MUSINGS OF THE MONTH

JUNE 2025

CONTENTS

Introducing: *Musings of the Month*

At the dynamic crossroads of creativity and the law, there are countless voices shaping the future of how we make, protect, and experience art. To celebrate and spotlight those voices, HALO is proud to launch *Musings of the Month* — a new monthly series designed to elevate diverse perspectives all over the world in the domain of art law.

Each month, we'll feature "Muses" — those who are inspiring, thoughtful, and influential — from across the creative and legal fields. Our Muses may be legal scholars, academics, practicing attorneys, artists, curators, gallerists, art students, law students, or cultural stewards. Through essays, interviews, articles, or other short-form media, these contributors will explore a range of timely and timeless topics impacting art, culture, and justice.

We begin our series in **June** with a powerful lineup of contributors who reflect the spirit of this project: interdisciplinary, forward-thinking, and deeply engaged.

This month's artistic featured Muse is **Richard Beavers**, founder of the *Richard Beavers Gallery*, a space dedicated to representing artists whose work reflects the African American experience. In an intimate interview by our very own Shira Fischer, Beavers shares the story behind building a gallery with a mission rooted in empowerment, education, and community engagement — and what it means to support artists beyond the canvas.

Also featured in this inaugural edition are **five authors** whose written pieces dive into urgent issues at the forefront of art law and cultural discourse:

- **Sarah Conley Odenkirk** reflects on the legal implications and challenges of AI-generated art and authorship;
- **CPT Jessica Wagner**, a legal officer with experience in cultural property protection, examines military legal frameworks for preserving heritage in conflict zones.
- **Professor Gilad Abiri** explores the inadequacy of intellectual property with respect to AI;
- **Nia Coleman** considers law's role in the preservation of African cultural heritage and art;
- **Dr. Sara Adami-Johnson** discusses the challenges of AI creativity and the rapidly developing legal landscape;

Through *Musings of the Month*, we hope to cultivate a space for reflection, dialogue, and discovery — one that brings together the voices shaping the ever-evolving relationship between creativity and the law.

Join us each month as we amplify new musings from those thinking critically and passionately at the edges of art and legal practice.

Yours,

Renée Ramona Robinson

Interview with Richard Beavers (Founder of Richard Beavers Gallery)

By Shira Fischer

Richard Beavers selling posters in Union Square in 2005

To begin, could you share some of your personal history? What sparked your passion for art, and how did you cultivate that connection?

I was raised by a single parent, my mother. I grew up in Flatbush, Brooklyn. I remember going on a middle school field trip to a museum. I don't know the exact museum, but I know it was one of the major museums. When I came back from the trip, my mother, Mary Wilson-Beavers, asked me, "Well, what did you think? How was the experience?" And I said to her, "It was cool." I couldn't articulate it at that particular moment, but the reason why I responded to her that way was because when we went to the art section, I didn't see any art that was really reflective of who I was. I didn't see anything that spoke to my personal experiences. So culturally, there was no connection to it.

Then, my mother took me to this gallery that was located in Manhattan on 13th Street between 2nd and 3rd Avenue. It was the Savacou Gallery, owned by two Black women from the Caribbean. And when we walked into the gallery, it was the first time I had ever experienced

Black art in one space, and that was the pivotal moment when I began to develop this connection with art. One of the first works of art that resonated with me was a painting created by artist Leroy Campbell. It was of a Black man sitting on a brownstone stoop with a hat on, and he was playing a saxophone. Being raised in Brooklyn, living in a brownstone, and as a teenager, it was a desire of mine to play the saxophone. The painting had many of the cultural elements that resonated with me, and the artwork spoke to me personally. That was the beginning. My mother would routinely take me on our trips into the city. On Saturdays, we would go to Union Square 14th Street Farmers Market and then head over to Savacou Gallery. I spent a significant amount of time in that art gallery, and I began to develop more of an appreciation and understanding of art.

From that initial connection to art, what was your journey in transforming your passion for art into a career? Did you realize early on that you wanted to work in the arts?

Early on, I never had any ambitions to pursue a career in the business of art. I actually wanted to be a lawyer. That was really where my interests were. When I was a kid, in middle school, my teachers referred to me as the "little lawyer." I always had to debate my point and express my thoughts. So, no, there weren't any aspirations or really any interest in working in the art world.

When I got my first apartment, my mother gave me art as a gift. And coincidentally—or not—it was the same artist whose work first spoke to me, and that was Leroy Campbell. It was a limited edition, and it was titled *Cotton Club*. That gift from my mother, I took it home and hung it up on the wall, and I just really liked the way that it looked and the way it made me feel. When people came over to my home, they would talk about the piece and ask questions about it. From there, my interest in collecting art began. It started with posters and limited editions—that was the early origins of it.

Richard's first piece in his art collection, *Cotton Club* by Leroy Campbell

At this particular time, I was working at MTV Networks. I had a monthly subscription to a magazine called *Black Enterprise*. *Black Enterprise* was a magazine that highlighted Black entrepreneurship and Black professionals from various industries and careers in the business world. In one of the issues, there was an article about this frame shop, Clinton Hill Simply Art and Framing, that was in Clinton Hill, Brooklyn, and it was owned by a Black woman named Miss Lurita Brown. At the time, I was living in Clinton Hill, Brooklyn, and the frame shop was less than a mile from my brownstone apartment. In the article, she talked about the Black Panthers and a collaboration that she was working on with Elizabeth Catlett and Fredrika Newton, who was the wife of Huey P. Newton. I was very familiar with the Panther Party, and then the intersection with art sparked my interest. It also helped that the business was located in my community.

My intuition told me that I should take a walk to the shop and introduce myself to the owner. So I went there, walked inside, and it was a very nostalgic feeling—it felt comfortable and reminiscent of the time spent with my mother at Savacou Gallery. Once inside the shop, I introduced myself to the owner, Ms. Lurita Brown, and I said to her, "I don't know a lot about art, but as a kid, I would visit galleries all the time with my mother. Whenever I'm around art, I get this really special feeling." I explained to her that I was currently working at MTV Networks

during the week, but if she ever needed some extra hands on the weekends, I'd be interested in working with her. Ms. Brown then proceeded to say, "You know what, it is not a coincidence that you walked in here today because just the other day, I was saying to myself it would be nice to have a young male work here." She explained that she had never had a man work in the shop. Shortly thereafter, I started working as an intern at Clinton Hill Simply Art and Framing on the weekends. That was the beginning of now stepping into the business aspect of it. I worked with her for a number of years, and everything that she taught me, I just absorbed it so quickly, and it came to me so easily. I began thinking to myself, "This is a career and industry that I could do really well in." More than anything else, it was something that I immensely enjoyed. My schedule was MTV Monday through Friday, and working with Miss Brown on Saturdays and Sundays. Working with her, I gained my own vision of what I wanted to do potentially.

One afternoon, Ms. Brown sent me on an errand to pick up a poster from Bruce Teleky's warehouse. Teleky was one of the major publishers and distributors of art prints and posters in the Northeast. I arrived at Teleky's warehouse to pick up this poster, and on that particular day, Bruce Teleky happened to be there. He walks over to me and introduces himself, and we begin a conversation. The conversation with Teleky developed into us eventually working together where he would consign posters to me at a distributor price which led to several of my early entrepreneurial ventures in the business of art such as selling posters to my MTV co-workers, on EBay and setting up at 14th Street Union Square to sell posters to the passerbys.

What inspired you to take the leap and open your own gallery? What was your thought process during that time?

Early on, prior to opening the gallery, I had never really seriously considered it. For a number of years, I was also working with Leroy Campbell. I met Campbell at his solo show in the Village in the early 2000s. Around that time, I started working for him. We would travel around the country doing small art fairs, jazz festivals, and home shows. After working with Leroy for about nine years, while still working at MTV, using my vacation days, sick days, and personal days, I would use those days to travel and continue to pursue my business interests in art.

Working with Leroy for nine years was an invaluable experience where I learned so much about life and business, but it was time for me to work with him in a different capacity. I also came to the decision that it was time to leave MTV. I had been at MTV for 12 years, and I accomplished everything that I set out to accomplish during my time there. I went back to school, discovered my passion, and purchased a house. Then, I did what I typically do and went into prayer, and I asked God what was next for me—what direction should I go in? The message was that I should open a gallery. There was a shop at 373 Lewis Avenue in Bedford-Stuyvesant, Brooklyn. I would drive my kids to school, and I would frequently stop at the red light, on the corner of where the shop was located—at that time it was a children's clothing store—and I would always look over at that store and say to myself, "Man, this would be a nice location and space for a gallery."I never expressed these thoughts to anybody else. And I did that for maybe about a year.

Two days after I prayed, a woman I knew who had a business in the area came up to me and asked me, just out of the blue, if I was interested in opening a gallery. Remembering, I had not shared it with anyone. I said to her, yeah, I would possibly be interested. It depends on the

location. She said to me that the children's clothing store—she knew the owner of that shop— was going out of business in two months, and that she would introduce me to the owner of the building if I were interested. The owner of the building owned dozens of properties in the Bed-Stuy area. She made an introduction. I scheduled an appointment, we met, and I told him what I was interested in doing, and he said that there were nine other business owners who were interested in that particular space. But he liked the idea of there being an art gallery in this community.

What was the driving force behind your vision for the gallery's mission?

The vision of the art gallery was that I wanted to bring art to my community, which I felt was an underserved community when it came to the arts. I also realized that the opportunities for exposure, more visibility, artist development, and professional spaces like an art gallery to display their artwork weren't common for artists of color, particularly artists whose works were speaking for my generation. The artwork in many galleries was not reflective of the stories or the experiences of everyday life in inner-city communities. A lot of the art was historical, but it wasn't depicting the various aspects of life that many of us were experiencing on a daily basis within my community, while also addressing many of the socio-political issues that are prevalent in society today.

I also wanted to make certain that art was accessible to young people. I would think back on my early years, so many of my peers who did not get the exposure or experiences that I had, and how transformative art was for me. For a lot of them, it was just a lack of access, a lack of resources, or their parents just not knowing or working two or three jobs and not having the time to be able to take them outside of the community to expose them to art. For me, the solution was to open an art gallery in the community, so you'll have access to young people. For the parents, it would be more accessible to them to be able to bring their children out to experience the gallery. It had to be a gallery that made the members of our community feel welcomed, uplifted, appreciated, important, and proud.

Frank Morrison's *Wonder World* exhibit

How did you prepare for actually opening your gallery? Did you have specific ideas for how you wanted the public-facing business aspect to be?

I didn't know a lot about owning a gallery. So I did a lot of reading and research. I went to dozens of galleries and, visiting them, one of the things that I would always experience was that there was a buzzer on the door, how intimidating galleries were, and how I never felt welcomed. Someone would look at me, and they would see a Black male at the door, and there would be a hesitation to buzz me in. So one of the first things that I said to myself early on is that I know galleries are intimidating—I know that they're not very welcoming. So I want this to be a space where everyone feels very comfortable coming into it, where there's no buzzer on the door. A lot of times, we leave the door open as an indication to people that you're welcome. Anyone who walks in is always greeted with a "Welcome to Richard Beavers Gallery." We also promote that there aren't any questions that aren't intelligent questions. This is a space where we want you to feel uplifted, inspired, and received. A place to comfortably learn about and discover new artists. When considering the type of art, it had to speak to the culture, contributions, and history of Black people. Our primary focus would be to identify emerging to mid-career artists who were being overlooked and not given the opportunities by many of the current galleries. Most importantly, the artwork would spark dialogue, educate, and challenge our visitors. The overall goal was to make art more accessible.

In Plain Sight Group Exhibition

As context for the readers, Richard Beavers Gallery is located in Bed-Stuy, Brooklyn, which is a historically Black neighborhood known for its rich history as a significant hub for Black art and culture since the 1930s. Richard, what was your experience like opening this specific location of your gallery in Bed-Stuy, Brooklyn, rather than other locations?

Bed-Stuy is home; it's my heartbeat. It's been an outpouring of support and encouragement from the first day the gallery opened. Many of our neighbors were our very first collectors. They believed in me and my vision. Without their early patronage, we may not have been able to keep the gallery afloat. The early years were difficult. The Richard Beavers Gallery that the art world knows of today, and the artists who exhibited with us early in their careers who have gone on to have successful careers, it was the Bed-Stuy community that made this possible. I'm forever indebted to the residents and homeowners; we see them as our family. I've never viewed Richard Beavers Gallery as just a gallery; we're a cultural institution for the people of our community. The objective has always been to use art and our gallery space to contribute in the most significant ways possible, where we can make a lasting impact through our community outreach initiatives. We do free art classes for kids. Whenever we have an exhibition, the gallery purchases all the art materials, paints, canvases, and the exhibiting artist would instruct a free art class. We'd have anywhere from 30 to 40 kids who participate. To see the joy and feeling of

accomplishment on the faces of the young people is so gratifying. These are our children.

Genesis Tremaine's "Kidz Paint It Up" workshop

We've done financial literacy workshops and fundraisers for politicians and college students. We've had etiquette classes for young males. I even co-founded a film festival, the Bed-Stuy Film Festival, so that the space could be used for independent filmmakers to have a place where they can screen their films. Firstly, Richard Beavers Gallery is an institution for the community. We do represent artists, and we've done extremely well in that area—that's the foundation of the gallery, which makes it possible for us to have the resources to fund the programming we've implemented over the years. It's our responsibility and obligation to reinvest back into our community.

