

# SKATEBOARDERS, MORAL RIGHTS AND THE RIBBON PROMENADE

## THE QUESTION OF PUBLIC PROPERTY IN A POST-MODERN SPACE

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*The Ribbon Promenade*, San Francisco's new public arts project, has been the source of intense criticism and praise. As the world's longest permanent art installation, the recent completion of the first two-thirds has been overshadowed by the almost instantaneous 'defacement' of it by skateboarders. The heated social, political, and aesthetic response has forced an examination of the role of public art, the "moral rights" (a legal term) of the artist, and the legal responsibilities of the owners or patrons of art. This paper will examine the legal issues raised by the *Ribbon Promenade* and how it compounds moral rights legislation. More specifically, I will discuss public art and how California law, based on assumed values of art, may or may not be applicable.

The *Ribbon Promenade* is an elegantly created line of concrete and glass that winds along a 2.5 mile section of the Embarcadero Expressway and the edge of the Bay of San Francisco. As a poured concrete curb, it is formed at times into "functional" shapes of benches, tables, seats, barriers and at other times, it is simply flush with the ground. These cuts into the curb not only transform its solitary character but also form a visual punctuation that accents the long expanse. At all times, it has glass-block embedded in the top which is illuminated at night by fiber optics. The 25-foot-wide pedestrian promenade that the work is built into serves as a meeting ground for many of San Francisco's various cultural groups.

As part of a waterfront renovation project the promenade is actually cantilevered over the Bay in many areas with the water underneath. As such, early proposals for the project called for a channel of water instead of glass block. They also called for large holes to be cut through the pier in order to expose the water below. Accordingly, the *Ribbon* was to rise out of the water and return to it in a way that weaves the two surfaces together. However, the punctures to the surface cement were rejected by engineers for being too costly, by lawyers for being unsafe, and by the city's water commission for being unsanitary.<sup>1</sup> Thus began a series of 13 revisions over the last six years. What has evolved through the revisions is a much more abstracted and, I believe, a more successful presentation of the concept of 'weaving' the two surfaces together.

As soon as the *Ribbon Promenade* was open to the

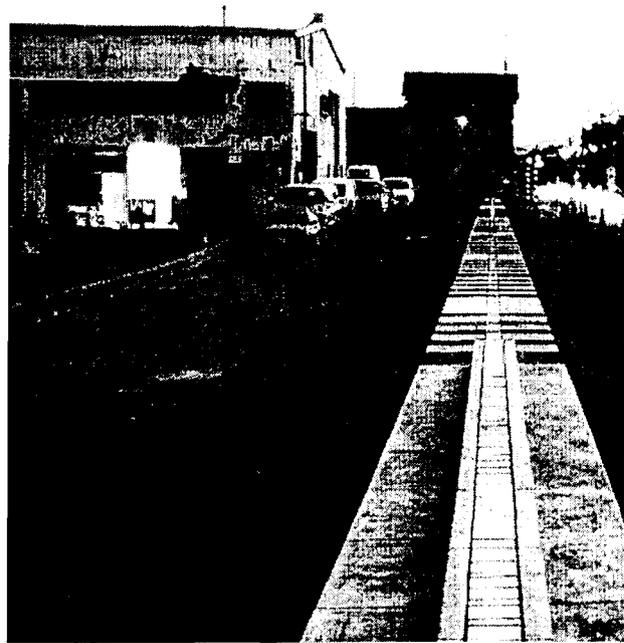


Fig. 1. The Ribbon Promenade. Photograph by Bob Swanson.

public, it returned to the hotbed of skateboard activity it had been before construction. (The Embarcadero had held a long-time international reputation with skateboarders.)<sup>2</sup> However, the skateboarders now have the added advantage of using the *Ribbon's* curb to perform their acrobatic feats. In the process, they have ground their skateboards along the edges causing the curb to chip and leaving paint rubbed into the cement. Local skateboarding "thrasher," Mike, put it this way:

*The grind tricks and side tricks really destroy property, you know. But it's — I mean, it's good, it's not — it's like the nicest way you'd ever want to break anything, believe me. When you're doing a good grind, you're like stoked, you're like*

*whatever, you don't really care about maybe taking a little paint off or chipping something.*<sup>3</sup>

On the other hand, some citizens were appalled by the idea that their new million-dollar "piece of art" was being defaced by young "punks." Yet others enjoyed the energy and excitement provided by the skateboarders and certainly applauded the creative outlet for the city's youth.

