

By: Berkeley Art, Law, and Finance Staff | May 22, 2025

On May 8, 2025, we hosted the **Fourth Annual Berkeley Art, Law, and Finance Symposium at SFMOMA**. The event brought together leading academics, legal practitioners, auction house professionals, and gallerists for innovative discussions on AI copyright registration, navigating art market dynamics, cultural heritage preservation during wartime, and sustainable art through creative reprocessing. Read the full recap below.

Truth and Justice

Paolo Moro, Professor of Law, University of Padua, Italy

The 2025 Berkeley Art, Law, and Finance Symposium began with Professor Paolo Moro's fascinating analysis of Sandro Botticelli's classic Renaissance painting, *The Calumny of Apelles*, executed by Botticelli between 1494 and 1497. Professor Moro contends Botticelli's reinterpretation of the famous trial through various rhetorical techniques (e.g. allegory, antithesis, and metaphor) to examine concepts of truth and justice, comprise Botticelli's true message – the shape of classic.

Professor Moro began with a discussion of the painting's origin, which can trace its roots to fourth century Greece. Botticelli's *The Calumny of Apelles* is a reproduction of the lost allegoric painting of the Greek artist Apelles of Kos (4th century B.C.), that had been described during the Second Sophistic era by the Greek poet Lucien of Somerset in his second century treatise, *How to Defend Yourself from Calumny*. Professor Moro reminded the audience that as a young man, Sandro Botticelli had studied at the Neoplatonic Academy in Florence, where he was exposed to classic Greek philosophers, such as Plato and Aristotle. There, Botticelli would have learned the dialectic philosophy of Plato and the cultural foundation of the humanities. Because classical texts and thinkers experienced an era of renewed relevance during the Renaissance, Botticelli was surely aware of Lucien's famous text. In *How to Defend Yourself from Calumny*, Lucien describes in minute detail the original 4th century painting, read from right to left, and the personifications of human foibles that follow one another in the trial of Apelles, the famed Greek painter. According to Professor Moro, *The Calumny of Apelles* itself a clear example of the Greek ekphrastic technique, demonstrating Botticelli's reverence for the classical era. The ekphrastic technique or "ekphrasis" refers to a process originally developed by Greek philosophers whereby a writer or orator would describe an artistic work to the point of making it "visible in words." *The Calumny of Apelles* reverses ekphrasis by adapting Lucien's text into the stunning visual composition we see today. Moreover, Italian humanist and scholar Leon Battista Alberti, a predecessor to Botticelli, encouraged Renaissance painters to look to poets, orators, and ancient stories as inspiration for their works. Alberti advocated a theory of imitation (mimesis) whereby the learning of classical literary and artistic models occurs through reproduction of a work. Thus, Botticelli's *The Calumny of Apelles* is an ode to the classic in terms of creation, subject matter, and form. However, Professor Moro highlighted that the

painting is also Botticelli's modern reimagining of classic themes of justice and truth placed against a backdrop of political unrest.

Thus, the work represents a strong link between justice, law, and art. Specifically, Botticelli encourages viewers to examine justice through its antithesis – the unfair trial. The scene shows a failure of due process, as King Midas, depicted with foolish donkey ears, is influenced by two women whispering to him. The women are personifications of suspicion and ignorance, two concepts that undermine the King Midas impartiality and ultimately, lead to an unfair trial.

Apelles, the slandered and prosecuted is depicted as naked, dragged by the hair by a beautiful woman, the personification of calumny. She holds a burning torch, which is a symbol of light, a metaphor for knowledge. Her hair is being adorned by women who represent fraud and conspiracy. These figures represent a failure of the adversarial system to ascertain truth through opposing viewpoints. Original truth only appears in the trial through its denial. Naked truth is shown by the classic nude on the far left of the panel, conspicuously far from the ears of King Midas. Professor Moro contends that *The Calumny of Apelles* demonstrates Botticelli's genius as both an artist and a jurist. The painting may also take on additional relevance in the current cultural and political moment, as truth, due process, and the legal system as a whole face increasing threat.