What is your clientele like? Are visitors typically knowledgeable about art and seeking out your gallery, looking to purchase works? How often are people stopping in just because they see art that interests them through the windows?

It varies. Because of the reputation that we've built, we have collectors who come from all over the world. When collectors who are familiar with our gallery travel to the States, we tend to get people saying that this was one of the galleries they had to come to visit. Because of the history, because of the impact that we've made in the art world, the space that you've created for artists

of color who tend to be overlooked, underrepresented, and often misrepresented, and allowing them to feel comfortable in dealing with some of these sociopolitical issues that may be controversial in some galleries which may not be open to those conversations surrounding the work. We have seasoned collectors, art appreciators, and people who may never purchase art. But they're still welcome to come into the gallery. We use art as a catalyst to engage viewers and have these difficult conversations around many of these social and political issues that are prevalent within our community and also society.

We have a lot of children who come—we're very welcoming to young people because that is a major part of our mission, to expose them to art and expose them to the possibilities.

Boys and Girls, which is a high school on Fulton Street, we did a program with them here a few times with their poetry class. It was a creative writing workshop. The students would walk around, look at the art, pick out a painting that really spoke to them, and then they would either write a poem or a statement, continuing where the artist left off in the painting and creating their own story. The students said that it was the most creative that they had felt since they joined the poetry class.

Xavier Daniels' *Cry Like a Man* Exhibition

To establish your community presence and reputation in the art world, you must have had strong outreach. What is your publicity strategy, and how has it been effective?

We use social media and Artsy to announce openings, artist talks, and our gallery programming. Participating in art fairs such as Untitled Miami, Expo Chicago, and Scope has brought the gallery a tremendous amount of exposure and visibility to new collectors, curators, and art advisors. Creative gallery programming like our Conversations in the Gallery, Kidz Paint It Up, Financial Literacy Workshops, and Collectors workshops keeps the art community engaged with our gallery. Speaking engagements, such as panel discussions, are necessary to spread the word about the gallery. We've also hosted private events at the gallery with The Black Arts Council of the MOMA and art fair tours with collector groups, and Inkwell Inspirations.

Exhibit at "Untitled Art" Miami art fair, 2021

EXPO CHICAGO Contemporary Art Fair, 2022

How do you operate the gallery? What kind of team do you have, and what is your current role?

I've been fortunate to scale the business. In the beginning, I was the only full-time employee of Richard Beavers Gallery for more than a decade. After about a decade, we were able to bring in consultants on a project-by-project basis. A few years ago, we were able to hire part-time employees. As of today, Monica Langham is the Director of Operations, and she's responsible for the day-to-day operations of the business. She's a liaison to the artist, making certain that the business is running functionally and keeping things on track. Terry Alexander is our gallery associate, and he's the person who's in the gallery on a daily basis. He's also responsible for inventory and logistics. We also have our internship program that provides opportunities for young adults who have an interest in pursuing a career in the art industry.

What are the legal aspects of running your business of actually exhibiting and selling art? What types of legal agreements do you use, and what do you think are the most important terms you include in contracts?

We have consignment agreements with the artists, and we have artist agreements, which are representational agreements. For the majority of the artists that we work with, we have

exclusivity with them in the New York Metropolitan Area. A few of the important terms in the agreement are representation period, consignment period, description of works, pricing, gallery's commission, gallery discount, no-resale clause, and payment terms.

Can you tell me more about the resale restrictions you implement and your thoughts on the topic?

The basis of that agreement is pretty much just how long the collectors have to own the work before they can resell it. That is something that we put in place to protect the artist's market so that they're not competing with preexisting work with works that have already been sold. This is an attempt to keep work from being sold on the secondary market and to discourage flippers or speculators. We need supporters and advocates for emerging artists early in their careers.

Who is handling the legal agreements? Do you fully outsource this to lawyers, or do you remain involved? What level of interaction do you have with the actual documents and deciding terms?

I do have lawyers, we sit down, have a conversation, and you explain to them what it is that you're looking for, and then they do all the legal terminology and put it in the form of a legal document. I've self-educated myself, a lot of research—I've always been an avid reader. It's my responsibility to be as knowledgeable as I possibly can about the business. I don't just see artists; I see individuals. I strive always to do what's best for the artists and to protect their interests, and in protecting their interests, I'm also protecting the collectors. I want the artists to have longevity; it's not just about a quick sale. It's not always about just the monetization, but how do we build a legacy? And how does an artist get to a point where they have stability in their career? We have these safety measures in place to be able to protect them.

I know that supporting artists is really important to you. What role do you envision your gallery playing in fostering the growth and development of artists?

We will continue to provide mentorship, artist development, and resources for emerging to mid-career artists. Focus on visibility and exposure through gallery exhibitions, group shows, and art fairs. Introducing the artists to new and current patrons of the gallery. Establishing a collector base and buyer market for each artist. We've recently announced Richard Beavers Gallery Publishing and Richard Beavers Gallery Editions. The publishing of exhibition and artist catalogs is important because they serve as a record of the exhibition, provide documentation of the works in the show, offer scholarly insights, context for the exhibition, and a history of the exhibition. It's also important for the gallery to document the work that we've done to launch the careers of many of these artists, who may move on to working with larger galleries. This way, our early work with them is published.

One of the things that our team is currently working on with a wealth management company is to have financial advisors come in and begin offering free financial literacy, estate planning, and taxation workshops for the artists. Our mission is to assist in educating the artists on how to intelligently manage their money.

You have a really impressive commitment to the gallery's mission of community service. I would love to hear more about one of your standout initiatives, Bed-Stuy Family Photo Day. Could you share how this program originated and how it works?

Bed-Stuy Family Photo Day is an initiative that we started in 2023. I had the vision for this initiative about eight years before it actually came to fruition. It's inspired by community. It's inspired by my childhood experiences. I just remember as a young person, once a year, my mother and I would go to Sears, and we would have family photos taken. Or when I was a teenager, my friends and I would take the train to 42nd Street to go to the movies, and they would have the street photographers out there, with the Polaroid Instamatic cameras, and they would have these flashy backdrops. We'd dress up in our flyest clothes and come up with the most creative poses to be photographed. These were memorable and cherished moments, immortalized in a photo that represents friendship and community.

So Bed-Stuy Family Photo Day derived from those memories at Sears with my mother posing for a family photo, and my travels to 42nd Street with my friends to take pictures with the street photographers. Family Photo Day honors family, friendship, and community. I contacted a group of photographers we've worked with, such as Jamel Shabazz, Brittsense, Daniel Austin, Kay Hickman, and Ian Reid, to name a few. I shared my vision of Bed-Stuy Family Photo Day to transform the gallery into a photo studio, and we would set up the backdrops, the gallery would cover the expense of whatever the materials cost, travel, and lunch. We just needed them to donate their services and time. They all agreed.

Around seventy families signed up to be photographed for Bed-Stuy Family Photo Day. It was such an overwhelming response, which was more than the capacity that we could service for the day. Mbele's Photo Booth agreed to join us so that those families who weren't able to get their photography taken could still have a photo as a lasting memory. It was a tremendous success. We printed out the photos, had them framed, and then members of the community were able to come and pick up their photos. Bed-Stuy Family Photo Day is a true testament to what is possible through service and community.

A family portrait from Bed-Stuy Family Photo Day

What has been the impact of this project on the community? How has this project shaped your experiences and perspectives, and what significance does getting to do this work hold for you personally?

It was such a heartwarming experience. I remember there was one family in particular.   A husband and wife, they had five kids they were an older couple. The wife came up to us and said that they had not had a family photo taken in 15 years. She also shared that her husband had stage four cancer. They couldn't afford to have a professional photograph taken of the family. She told me it just meant so much to her because she didn't know if they would ever be able to have another family photo taken. This was something that her children would be able to have, and the children's children, now as part of their legacy. We continually hear over and over again: how thankful people were.

We did Bed-Stuy Family Photo Day again last year 2024, in the summer, and it was received with a tremendous response; it's always an overwhelmingly positive event. Now my vision is that I want to take it to other parts of the country. We recently received confirmation that we will have Richard Beavers Gallery, Family Photo Day Chicago Edition on April 23, 2025, in collaboration with Chicago Navy Pier. Dani Jackson-Smith, founder of The Cre8tors agency, which represents the gallery, is the driving force for this production.

But the larger vision is that we can have activations taking place in different parts of the country on the same day. I want it to be in inner-city communities—communities where some may not

have the resources or time to be able to have a professional family photo taken. Imagine if we can get back to that mindset of how sacred family is, and family is not just your blood family; it's your friends and people you grew up with, it can also be your neighbors. We've even had people come out and take photos with their pets—whatever your interpretation of family is, it is welcome. We've had people come who never even met each other, and they took a photo together. So now you're meeting your neighbors and getting to know them on a first-name basis. Far too often, especially in cities like New York, people often just walk by each other and don't even acknowledge each other's existence. Hopefully, this encourages people to talk to their neighbors because they met them at Bed-Stuy Family Photo Day.

Bed-Stuy Family Photo Day in front of the Richard Beavers Gallery, Jamel Shabazz

As one of the few Black-owned galleries in New York City, could you share your experience and how you navigate the pressures of this significant role?

I don't have a traditional background in art. I'm not an art historian, nor a scholar. I'm not what some people typically consider or may envision when it comes to someone who owns a gallery, as a Black male, who is authentic to himself. Especially, with the tremendous amount of success the gallery has had and the doors we've opened for others like me. When applying to art fairs and we've been rejected or waitlisted, I've literally been told you don't know the right people or you're not the right fit. Unfortunately, it's not always on the merits or qualifications of what you've accomplished; it's a constant example of moving the goalpost. I've also received an outpouring of support from collectors, galleries, and those who aren't intimidated or afraid of progress. What I do know is that I come from a lineage of really prominent, proud, committed, and successful gallery owners, like Savacou Gallery, Kenkeleba Gallery, Dorsey's Gallery, Gil Hodges Gallery, Peg Alston Fine Art, and Miss Lurita Brown of Clinton Hill Simply Art and Framing. What I may not have from the standpoint of the traditional credentials that people feel

you should have, I have it from the community of those who paved the way for individuals like me and have passed the baton. I know that when you are a pioneer or disruptor, there's always going to be pushback. When you're stepping outside of the box of the norm and not doing things in a manner that people feel they should be done, and you're challenging the status quo, people are going to sometimes create these narratives about you that are false. Some will perpetuate these narratives because of an agenda to discredit your accomplishments. It's not easy being a trailblazer, but what has ever been easy for any Black person in this country that's walking in spaces and places historically owned or controlled by white people and gatekeepers.

This is my purpose, this is my vision, and my assignment. Sometimes you have to walk through the fire, but I know that I stand on purpose. I'm doing the work God has intended for me during this time in my life. I'm going to come out of the fire, not even smelling like smoke. I welcome the challenges. There's one thing that I know: hardship and adversity build character and strength. I'm a resilient person who was chosen for this mission because I have the fortitude to carry the baton until it's time to pass it on to the next person. I didn't get to where I am by coincidence. I worked really hard. I've never had a traditional loan. The only loan I've ever had was a $5,000 loan in 2005 that came from Monica, who is now the director of operations for the gallery. I literally took $5,000 and built it into a successful company. Look at the artists that we've identified and represented early in their careers: Bisa Butler, one of the most sought-after textile artists in the country. Genesis Tramaine came through this program. She had her first two solo shows with the gallery. I was one of Nathaniel Mary Quinn's first art dealers. There's also Marcus Jansen, Phyllis Stephens, and Frank Morrison.

I know that my responsibility is to stay focused on what the mission is and not to allow myself to be distracted or sidetracked. I'm going to continue to identify emerging artists of color, and I'm going to give them the resources that they need. I'm going to focus on artist development, and we're going to give them a platform to be able to exhibit their work and bring more visibility to it. The art market is a 60 billion-dollar-a-year industry. When we have a conversation about Black art or artists of color, these are our cultural assets. Black people should be the major stakeholders and decision-makers when it comes to our cultural assets. There's a lot of money being made from Black art. Many of these galleries are outside our community. But where's the job creation for Black people who are curators, art writers, and in managerial and administrative positions? They're not being given these opportunities. Richard Beavers Gallery has always been committed to providing these opportunities to Black people who are interested in contributing in different capacities to the art world.

Achieving the amount of success that we have has taken strategy, creativity, sacrifice, discipline, devotion, and hard work. I don't come from a family with money or access to capital like many of the other gallery owners. Many of these gallery owners have known each other for decades, dating back to their parents being friends, and they're part of the same networks. I didn't have that luxury or that helping hand; I had to do all of this from the ground up, coming from selling posters to being regarded as one of the most important African-American-owned art galleries for our significant contributions and lasting impact. What God has planned for you, no person can ever take that away. Let go and let God have his way.

Baptism Sunday, Lynthia Edwards, 2023

HUMAN INGENUITY IN THE SHADOW OF ARTIFICIAL INTELLIGENCE: THE URGENT NEED FOR THE ARTS TO ADOPT ETHICAL AI POLICIES

*[Sarah Conley Odenkirk](#)

"But if you'll bring that steamdrill 'round I'll beat it fair and honest. / I'll die with that hammer in my hand but, I'll be laughin', / 'Cause you can't replace a steel-drivin' man."

