European Review, Vol. 28, No. 4, 636–647 © 2020 Academia Europaea
doi:10.1017/S1062798720000125

# Artistic Research in the SATORI Common Ethical Framework

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It is well known that academic research which includes human participants undergoes an ethical review which, in many countries today, includes all academic disciplines and not only medical science. But what about those disciplines with the least experience of ethical codes for research, such as the visual and performing arts? How are they defined and positioned in ethical codes and guidelines that are intended to apply to all disciplines? What are the challenges to ethical frameworks which aim to be inclusive of the visual and performing arts? This article examines the European Commission-funded SATORI project (Stakeholders Acting Together On the ethical impact assessment of Research and Innovation) in its aim to produce the first comprehensive, international standard for the ethical assessment of research in all fields including the arts.

## The Position of the Arts in SATORI

From 2014 to 2017 the SATORI project produced a framework of ethical principles and problems that are common, and also specific, to the five main research fields of the medical and life sciences, natural sciences, engineering sciences, social sciences, and the humanities.[1] This project includes the visual and performing arts within the humanities along with the disciplines of philosophy, history, the study of languages and literature, religion, art history, and music. The framework is supported by a comparative analysis of ethics assessment of research across 11 countries, eight types of organisations and the five research fields.[2] Its significance lies in the aims for a

1. The SATORI project received funding from the European Commission's Seventh Framework Programme (FP7/2007–2013).
2. The countries included in the SATORI analysis are Austria, China, Denmark, France, Germany, the Netherlands, Poland, Serbia, Spain, the United Kingdom, and the United States of America. The types of organisations in the study are research ethics committees, national ethics committees, research funding organisations, national science academies and academic and professional organisations, universities, government and government-funded organisations, industry, and standards, certification and accreditation organisations.

https://doi.org/10.1017/S1062798720000125 Published online by Cambridge University Press

disciplinary inclusive list of guidelines based on the first comparative analysis conducted on current practices of ethical assessment in purportedly all research fields and across an extensive range of organisations and countries. One of the objectives of the SATORI framework for ethics assessment is to support the European Union's aim to align research and innovation with the promotion of growth, jobs and in addressing social challenges such as climate change, public health, and privacy issues. Ethical research and its assessment has an important role in this aim of the EU, particularly with research that crosses disciplinary, organisational and national boundaries. This agenda is supported by the EU research programme *Horizon 2020*, where for the first time the social sciences and humanities were formally included and recognised in the EU research funding programme. This pluralist aim for research is reflected in the methodology of comparative analysis used for the fact-finding phase of the SATORI project.

The evidence for this first phase consisted of 230 interviews with specialists in ethics assessment within the research fields, organisations and countries, and also literature surveys, case studies and desk research. In the humanities, the evidence gathered on ethics assessment consisted of documents, journal publications and an interview with an expert in the field, while several interviews were conducted with experts in ethics assessment in the social sciences. This disparity is further evident in the humanities literature survey, where there are only two journal publications which directly name the arts. Moreover, these articles are not able to provide evidence for specific ethical principles or dilemmas in the arts, rather, they both point to a lack of engagement by the arts with research ethics. One paper (Owen 2002) provides the results of a 2001 survey on the limited engagement with ethical regulations by researchers in the humanities and the fine arts, and the other presents the results of focus groups with humanities academics on the ethical concerns in their field (Stenmark *et al*. 2010). The focus group of performance scholars included representatives from drama, photography, literature and architecture, but the researchers were not able to include representatives from dance, music and the visual arts. From their findings, the authors conclude that research in performance generally does not involve the collection of data from human participants, but it may involve the analysis and interpretation of human responses to the performance (Stenmark *et al*. 2010, 295). This near-absence of the arts in the SATORI report is similarly evident in the case studies, where the humanities are represented by a single case concerning confidential interview material in oral history (Jansen *et al*. 2017, 58).

On the basis of this evidence, the SATORI reports identify problems in ethics assessment in the humanities and reveal certain differences in relation to other fields. One problem concerns the institutionalisation of ethics regulations in the humanities, which, compared with biomedicine and the social sciences, has the least established tradition of ethics assessment (Shelley-Egan *et al*. 2016, 55; Benčin *et al*. 2015, 16). As a result of the lack of a tradition with formal ethics systems, there are no major organisations or journals focused on research ethics in the humanities as there are for biomedicine and the social sciences (Benčin *et al*. 2015, 15). This problem is

https://doi.org/10.1017/S1062798720000125 Published online by Cambridge University Press

