



# Sergio Muñoz Sarmiento

# Merges

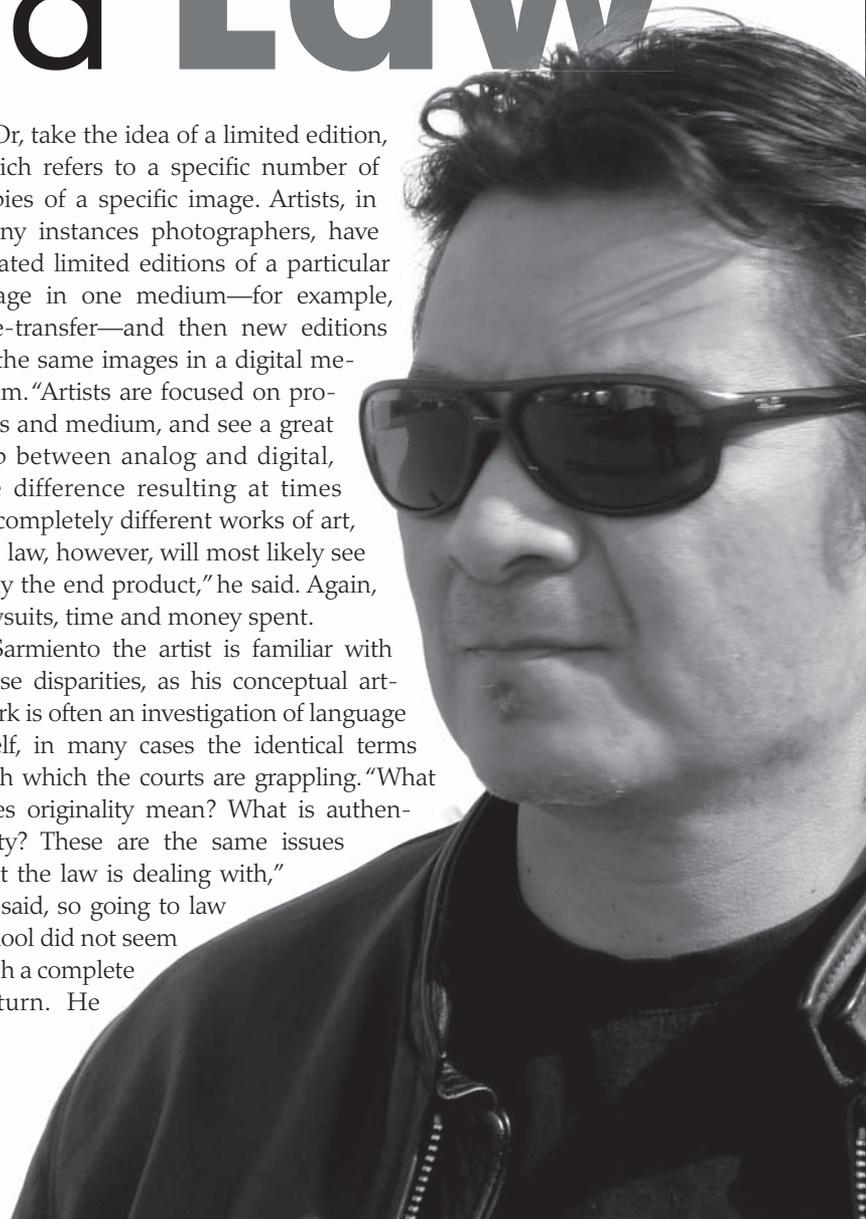
# Art and Law

Artists often have difficulty grasping how terms they regularly use in their practice have a different meaning in the law,” and part of Sergio Muñoz Sarmiento’s mission as both an artist and as a lawyer is to help artists understand the two sides. Take the term “site-specific,” which sculptors—actually, the entire art world—often use to indicate that a work of art was intended for one place and one place alone, losing its meaning if it were sited somewhere else. “Unfortunately, the law doesn’t accept the concept of site-specific,” Sarmiento said, and courts have ruled against artists every time they have filed moral rights lawsuits as a result of their works being moved.

Take the concept of using copyrighted material. “In order for something to be copyrightable, it has to be original,” he said. “The threshold for originality is low in the law, but many artists don’t believe in originality at all. In the age of mass-production, they think that the concept of originality has been debunked, and there is a long strain of theory supporting this view. Artists say, ‘Why can’t I just copy images?’” However, when artists do just that, they become subject to lawsuits that they frequently lose.

Or, take the idea of a limited edition, which refers to a specific number of copies of a specific image. Artists, in many instances photographers, have created limited editions of a particular image in one medium—for example, dye-transfer—and then new editions of the same images in a digital medium. “Artists are focused on process and medium, and see a great gap between analog and digital, the difference resulting at times in completely different works of art, the law, however, will most likely see only the end product,” he said. Again, lawsuits, time and money spent.

Sarmiento the artist is familiar with these disparities, as his conceptual artwork is often an investigation of language itself, in many cases the identical terms with which the courts are grappling. “What does originality mean? What is authenticity? These are the same issues that the law is dealing with,” he said, so going to law school did not seem such a complete U-turn. He





“Chicken Coop,” 2012, is a recent piece by Sergio Muñoz Sarmiento.

earned his Master of Fine Arts degree in sculpture at the California Institute of the Arts in 1997 and spent the next year as a fellow at the Whitney Museum of American Art's Independent Study Program. He then headed back to California where he taught at a number of colleges—California Institute of the Arts, Occidental College, the University of California at Irvine, and the University of Southern California.

