

Art And the Law: Nietzsche on The Desert

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Abstract: The right to freedom of expression is constitutionally protected in Western democracies. The right to produce art falls within the protection of expression and expression of thought. Works of art are protected both by the constitutional right to freedom of expression and by copyright. This dual protection creates tension when creating new works of art based on each artist's perception of the existing art collection. The article aims to analyze this issue, presenting a reflection on the Desert X Coachella Valley 2025 exhibition in California. The exhibition is a true oasis in the desert, which mixes contemporary and historical creativity. The theoretical framework adopted is the philosopher Nietzsche and his theory of justice as exchange. Nietzsche, the philosopher-artist, placed art at the center of his investigations into science, hence the justification for adopting his thinking. Applying the exploratory method and the bibliographic review, the article, in the light of Nietzschean thinking, concludes that art is one of the most relevant manifestations of the right to freedom of expression and should be protected as one of the human rights.

Keywords: Art and the Law, Nietzsche, Free speech, Right to Art, Desert X Coachella Valley, Exploratory methodology.



(Desert X. *Help us Protect the Land*, 2025)

I. Introduction

The desert grows; woe to him who conceals deserts.
(Nietzsche, 1885)

Art affirms life as a whole. This article presents a reflection on the Desert X Coachella Valley 2025 exhibition in California – its powerful transformative action and its connections with the right to art and freedom of expression.

Chapter two addresses art as a manifestation of the right to freedom, both the constitutional right to freedom of expression and one of the human rights.

Chapter three presents the constitutional protection of freedom of expression in law, with references to the historical origins of the constitutional protection of freedom of expression in the Bill of Rights of the United States Constitution, more specifically in its First Amendment. The chapter addresses the tension that exists in artistic freedom in the face of restrictions on freedom of expression and copyright, viewing freedom of expression as a two-way right that involves both the right to expression and the right of others to access art.

Chapter four addresses the artistic expression of Desert X Coachella Valley 2025 in California, a contemporary art exhibition in the Coachella Valley. The exhibition is set against the arid beauty of the desert, involving artists from various parts of the planet, exploring contemporary themes.

Chapter five presents, as a theoretical framework, Nietzsche's thinking on justice as exchange. Nietzsche, the philosopher-artist, placed art at the center of his investigations into science, hence the justification for adopting his thinking.

The article uses the exploratory method and a bibliographical survey to assess the level of constitutional protection that the expression of thought embodied in art deserves. Applying the exploratory method, under Nietzsche's theory of justice as exchange, it is demonstrated that art is one of the most relevant manifestations of the right to freedom of expression. The protection of artistic expression is consistent with the constitutional text on the prevalence of human rights. The relevance of transdisciplinary research lies in the interpretation of the right to art as a human right. Art conquers a new space of freedom and creation in the desert, offering new responses to the aridity of existence.