compounded by another finding whereby all universities in most of the countries require that human research has ethics assessment before the research begins (Shelley-Egan *et al.* 2016, 89). Within universities therefore, the humanities have not been supported by a tradition of ethics assessment as have other fields. The second problem for the humanities concerns the identification of the differences in research compared with other fields. In the literature on research ethics in the humanities, the SATORI report acknowledges, there is 'a special focus on determining the differences in handling ethical issues in the field as compared to those in other fields due to different methodologies and different kinds of involvement and risks of research participants' (Benčin *et al.* 2015, 16). The claim that humanities research raises distinctive ethical issues resonates in another SATORI report on proposals for ethics assessment in which the authors acknowledge that 'the significant differences in both the methodology and subject matter of the humanities mean that adopting ethical frameworks designed for other fields may be detrimental' (Jansen *et al.* 2017, 59). However, this argument for significant differences in humanities research (which may also generate distinctive ethical questions and dilemmas) does not influence the SATORI report on ethical assessment in the humanities. Instead, this report concludes that in regards to 'human research participants, humanities share ethical values and issues with social sciences' and more broadly, '[t]here seem to be no specific gaps or problems with ethics assessment in the [humanities] field' (Benčin *et al.* 2015, 16). By positioning research in the arts and its ethical dilemmas within the realm of the humanities and social sciences, could this approach by the SATORI authors elide distinctive aspects of research in the arts?

My question concerns the asymmetry of the SATORI comparative study and whether the investigation is limited in its scope and depth of evidence to be adequately compared with the other cases of research fields. My main aim in this article is therefore to supplement the SATORI project on ethics assessment in the arts by identifying the specific problems and issues for human participant research in the visual and performing arts. I will begin by identifying the main factors relevant to, but excluded from, the SATORI conclusion concerning the lack of a tradition in the humanities of ethics assessment. My focus will be only on artistic research, rather than all humanities research, due to an almost complete absence of this area in the reports. Afterward I will outline the issues that in the literature are considered to be specific to ethics assessment in the visual and performing arts.

## Specific Ethical Dilemmas in Artistic Practice and Research

The visual and performing arts can be defined as two related disciplines that include most forms of art apart from literature and architecture. In general, the visual arts consist of the fine arts, photography, and design, and the performing arts are comprised of music, dance and drama, while film is often included in both disciplines (Arlander 2010, 317; Wilson 2018, 8). As artistic practices and forms, the visual and

https://doi.org/10.1017/S1062798720000125 Published online by Cambridge University Press

performing arts have diverse and extensive histories; on the other hand, as academic disciplines with a research community they are under-developed, too hastily academicised, and the least well established in university systems (Biggs and Karlsson 2010, xiii; Kjørup 2010, 39; Biggs and Büchler 2010, 88; Wilson 2018, 4). The inception of artistic research in universities occurred in some countries in the late 1970s and it has been established as a research area since the early 1990s. One of the first stages in establishing this research area has been to define its main characteristics, and there is general agreement in the literature that artistic research produces knowledge which has a focus on the practice of art. As with other research areas, the values and standards of research are shared across disciplines, while each discipline finds its significance through its object of study, that is, the object of artistic research is the practice of art, including its processes and productions.

The SATORI project takes a comparable approach in finding that some ethical values or issues in the humanities need to be redefined in relation to the specifics of the research objects, methodologies and different risks to participants. Yet the conclusion that these differences in the humanities are common to the social sciences removes, rather than sustains, the distinctiveness of the field and its diverse disciplines. This suggests that the SATORI project has missed a significant step in its comparative research which has the potential to reduce the value of its findings. That is, while the project is laudable in gathering evidence across a range of units of analysis (countries, organisations, research fields and documents), there is also a need to explore why differences have occurred between and within research fields. This exploratory step would add depth to the analysis and strengthen the relevance of the results in a project which seeks to contribute to learning and policy. For example, the SATORI comparative analysis finds that 'the humanities have not yet established a clear tradition in ethics assessment,' but it does not address how this has occurred nor whether all humanities disciplines are in the same situation (Shelley-Egan *et al*. 2016, 110). There are however, important factors contributing to the disparity between a tradition of ethics assessment and certain disciplines in the humanities, such as those in the arts. The visual and performing arts are some of the most recent disciplines to encounter the academic system and ethics assessment and, as a consequence, have neither established a tradition of ethics assessment nor of research itself.

