

A Public Display of Love

a screenplay by

Irmak Baksu

ID: 2060427 / Supervisor:
Charlotte Woodhead / Word
count: 5999

1 EXT. THE GARDEN AT THE CARE HOME - DAY

The weather outside is sunny and beautiful. It's green, peaceful, and quiet. Birds are chirping. There is a slight breeze. The trees and the grass slowly swinging. An old couple is sitting on the grass facing each other, in the middle of the garden. This is Elaine and Sonny. They are a couple in their late 70s. Elaine is wearing a bright-coloured loose-fitting nightgown with a cardigan on top. Sonny is also wearing a bright-coloured outfit, with a grey loose-fitting turtleneck sweater and comfortable beige pants. There is no one else around in sight. Their eyes are closed at first, for thirty seconds or so, kind of in a meditative state. Then for a quick second, Sonny cheekily opens one of his eyes halfway to see if Elaine's eyes are closed. They are. Then he leans forward to hold Elaine's hands. They both open their eyes and start looking at each other, in silence. They stay like this for three minutes or so. Then Elaine gives him a heart-warming smile and squeezes his hands.

SONNY

Do you remember?

ELAINE

I remember.

They smile at each other and share a small kiss holding each other's faces.

ELAINE

(shouting at Nina)

Sophie, dear, did you get that?

There is a 30-something-year-old woman who is Elaine's nurse, Nina, facing them from a distance, holding a camera in her hand, recording their performance. She is wearing a pink nurse outfit. She gives them a quick smile and a thumbs up.

ELAINE

Okay, great. Now, can you help us get up, please?

A Public Display of Love

a screenplay by

Irmak Baksu

ID: 2060427 / Supervisor:
Charlotte Woodhead / Word
count: 5999

NINA

Oh...

Nina forgets to turn the camera off, runs towards the old couple, and helps them get up.

2

INT. THE CAFÉ AT THE CARE HOME - DAY

The interior is clean and practical, with your usual care home shades of white and light grey all around. It's depressing and boring. There is barely any light coming in from the outside as it is your everyday grey and cloudy UK weather. The lighting inside is disturbingly bright and bleak, illuminated by fluorescent tubes with a white shade. Sonny is sitting on the right side of a white round table at the café, with his tired and empty eyes, looking down at his piping hot tea in a carton cup and slowly stirring it with a wooden stick. Then another old man in his late 70s walks into the café with slow steps, confusingly looking around, trying to spot someone. This is James. He is wearing a big brown blazer and some grey trousers. He spots Sonny and walks towards him.

JAMES

Sorry, is this seat taken?

Sonny looks up at James and doesn't recognise him.

SONNY

(with a forced and quick smile)

Yes, sorry, just waiting for an old friend.

JAMES

Looks like you've been waiting forever as you have one foot in the grave.

James sits down on the left side of the table, opposite Sonny. At first, Sonny is surprised at James' audacity and looks confused. Then, he realises that it's James.

SONNY

(surprised)

James? Is that really you?

JAMES

(sarcastically)

If you weren't waiting for someone else who is as excited as me to see your saggy and lifeless face, then yes, it's me.

SONNY

(laughs)

Yes, you are James alright. Only less handsome.

CONTINUED:

JAMES

(laughs)

It's good to see you too buddy.

A waiter comes to the table and gives James a cup of hot tea. James gives a strange look to the waiter as he walks away.

JAMES

(confused)

Huh, I don't remember ordering tea.

SONNY

(jokingly)

Either you're too old to even remember that you ordered tea or even the waiter thought that you could use a hot cup of tea to warm up your cold heart.

They both laugh.

JAMES

(sighs)

Oh, I've missed this. It's good to see you again old man.

SONNY

Yeah, it's good to see you too. How long has it been since the last time we saw each other? 15-20 years maybe?

JAMES

You're asking me? Sometimes I can't even remember what I ate a couple of hours ago.

(pause)

So?

Sonny takes a quick sip from his tea.

SONNY

(with a forced and humble smile)

So...

JAMES

How are you doing?

SONNY

You know... It's still the early

CONTINUED:

stages of Elaine's dementia. She is not doing bad. So, I am not doing too bad either. The doctors said her situation has been somewhat stable for a while. Not that it can get any better, but at least it is not getting drastically worse either. Stable is good.