II. Art as a right to freedom

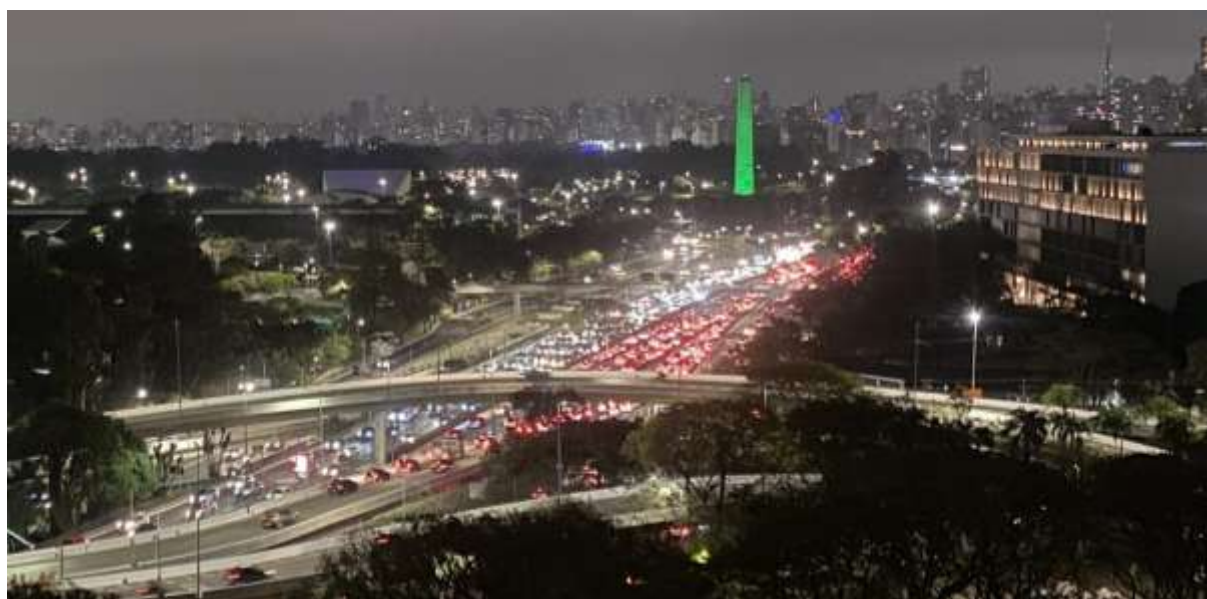
The aesthetics around us, such as form, color, sound and texture, affect our psychological state, – a claim from cognitive neuroscience. "In the quiet center of this small forest of ferns, I could feel my heart slow and my muscles relax." (Ellard, 2015, p. 52).

Art is necessary in public space – it gives access to a new perspective of understanding the arid urban world, the aesthetic perspective (Forghieri, 2016).

Street art, with Banksy (Forghieri; Rohrmann, 2015, p. 10), (Forghieri; Rohrmann, 2023, p. 81), Icy and Sot (Rohrmann; Forghieri, 2023, p. 80) and Kobra (Kobra, 2024) brings images of creative boldness and courage to the public space, as well as presenting another order of understanding and transforming the world.

Original and personal means of expression also reflect a perception of what is essential, of what needs to be really artistically affirmed.

Public space is not only the new contemporary canvas, but the must also open itself to the richness, beauty, and redemptive power of art.



(Forghieri, *Good traffic in São Paulo*, 2024)

The routine of urban life, the long and congested streets, the wasted time, the tensions that accumulate, the repetition that saddens – all of this is intertwined with street art, bringing hope where greenery is scarce.

Major cities like São Paulo and New York also have their poets, like Eduardo Kobra. Born in São Paulo, Brazil, he is one of today's most renowned muralists, with works spanning five continents. In 2022, at the invitation of the UN, Kobra created a nearly four-hundred-square-meter panel, exhibited in New York at the organization's headquarters in the United States.

As a boy, Kobra was arrested three times for environmental crimes — the illegal use of spray paint on walls in São Paulo. In *Greenpincel*, Kobra demonstrates his concern for environmental causes — the panels consist of an image and a protest phrase, and themes even include a ban on the exploitation of animals in events such as rodeos.

On September 11, 2024, Kobra posted on his Instagram page “The braves of 9/11”.



(Kobra, *The Braves of 9/11*, 2024).

Art has overflowed beyond the confines of museums in large cities. This overflow creates a new landscape, a new passageway for admiring public space.

III. Art, copyright protection and freedom of expression: a legal tension

Man gave values to things, first, to preserve himself –he created the meaning of things, a human meaning!
(Nietzsche, 1885)

Artistic creations are protected by both freedom of expression and copyright in the United States. Freedom of expression, as a right, is based on democratic constitutions in the West. The United States Constitution, through its First Amendment, protects the right to freedom of expression, as one of the first four amendments, also known as the *Bill of Rights*:

Amendment I

Congress shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof; or abridging the freedom of speech, or of the press; or the right of the people peaceably to assemble, and to petition the government for a redress of grievances. (United States of America, 1789)

The First Amendment of the U.S. Constitution constitutionalized the right to freedom of expression and served as inspiration for the constitutions of other democracies (Chemerinsky, 2010). The right to freedom of expression protects both the freedom of creation and expression and the freedom to access the expression of others' authorship, including art. The state should not, in order to protect the individual, legalize restrictions on access to art (Rohrman; Rego, 2013). Artistic expression in public spaces, since it can be appreciated by many people, deserves the highest constitutional right to freedom of expression, otherwise it risks suppressing people's access to artistic creation, even in federalism, where states are laboratories for new ideas (Chemerinsky, 2008).