Fireside Chat with Trevor Paglen

Sarah Conley Odenkirk, Founding Attorney, ArtConverge

Trevor Paglen, Artist and Researcher

Frank Partnoy, Professor of Law, University of California, Berkeley

Professor Partnoy moderated a fireside chat with artist Trevor Paglen and attorney Sarah Conley Odenkirk. Mr. Paglen is known for integrating technology into his image-making process. His foray into creating visual works with artificial intelligence began in 2012 when he began building systems for visual taxonomies. He remains fascinated with AI's literalness – especially in contrast to human's propensity to see the world through allegory and metaphor. At that time, Paglen sought to push the boundaries of AI's literalness to see if he could create a computer vision system based on taxonomies of allegories. He wanted his computer system to see and interpret the world through such allegories. One of the results of his experimentation was a computer vision system called *Monsters of Capital* (2017-2018.) *Monsters of Capital* was a dataset and model that could only see monsters that have historically been allegories for different moments in the circuit of capital, such as the 'mindless consuming zombie' or the 'blood sucking corporate vampire'. The resulting images were both haunting and glitchy. While Paglen celebrated the "glitchiness" of AI as part of its fidelity to the data set, Odenkirk and Paglen emphasized that computer visualization systems are generally not meant to create per se art images. Odenkirk posited that AI does not see images imbued with meaning in the same way humans do – AI sees commodities and is most often deployed for quality control or marketing purposes. For Paglen there is something interesting in trying to force AI to "think," "see" and categorize images in a way that the technology had never been

designed to do. This type of subversiveness, as well as a need to expose what is hidden, is a thread in Paglen work. The presentation also included a discussion of Paglen's underwater photographs of critical data infrastructure, ethereal images of military drones over Vandenburg Space Force Base, and various CIA "black sites" and international military bases.

Odenkirk expressed that Paglen's work is particularly interesting in the current moment because the systems he creates play with the process of visual categorization. Thus, his work raises critical questions of how humans can (and whether we should) create machines that function like human brains. This is especially true considering human brains are rife with bias, which raises additional questions of how to create artificial intelligence void of bias, how to detect bias, and who defines bias. The answer, according to Odenkirk, is that the creation of ethical artificial intelligence systems will be a lengthy, expensive, and exceedingly complex process.

The pair also discussed two major technological developments in the evolution of visual computer systems: object detection (categorization) and the invention of perspective (generative AI) which will have profound implications on law and ethics. Odenkirk highlighted some of the legal challenges for the application of generative AI. For example, AI systems that rely on scraped content from the internet may trigger intellectual property rights and privacy concerns. Currently, there are about forty lawsuits pending on the IP issue, indicating that courts have not fully caught up with the pace of AI technology.

Lastly, Paglen and Odenkirk discussed the current media landscape. Today's visual culture is driven in large part by data collection. The result is that everyone experiences a different version of reality that is both highly personalized and highly stimulating. Ultimately, that visual culture is fundamentally extractive – whether that be an extraction of attention, labor, or money. Paglen emphasized the importance of exposing the layers of data collection so people can make better-informed choices, while Odenkirk expressed caution at the speed with which technology was advancing. The conversation was forward-looking and was a fascinating dive into legal issues related to the intersection of contemporary art, surveillance technologies, privacy, and AI technology in artwork.

Heritage Under Siege: Protection in Conflict Zones

Emily Behzadi Cárdenas, Associate Professor of Law, California Western School of Law

Anne-Marie Carstens, Associate Professor of Law, University of Baltimore School of Law

Benjamin Porter, Professor of Middle Eastern Archaeology, University of California, Berkeley

Associate Professor Cárdenas began the discussion by defining cultural heritage as the "embodiment of human civilization through tangible and intangible objects." Broadly speaking, cultural heritage is categorized into immovable objects, such as archaeological sites or monuments or moveable objects, such as artifacts, fine artworks, paintings. The international instruments that protect cultural heritage, however, focus primarily on tangible objects, leaving intangible cultural property (oral traditions, dances, performances, etc.) largely unprotected.

The protection of cultural heritage is guided by two schools of thought: cultural internationalism and cultural nationalism. Cultural internationalism considers cultural property and cultural heritage as belonging to all of humanity. Cultural nationalism considers cultural heritage as contiguous with national borders and intimately connected, both geographically and culturally, to the nation in which the artifacts are found. These two guiding principles are in tension which each other and animate different international cultural heritage treaties. For example, the 1970 Convention on the Means of Prohibiting and Preventing the Illicit Import, Export and Transfer of Ownership of Cultural Property (UNESCO) takes a nationalist perspective to curb the illicit transport of cultural property. UNESCO's framework relies on individual national patrimony laws. By contrast, the Hague 1954 Convention, enacted in the wake of World War II, takes an internationalist perspective. The Hague Preamble states in relevant part that "damage to cultural property belonging to any people whatsoever means damage to the cultural heritage of all mankind, since each people makes its contribution to the culture of the world."