(chuckles)

Huh. Who would have thought those words would ever come out of my mouth?

JAMES

(chuckles)

Not me.

(pause)

But how are you doing? Really? And remember that I can tell when you are not being straightforward with me. I've known you for too long. Stop tiptoeing around the question.

SONNY

No, you're right. Sorry. I didn't ask you to come all the way here just to have small talk. It's just been difficult for me to open up to people about this. That's probably why I wanted to reach out to you in the first place. You know me. You know us. You've known us since day one actually.

(looks up and gives a quick smile)

Heck, you were my best man at our wedding. I've never meant for us to drift apart. But I guess life got in the way. Everything kind of went downhill after we've learnt that Elaine cannot have children, you know.

JAMES

Yeah... I wish I could've been there for you two, somehow ease your pain. I just didn't know how. As soon as I heard it, I just felt so powerless and unhelpful. And I don't think I have told you how sorry I am about that. So, yeah, I truly am sorry buddy.

CONTINUED:

SONNY

(shakes his head)

No, don't, please. Life happens to all of us in different ways, shapes, and forms. You may wonder all you want why certain things happen to you, but you learn over time that playing the victim isn't going to get you anywhere. You'll only be going around in circles whereas you could be moving straight ahead on your path. And it is not always about making sense of things but just accepting them as they are, especially if they're out of your control. And if you're lucky enough to have this realisation, then you open yourself up to the possibility of being blessed by something else. I guess that's how I like to see it for me and Elaine anyways.

(pause)

This brings me to why I reached out to you actually.

3 EXT. PORTOBELLO ROAD IN LONDON - DAY

SONNY

(V.O.)

It was right after we have left the doctor's office with the painful news about Elaine's infertility. Naturally, we were devastated, angry, like everything came crashing down... We were walking down Portobello Road in London. Not talking, just walking slowly. And then suddenly, Elaine stopped me right in the middle of the busy street and sat me down. I didn't know what she was trying to do, but I didn't question it, I was just following her. We sat down on the street facing one another, not talking. She closed her eyes, and so did I. I went to this meditative state of mind for a while and then woke up to Elaine holding my hands. I opened my eyes, and she was looking at me. We stared into each other's eyes, blocking the outside world, and just

CONTINUED:

feeling our pain together to the fullest. We communicated through our eyes and understood each other in an indescribable way. I don't even know how long we stayed like that. Time became such a blurry concept while we were heavily immersed in our emotions. Then, we both burst into tears, not being able to hold back anymore. We let it all out until there were no tears to be cried. It was emotionally and spiritually the most cleansing, calming, and relieving experience I have ever had.

(pause)

That is not to say that we had miraculously forgotten about the news we heard half an hour ago, but rather than having to hide and suppress our sorrow and grief, we let ourselves get taken away by these feelings, we let them be felt to their fullest and have their moment. And in that very moment, we both realised that we gave birth to our lovechild, right then and there. Our love for each other, our love for performance art, and our love for our never-to-be-born child have all merged to create a performance may be even more divine and beautiful.

4

INT. THE CAFÉ AT THE CARE HOME - DAY

SONNY

It's funny the way things work out sometimes. One moment, you find yourself at the bottom of a dark pit, without any visible way out. So, you just accept your faith and feel like there is no point in trying. And the next moment, you realise that you haven't been steady in one place for such a long time and that your mind is not going a hundred miles an hour, and you start to appreciate the state of stillness in a way. You think to yourself "Why not take a nice long sleep?". Then the sun comes out the next day, as it always does, and you

CONTINUED:

wake up to the smile of a lovely stranger that has been standing at the top of the pit and they ask you if you are ready to be saved.

JAMES

(impressed and shocked)

Wow. I honestly don't know what to say.

(pause)

Although, in some twisted way, it is not surprising at all knowing the two of you. Your special connection and love have always been something I looked up to.

(pause)

I just can't help but feel sorry that we have been out of each other's lives for such a long time. I mean, it's the first time I'm hearing of this important turning point in your life.

SONNY

(understandingly)

Hey, if anyone is at fault here, it's both of us. Don't carry all this guilt on your own. That's not fair to you. But let me tell you something, just the two of us sitting down together after God knows how long is still something to be grateful for, isn't it?

