

BOOK REVIEW

THE TRIALS OF ART

By Daniel McClean (Editor),

London: Ridinghouse, 2007, 380 pp., £25.00, ISBN 978-1-905464-03-6

When I was fourteen, I discovered Jane's Addiction. *Ritual de lo Habitual* had come out a year or so before and it, and their previous albums, quickly found a permanent place in my CD player. The cover (and longbox) for *Ritual* was of a photo of a mixed media votive-type sculpture that featured three partially nude papier-mâché figures – one male, two female, lying in a raised bed.

The sight of a partial papier-mâché penis and two papier-mâché breasts with exposed nipples was apparently too much for some CD store retailers, and so they refused to stock the album. Jane's Addiction and Warner Brothers then released an alternate cover, this time with a plain white label and with the text of the US First Amendment centred in the middle. It was censorship through commercial pressure.¹

CD stores were not alone in their reaction to what in retrospect remains only a mildly offensive image. My parents' reaction to the poster version of the original cover in my room was succinct: 'there is a difference between art and crap, and that is just crap.' And so it came off the wall.

Art can elicit a visceral reaction. Indeed, the role of the artist is often to show us our failings; to make us think; to shock us into a visceral reaction. *The Trials of Art*, edited by Daniel McClean, covers what happens when the reaction to art crosses over into the courtroom – both as a result of shock and as a result of (often comedic) legal technicality. Somewhat surprisingly, it reads more as a short story collection than as a dry and dusty discussion of law, and all the better for it.

Several of the chapters cover the 'that's just crap' reaction to art as it gets translated into the law: Michael White's chapter on the thirteen year struggle involving a blasphemy charge against George Grosz in Weimar Germany over, amongst other things, 'Christ in a Gasmask'. And Mapplethorpe, of course. Surely McClean could have filled the book solely with the cases of the transformative, the transgressive and the deceptively simple?

But charges of censorship and freedom of expression are not the whole picture. The same commercial pressure on the artist for censorship and CD sales also translates into political pressure with government spending. In different chapters Young covers Serrano's 'Piss Christ' and the NEA; and both Michalos and Bresler chapters in particular unpack the *Serra* case of a relatively innocuous (but apparently much hated) wedge of steel – 'Tilted Arc', built and taken down with public money.

¹ Apologies for the lay description if it is inaccurate – the figures look papier-mâché to me. The artwork can also be seen in the movie 'The Gift'.

The result is a very enjoyable book – one that can be digested in small chunks while relaxing in the garden or over lunch without feeling like you’re doing ‘work’, but with the satisfaction of learning in detail about an interesting subject. At first I found myself wondering about the relevancy of this book to the IP/IT practitioner, as *SCRIPT*’s focus (and my professional practice) is not art law. On the IP side, McClean has assembled a collection of chapters under the title “Protecting Art and Artists”, specifically around appropriation and moral rights (both very fitting themes for the book as a whole, given the wide range of relevancy of IP debates to art). The IP debates do not stray much into the digital, though this reader at least was not left feeling something was missing for it.

But what about the other face of the IP/IT lawyer?

Those music retailers in 1990, cringing at papier-mâché, had no idea what was in store for them with the explosion of the commercial internet over the coming decade (either for their business model or for the artists whose wares they sold). In this respect, the book’s relevance to IT law is, in part, historical (though recent).

Vassall-Adams, for example, details the obscenity and child pornography case against the Contemporary Arts Centre in Cincinnati, Ohio over a touring Mapplethorpe exhibition (including his famous 1978 BDSM-themed self portrait). The American religious right in 1990 had to wait for the tour to go through Washington, Chicago, and Berkeley before it went to a town with a reputation for banning adult material (though in a state where Larry Flynt made his fortune). Today, the internet, though it has not changed *everything*, it surely has made adult material readily available anywhere – and thus led to discussions along the lines of “Should Cincinnati’s laws apply to the rest of America, or to the world?” (cue John Perry Barlow and Avenue Q).

The role of the reviewer, in part, is to critique. I admit, I used my 8AM art history class in my first year of college as nap-time. My professional focus tends to be on IP/IT. So when the book takes on art theory and legal technicality beyond this narrow area of the law, I am at a bit of a loss. My role as critic therefore has its limits; and any quibbles I came across, so minor as not worth mentioning. In my role as reader, however, the collected stories are quite fun, so it is quite worth it in that sense. My favourite has to be Lydiate’s insider description of an attempt by the Bank of England to prevent one J.S.G Boggs’ pound note art project, which ended up turning the Old Bailey into an art gallery.

But the more serious core lesson from *Trials of Art* (for this IP/IT lawyer at least) is this: we too often lose perspective on the latest technology-and-the-law *kerfuffle*, be it the legality of virtual child porn, IP and UGC; or the availability of Nazi material on eBay. The themes in this book – about what content we find acceptable; about the role of the creator; about society; and about legal process – are all relevant to both the practitioner and academic. All the better that they come presented in such an interesting collection.

Jordan S. Hatcher

Lawyer and consultant, <http://www.jordanhatcher.com>
United Kingdom

DOI: 10.2966/scrip.060209.524



© Jordan S. Hatcher 2009. This work is licensed under a [Creative Commons Licence](#). Please click on the link to read the terms and conditions.