<div align="right">

Johnny Cash
"Legend of John Henry's Hammer"
Blood, Sweat and Tears

</div>

Introduction

The Ballad of John Henry recounts the story of a railroad construction worker who competes against a new steam powered engine touted as being able to hammer through rock better than any human. According to [the folklore](#), John Henry challenges and beats the steam engine by keeping pace with the machine but using human ingenuity to achieve deeper holes. Though successful in demonstrating the superiority of humans over machines, exhausted by the effort, John Henry

ultimately dies, and we are left to debate whether his achievement was a pyrrhic victory or an inspirational example of human perseverance and creativity.

Historically accurate or not, the romantic elevation of John Henry to folk hero serves to amplify a rallying cry to resist embracing innovation without considering the human impacts. Admittedly, we are not faced with John Henry-scale physical challenges when we struggle to create our own original content rather than relying on one of the popular artificial intelligence (AI) options to do it for us. Nevertheless, the allegory is apt as we are faced with a variety of potential negative outcomes, or even existential threats, by rushing to adopt AI. Even the most tech-friendly pundits are warning of dire consequences like the trampling of intellectual property rights in the use of copyrighted material in AI datasets, the violation of privacy rights as personal data is gobbled up to provide biometric information for deep learning models, fundamental threats to democratic governance, and catastrophic job losses as AI is used to replace human workers. Some are even more pessimistic, predicting the possible end of the world. The arts and culture sector has always served as the canary in the coal mine for social and political change and it will be no different when it comes to AI. Due in large part to the incontrovertible emergence of art as a recognized investment vehicle, and more recently solidifying its power as a market player in the crypto currency and emerging technology world, the arts will continue to be a bellwether for thought leadership and legal innovation on the cutting edge of the policy and ethics in the AI space.

Prioritizing Ethical Implications

As the focus on the development and deployment of AI continues to heat up and permeate every discussion and topic, the ethical implications of the mass-adoption of this revolutionary technology are getting short shrift. The focus largely remains on court cases debating the use of protected content in AI. These cases pit the promise of AI against the rights of individual creators and rights holders, and while justice is still part of the equation, the enormous amount of money at stake is the real driver. AI technology unquestionably offers powerful tools for creative expression, efficiencies in production and exploration, and the ability to affordably create works that otherwise may not have been possible. Meanwhile, ethical questions around how we sustainably innovate and adopt AI are largely being stifled in favor of feeding the voracious twin desires of achieving futuristic tech capabilities and fantastical marketplace profits. As a comprehensive analysis of the myriad ethical implications of AI would require a substantially longer article, the focus here will be on the development of ethical practices for the use of AI within the arts and culture sector. As the arts often provide fertile ground for cutting edge thought leadership, the solutions proposed should easily be extrapolated, at least conceptually, to a more general landscape. In any event, without the immediate proactive inclusion of ethics in the AI discourse, regardless of the sector, we risk allowing tech interests to steamroll human considerations in order to meet the insatiable greed currently driving legislation and policy.

Despite [lagging behind the EU](#) and other international jurisdictions in the development AI legislation and policy, the United States ,with many of the major companies driving innovation worldwide has a unique opportunity to shape the international development of both the technology itself and its ethical infrastructure. However, rather than putting pressure on U.S. based companies to step up and accept responsibility for the impacts of AI, the current administration has taken a vocal position advocating for [fewer regulations and the rapid and widespread adoption of AI](#). While speed is unavoidable given the pace of innovation, unfettered mass adoption without consideration for collateral impacts is not responsible and may inevitably lead to a John Henry Effect where technology, even where inferior to human efforts, will dominate to the [detriment of artists, workers, and consumers](#). Aiming to establish a one-size-fits-all solution to address the need for ethical AI policies is naïve, but developing a [general armature for ethical considerations](#) to guide more targeted conversations, is at least a step in the right direction of establishing an expectation that ethical considerations will be part of developing industry-specific AI policies.

Establishing AI Fundamentals

The development of AI policies requires establishing a shared understanding of what technology is actually being addressed. A multi-headed hydra of technological tools, AI encompasses many [different structures](#) and applications that include technologies that have been in use for decades as well as newer, more sophisticated tools. Traditional AI models use either [linear regression, or decision tree](#) algorithms programmed by engineers to identify patterns and develop predictive analysis capabilities. This process relies heavily on human input in the form of tweaks to the model made by software engineers. By contrast, the AI models that gave rise to the current fascination and heated debates over AI's impact are [deep learning generative AI models](#) which grew out of the use of [neural network technology](#) based on the structure of the human brain. [Neural network technology](#) uses interconnected computational nodes to create complex learning structures which process exponentially more data than the traditional models. [Deep learning models](#) learn autonomously from errors and internal feedback without the contribution of human engineers and allow for the independent, computer generated development of complex pattern recognition.

Conceptually, these deep learning AI models are organized into [three types of layers](#): the input layer, the hidden layers, and the output layer. The input layer collects data points from which the deep learning model learns. The [hidden layers](#) work based on weights instigated by the programmer, but developed by the computer itself, that control the strength and direction of connections using the data points gathered in the input layer. The process or logic that the AI uses in evolving and [applying these weights](#) is not visible by the user or programmer, and not able to be reverse engineered based on the output. This creates challenges in addressing concerns around transparency especially when trying to control for bias. The hidden layers essentially constitute the [AI model's "brain"](#) where the most complex computations between the input layer

and the output layer happen and the mechanism by which the AI makes its predictions that ultimate form the output. The output layer is the layer that displays the final results of the AI model's calculations

Assessing and Addressing the Challenges

With many of the lawsuits stem from complaints about the unauthorized use of creative content creators' protected works at the input phase of the machine learning process, a number of projects aim to create tools that allow for the [proactive protection](#) of original content. These protections may be as benign as [watermarking](#) original content, or more aggressive means like [Nightshade](#) or [Glaze](#) which add content to images that in essence poison any AI models that ingest them. While the use of subversive digital tools which could damage an AI model might raise legal and ethical issues of their own, given the draconian nature of AI platforms' approach to the distribution of risk allocation especially with regard to creative works, the desire to push back with a bit of rebelliousness is relatable.

The legal challenges to AI models also focus on the [potentially infringing output](#) that can be produced by the generative AI models, creating possible liabilities for AI platforms both on the input and output sides of the equation. Given the undisputedly high stakes, AI platforms and third party AI service providers routinely seek to evade responsibility for potential harms caused by their services, whether by being cavalier with appropriated intellectual property, or by turning a blind eye to the use of AI-powered tools to [violate civil rights](#) or [privacy laws](#).

This avoidance is accomplished by the powerful combination of providing [no transparency](#), and instituting overreaching embedded licensing terms and pushing all liability for risks known or unknown to the end user. The [terms of service](#) required by many AI platforms are perpetual works-in-progress, constantly edited to insulate the platform against the latest potential risk. These unilateral and one-sided terms are often buried in difficult-to-find locations on the platform's webpage, and [generally so incomprehensible](#) that users are likely to quickly click through to get to the end. Even companies aiming to provide services for visual content creators build in loopholes in the [form of broad licenses](#) for the use of any submitted content which essentially requires artists to relinquish any meaningful copyright protection.

After years of [click-through conditioning](#), many end users [do not read the Terms of Service](#) and [unintentionally relinquish intellectual property rights](#) or fail to understand the consequences of uploading their own sensitive data. Most users engage with these AI platforms without fully understanding that the content the platforms provide or generate will be available reciprocally to the platform for ongoing machine learning purposes as well as potentially being accessible to other users. These [practices could be viewed as deceptive](#) and, if ethical behavior is to be prioritized within the marketplace, ideally AI providers would be regulated at the federal level. Especially in light of the potentially grave repercussions of unintentionally exposing confidential

content, users and consumers deserve to be informed and better protected from the unintended consequences of their use of AI platforms. Unless, and until, broader protections become standard, however, it will be incumbent upon end users (or their lawyers) to carefully read the terms of service or other contract terms for AI-related service contracts. Given the power differential between consumers and tech companies, absent legislation, effecting changes to the terms is unlikely, but at least users could make an intentional choice to either use the services pursuant to the harsh terms or not. As the sophistication levels rise among users, the potential for market pressure to be a substantial factor increases, making education about AI a crucial element to developing thoughtful guardrails.

Level-setting education provided on a consistent basis across the board within organizations is a foundational element of fostering an ethics-based environment within the workplace. Much of the fear and unproductive handwringing over the introduction and adoption of AI tools within the work environment can be better managed with some basic education about the way in which AI works, and how it might realistically be applied in the short and longer term. One of the primary fears for many people is whether AI is going to displace them or take their jobs. While it is clear that some jobs will be lost to AI in the AI adoption process, it is far more likely that people who lose their jobs will do so because they are being replaced with someone who knows how to use AI. So, in fact, some job security may be gained by those willing to be educated about how to use AI within their existing scope of work. So, with regard to job security concerns, organizations prioritizing ethics might emphasize on-the-job AI training as a humane way to support the sustainable integration of AI tools into the workplace. Improving existing employees' ability to support and implement AI adoption will more likely yield mutually beneficial results.

Another fundamental way in which ethics might be prioritized would be for organizations to include consideration of the environmental impacts of AI when deciding how and when to implement AI tools into their workflows. Many cultural institutions in particular have gone to great lengths in the last few years to critically examine their carbon footprint in order to create more environmentally friendly practices when it comes to travel, transportation, and the creation of exhibitions and other events and offerings. Especially for arts institutions and artists, environmental impact was a substantial consideration when evaluating the urgency to jump on board with cryptocurrency and NFT-related digital art. These concerns should not simply be dismissed when it comes to the adoption of AI-based workplace solutions because of the perceived inevitability of AI dominance. The fear of missing out (FOMO) has driven hasty and imprudent implementation of AI without the due diligence necessary to truly assess how shifting to AI solutions could impact other mission-critical aspects of organizational policy . . . like adherence to environmentally sound business practices.

Adopting an Ethic-First Approach

Taking an ethics-first approach to the implementation of AI tools and solutions means prioritizing at least four major considerations: 1) best practices with regard to the treatment of intellectual property rights, 2) recognizing the importance of supporting consumer/user-friendly regulations and business practices, 3) valuing human labor as more than just a question of bottom line efficiencies, and 4) committing (or remaining committed) to environmentally-conscious business practices. How these ethical considerations are integrated into the larger AI conversation will depend a great deal on how they are modeled and messaged at the organizational level.

While an ideal future would include uniform and widespread adoption of rational and ethical standards, and best practices (and even better if these were developed with an eye toward at least some international conformity), for now it is up to individual organizations adopting AI to define needs, establish risk tolerances, and establish sustainable, equitable, and administrable internal systems and policies for their organizations and those communities and individuals they serve. Defining an organization's needs can start with a survey of existing agreements, systems, and protocols. Existing agreements and structures may need to be revised to meet the new demands of AI. For instance, software agreements may need to be amended to clarify the way in which an organization's data might be used for AI training. Further, ascertaining whether existing policies already provide the basis for regulation or guidance in the introduction of AI tools and capabilities might provide some direction with minimal effort. Existing policies might provide clear procedures for the adoption of new technology; protocols for protecting confidential information; well-defined standards for job training or rescoping job duties; or clear ways of determining whether a new protocol complies with existing environmental efficiency standards. Additional policies that specifically target AI use should be designed only as needed and tailored to dovetail with policies, obligations, and commitments already vetted and in place.

Once the policy landscape is established, the next step might be making a list of ways in which AI might be adopted for content-generating activities like drafting documents, automatically creating emails, creating summaries of meetings or internal protocols, translating or rewriting content to make it more accessible, or otherwise streamlining existing workflows. In addition to considering how AI might be helpful, organizations should ensure that potential users within the organization are educated about the limitations of AI, such as the possibility that AI models can hallucinate and produce wildly inaccurate or completely made-up output, or that the output may not be protectable with a copyright registration. Ultimately, AI tools should be used not just because they are there and available, but because the use of this technology helps to address an actual need or goal such as improving the job experience for employees; increasing the quality of goods or delivery of services; improving internal and external communications; or better serving a customer base, audience, or constituency. By establishing the ways in which AI might be helpful and produce positive results within a work environment, the foundation of defining successful implementation is also articulated.

While AI policies need to be somewhat flexible to accommodate the rapid evolution of this and other technology, it is important to consider whether and how the implementation of AI policies serve an organization's purpose or mission and include goals for the use and integration of AI and other new technology. Defining goals and establishing metrics for success against which outcomes can be measured is a crucial part of ensuring that policy impacts can be meaningfully assessed. These metrics should include the four major considerations outlined above as applicable to an organization's existing goals and standards. Accurate assessment will also require [transparency as a core value](#) both as an expectation for internal uses as well as for evaluating the impact of AI-generated or AI-assisted content provided to others. Establishing a clear, yet adaptable policy provides an essential framework for the development of legal, ethical, and consistent practices. This allows for the adoption and use of new technologies, including AI, with an inclusive, open, and constructive vision.

By vigilantly adhering to established policies and articulated values, organizations can ensure that AI models are adopted, deployed, and used in a considered and proactively evaluated manner, with the protection of constituents, customers, and audiences as a consistent goal. The process of applying AI policies to practical legal analysis, necessarily begs the question of [where ethics fit](#) into the equation. The urgency for inclusion of [ethical considerations](#) in both policy development and legal positioning especially when it comes to generative art is palpable as we see not only an accelerated use of AI creating legitimate fear that [artists and jobs will be replaced](#) with bots, but also the use of AI as a means for [manipulating the public, whether to push products or particular political agendas](#). If we are to develop sustainable systems that maximize the [potential for the use of new technology](#) and at the same time respect human labor and contribution, we must proceed thoughtfully with intentionality and integrity.