Art involved in armed conflict presents several challenges. Cárdenas noted that erasing a nation's identity through destroying sacred objects or historical sites is a tool of warfare. Similarly, Associate Professor Carstens emphasized that the destruction of cultural heritage, specifically immovable works such as buildings and cultural heritage sites, is a war crime. Indeed, the intentional destruction of cultural property is often carried out for ideological or political purposes. Such destruction symbolizes the power of the occupying force. For example, in Ukraine, Russia has destroyed cultural property both to demonstrate its might, and as way to tamp down Ukrainian culture and assimilate the Ukrainians into the larger Russian culture.

After discussing some modern examples of destruction of cultural sites during warfare, Cárdenas guided the audience through a history of the international cultural property regime. She began with Leiber Code (enacted during the U.S. Civil War), discussed several iterations of the Hague Conventions, and culminated her talk with segment on the doctrine of military necessity, first codified in Hague 1954 and later narrowed during the Second Protocol in 1999. The doctrine of military necessity is an exception to the general rule that nations must prevent the destruction of cultural heritage during wartime. It provides that nations may destroy cultural property only if it is "the least restrictive means" to achieve a critical military objective. Still, the standard appears malleable and thus highly fact specific.

Associate Professor Carstens transitioned the discussion to issues related to enforcement of international cultural property regimes. First, she clarified there are two different tribunals where states may seek redress for the destruction of cultural property: the International Court of Justice and the International Criminal Court. The International Court of Justice (ICJ) governs disputes between states and has jurisdiction over issues related to the destruction and looting of cultural property. Each state must submit to the jurisdiction of the ICJ in order for a case to proceed. Accordingly, parties engaged in armed conflict are unlikely to consent to being sued in an international tribunal, meaning the ICJ is rarely used to resolve disputes surrounding cultural heritage. However, Carstens posited that treaties such as the Genocide Convention and the draft articles on Crimes Against Humanity may provide a clearer pathway to the ICJ for cultural property disputes. Currently, there are many cases pending before the ICJ that characterize the

destruction of cultural property as “cultural genocide”, yet it remains unclear how the Court will rule.

The International Criminal Court (ICC) is governed by the Rome Statute, meaning that only parties to the Statute or parties referred by the UN Security Council may be heard there. The ICC has jurisdiction over war crimes, crimes against humanity, genocide, and aggression. While demolition of cultural property is a war crime, the ICC generally does not hear disputes pertaining to cultural heritage destruction because cultural protection follows civilian protection, meaning cultural preservation is lower priority than preserving human life. Still, such cases are not unheard of. Carstens stated that just recently, the ICC heard two cases that arose out of the destruction of a World Heritage site in Timbuktu, Mali. Interestingly, each garnered different results. In one case, there was conviction and sentencing, and in the other, there was acquittal for lack of sufficient proof of “intentional and unjustified” destruction of cultural sites.

Towards the end of the discussion, the panelists briefly touched on other complications related to the international cultural property regime. Carstens mentioned the current debate surrounding the restitution of cultural artifacts looted during the colonial period, highlighting the notorious case of the Benin Bronzes. She also pointed out the barriers for distinct cultural groups within a nation to reclaim cultural property. Specifically, such groups do not have the statehood status required to bring suit in an international tribunal. Furthermore, questions surrounding who owns transnational cultural property (objects have been moving across state lines for centuries) remain up for debate as researchers uncover more details about cultural artifacts.

As a whole, the presentation provided an interesting overview of both the practicality and morality of litigating cultural property disputes in the international space.

