for the public interest because the museum has a reasonable purpose of the use by informing the public about Dalí's work. Moreover, the museum has an appropriate amount and substantiality of the use. Dalí17 only uses smaller pictures of the artwork.

One may argue that Dalí17's artwork pictures have commercial value and use *Rogers v. Koons* ruling to undermine Dalí17's legitimacy of the fair use. In *Rogers v. Koons*, the court ruled that Jeff Koon's usage of Roger's photograph is for profit gaining purpose, and therefore not applicable to the fair use doctrine [7]. Despite Dalí17 uses the images of Dalí's work online, the museum did not sell these photographs like Jeff Koon did with his sculpture based on Rogers's picture. Therefore, the use of images is for art patronage, which is not in bad faith. Since these art images posted by Dalí17 are in lower resolution, the museum does not intend to distribute these pictures as a replica of the artwork, but merely a promotion for the exhibition. Last but not least, in *Rogers v. Koons*, the judge claims that Koon's art has social commentary that may hurt the future market or perception of Roger's original work. This is not the case for Dalí17, because the museum did not distort or parodize Dalí's artwork, but raised public interest in Dalí as an artist.

Besides copyright of Dalí's artwork, it is worth analysing the extent of infringement on trade mark. Dalí17 created a trade mark with Dalí's signature moustache, face, and name, which constitutes as a distinguishing design to identify the museum. This renders an unauthorized use of trade mark, and Dalí Foundation has a valid claim to prevent Dalí17 from imitating the likeness of Salvador Dalí. The museum also sells merchandise, which constitutes as selling goods that bear an unauthorized trademark. One may argue that Dalí17 still has a fair use of trade mark because the museum transforms its purpose as the brand identity of the museum, not an identity of the artist himself or his artistry. Nevertheless, the commercial purpose of the trade mark undermines Dalí17's legitimacy in intellectual property rights. Even though Dalí17 is not a product or a service that relies on its logo [6], the trade mark itself has become a product with commercial value. This is evident in merchandise or tickets sold by the museum, so the definition of "trade mark" itself gets extended. The Californian legislature, the jurisdiction for *Dalí17 v. Dalí Foundation*, provides sufficient evidence that a person's name and likeness is protected under the law. This is similar with *Data Protection Act 1998*, where the image of a person constitutes as personal data and should not be used without consent [8].

While Dalí17 should respect the copyright and trade mark of Dalí by asking usage permission from the Dalí Foundation, the Foundation should also respect Dalí17's fair use of the artwork to invigorate and pay patronage for Dalí's artistry. Dalí17 has some defence of fair use through its educational purpose and lack of intention to distribute replicable images of original work. Nevertheless, the use of trademark with an artist's image still requires legal precedent. *Dalí17 v. Dalí Foundation* is an intriguing legal case that balances between the educational merits of the museum and the rigidity of copyright for a posthumous artist.

## References

- [1] *17 U.S.C. 501 - Infringement of copyright*. govinfo. 2022. URL: <https://www.govinfo.gov/app/details/USCODE-2010-title17/USCODE-2010-title17-chap5-sec501/context>.
- [2] Frank Bott. *Professional issues in information technology*. British Computer Society, 2014.
- [3] *Bridgeman Art Library, Ltd. v. Corel Corp.* Copyright Cortex. 2022. URL: <https://copyrightcortex.org/research/bridgeman-art-library-ltd-v-corel-corp>.
- [4] *Copyright: The Dalí Foundation*. The Gala-Salvador Dalí Foundation. 2022. URL: <https://www.salvador-dali.org/en/dali-foundation/>.
- [5] *Marano v. Metro. Museum of Art*. US Copyright Office. 2021. URL: <https://www.copyright.gov/fair-use/summaries/marano-metromuseumofart-2dcir2021.pdf>.
- [6] Maggie Reinfeld. *Copyright and Publicity Rights in the Museum Context*. New York University. 2019. URL: [https://blog.jipel.law.nyu.edu/2019/08/copyright-and-publicity-rights-in-the-museum-context/#\\_ftn2](https://blog.jipel.law.nyu.edu/2019/08/copyright-and-publicity-rights-in-the-museum-context/#_ftn2).
- [7] *Rogers v. Koons*. US Copyright Office. 1992. URL: <https://www.copyright.gov/fair-use/summaries/rogers-koons-2dcir1992.pdf>.
- [8] Sarah Wright and Olswang LLP Louise Bloom. *Image rights: the pitfalls of celebrity endorsement*. Thomson Reuters Practical Law. 2012. URL: [https://uk.practicallaw.thomsonreuters.com/8-521-4902?transitionType=Default&contextData=\(sc.Default\)&firstPage=true](https://uk.practicallaw.thomsonreuters.com/8-521-4902?transitionType=Default&contextData=(sc.Default)&firstPage=true).