(pause)

And, besides, I have a favour to ask you.

JAMES

Of course, please, just name it. It would give me the greatest pleasure to be able to help you out in any way possible.

SONNY

You see, as a last gift to Elaine, I want to get copyright protection over our performance. I want to be able to show her that it belongs to us, not just on an emotional level, but on a

material level as well. Not that we ever cared about materialism, but I'm seeing this more as having the birth certificate of our love child. Since performance art mostly stays on a conceptual and abstract level, with a lot of ideas and emotions being reflected through our bodies in any shape or form, it's difficult to encapsulate everything that it involves in one simple physical form. So, I thought the least I can do is to have an official certificate of ownership of this performance to remind us that our love has once created this sacred thing and that's how it's going to keep on living even long after our bodies have left this world. And, I don't know, even though we are not technically parents in a conventional way, for an artist, your art becomes your child in a way. It's a creation of your intellect in this case but you still bring it into this world and naturally, you want to protect and take care of it.

(pause)

Do I sound crazy? You must think I'm mental or something.

JAMES

(shaking his head)

No, Sonny, you don't sound crazy. This might be one of the most beautiful ideas I've ever heard. Elaine is one lucky woman. However, we might have a little problem with this idea. Do you have a recording of the whole performance? And, unfortunately, I am not talking about just snapshots of it.

SONNY

(confused)

No, I don't think so. It all happened so spontaneously at that moment, even I didn't know what was happening at first. It would probably not have happened anyways if it wasn't for that specific situation that we were in. So, naturally, there are no recordings

CONTINUED:

of it. Wait, why? Why is that a problem?

JAMES

Uh, well, our job might be a bit more difficult than I imagined then. You see, usually, you get copyright protection automatically once you express your creation in some material form, be it in writing, as a sound recording, and so on. But with performance art, its unconventional intangible nature makes it difficult to prove the originality and ownership of the performance. Although some progress has been made in this area, the law is still not where we would like it to be in terms of the range of categories it covers and the somewhat high threshold to meet at times.

SONNY

(slightly disappointed)

Oh, I see...

JAMES

I am not finished. There is one more small thing that I need to clarify. There is no formal procedure for copyright protection in the UK that is going to give you an official certificate. However, you may employ any private company that provides copyright registration services. This will likely enable you to get a copyright certificate.

SONNY

Whatever works I guess. But how was I supposed to know any of these? I am not a man of logic, you know me. You covered that part in the friendship. I was the emotional one, I guess. But then, what is an artist if you strip them away from their emotions? That's just the only way I know how.

(pause)

Anyway, James, I haven't come to you just because you're my best friend,

CONTINUED:

but you are also one of the best damn lawyers I know. I trust you.

JAMES

Yeah, I was one of the best damn lawyers back in the day, but I have been out of the game for so long that I'm afraid I might have lost my touch. And the last thing I want to do is to let you down. But at least I won't go down without a fight. Let me see what I can do.

5 INT. JAMES' STUDY ROOM IN HIS HOUSE - NIGHT

It's dark with only one small desk lamp next to the couch where James is asleep. He has his pyjamas on. He is sleeping with his mouth open. He is faintly snoring. His glasses are sitting on his nose in a funny position. He is holding an open book on his lap with one of his hands. The other one is hanging off the chair arm. The room is kind of messy. There is a big library inside the room. There are multiple stacks of books everywhere on the floor, on the desk, etc. Olivia, James' wife, enters the room with her nightgown on and a phone in her hand.

OLIVIA

(quietly)

James, honey, wake up, it's your friend Sonny. James?

JAMES

(Still sleeping and dreaming)

Bond? James Bond? No, no, no... Call me Poppins. Reginald Poppins.

OLIVIA

(Sighs and whispers to herself)

Ugh, not again.

She starts talking to Sonny on the phone.

OLIVIA

Sonny, we seem to have lost your friend James, but I am giving the phone to his alter ego Reginald.

Olivia puts the phone to half asleep James's ear.

CONTINUED:

SONNY

(V.O.)

(Confusingly yells)

Reginald? Who the heck is Reginald for God's sake?

JAMES

(Wakes up in a state of panic)

Oh, heavens above! Who is this that thought a peaceful night's sleep was too much for a 70-year-old man?