Copyright, on the other hand, limits copies of original works of art protected by them. The requirement of originality is fundamental to the protection of works of art under copyright. Of course, there is a limitation on freedom of expression because making copies of original works of authorship is prohibited. However, this tension is mitigated because originality has a relative aspect. The law cannot require that every work of art exhibit absolute originality to be protected by copyright. There is a common collection of works of art to which people have access (Bittar, 2000), and from this, they can draw inspiration to recombine elements according to their own subjective creativity and originality.

This type of inspiration can be exemplified by Banksy and Kobra's reinterpretations of Leonardo da Vinci's masterpiece, the Mona Lisa. These works by Kobra and Banksy pay homage to Da Vinci's Mona Lisa, bringing La Gioconda outside the museum, with a new language.

Thus, for copyright infringement to be established, the original expression of the artwork must be reproduced. This identity is the set of interrelated elements that confer the original meaning of each work of art. Therefore, the tension exists and must be maintained, as the poles simultaneously clash and sustain each other.

IV. Desert X Coachella Valley 2025

I transform myself too quickly: my today refutes my yesterday.
(Nietzsche, 1885)

The idea of bringing art into public spaces has become so powerful that it has inspired new ways of creating and organizing art exhibitions in the world.

Desert X Coachella Valley inspires artists from around the world to create large-scale art installations, adjusting their creative perspectives to the invisible aspects of the place, engineering new rhythms for the vastness of the desert.

The curators, Neville Wakefield (artistic director) and Kaitlin Garcia-Maestas, propose reflections on the desert as becoming.

Desert X adds art to the ever-changing desert and its wild nature, exploring themes such as Indigenous futurism, design activism, humanity's mark on the earth, and the role of emerging technologies in contemporary society.



(Biggers, *Unsui – Mirror*, 2025)

The work "Unsui (Mirror)", by American artist Sanford Biggers, presents two majestic sequined cloud sculptures, set against the vastness of the desert. Clouds symbolize freedom and are recurring themes in Biggers' work. Buddhism also inspires Sanford, and Unsui translates to "clouds and water" in Japanese. Standing over 30 feet tall, the sequined clouds move with the sunlight and wind.

Sanford Biggers is a multimedia artist, and his work reflects personal experiences, from his early involvement with graffiti in Los Angeles to his time in Japan, deepening his ability to connect disparate cultural and historical contexts.



(Meyohas, *Truth Arrives in Slanted Beams*, 2025)

Sarah Meyohas is an American artist and economist. She researches the aesthetic and creative potential of science and technology, proposing sublime images. Her installation "Truth Comes in Slanted Beams" presents luminous patterns formed by the refraction or reflection of light through curved surfaces. Meyohas uses an innovative technology that projects sunlight onto a huge ribbon-like structure that unfurls across the desert. The sculpture's curves render the apparent rigidity of its structure fluid, presenting a new paradox.

*Around the inventors of new values the world revolves;
it revolves invisibly.*
(Nietzsche, 1885)



(Kimsooja, *To Breathe*, 2025)

The work "To Breathe", by South Korean artist Kimsooja, connects several ideas from her broader practice, which includes sculpture, painting, film, performance, and installation. The glass structure serves to define a performative space, inviting the audience to interact with the essential elements of the desert. By enveloping the glass surface in an optical film, it transforms the physical architecture into a dynamic spectrum of light and color.

"To Breathe" in Coachella Valley connects to another work of the same name by Kimsooja, located in the AlUla Desert in Saudi Arabia, nearly 12,800 kilometers away. The fundamental connection lies in the air we breathe, the cycles of life and death, and the Apollonian and Dionysian impulses.