Conclusion

Because museums and cultural institutions are already balancing the rights of creators with the needs of their audiences, they are well-positioned to [thoughtfully develop AI policies](#) that protect artists while allowing audiences meaningful access to creative works. They are also generally operating with the constraint of limited budgets and so are particularly motivated to [use technology](#) to maintain a lean and efficient staff. Having barely emerged from the frenzied conversations around whether and how to adopt crypto-friendly structures, and how to pivot [museum policy to accommodate new technology](#) in development and with regard to acquisitions and commissions, the machines of discourse within the arts are well-oiled and ready to take on the challenge of developing AI policy. In this way, the arts and culture sector is a perfect incubator for the development of ethical and humane standards and protocols that could be more widely deployed. Arts leaders around the world are already answering this call to arms, from the persistence of the [Writers' Guild in negotiating AI guardrails](#) into their latest contract with the studios to protect writers, to [museums embarking on innovative projects](#) to explore the value of

integrating AI tools into museum experiences, to the growing financial investment into the burgeoning field of immersive experiences, there is no question that the arts and culture sector will lead the way through this tumultuous and crucial moment of paradigmatic shift.

The potential peril and promise of AI will continue to increase as the technology continues to evolve, and there is likely another seismic moment on the horizon with advances in quantum computing. Quantum computing will enable the processing of content and data at an exponentially faster rate which will provide computational jet fuel to everything AI. The development of these technologies holds incredible potential for good and meaningful uses that could change the course of human history for the better, but it also heightens the need for a strong foundation of ethical standards to underpin policy and lawmaking. Though technological developments are exciting and hold tremendous promise for myriad wonders, just as train tracks need solid ties and ballast to provide a sturdy rail system, prioritizing ethical standards for AI and other innovative technologies is essential in keeping us on the path to building thoughtful and sustainable collaborations between humans and technology.

Sarah Conley Odenkirk is the Founder of ArtConverge, offering legal services, scholarship, and thought leadership internationally in the field of fine art and emerging technologies, with offices in Chicago, Los Angeles, and New York. She has been a practicing attorney and educator for more than three decades; sits on the Board of the Andy Warhol Foundation for the Visual Arts; and is a frequent speaker and published author.

HERITAGE PROTECTION IN CONFLICT ZONES AND THE MODERN "MONUMENTS MEN"

New York, N.Y. – Metropolitan Art Museum Head of Objects Conservation, Lisa Pilosi, shows archived materials from MFAA, "Monuments Men", to soldiers from the 353rd Civil Affairs Command (U.S. Army photo By Sgt 1st Class Gregory WilliamsReleased)

*CPT Jessica L. Wagner

Introduction

On Monday, October 21, 2019, the United States (US) Pentagon announced the establishment of a modern "Monuments Men" reserve program. The Army Military Government Officers, or 38G Program, are tasked with utilizing civilian sector expertise to aid in conflict operations, in addition to the protection of physical cultural heritage. The program is partially "composed of commissioned officers of the Army Reserves who are museum directors or curators, archivists, conservators and archaeologists." However, unlike the storied Monuments, Fine Arts, and Archives (MFAA) unit of World War II (WWII), the contemporary 38G Program has recruited officers with a greater diversity of skill sets and are directed to consider both tangible and intangible cultural heritage within conflict zones. USACAPOC(A) Program Director, Colonel (COL) Scott DeJesse, states:

What is going to be different than the monuments men and women of the past is that we've got to meet the [protection] requirements of the 1954 Hague Convention, (...) then (...) provide guidance to commanders on (...) analyzing the battlespace (...), cultural heritage is not just something that is passive that needs to be protected -- it's (...) an active agent (...) in these complex environments.

In brief, the Army Civil Affairs 38G, and their counterparts from the past, the MFAA of WWII, are similar US military programs, each tasked with utilizing specialized skill sets within the battle space, alongside the protection of cultural heritage in times of armed conflict. Yet, when considering tangible and intangible heritage, and the ratification of 1954 Hague Convention, key differences between these programs emerge. To examine these disparities, I pose the following questions: What structural, operational, and mission differences will exist between the Monuments Men of the past and present, the WWII MFAA, and the Army Civil Affairs and Psychological Operations Command (Airborne) 38G Program? And, how will a consideration of both tangible and intangible heritage aid in the success of US military protection of cultural property, and adherence to the 1954 Hague Convention, in times of contemporary armed conflict?

Through these considerations, I propose that the Monuments Men of the present, the Army Civil Affairs 38G Program, can best succeed in the preservation of cultural property in times of armed conflict via the following means. 38G officers must secure a deep understanding of the intangible aspects of heritage within a conflict zone through strong collaboration with source cultural communities. Subsequently, through that understanding and collaboration, the officers, alongside local cultural workers, must then utilize intangible heritage as a vehicle to safeguard tangible heritage, thus upholding the Hague Convention.

1. In support of this argument, we first explore a short synopsis of the MFAA, the 1954 Hague Convention, and the contemporary Army Civil Affairs 38G Program, and define key terminology. Secondly, we critically analyze tangible and intangible heritage, and the relationship between the two aspects of cultural heritage. Lastly, we'll examine tangible and intangible heritage within conflict zones and assert intangible heritage as an instrument to be utilized by the 38G Program's protection of cultural property in armed conflict.

Historical Background and Definitions

A short history of the MFAA, the 1954 Hague Convention, and the modern Army Civil Affairs program is useful. Without a historical frame of reference, the case for employing intangible heritage to protect cultural property is far less articulate. Additionally, the following definitions of key terminology are essential for clarifying critical points.

It is important to note the distinction between tangible cultural heritage and intangible cultural heritage. Tangible heritage refers to "objects, artifacts, buildings, places, and monuments, (...) [heritage with] a physical presence". Intangible heritage is then defined as "oral traditions, performing arts, social practices, rituals, festive events, knowledge and practices (...), [and] digital heritage", or "heritage without a physical presence".

Of the same vein, are the terms cultural heritage and cultural property, which are interrelated, and are often used interchangeably. However, cultural heritage is far broader, including both tangible and intangible heritage (Stone 167). Thus, cultural heritage can be defined as "the legacy of physical artifacts and intangible attributes of society" (Willis 145). In contrast, the United Nations Educational, Scientific and Cultural Organization (UNESCO) defines cultural property as tangible heritage including, "movable or immovable property, (...) such as monuments of architecture, (...) archaeological sites; groups of buildings (...), works of art, manuscripts, books and other objects of artistic, historical or archaeological interest; as well (...) collections of books or archives." Therefore, cultural heritage and cultural property will be utilized separately and intentionally.

The Monuments, Fine Arts, and Archives Program

The looting and destruction of cultural heritage amidst the Second World War (1939-1945) was unparalleled. While both European and Pacific regions suffered, Europe bore the brunt of the devastation. The ravaging of monuments, archives, libraries, and the spoliation of cultural property occurred in mass magnitude, pawns in the "[Nazi] Third Reich's broad-scale acquisition and destruction of European cultural heritage" (Moustafa 320; Zelman 5).

In 1940, in response to the impending looting of cultural property, the American Defense Harvard Group—described by Moustafa as "an organization of artists, librarians, professionals, and scholars [that] alerted the American government to the potential destruction of European cultural heritage sites and artifacts in the wake of the Nazi occupation of Europe"—raised early alarms about the cultural toll of the war (Moustafa 324). As a result, in late 1943, the American Commission for the Protection and Salvage of Artistic and Historic Monuments in War Areas was established by President Franklin D. Roosevelt. From this commission, the Monuments Fine Arts and Archives Program, the Monuments Men were born (Edsel and Witter 51-53; Moustafa 324-325).

The WWII MFAA consisted of a joint collaboration of American and British service members. Initially, the operation was chiefly focused on aiding combat troops in the protection of cultural property, identifying "protected monuments in various European countries" during the advance of the Allied forces (Edsel and Witter 54; Klein). To achieve this, MFAA officers served in both an "organizational capacity" and as field officers. Field officers were embedded within frontline battle groups during and following the invasion of Western Europe (Edsel and Witter 65). MFAA officers serving on the frontlines were tasked with the following during

armed conflicts: advising commanders on protected heritage within or near the battlespace, "recording conditions of protected monuments following combat (...), supervising emergency repair work, [and] preventing further damage and looting of monuments" (Edsel and Witter 77-78).

Of particular interest to Adolf Hitler and the Nazi Regime, were the vast holdings of artistic masterpieces throughout Europe. Hitler's desire to build a cultural empire in Linz, Austria, required "German forces (...) [to establish] a systematic method for plundering and looting artworks, particularly in Western Europe" (Nichols 444; Zelman 5). As Allied forces advanced across Europe, the MFAA "increasingly focused on the rescue and recovery of the art and artifacts looted by the Nazis" (Klein). By the end of 1944, the MFAA consisted of more than 350 men and women, deployed across thirteen countries, tasked with "the greatest treasure hunt in history" (Edsel and Witter; Moustafa 325). Throughout their time in service, the program "rescued, preserved and returned five million pieces of art and other cultural artifacts" (Klein).

In summary, the MFAA's priorities evolved over the course of the war. In the early stages of the Allied European campaign the MFAA focused on identifying, advising on, and protecting monuments or heritage sites, or immovable physical heritage. In the late stages of the war, the program refocused on the rescue and repatriation of art and cultural artifacts, or movable physical heritage. Through reviewing the history, mission, and operations of the WWII MFAA, the Monuments Men of the past clearly focused their efforts on the protection and recovery of cultural property, or tangible cultural heritage. Let's now move to the post-war period and the 1954 Hague Convention, an agreement birthed from the ashes of the second world war.

The 1954 Hague Convention

Signed in 1954 in The Hague, Netherlands, *The Convention for the Protection of Cultural Property in the Event of Armed Conflict* yielded the first international agreement explicitly focused on the preservation of cultural property during times of war. The treaty resulted as a reaction to the mass devastation of tangible cultural heritage during World War II (Teijgeler 5; Wegener, *Preserving* 1; Zelman 8). Initially, the Convention was signed by forty-eight countries, as of 2018 the agreement has been ratified by one-hundred and thirty-three nations.

In brief, The Hague Convention details the terms in which a signatory nation's respective tangible cultural property should be identified, safeguarded against future conflict, and protected during times of armed conflict. Most poignantly, the agreement directs nations to undertake specific military measures:

1. To introduce in time[s] of peace into their military regulations or instructions such provisions as may ensure observance of the present Convention, and to foster in the members of their armed forces a spirit of respect for the culture and cultural property of all peoples.

2. (...) to plan or establish in peace-time, within their armed forces, services or specialist personnel whose purpose will be to secure respect for cultural property and to cooperate with the civilian authorities responsible for safeguarding it.

Thus, the Convention explicitly stipulates a requirement for each nation to designate cultural heritage specialists within their military forces to ensure the protection of cultural property in armed conflict. However, despite the Hague Convention's post-WWII negotiations, the US did not officially ratify the treaty until March 13, 2009 due to Cold War complications. This recent ratification in conjunction with loss of cultural property within contemporary Middle Eastern and North African conflicts have ultimately elicited US response in the 2019 forming of the modern Monuments Men, the 38G Program (Cox; Moustafa 321).

In summary, it is important to note two key aspects of the Hague Convention. First the requirement for instating heritage experts within US military forces. Second, the specific use of the term "cultural property" throughout the treaty. Therefore, in order for the US to adhere to the 1954 Convention, cultural heritage professionals embedded within military forces must successfully protect tangible, or material heritage, within conflict zones. A requisite we will now examine in conjunction with the newly formed Army Civil Affairs 38G Program.

The Army Civil Affairs and Psychological Operations Command (Airborne) 38G Program

Although officially authorized in 2013, the United States Army Civil Affairs and Psychological Operations Command (Airborne) (USACAPOC(A)), 38G Program was announced to the public in October 2019, establishing a program of direct-commissioned officers with various expertise in civilian sectors. Unlike their predecessors, the MFAA, the Army Military Government Officers, or 38G, span 23 differing skill identifiers (SIs), and do not solely consist of art, archeology, and heritage experts, the various roles include:

Economist/Commerce Officer[s], (...) Public Education Officer[s], (...)Civilian Supply Officer[s], (...) Public Transportation Officer[s], (...) Public Facilities Officer[s], (...) Public Safety Officer[s], (...) Public Communications Officer[s], (...) Agricultural Officer[s], (...) Heritage and Preservation Officer[s], and (...) Archivist[s].

These wide-ranging experts work collaboratively to provide a broader "analysis of the battlespace." 38G Officers are embedded within various military units, applying their specialized skill sets to advise US combat troops. The initial 38G recruits numbered around 25 individuals, with a total of approximately 500 being commissioned for the program.

More specifically, 38G/6V, or soldiers with the SI of 6V, Heritage and Preservation Officers, train with the Smithsonian Institute's Cultural Heritage Rescue Initiative (SCRI) and act as a "scholarly liaison" between the US military and local authorities in conflict zones (Cox). Heritage and Preservation Officers identify tangible cultural heritage within a conflict zone, or

sites of cultural significance, monuments, libraries, churches, and movable cultural property, as well as analyzing aspects of intangible cultural heritage, such as religions, traditions, languages, and potential sources of cultural friction (Cox; Department of the Army; Wolfe).