SONNY

(V.O.)

It's Sonny, you old bean. Like you have someone else to call you in the middle of the night. Are you having a stroke of some sort?

JAMES

Oh, how I wish. At least I would have gone down as secret agent Reginald Poppins, fighting off villains with my trusty umbrella, sipping on cups of tea between shootouts.

SONNY

(V.O.)

Huh, you might not be a man of logic after all. Who would have thought?

They both laugh.

SONNY

(V.O.)

Okay, listen, I don't want to keep you away from your fantasyland, so I'll keep this short. I remembered something about that day which I thought might be of help. Sorry to bother you at this hour but I couldn't trust this old mind of mine to remember it in the morning.

JAMES

(tired)

Oh, this better be good.

CONTINUED:

6 EXT. PORTOBELLO ROAD IN LONDON - DAY

SONNY

(V.O.)

After we were done with our performance, I remember slowly coming back to the real world and looking at our surroundings. There were so many strangely confused pairs of eyes looking at us like we belong to a mental asylum. They were still watching us attentively, but I mean, truth be told, this was the 80s. People weren't familiar with the concept of performance art. Can't blame them for being puzzled. Anyway, what struck me the most was that, and I can't believe I am just recalling this now, this pair of eyes and a heart-warmingly understanding smile that belonged to a woman with a camera that was pointed towards us. I think she was taking our pictures during the performance.

7 INT. JAMES' STUDY ROOM IN HIS HOUSE - NIGHT

SONNY

(V.O.)

(excited)

Can you believe this? What are the chances of this? I mean it's not like everyone had smartphones back then that they carried with them all the time and took pictures whenever they wanted to.

JAMES

(with a half-smile)

Huh, unbelievable. This is the kind of news you wake up a 70-year-old man from his sleep with. Although, if you told me about this sooner, you could have saved me a long miserable night of pointless research my friend.

SONNY

(V.O.)

Let's focus on all those hours that I

CONTINUED:

might have saved you grumpy, shall we?

JAMES

Alright, alright. Although, you see the kind of problem we have here, right? How do we find those photos? They might help us get the only slight chance that we have at this, you know?

SONNY

(V.O.)

Yeah... Thought you might ask that. A couple of 70-year-old man who doesn't know a thing about technology is not what you would hope for in this situation.

JAMES

Yeah, well, not so fast old chap. I think I might know a guy to help us out with this. Give me a couple of days and I'll let you know.

SONNY

(V.O.)

Huh, look at that. You might actually be Reginald Poppins after all.

8 INT. ELAINE'S ROOM AT THE CARE HOME - DAY

The room is luminous with two big windows. The room looks towards a wide and spacious garden. There are patients outside, walking. The weather is nice and sunny. Elaine is silently laying on her bed, reading her book. Her glasses are on. Someone knocks on the door.

ELAINE

Come on in.

Nina slowly opens the door with James by her side. James is holding a colourful bouquet in his hand. He is smiling.

NINA

(Smiling)

Someone is here to see you, Elaine.

CONTINUED:

JAMES

(with a hopeful look)

Elaine, darling, it's me, James.
Remember me?

ELAINE

(looking carelessly at James for a
while)

Oh, I don't know a James. And,
frankly, you don't seem familiar sir.
Sophie, dear, can you show this
gentleman the exit, please? Thank
you.

The camera focuses on Nina's nametag. Nina and James
confusingly look at each other. Sonny comes out of the toilet
and sees James at the door.

SONNY

(smiling)

Oh, look at that, James is here honey.
I told you he was going to visit us.
Remember?

Elaine takes off her glasses, puts her book down, and sighs.

ELAINE

Oh, can everyone stop with the
"Remember?" already? Of course, I
remember. I was just messing with him.

(looks at Sonny)

You were supposed to be in the toilet
for way longer and James was supposed
to believe that I had already
forgotten about him and feel
devastated. Then 10 miserable minutes
later, when he would have just made it
back to his car, Sophie would have
stopped him and invited him back
inside. Then we would all have a good
laugh. Is that too much to ask for?

JAMES

(slightly timidly)

Um, not that there's anything wrong
with this plan but I will be taking
the bus on my way back. But apart from
that, really solid plan Elaine.

