SERGIO MUÑOZ SARMIENTO

A graduate of the CalArts MFA program, and Whitney ISP alumnus, Sergio pursued his interests in law and language to their natural conclusion, attending the Cornell Law school as an art project. His curiosity about topics such as property and copyright, however, resulted in him becoming a practicing arts lawyer upon graduating in 2005. Working with nonprofit organizations, such as Volunteer Lawyers for the Arts, he's advised numerous artists and organizations on the intricacy of the legal system. In 2010, he founded the Art & Law residency to help artists and other creative professionals examine "the effects of law and jurisprudence on cultural production and reception." As well as, "how artistic practices challenge, rupture, and change the apparatus of law."

You have an ongoing contemporary arts practice, can you tell me a little about how you ended up deciding to pursue a law degree and eventually transitioning into also becoming a practicing arts lawyer?

Just to give you a little bit of background, after grad school at CalArts and the Whitney program, I became more and more interested in language. One of the things that kept coming up was law, what separate language from a purely communicative act to an action in itself. After that began my interest in law and rather than studying law in a very casual way, I decided to attend grad school as an art project and it's only now in the last six months that I've realized, coming up on my ten year anniversary of graduating law school, how to materialize that. It's going to be materialized as an oral history project.

So that's sort of how I came to law. I never really intended to practice law. As a I went through law school, I fell in love with courses; the topics of intellectual property, first amendment, religion, property law, [were] very fascinating to me. I found out there was an area of law called art law, which is law that applies to art. I worked for a non profit organization here in New York city called Volunteer Lawyers for the Arts for almost six years and that's where I focused, primarily. All my legal training came to that organization and pertain[ed] to visual art, particularly contemporary art. When I was there, I was the Associate Director but was also the Director of Education and I focused a lot of my energy on visual artists, educating them about their rights in particular areas of law.

You run an actual law practice, how did you end up also working with institutions, establishing a client base and developing those relationships?

My private practice began in 2012, and the main reason I had to go private was because there were so many things that I wanted to do that I could not do at the organization. I wanted to deal with more controversial artists and topics. I wanted to take on certain legal issues and, increasingly, I was being asked to do these things that I couldn't do due to the organization

where i worked. I decided to focus primarily on artist, non-profit organizations and private foundations and help them with their legal issues both preemptively and once they were already engaged in a legal dispute or situation. That's where I am right now, that's what I do for a living, but I also do it as a way to mobilize a different way of thinking about art, if art can impact law in interpretation of art through the legal spectrum.

Can you touch on some of the points of how your practice, specifically, differs from someone who is interested in a more conventional implementation of art law?

I'm reallying trying to parcel out the difference between art law and art & law. And the reason for that is, that art law is really the law that applies to the business of art, and so by saying "the business of art" were talking about the commercial aspect, when you look at art only as system and a price, which I don't, to me, it's still a form of culture. The difference is that people who want to be art lawyers, that's not very difficult, because you just need to learn the laws that apply to art but with art & law, it all invokes a more theoretical and speculative aspect of art in relationship to law. So for example, the question of the *aura*, whether you think about the Walter Benjamin notion of the *aura*, or not, how does the the *aura* affect not just artistic production but the way the law sees art, and why does it exist. Why does the aura still exist and who benefits from that ideology? Or even the romantic representation of the artist, there's this idea that the artist very creative, he's a channel, that does sort of spit out some sort of higher entity, will. This is still very precedent in the legal arena.

What legal standing does aura have, how does it play into litigation of art law or more specifically to your practice?

Because it's very closely tied to the question of property. You can think of property in two different ways one is tangible property, the other is intangible. The tangible property would be, obviously, your house or a vehicle and intangible [property] would be something like a copyright or a trademark. The thing about aura is that it applies to both. Let's talk about the reproduction of an artwork. Can I recreate, lawfully or ethically, a Jackson Pollock? That's on a more tangential or tangible level. On an intangible level, think about something like a certificate of authenticity. What is a certificate of authenticity but a document that says that this thing, a painting, a video or idea, authentically belongs to Sergio, or is authored by Sergio. So there we have the reinforcement of genius, the reinforcement of aura, through a mechanism of law, like a contract, which is a certificate of authenticity.

In the practical sense, how does that break down; litigating that, establishing that? And in the day to day operations of your office where does this come into play?

Well, there are cases, there's one that you can google if you'd like, it has to do with the Rhona Hoffman Gallery in Chicago. If you google Rhona Hoffman, Sol LeWitt, certificate of authenticity, you'll see a few articles on there. And there the question was, if the certificate of authenticity is lost, what is the artwork? Is the certificate the artwork? Is it the instructions? Or is it the drawing

on the wall? On a practical level, that's something that I would have to deal with, had that been my case. How do I make this argument? Theoretically speaking, what separates me from the typical art lawyer, is that I'm interested in; how is this going to impact art history? In a legal decision we could have a judge saying the work of art is the certificate of authenticity, not the drawing, and it's not the instructions. Well then how does that impact, or does it impact the way art historians read the work of Sol Le Will?