Therefore, in contrast to the MFAA Program of WWII, the 38G Program does not solely concentrate on physical monuments, buildings, and pieces of movable cultural property. The soldiers also evaluate the cultural climate of a conflict zone, considering the intangible aspects of heritage. As evidenced by both the recruitment of diverse expertise across numerous sectors, as well as through the objectives of the 38G Program. However, I have yet to address how this consideration of the intangible will aid in the successful US protection of cultural property. Thus, the following section will consider tangible and intangible heritage and the relationship between the two aspects of cultural heritage within conflict zones.

Tangible and Intangible Cultural Heritage

As defined prior, tangible heritage and intangible heritage are aspects of the broader term cultural heritage. Tangible refers to physical heritage, intangible to facets of heritage without a physical presence, and cultural heritage to a compilation of both (Ahmad; Willis). Yet, though tangible and intangible heritage are differing pieces of the same whole, the two exist in a bound relationship. This interdependency is key when considering the protection of cultural property in conflict zones.

The Interdependent Relationship of Tangible and Intangible Heritage

Tangible cultural heritage is defined by UNESCO as "movable cultural heritage (paintings, sculptures, coins, manuscripts), immovable cultural heritage (monuments, archaeological sites, and so on)". UNESCO then interprets intangible heritage as "the practices, representations, expressions, knowledge, skills— as well as the instruments, objects, artifacts and cultural spaces associated therewith" (Ahmad 298-299). Through this definition UNESCO asserts a direct link between physical, tangible heritage, and non-physical, intangible heritage.

Examining further, Richard Kurin, Smithsonian Distinguished Scholar solidifies the interdependent relationship between the two aspects of cultural heritage:

> For many peoples separating the tangible and intangible seems quite artificial and makes little sense. For example, among many local and indigenous communities, particular land, mountains, volcanoes, caves, and other tangible physical features are endowed with intangible meanings that are thought to inherently be tied to their physicality. (70)

The inability to part tangible, material cultural heritage, from intangible, nonmaterial cultural heritage is clearly shown through the use of physical objects within non-physical practices and traditions, as well as the intangible meanings and associations placed upon tangible aspects of cultural heritage. Examples include, religious ceremonies held within a church or

temple, costumery and adornments used within a traditional dance, or community value placed on a local monument. Joris van Eijnatten and Marije de Nood echo "the evident connections between the two kinds of heritage" (...)tangible objects are not just meaningful expressions of immaterial ideas and viewpoints; objects also provoke opinions, memories, anecdotes and stories, thus adding to the reservoir of intangible heritage". Lynn Meskell summarizes, "physical landscapes, monuments and objects cannot be separated from intangible beliefs and resonances".

Thus, having established the interdependent relationship of tangible cultural heritage and intangible cultural heritage, this analysis now turns to the following questions: How does the interconnection between the tangible and intangible unfold in areas of armed conflict? And most importantly, how does this translate to the protection of tangible cultural property in armed conflict?

Tangible and Intangible Cultural Heritage in Conflict Zones

The interdependent relationship of intangible and tangible heritage in conflict zones is often overlooked. Actors within areas of armed conflict, even those tasked with the protection of heritage, frequently promulgate "an attitude towards [physical] heritage that assumes it can exist in isolation from its wider contexts" (Sorenson and Veijo-Rose 5). This premise proves wholly untrue through a deeper investigation of the role that material heritage, and the meaning placed upon it through non-material heritage, play within conflict zones. Additionally, when considering the manner in which tangible cultural heritage, vested with symbolic importance, is then utilized as a pawn in times of armed conflict.

First, through our prior examination of the interdependent relationship between tangible and intangible aspects of cultural heritage, we have evidenced intangible heritage as the means through which tangible heritage gains associations and meaning. Tangible heritage, or cultural property, within conflict zones often refers to monuments, buildings, artifacts, and cultural sites. Therefore, through the intangible, "heritage sites act as anchors of symbolic meaning, (...) they are crucial to the relationship between people and their environment" (Sorenson and Veijo-Rose 6). This assertion of meaning is also applied to movable cultural heritage, objects and artifacts, which become "laden with symbolic meaning and affective association" (Sorenson and Veijo-Rose 6).

Dr. Zainab Bahrani illustrates the relationship of tangible and intangible during conflict through the desecration of the Jewish peoples and heritage during WWII, "[the Nazis] didn't just take them to camps and kill them—they did their best to destroy any personal property so that there would be no trace" (Moustafa 331-332). The intangible, symbolic importance of physical heritage is evidenced through the Nazi campaign to eliminate all tangible traces of the Jewish people.

This notion transitions to our second claimAs a result of intangible meaning vested within tangible cultural heritage, physical heritage is then targeted and manipulated during times

of armed conflict. <u>Sorenson and Viejo-Rose</u> assert the role of tangible, intangible, and heritage destruction within conflict zones:

> In terms of conflict, (...) tangible qualities (...) are important, helping explain why (...) places become targeted for destruction (...). Firstly, their physicality creates an obvious focus for attention and activity; alterations to their physical form can be observed and responded to: the 'message' of destruction is unavoidable. Second, (...) within physicality lie intangible values, (...) imbued with symbolic meaning and emotions. (7)

In other words, immovable and movable tangible heritage, or cultural property, become effective tools, targets for ravaging, bargaining chips, or victims of looting, due to the value placed upon them through intangible heritage. For greater clarity, I now examine a specific example of contemporary armed conflict, the 2003 US invasion of Iraq and subsequent looting of the Iraq National Museum.

The Iraq National Museum

In April 2003, US and Allied forces invaded Iraq and the ruling regime of Saddam Hussein fell. In the immediate aftermath, the Iraq National Museum was looted and the National Library, the National Archives, and the Religious Library were partially burned (Wegener, *Looting* 28). Artifacts, records, works of art, statues by the tens of thousands were <u>spoliated and destroyed</u> (Gerstenblith 289). "<u>Roughly 15,000 objects were reported missing from the Iraq Museum alone</u>" (Wegener, *Looting* 28; Zelman 27).

The devastation and mass looting of cultural sites occurred despite preparation prior to the invasion in which "<u>a group of scholars, museum directors, and antiquities dealers met with Pentagon officials to discuss their fears about the threats</u>" to the cultural heritage of Iraq (Zelman 29). As a result, "<u>the Pentagon placed Iraq's National Museum and other important cultural sites on the military's "no target" list</u>" (Thurlow 175; Zelman 29), consisting of "<u>roughly 5,000 cultural sites</u>" (Teijgeler 6). In addition, Iraq museums also relocated key objects and artifacts to "<u>secure locations as suspicion of the incoming invasion grew</u>" (George 97; Zelman 30).

Despite precautionary measures, the direct aftermath of the fall of Sadam, and mass spoliation and destruction of heritage which followed, was wholly unexpected. Colonel Matthew Bogdanos, a US officer tasked with the recovery of Iraq cultural objects, <u>explains</u>:

> The planners had no idea of the extent to which the average Iraqi viewed the museum not as housing the priceless cultural heritage of their country, but as Saddam Hussein's gift shop… Many Iraqis equated stealing from the museum as stealing from Saddam, not from themselves. (qtd. in Zelman 30)

In fact, so unanticipated was the immediate looting by civilians following the invasion, that the Iraq National Museum, alongside other cultural sites were left unprotected and unguarded (Teijgeler 6; Zelman 30).

Illustrated by pillaging of the Iraq National Museum and other cultural sites was the US military's lack of understanding of the intangible aspects of heritage within the conflict zone. Unbeknownst to US forces, Iraqi citizens placed little value in the tangible heritage within the nation's museums, archives, libraries and monuments. Cultural sites "often only opened to celebrate Saddam Hussein's birthday or for another government holiday" leading collections to be viewed as government property (George 105; Zelman 37). Civilians felt no connection to, or sense of ownership in Iraq's material cultural heritage. On the contrary, the pillaging of cultural sites and artifacts was perceived by many Iraqis as an act of resistance against the previously reigning regime. In other words, the symbolism and meaning, or intangible heritage, vested within the tangible cultural property in the country was wrought with negativity and disconnect.

Thus, through examining the looting of the Iraq National Museum the interdependent relationship between intangible and tangible heritage within areas of armed conflict is clear. Lastly, I address the manner in which intangible heritage can be utilized within conflict zones as a vehicle to protect tangible cultural heritage. As asserted by Kurin, "the preservation of tangible and intangible heritage are intimately conjoined" (70).

Intangible Heritage to Protect Tangible Cultural Heritage in Times of Armed Conflict

In times of armed conflict the interdependent relationship between tangible and intangible cultural heritage must be considered and strategically utilized. Intangible heritage bestows tangible heritage with meaning, it is the medium through which people connect to material culture. This symbolic importance then targets cultural property as a tool in times of armed conflict. As demonstrated by the widespread destruction and spoliation in Iraq, disregarding the intrinsic relationship between tangible and intangible heritage in conflict zones undermines efforts to protect cultural property and to uphold the principles of the 1954 Hague Convention.

To address this, I propose the following two-pronged approach. First, the Army Civil Affairs 38G Officers must build strong collaborative relationships with source cultural communities in order to fully interpret intangible heritage within a conflict zone. Second, informed by those partnerships, officers—working alongside local cultural professionals— should employ intangible heritage as a tool to safeguard tangible heritage, or cultural property.

The establishment of the Army Civil Affairs 38G Program points to the U.S. recognition of the need for cultural expertise within armed forces. Despite the proposed increase in U.S. heritage professionals embedded in military units, a relationship between these experts and local source cultural communities is essential. Peter Stone, UNESCO Chair in Cultural Property Protection and Peace, asserts the need for collaboration, "recent events in Egypt, Libya, Mali,

and now Syria, all underline the need for a clear relationship to be established between cultural heritage experts and the military, as the world struggles to come to terms with conflict in the twenty-first century" (168).

      Janet Blake, Professor at Shahid Beheshti University, reinforces this call for partnership: [Contemporary conflict] requires us to reconsider the role of communities, groups and individuals in [cultural heritage] safeguarding and to propose new approaches towards building partnerships. (...) We move towards giving value to a heritage that resides primarily within human memory and human communities, moving away from a paradigm that gives value predominantly to (...) material heritage.

      As seen in Iraq, without recognizing intangible aspects of heritage, or meanings and symbolic importance placed upon cultural property, the protection of tangible heritage is much impeded. Therefore, I assert that it is through partnerships with local cultural groups that intangible cultural heritage within a community may be truly accessed. These source cultural communities may include – but are not limited to – library, museum, and heritage professionals, archivists, archeologists, historians, conservators, government and public cultural workers, and local community leadership. Thus ensuring that U.S. forces are fully informed of the cultural climate within a conflict zone.

      Having established the requisite for strong collaboration and increased cultural knowledge, I now argue that 38G officers, alongside local cultural workers, must then employ aspects of intangible heritage within a conflict zone as a vehicle to protect tangible heritage. As key stakeholders within the community, heritage professionals in conflict zones must be entrusted to work alongside Army Civil Affairs, taking "an active role in protection and recovery" of cultural property (Moustafa 322). However, I have yet to detail the particular manner in which the intangible may be harnessed to protect cultural property. Thus in summary, I suggest that 38G officers, in a combined effort with cultural workers, can employ intangible heritage in the following ways:

- To gain key perspectives on local social standards and viewpoints towards movable and immovable tangible cultural heritage within a conflict zone. Thereby anticipating potential disconnect with cultural property, and consequent spoliation and damage by civilian, and/or military, and/or terrorist, and/or government populations.
- To identify key movable and immovable tangible cultural heritage, such as monuments, museums, cultural sites, and artifacts of particular symbolic importance within a conflict zone. Therefore establishing:
    - Cultural property that is vulnerable to destruction and looting, thus requiring proactive protection prior to, throughout, and following armed combat.
    - Cultural property that is not to be exploited by US military or allies during armed combat.

- ○ Cultural property that requires condition reporting and/or emergency repairs following armed combat.
- To establish differing cultural groups, or stakeholders, with vested interest or ownership in certain movable or immovable cultural heritage within a conflict zone, monuments, museums, artifacts, or heritage sites. In order to:
  - ○ Identify particularly contested cultural property and heritage sites as potential sources of conflict, therefore of increased vulnerability.
  - ○ Utilize identified stakeholders collaboratively in the protection of cultural property.

Conclusion

Though long overdue, the U.S. mandate of a modern "Monuments Men" program does not come without the unique challenges posed by contemporary armed conflict. I have asked the question, how can the USACAPOC(A) 38G Program best succeed in the protection of cultural property in armed conflict, thereby adhering to the 1954 Hague Convention? I have proposed that the program take a two-part approach: securing inherent knowledge of intangible heritage within conflict zones through collaboration with source communities, then employing that intangible heritage as a vehicle to safeguard tangible heritage.

To support this argument I have identified differences between the Monuments Men of the past and present, the MFAA, and the contemporary Army Civil Affairs reserve program, and reviewed the 1954 Hague Convention. I have then demonstrated the interdependent relationship between tangible and intangible cultural heritage. Concluding with the application of that relationship to conflict zones.

However, the proposal of collaboration and utilization of intangible cultural heritage in conflict zones opens several doors in need of additional study. One, I have not explored the particular steps to forge strong relationships between the US military, 38G Program, and source cultural communities. Nor have I outlined the manner in which the hierarchy of importance, therefore urgency, will be established in regards to key facets of intangible heritage within a conflict zone. In other words, how to determine which aspects are most important, and how they then will be classified and documented for utilization. Additionally, I have not specifically addressed the preservation of the aspects of intangible heritage in armed conflict, elements such as languages, traditions, and religions. These questions require future research and continued assessment of the interdependent relationship of tangible and intangible cultural heritage in conflict zones.