CONTINUED:

Everyone laughs. Nina leaves the room and closes the door. James is left standing in front of the door. Then he walks towards Elaine, kisses her forehead, and hands the flowers to her.

JAMES

How are you then my dear?

ELAINE

So much better now that I've seen you after all these years.

JAMES

Likewise.

ELAINE

So, what do we owe the pleasure, Mrs. Reginald Poppins?

JAMES

(chuckles)

Huh, I see you two still share everything with each other. Some things never change, I guess.

ELAINE

(looks at Sonny with a broken smile)

Well, maybe not everything.

(looks back at James)

Old habits die hard, you know. But don't you worry, I'll probably forget about it either tomorrow or the next day.

SONNY

And I'll keep on reminding you every day regardless.

JAMES

Hey, as long as I am remembered, I don't mind how.

ELAINE

So, James, what brings you to this five-star prison, full of people who can't remember their own names but love Bingo and daytime television?

CONTINUED:

JAMES

Well, looks like a top-notch place to me. I mean, the staff caters to your every whim and desire. Sometimes I wonder whether Olivia would realise if my soul finally decided to leave my earthly body. But then again, I should probably stop taking so many naps on just one couch.

Everybody laughs.

JAMES

Okay, on a more serious note, I had to come to see two of my favourite people on Earth together. I can't express how great it is to see both of you like this. I feel like I have just travelled back in time to our Three Musketeers days. And the day it all started when we first met Elaine.

SONNY

Oh, the night that changed it all for me. And for us.

9 INT. THE BAR - NIGHT

SONNY

(V.O.)

It was like yesterday when I saw Elaine walking up to the stage on that open-mic night at the bar, looking like a real-life angel who had just fallen from the sky to save me from my miserable life. And then, she gently sat on the stool and the stage light focused on her. The whole bar went silent before her graceful presence. And she blessed the world with one of the most beautiful poems that humankind has ever heard.

YOUNG ELAINE

We might only be passengers / without
any end destination to reach /
circling though the galaxy / without
any guidelines / albeit the sense of

CONTINUED:

loss weighs in heavily / once in a
while, in a moment in time,
fortuitous, two points coincide /
causing a minor, however glorious
disturbance in the timeline / that
glory dedicated to those two points /
in alliance, to explore a new pathway,
a detour purely, maybe / only to go
back to their designated lane /
whether remaining as they have
started, lonely / or, in the mercy of
the sovereign power, somehow becoming
one / circling through the galaxy
together, less lonesome, with warmth /
cluelessness still reigning / less
intimidating this time

10 INT: ELAINE'S ROOM AT THE CARE HOME - DAY

SONNY

Then we locked eyes and that was
pretty much all it took for me to fall
in love with you.

ELAINE

(blushing)

Oh, I've heard better poems. But I
probably looked too good to not fall
in love with.

SONNY

That too.

Elaine and Sonny share a small kiss.

JAMES

Before we keep on reminiscing about
the old days, can I talk to you for a
minute outside Sonny?

SONNY

Oh, sure.

(Turns to Elaine)

We'll be right back sweetheart.

11 EXT. THE GARDEN AT THE CARE HOME - DAY

The weather is sunny outside. Birds are chirping. It's quiet.
Sonny and James are sitting in silence

CONTINUED:

on a bench in the garden of the care home. James grabs a folder that is in his pocket inside his jacket and hands it over to Sonny. Sonny reluctantly opens the folder and sees the pictures.

SONNY

(shocked)

You've found them.

JAMES

(with a reassuring smile)

I've found them.

SONNY

But, but, how? I mean yeah, I got excited when I first remembered that some photos of our performance existed, but I didn't actually think that you would be able to find them. No offense.

JAMES

(sarcastically)

You didn't believe in my abilities to pull this off, huh?

SONNY

Oh, I'm sorry, I didn't mean to put it like that. But can you blame me for doubting your computer skills? I still can't tell you grateful I am feeling. It's just, I'm too surprised to know what to say.

JAMES

A thank you would do it. But you're right. I might have needed to get some help once I realised that I didn't know a thing about how to those shiny square screens.

SONNY

(chuckles)

That makes the two of us.