Caught in the middle is the San Francisco Arts Commission. Given the climate of diversity in the Arts today, the Arts Commission has been simultaneously encouraged by the way a variety of people are engaging the artwork and also forced by legal and political pressures to protect it from "vandalism." The double bind of the arts commission points to the complexity of this issue and how difficult it is to create meaningful boundaries for moral rights in public art.

The legal issue revolving around the *Ribbon Promenade*, that this paper is investigating, pertain to the so-called "moral rights." Moral rights is a French concept that refers to special extenuating provisions for artists and their works. Given special status as a unique entity, works of art were seen as extraordinary and sublime and, as such, it operated outside the legal system. In the late 19th century, the Berne Convention was the first significant attempt to give artists protection for their works and creations. Held in Basel, Switzerland, in 1886, guidelines were drawn up to protect artists rights of attribution and integrity. Almost all industrialized nations, other than the United States, signed the Act providing basic protection.<sup>4</sup>

The Berne Convention legislation ran into legal resistance in the United States because of American constitutional emphasis on both private property and individual rights. The Moral Rights Doctrine contends there is a larger public good or a collective cultural interest that precludes individual rights. Until recently in the United States, it has been held that a private collector or entrepreneur, who invests in a work of art, becomes its sole owner and can do with it as he or she pleases, even if it means destroying it. In turn, the courts (both federal and state) have viewed artwork as any other property and have not assigned any special status to protect it. Contrary to this, the majority of the industrial world has seen art as unique and part of a nation's cultural heritage. Therefore, a collector or entrepreneur who purchases a work is bound by law to be a good steward of it. This all changed in the United States in 1989 with the passage of V.A.R.A. (Visual Artist Rights Act) which legislated protection for works of art.

This paper will deal with the legal provisions in both federal and California law. Federally, we will be concerned with the rights of integrity and in a lesser degree with the rights of modification, respect, and withdraw. Building on the federal protection of the rights of integrity, California law also protects the actual materiality of the work. Rather than citing applicable case studies, I will instead concentrate my investigation on the assumption that many of these laws are predicated upon. Of particular interest is the definition of art, authorship, and the designer's concept. I will also examine how these rights

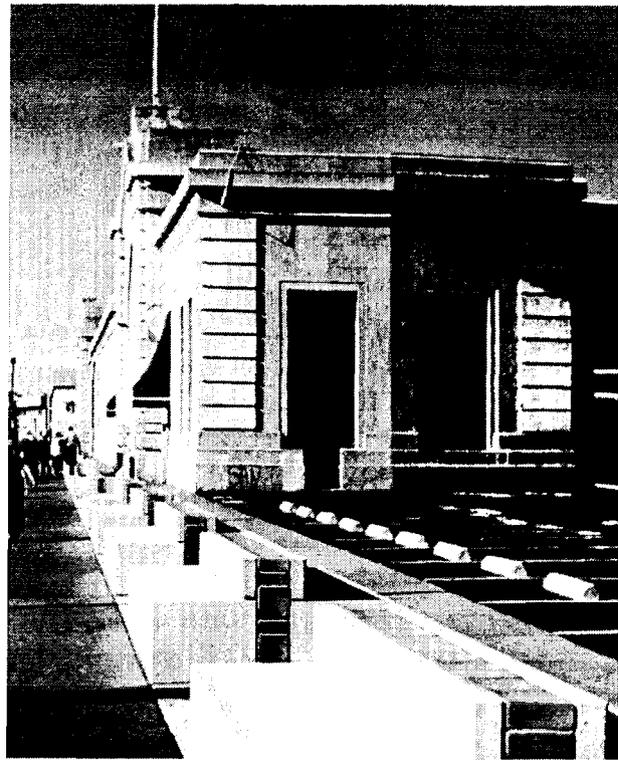


Fig. 2. The Ribbon Promenade. Photograph by Bob Swanson.

may conflict with those of the skateboarders and the community at large.

When discussing public art, there are several pertinent issues in order to determine legal responsibility. First, what is public art in the 1990s? Second, who are the patrons and what are the implied social and political implications? Third, who and what are the public? Fourth, how does the specific nature of the work change these issues? In order to discuss these issues, I will provide some historical information about public art.