Ultimately, I assert that through utilizing intangible heritage the USACAPOC(A) 38G Program can best succeed in the preservation of cultural property in times of contemporary armed conflict. As a result, assuring the US adheres to the requirements outlined in the 1954

Hague Convention. Thus, following in the footsteps of their predecessors, and carrying on the legacy of the storied "Monuments Men."

*CPT Jessica L. Wagner is commissioned as a Heritage and Preservation Officer with the Army Civil Affairs and Psychological Operations Command (Airborne), USACAPOC(A) 38G Program in 2022. She is currently attached to the 353d Civil Affairs Command, and serves as the 353d Command Historian. Cpt. Wagner has over 13 years of experience within the U.S. and international cultural sector. Her career has centered around heritage preservation, development, public outreach, education and engagement within cultural institutions. She is currently the Director of Education for the Durham Museum, a Smithsonian-Affiliate in Omaha, NE.

ML-MEDIATED CREATIVITY
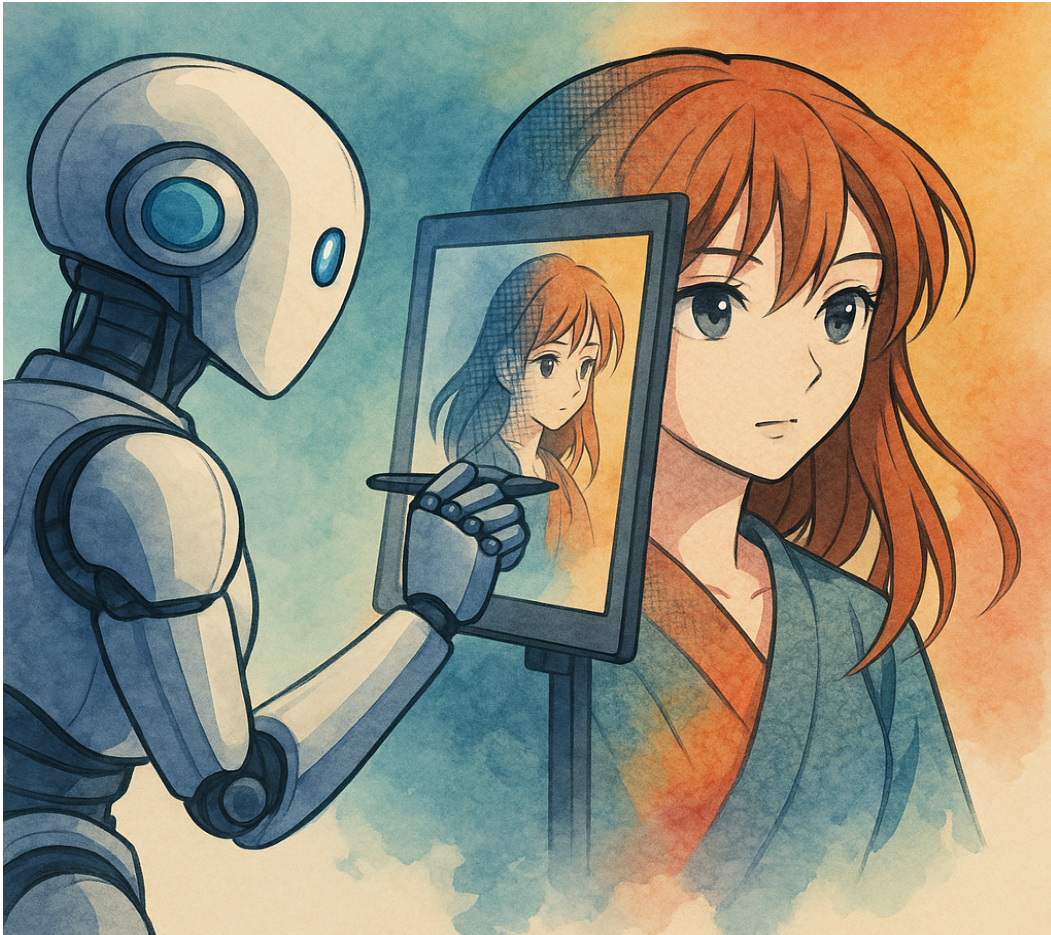
*Gilad Abiri

Last month, OpenAI's new GPT-4o image generator flooded the web with images mimicking Studio Ghibli's beloved hand-painted aesthetic. In his customary fund-raising tone, Sam Altman celebrated "the democratisation of creating content" as "a big net win for society." In stark contrast, the legendary co-founder of Studio Ghibli, Hayao Miyazaki, had commented years earlier on AI-generated art: "Whoever creates this stuff has no idea what pain is whatsoever... This is an insult to life itself." These competing visions—one exalting frictionless production and access, the other defending the essential struggle of human creativity— represent not just different opinions, but fundamentally opposing futures for art itself.

Like the great Miyazaki, I am concerned about the future of human creativity. To understand why, allow me to offer the following, rather plausible, thought experiment: imagine a world in which machine learning models (producing text, video, images and music) are the main mode of human cultural production

The stakes of this transformation become clear when we examine how human creativity has historically functioned as a mechanism of cultural meaning-making and social adaptation. Consider, for instance, the evolution of <u>anime aesthetics.</u> Originally, anime emerged as a distinctive artistic form in post-war Japan, where artists and animators externalized their society's experiences through a new visual language. This process exemplifies what sociologist <u>Peter Berger</u> calls "externalization" – the projection of human meaning into the world. But this was more than artistic creation; it represented a deeply social process through which a society grappled with post-war trauma, economic constraints, and cultural identity through creative expression. Artists combined <u>Japanese woodblock printing traditions with Western animation techniques,</u> to create something genuinely new through cultural friction and social needs.

Over time, this new artistic form became what Berger calls "objectified" – it began to appear as an independent cultural reality, maintained by what he terms "plausibility structures": animation studios, fan communities, critics, and cultural institutions that made this new aesthetic feel natural, even inevitable. These structures did more than maintain a style; they preserved the social meanings embedded within it, allowing the form to evolve while retaining its cultural integrity.

New generations of artists then internalized these forms through socialization – Berger's third moment in the dialectic of cultural creation. They learned the visual language of anime not just as a set of techniques, but as a way of seeing and expressing meaning. This internalization provided the foundation for further innovation, as artists brought their own experiences and cultural influences into dialogue with the established form.

Crucial to anime's evolution was what Berger terms "cognitive contamination" – the productive friction that occurs when different cultural systems encounter each other. The form's development was driven by continuous contact between Japanese and Western aesthetic traditions, between different generations of artists, between different studios and their approaches. Each point of contact created opportunity for innovation through the clash and combination of different systems of meaning.

Legal theorist Julie Cohen helps us understand why this friction is so <u>essential for cultural innovation.</u> She describes creativity as a process of "working through culture" - artists and creators must actively engage with, play with, and transform existing cultural resources. This isn't just about combining elements; it's about the "to-and-fro" of unstructured experimentation, the serendipitous encounters that occur when creators freely explore cultural possibilities. In anime's evolution, we see this process at work: artists weren't simply mixing Japanese and

Western elements according to a formula, but engaging in open-ended play with different artistic traditions, storytelling forms, and technical possibilities.

Now, in our thought experiment, observe how this process transforms in a world dominated by AI art generators. These systems, trained on millions of existing anime images, fundamentally alter the dynamics of cultural innovation in two ways. First, through their training process, they create a statistical flattening of the anime aesthetic. By analyzing millions of images to find common patterns, ML systems don't preserve distinct artistic traditions or approaches– instead, they generate an optimized average of all anime styles, smoothing out the distinctive elements that emerged from specific cultural collisions and contexts. Second, this averaged style becomes locked in through the system's architecture. ML systems can only generate variations within the patterns they've been trained on, and meaningful stylistic change would require retraining entire models– an expensive, technically complex process that effectively freezes cultural evolution at the point of training.

These technical constraints fundamentally transform the social processes that Berger and Cohen identify as crucial for creativity. Instead of externalization emerging from genuine social needs and cultural friction, we get variations within algorithmically determined boundaries. Rather than being maintained by social plausibility structures that preserve cultural context and meaning, the aesthetic becomes locked into technological systems optimizing for pattern recognition. When new artists internalize these forms, they're absorbing algorithmically refined patterns rather than socially negotiated meanings.

The result is a closed feedback loop: ML systems train on existing anime, creators use these systems to generate new content, this content feeds back into training data, and the cycle reinforces existing patterns rather than generating genuine innovation. The "objective reality" of anime style thus becomes determined not by ongoing social negotiation and creative play, but by algorithmic parameters and technical constraints.

This transformation exemplifies the broader challenge we face as machine learning systems increasingly mediate our creative processes. The implications extend far beyond anime or even aesthetics. Cultural innovation has historically served crucial social functions: processing collective experiences, adapting to new conditions, negotiating power relationships, creating new forms of meaning and connection. If ML-mediated creativity optimizes for pattern recognition rather than productive friction, we risk losing these essential social functions of cultural innovation.

THE STRUCTURAL INADEQUACY OF INTELLECTUAL PROPERTY LAW

While intellectual property law grapples with crucial questions about compensation and control in ML-mediated creativity - questions that matter deeply for the financial sustainability of cultural production - these debates cannot address the more fundamental transformation that Berger and Cohen help us identify. When ML systems optimize for pattern recognition and

statistical averaging, they don't just raise questions about compensation and rights; they threaten the very dynamics of how cultural innovation occurs - the friction, play, and serendipitous encounters that drive genuine creative evolution. Yet intellectual property law emerged from and remains wedded to a model of creativity that treats cultural works as discrete resources to be owned and controlled, rather than materials for <u>open-ended play and experimentation.</u>

Return to our anime example. Copyright law would ask questions about ownership and originality: Does an ML system trained on anime infringe the rights of individual creators? Should studios receive compensation when their works are used as training data? But these questions miss the crucial dynamic that Berger and Cohen help us identify. The creative force of anime emerged not from individual works but from the friction between cultural systems and the freedom to play with different artistic traditions - Japanese aesthetics encountering Western animation techniques, traditional storytelling forms colliding with new media technologies. No framework of individual rights can preserve this generative friction or protect these spaces for cultural play.

The proposed solutions for ML regulation through IP law reflect this structural blindness. <u>Mandatory licensing schemes</u> treat cultural innovation as a problem of resource allocation - as if ensuring proper compensation would somehow maintain the social processes and spaces for play through which anime evolved as a form. <u>Attribution requirements</u> imagine that tracking lineage is equivalent to preserving the living traditions through which artistic innovations emerge and evolve. <u>Content filters</u> mistake the protection of specific works for the protection of creative processes. Even more sophisticated proposals betray this fundamental misunderstanding. But this simply shifts the unit of analysis without addressing the core dynamic. The issue isn't whether we protect individual artists or collective entities - it's that IP law can only see static rights where it needs to see dynamic processes of cultural play and experimentation.

The problem runs deeper than any particular doctrine. Copyright's idea/expression dichotomy, trademark's focus on market signals, patent's emphasis on technical innovation - these frameworks all emerge from and reinforce a model of creativity that treats cultural works as discrete objects rather than materials for play and experimentation. They are tools designed to manage a market in cultural products, not to preserve the generative friction and playful engagement that drives cultural evolution.

This structural mismatch becomes particularly clear when we consider proposals for licensing fees in ML training. The logic seems compelling: if ML systems learn from human creators, surely those creators deserve compensation. But this frames the problem as one of fair resource extraction rather than cultural preservation. It's as if we tried to preserve a coral reef by paying for the minerals we mine from it - missing entirely the living processes and spaces for play that make the reef worth preserving in the first place.

IF IP LAW CANNOT SAVE HUMAN CREATIVITY, WHAT CAN?

If one accepts the concerns raised by our thought experiment about ML-mediated creativity, we face challenges that may well exceed law's capacity to resolve. The preservation of generative friction - that productive tension between cultural traditions that drives innovation - seems to slip through the fingers of our existing legal frameworks. While I cannot offer definitive solutions, I want to explore two potential approaches that might help mitigate these challenges, though each comes with significant limitations. The first approach builds on existing institutional structures that already foster cultural innovation, while the second suggests more radical interventions in the architecture of ML systems themselves.

Educational institutions - from art schools to universities - already provide environments where different cultural traditions collide and where students engage in what Cohen calls creative play. The classroom, the studio, the library - these are spaces where the dialectical process Berger describes unfolds naturally through discussion, experimentation, and direct human exchange. Our first task, then, must be to preserve these existing spaces of cultural friction against algorithmic displacement.

This might mean requiring educational institutions to maintain certain percentages of direct human-to-human instruction and creative exchange. Not because traditional methods are inherently superior, but because these unmediated encounters generate the kind of cognitive contamination that Berger identifies as crucial for innovation. We already regulate educational institutions to maintain certain standards of instruction - why not extend this to preserving spaces for creative friction?

The legal mechanisms already exist. Just as we use accreditation requirements and funding conditions to shape educational practices, we could develop frameworks that recognize and protect spaces of cultural exchange. This wouldn't mean banning ML tools from education - rather, it would mean ensuring that algorithmic mediation enhances rather than replaces direct creative exchange.

Let me propose something more radical than merely trying to save existing spaces of cultural friction. The architecture of our ML systems - the code itself - operates as a form of law, shaping how cultural innovation can or cannot occur. When we allow ML systems to optimize cultural production for statistical efficiency, we are making a profound choice about how culture evolves, one that threatens the very dynamics that Berger helps us identify as crucial for innovation.