JAMES

Apparently, they were uploaded on the photographer's website all along. Of course, I would still not be able to

CONTINUED:

find them by myself, but still, the key to our hope wasn't too far away from us after all.

SONNY

Huh, who would've thought? The universe does work in funny ways.

(pause)

But, um, are we allowed to use these photos then? I know these are photos of Elaine and me, but it's the photographer who took them, so would that be okay you think?

JAMES

Well, I contacted the photographer to have permission to use the photos and she said she wishes she knew sooner about who you are, so she would've been able to send the pictures a long time ago. So, in a nutshell, no problemo.

(pause)

Um, there is just one thing I need to make clear, and this is not to burst your bubble of happiness, but I cannot guarantee you that these photos are going to be enough to get you copyright protection. You see, a succession of still photographs of your performance does not fully satisfy the requirement of the fixation of the whole performance. I know you might think it's an unfair rule but that's just where the law is at with performance art unfortunately, and to some extent, we are bound by those rules regardless of whether we can make sense of them or not. This is not to say that it's an impossible thing to achieve, and we will give it our best shot, believe you me, but I just wouldn't be able to forgive myself if I was the one to get your hopes up and then see it all come crashing down.

CONTINUED:

SONNY

(nodding)

Yeah, no, you're right, thanks. I shouldn't get my hopes up so early on. You said these pictures might get us the only slight chance we have at this so that's what I am going to keep reminding myself until we get a definite answer from the company.

JAMES

Hey, look at me. We still have a real shot at this. As I said, we won't go down without a fight, okay?

SONNY

(looks at James with a grateful smile)

Okay.

JAMES

And, who knows? You might be the exception.

SONNY

We might be the exception.

12 EXT. OUTSIDE OF THE COMPANY BUILDING - DAY

The weather is not too cloudy nor too sunny. Sonny and James standing side by side in front of the company building. They are quiet and looking at the sign.

SONNY

(nervous)

So, this is it.

JAMES

This is it.

SONNY

Do you have the paperwork?

James hands the paperwork over to Sonny.

CONTINUED:

SONNY

(trying to stay calm)

Okay, good, good.

(pause)

What if this doesn't work?

JAMES

Then... It doesn't work. But we still might have other options just so you know. If you were to modify your performance to be able to meet the criteria, you might be eligible for copyright protection for example.

SONNY

(slightly angry)

Modify our performance to meet the criteria? Modify our perf..?

Nonsense. They should be the ones modifying the criteria to meet our performance. Art loses its meaning if you were to try and fit it in a box that someone who doesn't understand from art has created. The law would only become more meaningful and understanding if it were a bit more open-minded towards welcoming differences and novelties. I mean, is that too much to ask for?

(takes a deep breath)

JAMES

Huh, I've been wondering that myself since my first year at university.

SONNY

And?

JAMES

Still got no clue. Maybe the lawyers inside could help us get some answers.

SONNY

(carelessly)

Yeah, right.

JAMES

So? Shall we?

CONTINUED:

SONNY
(takes a deep breath)
Yeah, let's get this over with.

JAMES
And be the exception that changes the
trajectory of the law.

SONNY
(shrugging his shoulder)
Yeah, sure, that too.

They walk to the entrance of the company and go inside. The
door closes behind them.

THE END

Reflective Prologue

Copyright being the fundamental source of intellectual property protection provided to original artworks, its importance in the art world has increased over the years as the idea of originality has undergone some changes¹. Especially the evolution of the digital era since the 90s, the heightened popularity of social platforms, and the expansion in the appropriation of art have led the way to numerous obstacles for artists². More specifically, an area of contemporary art that has been on the rise since the 1960s is performance art³. Its intangible and conceptual nature has been the source of many questions about how legal protection is given to this art form⁴. This reflective piece is intended to clarify the main themes covered in the script and analyse them. In this commentary, we will examine the connection between performance art and copyright law while referring to the relevant parts in the script and drawing similarities between them. We will move on to exploring how performance art is protected under copyright law, as well as how it is not. Furthermore, we will identify three primary problems with copyright law in relation to performance art by assessing some examples.