Buying and Selling Art: Navigating Dealers and Auction Houses

Aaron Bastian, Director of Fine Arts, Bonhams

Frank Levy, Art Dealer, Levy Galleries, NY

Paul Clark, Senior Counsel, Seward & Kissel LLP

Paul Clark, Senior Counsel and Seward & Kissel LLP, moderated the discussion on buying and selling art with two of the industry’s leading professionals: Aaron Bastian, Director of Fine Arts and current auctioneer at Bonhams, and Frank Levy, a third-generation gallerist and dealer in American antiques. Right off the bat, Clark noted that the secondary art market is interesting because although the sale of art is in the billions of dollars, the industry remains largely unregulated. That means the reputation of the sellers to transact in high-quality, authentic work is of paramount importance. Objects of renown come to galleries from a variety of sources, including, somewhat surprisingly, through probate.

Frank Levy started his career in the art and antiques business through osmosis. His great grandfather started Levy Galleries in New York in 1901, and he followed his father and grandfather into the firm, developing a keen eye for American antiques at an early age. By

contrast, Aaron Bastian started his career as a sculpture assistant while studying European history at UC Santa Cruz. From there, he moved to exhibition installation work, eventually landing positions as an art appraiser for the illustrious auction house, Bonhams, and for the television show, Antiques Roadshow.

Levy described his excitement at discovering a distinctive wooden coffee table, catalogued as Irish, while combing the Internet for sales. When the item was sold at auction, he was on pins and needles – he knew the piece was special. Levy bought the table and thereafter spent months researching it, suspecting the table was mislabeled. After discovering its true identity as a rare American coffee table, Levy was able to sell it to the Chipstone Foundation art museum, where it can be enjoyed by the public. Levy's process of painstaking research, including a wood varnish analysis, a comparative visual analysis of similar European works, and a deep dive into American history, is emblematic of the authentication process many dealers and experts undertake to ascertain a work's provenance. While forgeries are not uncommon, he noted that because there is no formal degree to become an antiques dealer, sellers may make honest mistakes, and it is important for buyers to purchase from trustworthy sources.

Bastian described the economics of an auction and the shift away from live auctions to online auctions. While online auctions provide greater access to buyers, who are able to participate from anywhere in the world, the shift means that some of the energy and excitement is lost. When preparing the sale of an item at auction, Bonhams will estimate the price based on expert opinion. The auction house also sets a reserve price, which is the minimum price for which the item may be sold, and is typically memorialized in the contract between the auction house and the seller. Unlike the description of the piece, the reserve price is never published. Auction houses are strictly prohibited from bidding on an item in order to push the final selling price higher.

After a piece is sold, the auction house takes a commission and transfers the remaining proceeds to the owner (seller) of the piece. The rules for returning an inauthentic piece vary depending on what type of item is sold – whether it be a painting by a famous artist, an antiquity, a bottle of wine, or a car. Like reputable dealers, auction houses rely on their reputation and expertise to gain market share. Bastian noted that deceased artists often have independent committees of art experts that may be hired by auction houses or buyers to verify works.

The conversation ended with a reflection on the symbiotic relationship between galleries, auction houses and museums. The discussion provided a rare, inside look into how the art market functions from seasoned experts.

A Single Piece of American Cheese

Kent Keirse, Founder and CEO, Invoke

Judd Lauter, Special Counsel, Cooley

Erik Stallman, Assistant Professor of Law, University of California, Berkeley

Judd Lauter, Special Counsel for Cooley, began the segment with a brief overview of U.S. copyright law, which set the stage for artist Kent Keirsey's groundbreaking work, *A Single Piece of American Cheese*, the first artwork created entirely with generative AI tools to receive copyright protection.

For copyright to attach, a work must be an "original work of authorship fixed in any tangible medium of expression." 17 USC § 102(a). However, the term "author" is not described anywhere in the copyright statute, nor in the copyright clause of the Constitution. This inevitably raises the question of whether a computer – artificial intelligence – can be considered an "author" for purposes of copyright protection. Lauter highlighted some recent cases where courts have suggested that only works created by human authors are eligible for copyright. For example, the Ninth Circuit held that a selfie photograph taken by a macaque was not copyrightable for failure to meet the "human authorship" requirement. Additionally, the US Copyright Office denied copyright protection for artistic works created with or by AI. Procedurally, the Office will separate out the elements created by a human author and those created by a computer. Only the human-created elements of work receive copyright protection.

In the case of a graphic novel *Zayra of the Dawn* for example, visual images on each panel were created entirely by the AI program MidJourney, while the text and arrangement of images was done by a human. Following the human authorship requirement, the Copyright Office determined that the individual panels were not copyrightable, but the selection, coordination, and arrangement of those panels into a narrative could receive protection. In denying copyright protection to the panels, the Office held there was simply too much distance between user's input and AI model's output for the author to claim sufficient control over the process of creating images.