Historically, public art in the 19th and early 20th centuries consisted largely of historical or monumental art and the ideas it expressed about government. Usually, the aesthetic goal was to unify the art and architecture through complementary design. With the rise of modernism and the international style of architecture, ornamental decoration was exchanged for functionalism. The growth of large-scale, abstract sculptures accompanied the growth of the international style and some critics theorize that it was an indirect attempt to ornament the stark, modernist structures. Recently, the "plop art" (because it was plopped down after the architecture) of the late modernism has been replaced by Post Modern sculpture and deconstructed notions of urban space. Today, Public Art is as diverse and varied as art in general. Without a predominant guiding force or sensibility, it is difficult to determine quality, value, longevity, interaction, etc. The new artistic sentiments reject the grandeur, the macho authorship, and the revered "jewel" of the modernist master. Thus, contemporary public artwork often becomes more of an

environment than an object. Artists have attempted to remove themselves from their creation in order to further engage the audience. Thus, the guiding criterion has become: In what way does a work engage its audience?<sup>5</sup> The question of authorship, central to any such discussion or understanding of moral rights, can be applied. In this case we have three authors with varying degrees of involvement and authorship. The lead designer is architect Stanley Saitowitz who sought out the help of landscape architect Barbara Solomon and artist Vito Acconci in order to broaden the base of collaboration for the initial competition.<sup>6</sup> As such, all three share equally in the authorship of the project. However, of these three, it appears the initial concept and the lion's-share of the early design was inspired by Acconci. However, when the politics of repeated revisions became too much for him, it was Saitowitz who persisted and carried the project through. According to Saitowitz, "Acconci had all kinds of crazy ideas to start with - he had great big holes for people to fall into. When they kept asking for us to revise the project, he basically pulled away and responded with the position that it would never be built. For me, revising and negotiating is all part of the design process and as an architect I am used to it."<sup>7</sup> Solomon rounded-off the collaboration with her expertise in landscape and graphics with input as a negotiator and illustrator.

However, authorship is a fundamental, yet unresolved issue, in the *Ribbon Promenade*. Two of the three designers, Solomon and Acconci, embraced the contemporary notion of public art — that is that art should be "open" and engage a wide audience both intellectually and physically. Consequently, they are both pleased by the skateboarders and not offended by the chipping and the marring that they have incurred.<sup>8</sup> However, the third and most outspoken of the triad of designers, Saitowitz, is a closet modernist who was deeply offended that [his] "sculpture was ruined by skateboarders . . . It's so heartbreaking, it's almost impossible for me to go look at."<sup>9</sup> Recently, however, he has started to moderate his position under pressure from his co-designers and the community at large. He now states, "The real problem with the *Ribbon Promenade* is that the design team were forced by budgetary concerns to use cheap concrete which chips easily." While this may, in fact, be the case, I suspect that he recognized that he was out-of-step with popular aesthetic opinion and shifted the blame to financing. For legal purposes that I will discuss later, it is important that he is on record initially with a very different vision of public art.

Saitowitz also believes the destruction points to a low value and expectation that we place on public or civic spaces — that we will let these spaces be disfigured by anyone points toward the low regard we have for public, space and property. "Certainly this sort of destruction would not be allowed in Europe."<sup>10</sup> "Skateboarders have taken to it in the most unpleasing way," Saitowitz says. "I try to talk to these people. I say, 'Can't you understand you're ruining something that belongs to you, the people?' But they don't seem to care."<sup>11</sup>

The complexity of the legal issues is compounded principally by two factors. First, as a public art project, it

does not fit neatly into the definition of either federal or California law. In order to be protected by law there would have to be an idea of what constitutes use and abuse. This, of course, would be predicated by a clear understanding of the role this object was intended to play in this setting. Since the role of public art has shifted from the sedentary modernist sculpture to the engagement of a participatory work, the legal protection of it must also change. Questions of permanence, defacement, and perpetual custodial care are begged by artists such as Joseph Beuys whose intent is for deterioration.

Conceptually, the *Ribbon Promenade* is designed to be functional. As such, the curb becomes a table, a bench, a platform . . . and it is sat, stood and jumped upon. Bodily engagement will affect it. In order to protect it, should the kind of engagement be regulated? For instance, is it the same thing if it is sat upon by a fully clothed person, a person who is barely clothed, or someone whose clothes are heavily soiled? The porous cement will be affected in each case, and yet there are no guidelines regulating attire in relation to this work. It seems as if the work could be defaced or abused in either of these situations but we can not make such a determination because we do not know what constitutes use or abuse. Largely, we have no guidelines because we have no clear concept of how this work is to be engaged by the public — the designers cannot even agree on how this piece relates to the public, let alone a concept on how the public is to relate to it. Skateboarder and editor of Thrasher magazine, Brian Banner, provokes the issue further by stating, "What the skateboarders are doing on the art is really flattering the artist, telling him he has good form, he knows how to *build a nice buck*, people are actually using his art. He should be flattered."<sup>12</sup>