Just out of curiosity, how did they end up resolving that?

Well, that's the problem, you could always print up another certificate of authenticity but what would happen if the lost one, all of a sudden, were to be found? Now you have two certificates certifying one work of art with, potentially, two different owners.

What are some of the pitfalls or challenges of dealing with photography in art law?

Photographers really are, increasingly, more and more like musicians, where the internet, the facility of downloading and uploading and copying, really destroyed the industry. In a way, it democratized music because it said to bands: Okay, you no longer have to depend on the middleman. You can put up your own website, upload your own songs and charge 99 cents, if you want. Charge what you want on tour or for your t-shirts or merchandise and what have you. It allows different ways for bands to exist independent of corporate structure or, I should say, conventional corporate structure.

But photographers, they're not arrogant but they're getting there, and what I mean by that is one, with photography you have to think about two things: the producer and the user. A photographer is going to produce an image and someone is going to want to use that image. The question is: How do we regulate, or do we need to regulate, that communication between the user and producer? So one way would be copyright and copyright is balanced by fair use doctrine. The one issue that would come up is copyright, to go straight to your question. Two would be Right of Publicity, Right of Privacy. Copyright is a federal law, Right of Publicity and Right of Privacy are laws that change by state. What happens when a photographer in New York takes pictures of people in Times Square without their consent? Can the photographer lawfully exhibit those images without permission of the subject? Can he or she sell them? Can he or she publish them in a book and sell the book? So the question is: What can the photographer do with that person's image?

Philip Lorca DiCorcia, has he come across issues with that?

Of course, there's actually a case. There's also the Svenson case. Those two cases pretty much test the waters of Right of Privacy and of Publicity in New York State. They're a little different because, with DiCorcia, the subjects were out in public, in Svenson, the subjects were both the interiors of private homes and people inside of those private homes.

He's the one that shoots in downtown through telephoto lenses into people's apartments, right?

Exactly.

That's weird. [Laughter] But maybe they need to invest in some expensive window treatments?

Yeah! Well that's basically what the court said, the law in New York, basically, most rights of privacy laws are: Whatever the naked eye can see is not private. Some courts have taken that to mean: Whatever the eye can see with a technological apparatus, so including a camera.

How does that translate to California, where they have so many issues with paparazzi?

California law, obviously is different than New York. One of the things you look at is who is the subject. In the case of California, paparazzi usually follow people who are political figures or celebrity.

And through that they elect to waive the right to privacy.

Right, well, what the law says is that when you put yourself out as a public persona or a celebrity figure, you're basically opening up your life to the public. That's one thing. Two, the courts also say when it comes to something like defamation, for example, or libel or slander, public figures and political figures have an easier access to the microphone, so the ability to defame them is harder than it is a private figure like someone like you or me.

Going back to, specifically, the fine art market in photography, where do you notice those issues coming up? Where is contemporary photography becoming problematic and what have you come across in your practice that has peaked your interest?

I think that increasingly artists and institutions, including galleries, are becoming a little more sensitive as to the image containing a person [and] property, which includes pets. Do you have the right to show this image and did that person give permission? Second after that would be, if you do something similar to Sherrie Levine or early Richard Prince and re-photograph a photograph or photograph, let's say, the interior of a home that contains an Andy Warhol painting, that's a copyright issue. Do you have permission to exhibit that work or can you show that photograph that contains a copyrighted work inside?

One thing I'm curious about is this discrepancy between more established artists running into those roadblocks and having some sort of connections to obtain permissions and someone who is just toiling away in the studio and is not expecting a profit and that work goes to sale, what happens then?

This is where I come in with talks, like at the AIM program [Artists in the Marketplace residency], where part of my role is to educate preemptively so that, if you are taking those photos or you do have them in your studio, then maybe you think: Oh, maybe I should go back and get releases. To go to your point, what happens if you don't and you become famous or it becomes highly sought after or highly valuable? I would advise you you're better off getting permission. And the perfect example for that, going back to photography, is the Brooke Shields photograph when she was ten years old. I always forget the name of the photographer [Patrick Cariou], but the mother allowed [him] to photograph Brooke Shields nude, as a ten year old stepping out of a bathtub, and the mother provided [him] with a release in perpetuity. The photographer was allowed to display it, sell it show it, print it. And, in fact, there's belief that he sold or licensed the image to Richard Prince.