In the loneliest desert a second metamorphosis occurs: here the spirit becomes lion, it wants to capture its freedom and be lord in its own desert.
(Nietzsche, 1885)



(Luger, *G.H.O.S.T. Ride / Generative Habitation Operating System Technology*, 2025).

The work "G.H.O.S.T. Ride", by artist Cannupa Hanska Luger, reimagines her iconic artwork, the Repurposed Archaic Technology (RAT Rod) vehicle, in a nomadic installation that traversed the Coachella Valley over nine weeks, stopping at various locations.

Luger was born on the Standing Rock Reservation in Fort Yates, North Dakota, and is an enrolled member of the Three Affiliated Tribes of Fort Berthold, bridging ancestral knowledge with contemporary culture. Her multidisciplinary practice establishes a dialogue between an Indigenous worldview and bold contemporary visual narratives, using technology as a vehicle for transmitting ideas across time and space. According to the artist, "This project inverts how the desert survives profound and unimaginable temporal evolutions and invites us to consider what we can learn from the desert if we focus on its knowledge." (Desert X, 2025).

Walking and admiring the vastness of the world, contemplating the vast and looking upwards – this practice promotes a kind of sublime elevation, even for agnostics:

When we walk through a grand space, be it a stunning natural vista, a large cathedral, an impressive city hall, or a courthouse, one of our near-universal responses is to gaze upward. As surely as a mystic may focus upward to engage a "third eye" or an individual engaging in intense prayer may try to focus their attention on the heavens above this upward focus of attention activates an extra personal information processing system that primes us to focus on the faraway, the distant, or even the infinite. This upward focus helps us to dissolve the earthly chains that bind us to the prosaic events of ordinary life, the exigencies of mere survival, bodily sustenance and protection, and ultimately our awareness of our mortality, and to feel the positive emotion and comfort that come from connection with a greater existence—some would feel even a divine one. Though there are many other complex feelings and adjustments of behavior that might be generated by the experience of being enveloped by vastness in the built environment, some of them enjoying evolutionary continuity with the effects felt by other

animals as they find their place in a social order or feel the protection of a powerful parent, the operation of brain systems that encourage us to feel contact with the sublime and celebrate the miracle of self-awareness are supremely and uniquely human. It may be here that we find the secret formula that allows us to poise miraculously on a knife-edge of existence, enjoying all of the benefits of the inner theater of our minds while at the same time coping with the abyss of our own eventual certain deaths. Perhaps it is here that we find the most dazzling exhibition of the power of the built environment to sustain our fragile purchase on such a narrow ledge. (Ellard, 2015, p. 173)

The right to art, the right to large spaces, is a type of redemption and reaction to the landscape congested by cars, buildings and sirens: "[Art] wakes us from an urban trance, always heading towards an urgent and hurried repetition." (Rohrmann; Forghieri, 2023, p. 78)

The aim is to establish a field of freedom where the movement of the desert harmonizes with artistic interventions, authentic expressions of each individual.

And, like Nietzsche (Nietzsche, 1884, p. 251), the stimulating environment to intensify artistic imagination and creativity is sought in the landscape, not in the interior of a room.

V. Nietzsche and justice as an exchange

Each people invented its own language, according to its customs and its justice.
(Nietzsche, 1885)

The theoretical framework adopted is Nietzsche's doctrine, which proposes that justice be viewed as an exchange. In other words, the pursuit of justice will always involve an exchange between the parties. This is Nietzsche's concept of the origin of justice, as taught in Nietzsche's work, "Human, All Too Human":

Justice (fairness) originates among men of approximately equal power, as Thucydides well understood (in the terrible dialogue between the Athenian and Melian envoys). It means that: where there is no clearly dominant power and a struggle would only result in mutual harm without any outcome, the idea of trying an understanding and negotiating the claims of both sides arises: the character of exchange is the original character of justice. Each one gives satisfaction to the other, provided that each one receives that to which he gives more value than the other. Each is given what he claims to possess, as being from now on his own, and in return he receives the object of his own desire. (Nietzsche, 1878, p. 88)

The Nietzschean vision of justice as exchange prevents the state from repressing street art because it involves a perfect exchange between the artist who makes his creation available in the public space, which will be exchanged for the widespread dissemination of his ideas and his expressions (including political ones) to a large number of interpreters. Furthermore, confronting the third party, the interpretation of a third party, also requires confronting oneself. It is a matter of self-transcendence. The growth of a person, even an artist, cannot be measured with a ruler; it is dissociated from something that is added—to grow, here, means to intensify.

