



Art: A Form of Speech, But Not Like Any Other?

Kate MacNeill, University of Melbourne

ABSTRACT

Protection of art occurs under Australian law in only a narrow range of circumstances where works of artistic merit are exempted from otherwise unlawful acts. In this paper I suggest that this approach to protection appears to be based on the idea that while art may constitute a form of expression, it is a particularly benign form. In fact it is likely that when art attempts to engage in the realm of the political it is at risk of falling outside of these protections. I go on to examine a number of issues that arise as a result of art being regarded as protected speech under the United States' First Amendment. In conclusion I suggest that before entrenching a protection along the lines of the First Amendment in any future Australian Bill of Rights, further consideration is needed as such protection is limited by a provision that defines art as speech and offers protection solely against state censorship.

Kate MacNeill is a Sessional Lecturer in Arts Law at the School of Creative Studies, University of Melbourne, researcher at the Communications Law Centre, Victoria University and postgraduate student in Art History.

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ISSN 1443-8607

Volume 2, Number 3: March 2002, 119–129

The Drawing Board: An Australian Review of Public Affairs

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