In a democracy, the values which are both portrayed through art become very dicey, particularly if funded by the government. The explosion of recent, large public art projects funded by the percentage for the Arts Program and the controversies provoked by them attest to this. The *Ribbon Promenade* is such a project. As the recipient of one percent of the funds provided by a major urban infrastructure and revitalization project for the waterfront area of San Francisco, the *Ribbon's* mission is to be inclusive in this very diverse district. The challenge to this democratic notion is how inclusive it will be to the extremes of its membership. In this case, the skateboarders aggressively challenge the notion of inclusion and the destruction of public holdings and public spaces. The administering body, the San Francisco Art Commission, wanted a work that was both functional and democratic. What they got will ultimately be determined by how all people are allowed to participate and engage it. Specifically, if skateboarders, one of the principal subcultures before the project began, are banned from the area, the *Ribbon* can hardly be seen as either functional or democratic.

The notion of public art is certainly affected by the idea of who the public is and how they should be treated or engaged. In this situation, the work is engaged by a wide variety of people who frequent the area, but only the skateboarders significantly alter it. Left unrestricted, they will seriously impact its general appearance. Yet the

Embarcadero was the skateboarders' territory before the project and any democratic form would have to include them. If it doesn't, local citizen and editorial writer, C. Paul Canaday, comments, "Then it should be ripped out of the ground and placed in a gallery (a very big one) with ropes around it, a guard posted and a sign saying, 'This is art. Do not touch.'<sup>13</sup>

The creation of public art is a social and political statement which extends far beyond a simplistic aesthetic definition of art. The need for an interdisciplinary approach and definition is evidenced when we examine current art legislation. These observations are all the more true in 1997, particularly in light of the democratizing ideals of art and architecture over the last 20 years. Legally, under California moral rights law, and to a lesser extent under VARA, the San Francisco Arts Commission is bound to protect the works. However, it would be almost impossible to enforce given the record of conflicting attitudes about what the role of public art, what the concept of the *Ribbon* is, and how it should operate in the public sphere. Although covered by the law as sculpture, there are not clear measurable guidelines or court cases which provide a precedent. In order to establish neglect or malicious intent there would have to be a clear legal language regarding contemporary art and a more consistent concept from the triad of designers.

The true irony of this case is if the work was not viewed as a work of art, and therefore, considered only property and not subject to special moral rights provisions, then it is quite possible that a case could be made against the skateboarders for defacing public property. The paradox is that by inverting its ideals, the art world has

undermined the legal system set up only recently to protect it. More so, in this and other similar situations we must deny the special status of art in order to make any meaningful legal claim. With the post modernist notion which at times denies a precious value of the work, the legal consequence reverberates that art is now only property, nothing more.

## NOTES

- <sup>1</sup> Phone interview with Stanley Saitowitz, April 28, 1996.
- <sup>2</sup> All Things Considered, "Concrete Art Sculpture Favorite Spot for Skateboarders," *National Public Radio*, (January 4, 1996).
- <sup>3</sup> Ibid.
- <sup>4</sup> Jessica Darraby, *Art, Artifact and Architectural Law*, (Clark Breadman Callaghan, 1995), 9.55.
- <sup>5</sup> Malcolm Miles, *Art for Public Places* (Winchester: School Art Press, 1989), pp. 2-7
- <sup>6</sup> Phone interview with Stanley Saitowitz, April 28, 1996.
- <sup>7</sup> Ibid.
- <sup>8</sup> Phone Interview with Barbara Solomon, April 20, 1996.
- <sup>9</sup> "Skateboarders barred for art's sake," *The San Francisco Examiner*, (December 20, 1995), p. A-1.
- <sup>10</sup> Phone Interview with Stanley Saitowitz, April 28, 1996.
- <sup>11</sup> "Skateboarders barred for art's sake," *The San Francisco Examiner*, (December 10, 1995), p. A-2.
- <sup>12</sup> All Things Considered, "Concrete Art Sculpture Favorite Spot for Skateboarders," *National Public Radio*, (January 4, 1996).
- <sup>13</sup> C. Paul Canaday, "Letters to the Editor," *The San Francisco Examiner*, (December 27, 1995), p. A-14.