You sought the heaviest burden: you found yourself —
and you cannot cast yourself of. (Nietzsche, 1889, p. 49)

Therefore, in view of the maximization of the exchange that occurs with street art in public space, applying the Nietzschean theoretical framework, the level of protection for freedom of artistic expression in public space must be as high as possible in order to avoid the suppression of artistic expression and to avoid the imposition of legal difficulties so that the greatest possible number of people have access to that production, even if it carries with it political criticism.

Go into your solitude with your love, my brother,
and with your creative activity;
and only later will justice hobble after you.
(Nietzsche, 1885)

Interestingly, American law regulates free speech public in public spaces differently when it comes to protecting individuals' freedom of expression. "Public forums" are places where freedom of expression deserves the greatest possible protection; examples of this are squares and most public sidewalks, with the exception of the sidewalk in front of post offices, for example, due to the need to clear letters and other packages often delivered urgently by the postal service. Therefore, public deserts deserve higher free speech protection.

Finally, "No interpretation escapes what we are, or what, deep inside of us, we cannot teach". (Nietzsche, 1886, p. 172)

VI. Conclusion

The article investigated the right to art as a manifestation of the right to freedom of expression.

The article adopted Nietzsche, the philosopher-artist whose thought presents justice as an exchange, as a theoretical framework to investigate the level of freedom of expression protection that artistic expression should receive under law.

The right to freedom of expression has its constitutional origin in the so-called Bill of Rights, the first four amendments to the United States Constitution. The Constitution also protects freedom of expression with regard to the right to artistic expression. At the same time, there is a constitutional copyright on works of art that limits freedom of expression by prohibiting copying and plagiarism. The article identifies a tension between these rights, rooted in the United States Constitution.

Using the exploratory method and a literature review, the article investigated the artistic expression contained in Desert X Coachella Valley 2025, in California. Several images from the contemporary art exhibition in the Coachella Valley desert are presented in light of Nietzschean thought. The aforementioned art exhibition is another oasis in the desert, affirming the continuous transformative power of art.



(Banksy, 2016; Kobra, 2024)

The right to art, in light of Nietzsche's thought, is one of the human rights.

References

- [1]. Banksy. *Mona Lisa*. *Banksy in Art we Trust*. Amsterdam: Ed. Moco, 2016.
- [2]. Biggers, Sanford. *Unsui – Mirror*. 1 picture. 1386 x 1089 pixels. Desert X 2025 Coachella Valley. 2025. Retrieved from: <https://desertx.org/dx/dx-25-coachella-valley/sanford-biggers>.
- [3]. Bittar, Carlos Alberto. *Direito de autor*. 3. Ed. Rio de Janeiro: Forense, 2000.
- [4]. Chemerinsky, Erwin. *Enhancing Federalism. Federalism for the 21st Century*. Stanford Law Books, Stanford, 2008.
- [5]. Chemerinsky, Erwin. The Assumptions of Federalism. *Stanford Law Review*, Stanford, v. 58, n. 6, p. 1763-1792, Stanford University Press, April 2010.
- [6]. Ellard, Colin. *Places of the heart: The Psychogeography of everyday life*. New York: Bellevue Literary Press, 2015.
- [7]. Desert X. *Desert X 2025 Coachella Valley, CA*, March 8 – May 11, 2025. Retrieved from: <https://desertx.org/dx/dx-25-coachella-valley>.
- [8]. Desert X. *Help Us Protect the Land*. 1 picture. 1992 x 1494 pixels, 2025. Retrieved from: <https://desertx.org/visit/visit-desert-x-2021/protect-the-land>.
- [9]. Forghieri, M. C. *Formação do mestre: Nietzsche, arte e autoconhecimento*. Tese de pós-doutorado. São Paulo, USP, 2016.