It is within this context that artist Keirsey conceived of *A Single Piece of American Cheese*, a visual work created by the open-source AI model Stable Diffusion. After creating a different piece with AI that was denied copyright protection, Keirsey was determined to create a work with AI that would receive a copyright. Thus, *A Single Piece of American Cheese* was never about gaining the legal protections afforded by copyrighting an AI-assisted work, but driven by a need to identify the minimum level of human creativity for the authorship requirement. Keirsey took the audience through the process of creating the image, as well as the Copyright Office's fact-finding mission, which was aimed at determining how much of Keirsey's own input, or 'creativity' modified the output. The resulting conversation was a captivating view of the intersection of creativity and the law.

Interestingly, creating the image was not the result of thousands of man hours behind a computer. Keirsey explained it took a mere ten minutes to enter the inputs into the system to generate the absurd image he wanted to see – a woman's face made of stained glass, with spaghetti for hair, and a piece of cheese melting on her head. He made a total of thirty five changes, which Keirsey contends is the minimum level of creativity required to meet the human authorship requirement for copyrighting AI-assisted works.

Keirsey also noted that image-generating AI models are the new frontier for media and entertainment. He posited that the fear creators have that AI will replace them may be overblown. After all, he notes, artists can imprint on AI-models and then use those models as tools of their own creative expression. Keirsey encouraged artists to participate in the creation and registry of intellectual property, reminding creators that it was not the AI model that got the copyright, it was him, the human artist. In this way, both speakers emphasized that AI is a tool, and what matters is the creator's intent in making a piece of art. In the near-term, the U.S. Copyright Office will continue to evaluate AI-assisted works on a case-by-case basis. Still, based on *A Single Piece of American Cheese*, it seems safe to say if an artist's intent to create translates into thirty-five or more changes, that artist has a good chance of being able to register a copyright on an AI-assisted work.

Fireside Chat with Kyle Karrasch

Kyle Karrasch, Artist

*Delia Violante, Associate Director and Founder of the Art, Law, and Finance Project,
University of California, Berkeley*

Kyle Karrasch's innovative sculptural practice revitalizes waste – aluminum cans, plastic, cardboard – to craft pieces that speak to the toll of human consumption on the natural environment. He joined Delia Violante of the Berkeley Art, Law, and Finance Project to discuss his work and inspiration.

Karrasch grew up in Nevada, spending much of his youth outdoors camping and hiking. However, regardless of how far into the wilderness he ventured, Karrasch was always faced with the presence of humans by way of the garbage they left behind. The sheer abundance (and variety) of human refuse inspired him to use the material as his primary medium. When Karrasch first began working with garbage, he was horrified to learn that Nevada, a small state, leads the nation in waste production. Each person in Nevada generates about eight pounds a day, while the U.S. average is four pounds. Today, his work transforms the mundane and the discarded into works that speak to human consumption. Violante and Karrasch discussed several of his works. One is the *Tethered Series* (2020), a piece comprising several highly-detailed sculptures of American birds, all of which are in varying states of population decline, depicted tethered to concrete cinder blocks. The birds, such as the Stellar's Jay and the Western Tanager, are constructed with pieces of plastic. The birds are shown in various states of decay to symbolize how close the species are to extinction, while the cinder blocks represent the built human environment that imprisons them. The work was inspired by an article highlighting the rapid decline of American bird populations since the 1970's, which has dropped by 30%, or 3 billion birds. The *Tethered Series* is a poignant commentary on the ecological devastation humans cause to the animal world.

After creating figurative works for some time, Karrasch wanted to explore the same subject matter but in a more abstract sense. His elegant sculpture, *Ascent* (2022), features compressed cardboard slices in the shape of a semi-circle, placed on the ground, which appears to grow as

one walks around it. This piece was one of several that focused on data visualization of waste consumption. It is a physical manifestation of an ever-increasing bar graph that increases through one's lifetime, which also speaks to the idea that the amount of garbage we as individuals produce is, as Karrasch points out, "out of sight, out of mind." In this way, Karrasch's work is both a beautiful and sobering reminder of the scale of human waste production, and served as climactic end to 2025 Berkeley Art, Law, and Finance Symposium.