Return to our anime example. The current architecture of ML systems actively undermines the friction that generated anime's innovations. By training systems to find statistical patterns across thousands of anime works, by optimizing toward averaged styles, by hiding cultural lineages within black boxes, we create architectural constraints that make certain forms of creative evolution impossible. This isn't just a technical choice - it's a regulatory one, embedded in code rather than legal text.

But here's where it gets interesting: If code operates as law, then we can regulate that code to preserve different values. Instead of accepting ML architectures that smooth out cultural differences in pursuit of optimization, we might require systems that deliberately maintain productive tensions. Think of how anime emerged from the friction between Japanese and Western artistic traditions - what if ML systems were required to maintain and make visible such distinct cultural streams rather than merging them into an optimized average?

This suggests several specific architectural requirements. First, ML systems would need to maintain multiple, distinct cultural lineages rather than collapsing them into single patterns. Second, they would need what I'll call "friction points" - moments where artists must actively engage with different cultural traditions rather than simply selecting pre-optimized styles.

What's crucial here is that we're not just trying to ensure diversity in outputs or exposure to different viewpoints (though these matter). Rather, we're using architectural regulation to preserve the essential dynamics of cultural evolution - the friction, the tension, the unexpected combinations that emerge when different traditions collide.

CONCLUSION

The transformation of cultural production through ML mediation poses fundamental challenges to how societies innovate and evolve. We face a future where the essential dynamics of cultural evolution - the friction between traditions, the messy process of cultural play, the productive tensions that drive innovation - may be systematically eliminated in favor of algorithmic averages. While law alone cannot fully preserve these dynamics, it must play a role in maintaining the conditions where genuine cultural innovation can emerge. The task ahead is not to resist ML-mediated creativity entirely, but to design institutions and architectures that preserve space for human meaning-making in an increasingly automated world.

*Gilad Abiri is an Associate Professor of Law and Co-director of The Program on Law and innovation at Peking University School of Transnational Law. He is also an Affiliate Fellow at the Information Society Project at Yale Law School and a Senior Research Affiliate, Digital Law Centre, Singapore Management University.

AFRICANA OWNERSHIP: EXPLORING THE PROTOCOL OF VISUAL ART AND THE LAW'S INTERFERENCE IN ITS RITUAL TO PRESERVE AFRICANISMS

[Cover Image Credit](#)

*Nia Coleman

I.   INTRODUCTION

Art and its power to reflect, comment, and correct the social and cultural Westocentric concepts that permeate history brings to light the cultural continuity ignored by the supposed fragmentation of African people and their culture. If artistic expression creates and names worlds for itself, then Africana art divorces itself from colonial subjugation through its intentional use of people, images, names, and symbols to retain African memory and identity. By centering the perspective of African people and their way of governance, claims to ownership of oneself can be redefined through artistic expression. From a legal standpoint, the enslavement of African people limited the ways in which Africans in the West could take ownership of themselves;as a result, the retention of African governance as it pertains to art and culture had to be hidden in plain sight.[1] ([Newman, 2018](#)). There is still work to be done to deconstruct and dismantle the colonial power structures from the ways in which people consume African art.

II.   LAW AND PROTOCOL

---

[1] Simon P. Newman, *Hidden in Pain Sight: Escaped Slaves in Late Eighteenth- And Early Nineteenth -Century Jamaica.* William and Mary Quarterly. 8 (2018).

A. <u>Ownership</u>

Protocol, defined as "the body of African systems of governance [and] rules for social living," conflicts with the Western concept of law regarding the ways it seeks to address ownership of visual art. Law, like other Western constructs, is the ". . . creation of a particular set of historical and political realities and of a particular mind-set or world-view."[2] (Porter, 2022). The United States legal system operates under a Qualified Law Orientation (Q.L.O.), or the false universalization of law; and as a result improperly imposes legal constructs on time periods, peoples, and cultures in which they do not belong.[3] (Porter, 2022). Protocol remains distinct from Law and does not use analogous terms of art, structure, theory, philosophy, or culture, to authenticate it as a system of governance. Understanding Protocol requires understanding African people and the history and culture that informs their governance. By applying an African-centered orientation, the limitations placed on African people's relationship to their own art through Law becomes apparent.

In Yoruba culture, creative expression is held in the highest regard. In the Yoruba religion, Ifa, it is believed that the gods and goddesses send messages and embodiments of *àshe* or a spiritual command that gives the power to make things happen.[4] (Thompson, 1984). Within the Yoruba religion, creativity is seen as a gift from God and *àshe* acts as a vital force to make objects that can then be presented as gifts or offerings.[5] (Thompson, 1984). Yoruba sculptures are not depictions of gods or ancestors, but the devotees to gods or ancestors so a significant feature of embodying *àshe* to create involves Yoruba artists materializing the image of invisible ancestral spirits.[6] (Drewel, 1978). The performative power of Yoruba artists' creations depict heightened moments of worship when humans and gods become one, which allow Yoruba people to see divinity as a manifestation of entranced devotees.[7] (Drewel, 1978). Contact with divinity is the overall goal of the Yoruba art ritual. A person who possesses *àshe* is said to masterfully work their medium, moving audiences emotionally and spiritually.[8] (Drewel, 1978). Spiritual *coolness*, or the gentleness of character is a vital characteristic of presenting art to a person or god. Yoruba spiritual coolness manifestsin two forms:

"(1) direct sacrifice (*ebo*), the cooling of the gods by the giving of cherished objects — . . . [   ]
(2) propitiation (*irele*), the utterance of conciliatory words or acts to hardened or angered deities, entrating

---

[2] Angi Porter, *Africana Legal Studies: A New Theoretical Approach to Law & Protocol*, 27 Mich. J. Race & L., 272-73 (2022).

[3] *Id*. at 274.

[4] Robert Farris, Thompson. *Flash of the Spirit*. Knopf Doubleday Publishing Group, 5 (1984); *see also* Rev. R.H., Stone. *In Africa's Forest and Jungle: Or Six Years Among the Yorubans*, New York: Fleming H. Revell, 20-23 (1899).

[5] *Id.* at 12.

[6] Henry John, Drewel. *Ase and the Sense in Understandings of Yoruba Arts and Culture*, Newark Museum of Art, 214 (1978).

[7] *Id.* at 219

[8] *Id.* at 216.

them to become generous and concerned at time of crisis such as birth, death, or initiation."[9] (Thompson, 1984).

Essentially, *coolness* is the act of good character which is reflected within Yoruba art. Much of Yoruba art deals with *itutu*, which is a mystic coolness that often is a visual representation of an orisha sculpted with a calm face.[10] (Thompson, 1984). Through Yoruba art, coolness tells the story of the Yoruba way of life. Yoruba art shows images of devotees that signal morality as it relates to the social structure with their culture. There are many Yoruba art pieces that show men and women presenting an empty kola bowl (wooden bowls used for offering) with both hands as a sign of honor and respect.[11] (Thompson, 1984). Therefore, coolness is a quality that signifies a dignified person capable of noble acts and in Yoruba culture Protocol lives in art.

On the contrary, the validity of Law derives from its tool as an abstraction by means of written language. As Ngũgĩ Wa Thiong'o states, it is "[the] use of language [that] deconstruction[s] a sovereign African and his reconstruction as a colonial subject."[12] (Thiang'o, 2009). The language of the Law imposes the conception of a culture rooted in hierarchies.[13] For this reason, in relation to Western law the concept of establishing a system of governance that is not written and instead valued for its application in this context of quotidian situations appears futile.

The legal right to "own" something in the United States birthed from the property right to ascertain permission to exercise power, and in certain circumstances obtain protection, restitution, or compensation by the aid of the judiciary.[14] (Nunn, 1979). John Adams contended that "[p]roperty must be secured, or liberty cannot exist," equating the right to ownership to a fundamental right.[15] (Morris, 1996). Property rights were established as a safeguard for economic independence. Over time, property rights in the U.S. legal system have extended beyond theories of relational property, natural rights, utilitarianism, and have created doctrines to protect works such as inventions or creative expression as intellectual property.[16] (Adams, 1787). Amid slavery, enslaved Africans were amongst a period of this legal transformation in which their legal classification was "freehold" property:

---

[9] Robert Farris, Thompson. *Flash of the Spirit*. Knopf Doubleday Publishing Group, 15 (1984).
[10] *Id.* at 12-13.
[11] *Id.*
[12] Ngũgĩ Wa, Thiong'o. *Something Torn and New: An African Renaissance*, Basic Books, "Dismembering Practices: Planting European Memory in Africa," 16 (2009).
[13] Kenneth B. Nunn, *Law as a Eurocentric Enterprise*, 15(2) Minnesota Journal of Law & Ineq., Issue 2, 345 (1979); ("The hierarchical structuring of the law is readily apparent.").
[14] *See generally*, Thomas D. Morris, *Slavery and the Law 1619-1860*, "Slaves as Property – Chattels Personal or Realty, and Did it Matter?", Chapel Hill: University of North Carolina Press, 61-63 (1996).
[15] John, Adams. *Deference of the Constitutions of Government of the United States*. 1 The Founders' Constitution No. 15, The University of Chicago Press.
[16] Morris, *supra* note 13, at 76.

"[T]he Negro enjoyed higher legal status than he did as chattel as a chattel, because freehold was higher form of property than chattel. Freehold property was attached to a landed estate and could not be moved; its holder legally had a right only to its use and not absolute ownership.. . . ."[17] (Morris, 1996).

This legal construct of freehold property granted total ownership to the master, objectifying enslaved Africans and further severing them from any memory of themselves while in service of works of invention or creative expression. (Morris, 1996). This legal status of slaves laid the foundation for U.S. law to deprive Black Americans of intellectual property protections for many years to come.

As opposed to the rules that govern African cultures and societies, materialism is an underlying value of the Law.[18] (Dukeminier, 2018). Early examples of the U.S. materialism include "discovery and conquest" which are terms of art referring to methods of acquiring territory by being the first to occupy the land.[19] (Dukeminier, 2018). The theory of first occupancy, or first possession dates back to Roman law.[20] From that historical reference, the nexus of Law and materialism manifests with acquisition as the goal to attain status and wealth. In cases like *Johnson v. M'Intosh*, the U.S. legal system persists in " be[ing] opposed to natural right, and to the usages of civilized nations,"by ignoring the culture and system of governance of Indigenous people in stride of claiming exclusive ownership of Indigenous land through the discovery doctrine.[21] (Johnson & Graham's Lessee v. McIntosh, 21 U.S. 8 Wheat. 543, 1823).

Protocol is rooted in spiritualism. With knowledge of Vodun and Ifa traditions, African governance never strays from centering its cultural ties to the religious philosophy of ethnic groups across the African diaspora. In Yoruba culture the act of *coolness* extends to the rules of social order of society, which indicates that the act of worship, and giving and receiving offerings is a form of social contract.[22] (Thompson, 1984). This is distinct from European and Anglo-American portrayals of the Law which roots itself in desacralization.[23] (Nunn, 1979). Even in instances where personal bias towards Judeo-Christian principles permeates law, Western philosophy does not give spiritual beings discretion over human affairs. The Law aims to objectify, whereas Protocol aims to connect. The contrasts between these systems of governance shows that Protocol views natural law as divine since the creation of such system requires a level of creativity or *àshe*, and although the foundation of the U.S. legal system speaks

---

[17] *Id.* at 73.

[18] Kenneth B. Nunn, *Law as a Eurocentric Enterprise*, 15(2) Minnesota Journal of Law & Ineq., Issue 2, 331-32 (1979).

[19] Dukeminier, Krier, Alexander, Schill, & Strahilevitz, *Property*, Aspen Publishing, 9th ed., 53-60 (2018).

[20] *Id.*

[21] *See* Johnson & Graham's Lessee v. McIntosh, 21 U.S. 8 Wheat. 543 (1823) (holding that the U.S. government had the sole right of negotiation with the Native American nations, and land transfers from Native Americans to private individuals are void).

[22] Robert Farris, Thompson. *Flash of the Spirit*. Knopf Doubleday Publishing Group, 5 (1984) at 15.

[23] Nunn, *supra* note 18, at 337.

of "natural law" as valid theory of law, the Law only perceives Western reasoning and culture as natural. Ultimately, this conclusion further validates European and American legal scholars in upholding their belief in positioning themselves as authorities of Law and that Law is universal.

1. Copyright Ownership: Communal v. Individual

The English Statute of Anne, passed in 1709 was the first recorded appearance of authorship now regarded as "copyright law" in Western law.[24] (Jaszi, 1991). Copyright law as an appendage to property law's emphasis on economic independence, prioritized individualism as means to obtain wealth. Individualism pervades itself in Law by sanctioning individual ownership of property and also liability. Law is a system in which individuals are held liable for wrongs committed towards others individuals.[25] (Nunn, 1979). Conversely, the Yoruba culture is communal and anchors its values in the notion of common will or public interest, which supersedes individual interests. In Yoruba society, when a person harms another person; they harm the community. Regarding theft, the *Il ejo agbo ile,* which is a group of elders in the family that are seen as representatives of their ancestors and maintain social order at a family and societal level, would serve as adjudicators on the issue and can appoint punishment such as public ridicule, ostracization, or banishment.[26] (Oke, 2021). For theft, Yoruba people can also conduct ceremonies that detect the thief and recover the stolen property.[27] (Oke, 2021).

