

Media and Arts Law Review

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This article investigates court-ordered remedies for copyright infringement that permit the destruction of infringing artworks. While orders for delivery up for destruction of infringing copies are common, they take on a special significance when the infringing copy is three-dimensional art. Such art objects are unique because once destroyed, they are gone forever. This is of little consequence when destroying facsimile counterfeit products, but art is conventionally lionised by society and the law. This article investigates whether it receives the same treatment when it infringes copyright, and whether that treatment shifts depending on the nature of the infringement. Orders destroying art magnify significant clashes of interests across varied stakeholders. They illuminate art's special characteristics as both intellectual and material property, which proliferates rights across those property owners. And unlike counterfeit replicas of copyright works, the community might have an interest in infringing art. Orders for destruction inevitably amplify and complicate this web of potentially clashing interests. While court-ordered destruction of art in copyright cases appears to be rare, this article considers several cases in different jurisdictions. It outlines the legal framework for destruction orders in the major common law jurisdictions, and then examines the discretionary factors that influence decision-makers to either order the destruction of infringing art or preserve it, including the interests of both plaintiff and defendant, as well as the public interest in the survival of the impugned artwork as an expression of free speech. The article concludes with some observations and a general recommendation that orders for destruction should be very rarely granted.

[Be still my heart: Copyright in defence of humanness](#)

— *Amelia King* 219

We have long viewed creativity as both product and proof of our own humanity. The human creator has ostensibly been foregrounded in the development of copyright law. This article asks what happens to creativity when humans are not the only creators in town, examining the potential threats that generative AI poses to the viability, culture and process of human creativity. Concluding that such

threats will be mitigated or exacerbated by decisions we make now about the use and treatment of generative AI, the article looks to the continued suitability of copyright law in defence of humanness. Acknowledging scepticism that copyright law has ever faithfully served human creators, the article concedes that it does offer one potential path forward into the AI age — but not a path that will sufficiently guard human creativity by itself.