I wanted to go back to the idea of how you see your law practice and your art practice coming together. What distinctions you make between a and b, how do you separate the two? You seem to be coming to this juncture, at the ten year mark, where it sounds like you're transitioning back into being more devoted to your art practice, could you talk a little bit more about that?

The question of: Are these two practices, do they have to be divided, or is one going to override the other one? The reason I'm pausing is because, [and] what poses a particular problem for me here, are the ethical dimensions of law. In law, because you're dealing with clients on a confidential basis, the practice of law is regulated with ethical rules and legal rules, which have repercussions. Whereas with being a welder or being a plumber or driving a bus, there aren't really any ethical dilemmas. I think, more and more, for me, the relationship and the practice of art to law is about changing the discourse of art to really be focused more on the theoretical legal disputes and legal discourses such as property, intellectual property, privacy, freedom of speech and the subsets of those areas like how to build a commons or the public or the private.

I don't know if I'm answering your question, it's one that I'm still thinking about. To give you an elevator pitch; I write, I blog and I teach. I give lectures. All of these are informed by the practices of the discourses of art and law.

It's kind of curious that, you mention that your project is going to take the form of oral tradition, which in some ways is the antithesis of what you've been involving yourself in, which is writing and things being stated explicitly. It seems that oral tradition falls into this folk tradition and that copyright and issues of property are way more fluid in those cases and I was wondering if you could speak more to that decision of gravitating toward almost the exact opposite.

The reason I went to an oral history is because I struggled with a way to materialize, to make visible, my law school experience because I didn't want to, you know, those are all photos, videos and texts, I didn't want to put up a gallery exhibition or do film or a video. What drew me, more and more, toward oral history is the fact that it's very closely related to law in that there is

a witnessing element to it. Like, the witness is on the stand. It's based in vague recollection, memory, the history will be developed according to that memory which may or may not be faulty.

It's sort of an eyewitness account and the question that always comes up in these oral history projects is: Well what exactly is that moment of history? When is history being recorded, is it when I'm speaking into a microphone and it's being recorded as a digital file? As we know, what's going to happen is, you can have a footnote that's going to be elicited as, "Oh, now I remember something, I want to go back and clarify something or I want to go back and add something and it's going to be a footnote to a footnote." That oral history, what's going to be elicited, is that it's never complete, it's never going to be final. I like that about it, that's one of the elements that I really like about that. [Rather] than if it was photography [or] text, where there's the belief that, this is the last thing and enters the history books. And also the fact that, in law, when there's a deposition or a witness examination or cross-examination, the little pauses or body movements, the intonations, the facial gestures all also signify. In text or photos all those could potentially be false.

If you could just talk a little bit about the Art & Law Program and your role as a teacher and how that feeds into your practice.

The Art & Law Program came out of my experience in law school, sitting around or being taught by these phenomenal legal scholars and falling in love with areas that I didn't even know existed, like property or free speech, and thinking in that moment "Well, why didn't have access to these people when I was in art school or at the Whitney Program?"

I really felt that I didn't understand the way the world worked until I went to law school. There's a saying that "The last thing the fish will discover is water," because, obviously, the fish is always submerged in it, it is so familiar to him that it doesn't know the water exists. To me, that water is the mechanism and the structures of power and you can't understand power unless you understand law and the functions of law and the question of what is law.

And so all of that, I thought, "I have to think about, I want to learn more about it and I want to teach it. I want people to have the same experience, but I can't expect everyone to go to law school, so what's the closest to it?" So I thought, "I'll develop my own residency program."

And who are the people that primarily end up attending it?

Were going on our seventh year and we've had over seventy people. It's primarily artists, historians, critics. We have some architects, a filmmaker. Well, lots of creatives.

Are they approaching it as researching their own proprietary works or are they trying to bone up on their own understanding of this institution, the rule of law and how the world works?

I discourage proposals and accepting people who are more interested in the practical aspects. To me that's not that interesting, I'm interested in the people that want to do two things; one is learn about the discourse of law. What is it? How does it manifest itself? How does it visualise? But also to learn how people in law, legal scholars, lawyers, think and problem solve because an artist and a lawyer can approach a problem very differently.

The artist isn't necessarily better off, and, in fact, there might be times when the artist is actually worse off. There's a saying in law that "You make your own worst lawyer." If I were in a legal dispute, I should not represent myself. Why is that? Because you cannot be completely objective. You can't ask yourself those hard questions and see, really, the problems if you can't step outside yourself. Sometimes, I think artists can't do that. To me, artist have become so reliant on critical theory that it's become a crutch, not a tool. All of the answers are there for you already, you're being taught this stuff, but, the problem is, the way the opponent is going to come at you is not necessarily going to be in these conventional, traditional ways. This is the beautiful thing about law; it shifts, it morphs and unless you can understand what it's doing, you won't be able to counter that.