

V. THE NEW MILLENNIUM

WHAT THE NEW MILLENNIUM MIGHT BRING

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In order to bring home the importance of art and culture in helping us to understand our society and ourselves, Professor Merryman quotes John Steinbeck's pithy question, "How will we know it's us without our past?"¹ Similarly, it is appropriate for us to reflect upon the future of art and culture as a way of conceptualizing and understanding where we are and where we soon might be.

This panel is about the new millennium. What changes can be expected in the world that is coming? How will these changes affect matters such as censorship, artists' rights, copyright, and cultural property, the movement of art across national borders, and concerns about ownership and access to authentic cultural creations? While none of us has a crystal ball, our panelists are all on the frontier of the coming changes and figure prominently among those who have considered what the future is likely to bring.

As background for what is to come, a very general sketch of where we have been is useful. Up until now, at least since the Enlightenment and the rise of the modern world, it is fair to say that art and culture have been thought of as discrete works of individual creators.

Until recently, the tendency has been to think that we make sense of things without having to relate them to anything else. Authors and their works were believed to be understood without regard to the context in which they originated and to what came before them and what came after. As a result, the key concepts that underlie the earlier discussions today have an objective, self-contained character. For instance, censorship is commonly thought of as the removal of offending words or images from a book or museum display; copyright and moral rights as the artists' ability to enforce independent rights in their discrete creations; cultural property as unique expressions of a particular culture or nation; ownership, likewise, as an individual right definable with-

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¹ See John Henry Merryman, *The Public Interest in Cultural Property*, 77 CAL. L. REV. 339, 339 (1989) (quoting JOHN STEINBECK, *THE GRAPES OF WRATH* 114 (Penguin Books ed. 1976)(1939)).

out reference to the larger community in which it functions; and authenticity as an inherent quality that is determinable through the application of expertise to individual works.

As a result of developing technologies, we are entering a new world where controllable, fixed objects and self-contained, unproblematic contexts are quickly losing their position as the paradigms of experience.

Like an artist's use of a new medium to create a different art form, developments in new digital information technologies and new techniques of fabrication from the biological and material sciences will change our world and the ways in which we relate to it. These changes are likely to be previewed in the art world. As in the past, artists and their art will be the vanguard of creating the new culture in which we live.

Artists of the twentieth century avant-garde early asked, "What is art?" They were among the first to question a static view of things and raise the issue of whether art was self-defining or needed to be understood in context, with special reference to the creator's intentions. The importance of context and of artists' intentions gave rise to the appropriation of art as the subject of another artist's art, and the issue of whether art could be rightly understood if its original context were changed or ignored. The new approach challenges our traditional concepts of creativity, authorship, uniqueness and authenticity. It further challenges traditional notions of copyright and of moral rights, and it raises the question of whether art belongs exclusively to its original cultural context or whether it should be considered outside of that context. This is a key issue in the cultural property debate.

Changes in approaches to ownership and censorship also arise because of the information revolution. Traditionally, the art world has been cloaked in secrecy. Objects of immense value and importance have been bought and sold with little knowledge about them being exchanged. If this information were made available through new means of communication, it might affect, among other things, cultural property and other ownership claims. For example, disputes between original owners and good faith purchasers might then turn on who first provided, or sought, information about a work. In the area of censorship, the ever-growing availability of information might make it impossible to prevent access to what some find objectionable in art or ideas.

In addition, new technologies of manufacture may affect concepts of uniqueness, authenticity, ownership, and the very nature of art. The ability to create endless identical objects changes the

aura that is now thought to reside in authentic art works and our desire for them.

If someday we were able to replicate indistinguishably the Elgin Marbles, would this resolve the dispute between England and Greece, if it had not already been solved? Let us imagine three sets of marbles that are somehow put into a grand shell game and mixed up so that the original "real ones" cannot be distinguished from the copies. Will Greece be satisfied with one of the sets? Will England? And who should get the third set? What do the answers to these questions say about our present view of the issues? And what will the answers be for those to whom such questions are more than academic exercises?