- [10]. Forghieri, M. C. *Good traffic in São Paulo*. São Paulo, 2024. 1 picture. 1920 x 2720 pixels. Retrieved from: https://www.academia.edu/123870111/FORGHIERI_transito_bom_em_Sp_2024.
- [11]. Forghieri, M. C.; Rohrmann, C. A. *Banksy x Guess: Ética, estética e propriedade intelectual*. Direito, Literatura e Culturas Jurídicas I [Recurso eletrônico on-line] organização Conpedi, 2023, p. 77. Retrieved from: <http://site.conpedi.org.br/publicacoes/w7dsqk3y/q3w3kr96/MRR5x2w4f46OwwFe.pdf>.
- [12]. Forghieri, M. C.; Rohrmann, C. A. Direito empresarial contemporâneo: O caso Banksy. *Conpedi Law Review*, v. 01, n. 8, p. 07-17, 2015. Retrieved from: <https://www.indexlaw.org/index.php/conpedireview/issue/view/290>.
- [13]. Kimsooja. *To breath*. 1 picture. 605 x 454 pixels. Desert X 2025 Coachella Valley. 2025. Retrieved from: <https://desertx.org/dx/dx-25-coachella-valley/kimsooja>.
- [14]. Kobra, Eduardo. *KobraStreetArt*. Instagram. 2024. Retrieved from: <https://www.instagram.com/kobrastreetart/?hl=pt-br>.
- [15]. Kobra, Eduardo. *Mona Lisa*. 1 picture. 570 x 554 pixels. Facebook. Retrieved from: <https://www.facebook.com/eduardo.kobra/>.
- [16]. Kobra, Eduardo. *The braves of 9/11*. Nova Iorque, 780, Third Avenue. 1 picture. 693 x 1024 pixels. Instagram. 2024. Retrieved from: https://www.instagram.com/p/C_yQjNoxySo/?igsh=bXl3ZXk2ZGJqM3h5&imgindex=1.
- [17]. Luger, Cannupa Hanska. *G.H.O.S.T. Ride / (Generative Habitation Operating System Technology)*. 1 picture. 605 x 454 pixels. Desert X 2025. Coachella Valley. 2025. Retrieved from: <https://desertx.org/dx/dx-25-coachella-valley/cannupa-hanska-luger>.
- [18]. Meyohas, Sarah. *Truth Arrives in Slanted Beams*. 1 picture. 1386 x 1089 pixels. Desert X 2025. Coachella Valley. 2025. Retrieved from: <https://desertx.org/dx/dx-25-coachella-valley/sarah-meyohas>.
- [19]. Nietzsche, F. W. *Assim falou Zarathustra*. (1885). Lisboa: Presença, 1973.
- [20]. Nietzsche, F. W. *Ditirambi di Dioniso e Poesie Postume*. (1889). Milano: Adelphi, 1997.
- [21]. Nietzsche, F. W. *Humano demasiado humano*. (1878). Lisboa: Presença, 1973.
- [22]. Nietzsche, F. W. *Para além do bem e do mal*. (1886). São Paulo: Hemus, 1982.
- [23]. Rohrmann, C. A.; Forghieri, M. C. *Espaço público, espaço interior: O caso Icy and Sot*. Direito, Literatura e Culturas Jurídicas I, coordenadores: Carlos Alberto Rohrmann; Iara Pereira Ribeiro. Florianópolis: Conpedi, 2023, p. 58. Retrieved from: <http://site.conpedi.org.br/publicacoes/w7dsqk3y/q3w3kr96/o1LdH7Yz9OWtN60k.pdf>.
- [24]. Rohrmann, C. A.; Rego, C. Private law and state paternalism: too much legal regulation of private life. *J. Int'l Com. L. & Tech.*, vol. 9, p. 236, 2014.
- [25]. United States of America. *United States Constitution*, 1789. Retrieved from: <https://www.archives.gov/founding-docs/constitution-transcript>.