Although proponents of the Western law may argue that the law minimally infringes upon citizens by targeting individuals, Western jurisprudence fails to address protections for the cultures of marginalized communities. The Copyright Act does allow for joint ownership of works, which it defines as:

> "A copyright owner is entitled to exclude others from copying a joint work. A joint work is a work prepared by two or more authors. At the time of the joint work's creation, a joint work must have two or more authors; and: [. . .]. each author of a joint work shares an undivided interest in the entire joint work."[28] (Copyright Act of 1976, 17 U.S.C. §§ 101, 201(a)).

---

[24] *See P*eter Jaszi, *Toward a Theory of Copyright: The Metamorphoses of "Authorship*," Duke L.J. 455 (1991).

[25] Kenneth B. Nunn, *Law as a Eurocentric Enterprise*, 15(2) Minnesota Journal of Law & Ineq., Issue 2, 332 (1979); (discussing that "Eurocentricity demands a rampant materialism and excessive acquisitiveness, a point the following comment emphasizes. . .").

[26] Olusegun Peter Oke, *Using Crime Control Mechanisms in Yoruba Traditional Society as a Template for Redressing Security Challenges in Nigeria*, 102 Pharos Journal of Theology, 9-11 (2021).

[27] *Id.*

[28] Copyright Act of 1976, 17 U.S.C. §§ 101, 201(a).

However, communal ownership differs from joint ownership in that it recognizes a group of people based on their identification with a particular group.[29] (Riley, 1992). The law may appear neutral on its face in regards to copyright ownership, but in its application, it continues to perpetuate the culture of individualism and white supremacy on which it was founded. The 1909 Copyright Act, which governs the protections of creators' works as it pertains to any form of expression in a fixed tangible medium, included vague and intricate notice and publication requirements that led to many Black artists in the early twentieth century losing protections for their work.[30] (Feldman, 2022). It is through spirituality and memory that many African-Americans challenge the Western rubric for painting, sculpture, and dance, which births distinct styles, genres, and techniques that call to their harmony with Africana cultural heritage. Africana art's dissonance with the Law accentuates racism and individualism as a defining feature of the West and its notion of ownership. Black artists would benefit from legal enforcement that preserves communal ownership of art because "[w]hen a group has exclusive authority to prescribe the employment of its most valuable creations, the entire community flourishes and benefits."[31] (Riley, 1992).

II. <u>CONCLUSION</u>

African people are not devoid of culture or thought and maintain knowledge of their unique systems of African governance, philosophy, and spirituality through the creation of art. Along with the creation of art, art objects themselves are vessels of tradition that maintain that African identity was never fragmented or lost, but simply something to be remembered. The Protocol of visual art is ritualistic in its presentation and shows the means by which African art remains bound to the culture that created it. While efforts to codify Law with African values of communal ownership are useful, at length this will never be a solution because Protocol aligns with African culture and values in which the Law does not seek to protect. For these reasons, it is crucial that African art and cultural heritage be placed in hands of African people where it can receive proper protection and restore the collective memory of African peoples.

---

[29] Angela R. Riley, R*ecovering Collectivity: Group Rights to Intellectual Property in Indigenous Communities*, 18 Cardozo Arts & Ent. L.J. 175, 177-78 (2000); *see also* Martha Woodmanse, *On the Author Effect: Recovering Collectivity*, 10 Cardozo Art & Ent. L.J. 279 (1992).
[30] Shelley, Feldman. *The Discriminatory Effect of U.S. Intellectual Property Law on Black Artists.* 27 Mich. J. Race & L. (2022).
[31] Angela R. Riley, R*ecovering Collectivity: Group Rights to Intellectual Property in Indigenous Communities*, 18 Cardozo Arts & Ent. L.J. 175, 205 (2000).

Author Bio:

*****Nia Coleman** (she/they) is a recent graduate of American University Washington College of Law, where she was active as a Senior Staff Editor on the Intellectual Property Brief, President of the Fashion and Art Law Society, and a member of the Transactional Negotiation Team. She graduated summa cum laude from the University of Central Florida with a Bachelors of Arts in English and a minor in Legal Studies. During her undergraduate studies, she held editor positions on the literary magazine T*he Florida Review,* and the Undergraduate Law Journal. She currently works as an Estate Planning Attorney in Washington, D.C. In her spare time, you can find Nia visiting museums, playing guitar, traveling, and attending concerts.

ART BY MACHINA: HUMAN-LESS OR HUMAN 2.0?

[Cover Image Credit](#)

*Dr. Sara Adami-Johnson

<u>Abstract</u>

The rise of cyborg, robot and computationally generated art has sparked critical discussions and inquiries at the intersection of technology, law, society, and ethics. This article aims to present the challenges posed by AI-driven creativity, focusing on the implications these technological advancements may have for the art law world, the human psyche and artistic posture to computational aesthetic. Legally, the question of authorship and ownership is complicated by the emergence of AI language and design models and robots as potential independent "creators," raising questions about the status of machines as legal entities. The lack of ad hoc or harmonized global legislation, and the difficulties of squaring "old principles" with new realities reveal fragilities in (if not complete want of) clear rules and remedies as well as the ability for rights to be effectively enforced. Socially, these technologies test traditional notions of artistic human creativity, the role of

the artist-author, while also reshaping the art market. Ethically, concerns regarding data privacy usage and integrity, algorithmic bias, and the environmental impact of AI-driven art highlight the complex responsibilities involved in these new practices. The article argues that while machine-made art is "here" to stay and continuously perfect in its mechanical evolution and expression, it necessitates a more robust critical evaluation and cross-functional discourse. The paper stresses the evolving nature of the relationship between technology and art, emphasizing the need for an interdisciplinary approach to address the crisis of traditional paradigms amidst the opportunities of this rapidly developing field.

1. Introduction – The dawn of Engineering: Robot, Cyborg and Computational Art

It is not preposterous to openly declare that humans are no longer the exclusive gatekeeper of creative outputs, and that the human race may have pivoted and become the biological "muse" to an upgraded synthetic version of ourselves– an entity embedded in an algorithmic brain and a robotic arm. Echoing a reinterpreted famous quote: "The creative machine is the human who survived." To be clear, the likes of robot artist Ai-da, Botto, Refik Anadol's Hallucination Machine, DABUS or Neil Harbisson's cyborg are not substitutes but rather alternatives or integrations, emerging in many shades and variances, as 2.0 versions of human artists. These machine artists are hardware and software working alongside us, using our creative output as data training and aesthetic canvas in a somewhat complex coexistence and intriguing reversal of roles. Humans as owners, inventors, investors and artistic data sources for the autonomous artist-machine. Regardless of how we may personally "feel" about them, the engineered-made artists and art are "real" and already prosperous. They demand our attention as a new, diverse genre of artistic "disruptors". Historically we can trace these developments back to the 1960s when scientists Clynes and Kline coined the term "cyborg" as innovation that transcends human biological complexity through mechanical augmentation. Cyborgism was more widely experimented with in the 20th century when artists started incorporating external prosthetics and bio-tec networks onto themselves (Neil Harbisson's antenna) or in their performances (Stelarc's body as an evolving structure).

Since then, the journey has shifted rapidly toward empowering fully autonomous machines in art creation. The increasing sophistication of Large Language Models (LLMs), data processing and training, and the ability of AI algorithms to generate pictorial output using advanced printing or robotic dexterous extremities has given birth to independent machine-based artists-agents. Computer, AI made art has escaped the confines of experimentation and is conquering the public's imagination–   and wallets– even before an in-depth critical analysis has been fully digested about its meaning and implications. Questions relating to authorships, rights and remedies, ethical risks and rewards have so far been an after-thought. It seems that we deal with what's at stake, after it has been presented to the world, and we are left with a wanting for robust scholarship on the meaning of computational creativity and the artist process. Law and sober second thoughts seem to be *following* technical advancement, but they are essential to keeping a reasonable engagement so not to "lose our way" but "jointly, conquer the stars".

2. Legal Dimensions, *more questions than answers*

In the first instance, there are challenges in defining "robots" and whether the "*robot-artists*" is a legally recognizable "entity/persona" with rights and obligations; which legal doctrine or theory could be applied to justify such "personhood" . Could we envision a robot artists' right to exist, to be cared for, to be updated and maintained (protected from tech obsolescence), alongside debates over who holds the right to "pull the plug"/kill, to curate and administer art

shows, expositions, art pricing and sale proceeds collection management and compensation? Could Ai-Da, the robot artist, be considered an "employee" under labor laws rather than an inanimate asset in inventory)? A "machine-bill of rights" is not intellectually or doctrinally fully developed and available but it is not unimaginable.

Would principles of agency law (the principal-agent relationship) or trust (settlor-trustee-beneficiary relationship, with repurposed   supercharged trust law) or tort (via intermediary liability, "coming to the nuisance" law be a good match for regulation. Or, should we explore the creation of novel legal concepts for autonomous AI agents?

And what about *proving* authorship in works created by non-human entities (would Ai-Da's hidden computation DNA signature be evidentiary indicia)? What would be the consequences of imposing liability directly on machines—would that chill innovation? Today, fierce debate surrounds   the existence, registration-ability and enforceability of intellectual property rights (in the USA, latest USCO decision on " A Single piece of American Cheese"). There is also a lack of clarity and   uniformity related to copyright and moral rights related to input-training data, including licensing and assignments, royalties' payments, posthumous reversions; privacy rights et alia.

A few of the above matters, especially in the copyright's infringement arena, are currently under Courts' scrutiny. Litigation seems to be the immediate (albeit "*knee-jerk*") reaction to perceived injustices. Yet some matters may not be legally actionable, and available remedies might be limited. Artists generally resist stakeholder-style narratives, but in this technically-autonomous realm, the art   community may need to reimagine its relationships–possibly through expansive new partnerships. I would argue that art critics, scholars, and art market participants should be all involved in the legal discussions alongside the AI-artists and their inventors. My hope is that the governing laws of the future will be shaped by meaningful larger community consultations.

3. Social and Ethical Implications

Art and creativity are emotionally charged topics as they center on the very essence of human originality and art works are visual responses to socio-political-historical-environmental and justice perceptions. Art reflects and questions the reality we live in, the structures of civitas, and the cultural heritage we inherit. Artists act as agents for dialogue and reflection, mind-bending and innovation- provocateurs. In the art market, artists perform a relevant albeit stress-filled role as "homo economicus." The definition of who is an "artist" is evolving in a world where machines actively emulate, produce and are at the center of creative processes. Human artworks become data training sets, tools for machines   to learn the "how to" simulate creativity and generate   aesthetically engaging outputs   ; human artists morph into muses for the computational artist. There is a new systemic collaborative dynamism afoot: human artists as algorithmic supervisors, aesthetic judges, data prompters, and receivers of machines' productivity.

Traditionally, artistic labor has been grounded in the idea that creativity stems from human-specific experience—personal expression, emotional depth, and subjective intention. While machines may produce unique and visually striking works, can they truly be said to engage in creative labor—or are they merely executing programmed instructions and processing vast data sets without consciousness or intent? May Artistic labor no longer be confined to human physical or emotional effort alone? Could it be expanded to include the intellectual work of designing systems directing the creative process, and navigating the complex relationship between human creators and their technological counterparts?

Directly related are matters of "value", ethical normatives that promote cultural and historical context within machine-made art. To date, there is no ad hoc "ethical code for machine artists." With the rise of computational art, topics like data privacy, algorithmic bias, gender myopia or exclusion and risks of cultural appropriation have emerged. Still, we rely on the traditional rules which are increasingly losing their theoretical persuasiveness and moral grounding.

Also, from an environmental perspective, AI systems are resource-intensive and have negative pollution externalities. The training of AI models and NFT minting imply vast computational power consumption, raising ethical concerns amid the increasing climate crisis.

4. Conclusion – a post-human renascence in the making

"*My father said, it was the way my mother danced with him.*"— Jonathan Carroll. Finding and applying the right modus operandi, is *an art*. As with all other disciplines, it is with our relationship with computational, machine-made art. It appears poised to expand and challenge traditional boundaries of creativity, allowing for new forms of authors-personas (robot artists), expression, interactivity, and immersive experiences (in real life or virtual viewing rooms).

Artificial-made art highlights the innovative potential of "*human et machina*" collaborations and opportunities for shared inventiveness, control, and cross-disciplinary engagement of art, technology, science, philosophy, law, ethics, and ontology. An AI-cybernetic-robotic-agentic (r)evolution is on foot, expanding beyond the confines of biology and physical labor. AI-driven art demands a critical acuity   and intellectual alertness for a *humanized* outcome.

Embracing technological innovation while considering the human-relevant (legal, ethical, and social) dimensions for robotic expansive frontiers is essential. The conclusion calls for energized dialogue   with an eye for adapting existing frameworks and an openness to novel concepts, ensuring the future of art reflects human ingenuity and algorithm logic– dancing together in a harmonious *tango for two*.

*Dr. Sara Adami-Johnson Esq., Ph.D, TEP, CFP, LL.M (US Law), JD | VP, HNW Planning Services. Sara specializes in international estate planning, art collection and digital legacy planning for HNW families at RBC Family Office, Canada. She completed a Masters in US Law at Antonin Scalia Law school, George Mason University and a Ph. D. in International Management at International School of Management in Paris, France. Sara was admitted to the California State Bar in 2021 and is member of ABA and the Beverly Hills Bar association in Los Angeles, California. She is an active member of Professional Advisors to the International Art Market in NY City, the Institute for Art and Law, and the Art Lawyers Association in London UK, and Center for Art Law in USA. She is a prolific author with several publication on the topics of art, digital assets and trust law.