We witness a clash of opposite characteristics and aims with the relationship between copyright law and performance-based art. I have tried to convey this difference through the relationship between the two main characters, Sonny and James. Sonny is a passionate and hopeful performance artist; James is a retired lawyer and a man of logic, sceptical at times. However, regardless of their distinct characteristics, they are best friends and can work together towards the same goal, which is to get copyright protection over the performance. In other words, on the one hand, we have law that finds comfort in stability and tradition and finds it difficult to adapt itself to changes. On the other hand, we have art that is hungry for innovation and trying to defy the banality of life and disrupt the set-in-stone belief systems⁵. However, their reconciliation stays in the realm of possibility.

Intellectual property law enables performer artists to gain ownership rights over their works if they meet certain criteria. In the UK, this protection is regulated through the Copyright, Design and Patents Act 1988 (CDPA). Section 180(2) of the CDPA defines a performance as “a live performance given by one or more individuals” of either: (a) a dramatic performance (which includes dance or mime), (b) a musical performance, (c) a reading or recitation of a literary work, or (d) a performance of a variety act or any similar presentation⁶. However, these types of artworks must be preserved in a tangible medium of expression, either written or recorded⁷. In case these conditions are satisfied, then the CDPA automatically

¹ Lori Petruzzelli, ‘Issue 1 Winter 1994/Spring 1995 Article 5 Copyright Problems in Post-Modern Art’ (1995) 5 *Technology & Intellectual Property Law & Intellectual Property Law* <<https://core.ac.uk/download/pdf/232975676.pdf>> accessed 3 March 2023.

² Kevin Liftig, ‘OpenCommons@UConn the Evolution of Copyright Law in the Arts’ (2009) <https://opencommons.uconn.edu/cgi/viewcontent.cgi?article=1114&context=srhonors_theses>.

³ Henry Lydiate and Daniel McClean, ‘Performance Art and the Law – Art Monthly’ [2023] *Proquest.com* <<https://www.proquest.com/docview/900456918>> accessed 10 March 2023.

⁴ *Ibid.* 3

⁵ *Ibid.* 1

⁶ ‘Copyright, Designs and Patents Act 1988’ (*Legislation.gov.uk*2023) <<https://www.legislation.gov.uk/ukpga/1988/48/section/180>> accessed 6 March 2023.

⁷ Simon Stokes, *Art and Vopyright* (2nd edn., Hart Publishing 2012) 164–180.

grants exclusive rights to the artist regarding their performance.

When it comes to consolidating the connection between these two stranger-to-each-other areas, a couple of legal obstacles arise.

The first issue (more important for our purposes) is the exclusion of extemporary performance works since they don't satisfy the requirement of a film or sound recording of the whole performance⁸. This is the main problem that I have tried to tackle in the script with Elaine and Sonny's extemporary performance piece. Their performance was spontaneous and therefore undocumented. It came about at a specific moment in time as a result of their unforeseen heightened emotions, which can be the case with performance art. As they consider this performance as their lovechild, they keep it alive by performing it from time to time. However, the duration of the performances varies depending on the intensity of their feelings. For example, their very first performance was longer as they were devastated by the news of Elaine's infertility, compared to their other performance that takes place in the opening scene which is shorter due to the circumstances. Although they managed to find some still photographs of their very first performance, whether this would suffice to get copyright protection over the performance is uncertain as a succession of still photographs of a performance does not satisfy the fixation of the whole performance requirement.

Moreover, a second problem arises regarding the protection of the concept behind the performance as per the idea/expression dichotomy⁹. We can observe the six-hour work of performance art by Marina Abramović named "Rhythm 0" (1974) where she stood in front of an audience for six hours, allowing the viewers to do whatever they wanted to her using the 72 objects provided to them¹⁰. Even though this performance is one of the most scandalous and daring performances of all time, copyright law is not capable enough to protect the concept of the artwork unless it is performed by another artist in precisely the same way¹¹. This approach puts the value of originality, which is claimed to be an essential requirement for copyright, in a vulnerable position in a world full of appropriation art.

Furthermore, another issue stems from the categorization of "artistic works" under the CDPA as the nature of some performances can be difficult to classify compared to traditional forms of art¹². We can consider a multi-media project by Pierre Huyghe called "This is not a time for dreaming" (2004)¹³. The project comprises three components: a puppet opera, a temporary architectural extension, and a film¹⁴. The multi-media nature of this artwork raises the question of whether the current boundaries of copyright law are too narrow to accommodate it.