His largest art project was a three-part mixed-media installation (2000-2003), “Suburban Interventions,” “A Question of Property,” and “Assigned Value,” which examined the intersection of real estate property and intellectual property through the medium of architecture and sculpture. “Suburban

Interventions” dealt with the investigation of the foundation of property law in the United States, while “A Question of Property” examined the notion of “discovery,” via a seminal U.S. Supreme Court case, *Johnson v. M'Intosh*, that became the foundation of property ownership and title. “Assigned Value” examined the laws pertaining to real property as they applied to intangible property—intellectual property—by proposing that “the historical socio-economic shift from agricultural and industrial production to intellectual property creates a logical fourth mode of production, that of aesthetic property rights.” Those projects were exhibited in public and private properties in California, Massachusetts, Pennsylvania, and Texas.

His most recent project, “Good Times Are Waiting,” exhibited at Denniston Hill Residency in Denniston,



**Above:** Muñoz Sarmiento's most recent project, "Good Times Are Waiting," exhibited at Denniston Hill Residency in Denniston, N. Y., in 2012, examined the idea of cultural property ownership and the concept of "Americana" through the mediums of appropriation, drawing, and sculpture.

N. Y., in 2012, examined the idea of cultural property ownership and the concept of "Americana" through the mediums of appropriation, drawing, and sculpture. The ongoing project examines how the fight over the definition of "Americana" is in fact "rooted in the fight over intellectual property and appropriation laws, highlighting the current socio-political divide in the United States."

In 2003 Sarmiento enrolled at Cornell Law School, earning his law degree in 2006 and going to work directly at the Manhattan-based Volunteer Lawyers for the Arts, where he was the associate director until 2012 when he went into private practice in Brooklyn ([www.artlawoffice.com](http://www.artlawoffice.com)). His clientele consists of individual visual artists, as well as the directors of arts organizations.

"Seventy to 80 percent of the calls I get concern issues of intellectual property," he said, which may be expected since a large percentage of the educational programs he ran at Volunteer Lawyers for the Arts focused on issues of copyright, trademark, and patents. "People want to use copyrighted content in their artwork—still images, music, films—and they want to know if what they are doing constitutes fair use—the legally permitted limited use of copyrighted material for commentary, parody, research, or teaching— or if they need to obtain permission. I can help them get permission or advise them how to get their use of the copyrighted material more on the fair use side."

The other part of his work involves the "transactional" side, involving consignment agreements with art dealers, commissioning contracts for public art, setting up limited liability corporations for artists, and preparing work-for-hire agreements that artists may use for

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*– Sergio Muñoz Sarmiento*

the assistants they employ. “Artists sometimes bring in people to help them with their work,” he said. “They don’t know how to use PhotoShop or they want someone to do some or all of the actual painting of a canvas, but they need to have those people sign a work-for-hire agreement or else those assistants may be able to claim partial copyright ownership of the artist’s work.” Clearly, the intellectual property and transactional aspects of the art law field sometimes overlap.

The current direction of art law, he noted, appears to be moving in one direction. “It would be good if the work that artists create could expand the legal framework, but to my chagrin, it seems that artists are being forced to conform to the legal and business world.”

Sarmiento’s principal role is an advisor to artists, helping them avoid problems rather than righting wrongs. As such, he refers those who have been sued or are looking to file a lawsuit against someone else to other attorneys whose practice includes litigation. “The costs of litigation are just so high, and they take so much time.”

Another aspect of advising artists, which he began at Volunteer Lawyers for the Arts, is an educational program for artists and arts administrators. The central component is a five-part once-a-week Art Law School at Fordham Law School, where he is an adjunct professor. The course (all materials and a one-hour private consultation with Sarmiento are included) examines business and

employment law, intellectual property, contractual agreements and negotiation strategies, nonprofit incorporation, and issues pertaining to censorship, free speech, and privacy. Additionally, Sarmiento offers a 13-week theoretically-oriented Art Law Program that examines the “effects of law and jurisprudence on cultural production,” as well as two-hour long webinars on specific topics.

His own life story also attracts some clients. “Artists who want to enroll in law school—I mentor them through the law school admission test—and lawyers who want to practice art. I give them advice on how to get into art school.”

“I became an artist to challenge preconceived notions of making and understanding culture, and attended law school as an art project in order to understand the power structures that governed my existence as an individual, as well as the production and reception of art,” said Sarmiento. I became an arts lawyer to merge art and law in a way that reflects my art making and my desire to empower artists and those who seek to disseminate challenging art.”

In a sense, the law office of Sergio Muñoz Sarmiento is an art project. <sup>TCR</sup>

**About the author:** Daniel Grant is the author of both *The Business of Being an Artist and Selling Art without Galleries* (Skyhorse Publishing, [www.skyhorsepublishing.com](http://www.skyhorsepublishing.com)), among others. A former art critic for *Newsday*, he has taught at *Lyme Academy College of Fine Art in Connecticut*.



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