⁸ Ibid. 3

⁹ Ibid. 3

¹⁰ Stefanie Graf, 'Rhythm 0: A Scandalous Performance by Marina Abramović' (*TheCollector* 29 June 2022) <<https://www.thecollector.com/rhythm-0-by-marina-abramovic/>> accessed 12 March 2023.

¹¹ Ibid. 3

¹² Molly Torsen Stech, *Artists' Rights: A Guide to Copyright, Moral Rights and Other Legal Issues in the Visual Art Sphere* (Institute of Art & Law 2015) 119–131.

¹³ Ibid. 12

¹⁴ Ibid. 12

The legal understanding with regards to contemporary art falls short of the expectations of modern artists, and on a wider scale of our modern society. One of the keys to unlocking the stiffness of the legal approach towards performance art, and other art forms, would be to welcome these new concepts and definitions of artistic expressions on a more profound level. Therefore, potential developments such as the inclusion of a new category of multimedia works or the acceptance of still photographs as fulfilling the fixation requirement should be explored. If law had any similar characteristics to James, such as his willingness to help his artist friend Sonny make his dreams come true, none of these issues would stand in the way of reconciliation of art and law which would be more than just a mere possibility.

Bibliography

'Performance Art: The Legal Issues behind the Ownership of "Invisible" Art | Simons Muirhead Burton' (*Simons Muirhead Burton* 11 November 2020) <<https://www.smb.london/news/performance-art-the-legal-issues-behind-the-ownership-of-invisible-art/>> accessed 2 March 2023

Barron A, 'Copyright Law and the Claims of Art' [2002] Social Science Research Network <https://papers.ssrn.com/sol3/papers.cfm?abstract_id=346361> accessed 2 March 2023

'Copyright, Designs and Patents Act 1988' (*Legislation.gov.uk* 2023) <<https://www.legislation.gov.uk/ukpga/1988/48/section/180>> accessed 6 March 2023

Creekmore J and Connors A, 'Understanding Intellectual Property: A Guide for Artists' (2013) 7 *Liberty University Law Review* <https://digitalcommons.liberty.edu/cgi/viewcontent.cgi?article=1138&context=lu_law_review>

Graf S, 'Rhythm 0: A Scandalous Performance by Marina Abramovic' (*TheCollector* 29 June 2022) <<https://www.thecollector.com/rhythm-0-by-marina-abramovic/>> accessed 12 March 2023

Hart T and Fazzani L, *Intellectual Property Law* (Macmillan Law Masters 1997) 170

'I'm an Artist – What Do I Need to Know about IP? | Creative IP' (*Creativeip.org* 2017) <<https://creativeip.org/im-an-artist-what-do-i-need-to-know-about-ip/>> accessed 5 March 2023

Jasani A and others, 'IP Rights in Art in United Kingdom - England & Wales (England & Wales)' (*Lexology* 2 May 2019) <<https://www.lexology.com/library/detail.aspx?g=64b8d9eb-627d-413b-b4e6-f001edb39f38>> accessed 13 March 2023

LexisNexis IP expert, 'Performers' Rights and Rights in Performances' (@*lexisnexis* 16 October 2019) <<https://www.lexisnexis.co.uk/legal/guidance/performance-rights>> accessed 18 March 2023

Liftig K, 'OpenCommons@UConn the Evolution of Copyright Law in the Arts' (2009) <https://opencommons.uconn.edu/cgi/viewcontent.cgi?article=1114&context=srhonors_theses>

Lydiate H and McClean D, 'Performance Art and the Law – Art Monthly' [2023] Proquest.com <<https://www.proquest.com/docview/900456918>> accessed 10 March 2023

Petruzzellr L, 'Issue 1 Winter 1994/Spring 1995 Article 5 Copyright Problems in Post-Modern Art' (1995) 5 *Technology & Intellectual Property Law & Intellectual Property Law* <<https://core.ac.uk/download/pdf/232975676.pdf>> accessed 3 March 2023

Stech MT, *Artists' Rights: A Guide to Copyright, Moral Rights and Other Legal Issues in the Visual Art Sphere* (Institute of Art & Law 2015) 119

Stokes S, *Art and Vopyright* (2nd edn., Hart Publishing 2012) 164