In principle, the SATORI report recognises that ethical frameworks should not be applied wholeheartedly from one field to another; indeed, for all research areas the SATORI project emphasises the importance of addressing the differences in a common ethical code. Ethical diversity amongst research fields is emphasised in the comparative analysis, where it is found that while there may be some common ethical values in all fields, 'it is also important to discover and express those issues and principles unique to a field' (Shelley-Egan *et al*. 2016, 54). In practice, the project has not identified unique ethical aspects in such diverse humanities disciplines as the arts, rather a double conflation occurs where research ethics from the social sciences has been transferred to the humanities, which, in turn, limits the discovery of any distinctive ethical areas in artistic research. Before the SATORI project had been

https://doi.org/10.1017/S1062798720000125 Published online by Cambridge University Press

completed, there were already reservations about the first fact-finding stage by the ethicist Ron Iphofen, who questioned 'whether the focus of the study is broad enough to encompass the issues that researchers and research reviewers need to address' (Iphofen 2017, 213).

A wider coverage of countries, disciplines and documents may well have enabled the SATORI project to find and discuss ethical principles and issues in certain disciplines in the humanities. Given that artistic research is a relatively new area of academic research, a comparative study should have included the widest possible range of literature on the distinctive ethical values and problems of this area and its disciplines. As we have seen, the SATORI report states that the literature in the humanities on research ethics has a focus on identifying the differences of ethical issues, but these differences are not explained in the reports. Amongst certain disciplines in the humanities there is indeed a focus on identifying specific ethical issues, most notably when participants are involved in research in history, art history, journalism, and the visual and performing arts. According to the SATORI report on the humanities, this field mainly includes participants as interviewees and, in regards to the arts, the report only explicitly refers to the possibility of performers and audiences as participants in performing arts research. But are these broad conclusions supported by the discussions in the visual and performing arts on ethical principles and issues which may be unique to their disciplines?

Following the introduction of artistic research in universities, artistic researchers have begun to address human research ethics and the application of regulations from other fields to their new disciplines. One of the first papers to address research ethics in artistic research presents an argument against the adoption of ethical approaches from the social sciences and proposes that the focus on practice in artistic research determines this difference. According to Newbury, the development of ethical procedures that are specific to practice-related research would better support and strengthen these relatively new disciplines which have not yet formulated relevant ethical codes (Newbury 2010, 384–385). For example, Newbury identifies three types of artistic practices which do not conform to the values and standards of established research ethics and instead privilege the entirety of the image over the principle of anonymity, the right to use copyrighted material, and public actions or performances ranging from the provocative to the illegal, in other words, freedom of artistic expression. Newbury's paper can be situated within the context of research ethics regulation in the UK, where universities in 2005 began to implement the Research Ethics Framework. After a few years experiencing the ethical regulations in Australia, artistic researchers there also began to question the imposition of ethical regulations from other fields. In Australia in 2007, the revised National Statement on Ethical Conduct in Research Involving Humans had been extended to include a review of the humanities and creative arts. While social scientists participated in these revisions, Australian researchers in the arts have expressed similar concerns to those raised by Newbury. For Bolt *et al.* (2014, 79–80) there are 'fundamental differences between research in the social sciences and in the creative arts' in their approaches to methodology and ethics. As they argue, the social sciences treat

https://doi.org/10.1017/S1062798720000125 Published online by Cambridge University Press

images as data for analysis, that is, anonymised images would not undermine the results, but images in artistic research are also the research outcome, and thus to anonymise those images would degrade both the evidence and the results. A further difference relates to the artistic aim of provocation and transgression, which, while often highly valued outside research institutions, comes into conflict with academic ethics regulations when adopted in artistic research (Bolt *et al*. 2014, 83–85). In the following I will examine these views that the ethical issues of freedom of artistic expression and participant anonymity in artistic research would not be well supported by an ethical framework from the social sciences. These two issues will be shown to converge on the difference between professional practice in the art world and artistic research. After outlining the convergence of these ethical issues in a range of artistic practices, I will conclude with a proposal for a rights-based approach to human research ethics in artistic research.

The argument that artistic practice would be restricted by ethical and legal conduct can be found in the College Art Association's Artist Code of Ethics, which is part of the professional practice guidelines introduced by the CAA in 1977. Artistic diversity, according to the Code, cannot be accommodated by any standard of conduct since 'artists highly value their ability to challenge, criticize, and transgress those standards . . . these elements [in professional codes] potentially limit legitimate artistic expression and therefore should not be enshrined in a universally applicable, CAA-sanctioned Artist Code of Ethics' (College Art Association 2011). According to this Code the artist's right to freedom of expression trumps the rights of others, including those rights protected by law and by regulations such as ethics codes. Indeed, there have been significant cases, both in and outside the law courts, where artistic freedom of expression has been privileged over the rights of others, and particularly the right to privacy. For example, in 1936, Dorothea Lange, a documentary photographer working for the American Farm Security Administration, took a photo of Florence Thompson which has come to be one of the most well-known photographs of the Depression, under the title *Migrant Mother*. Along with thousands of other similar photos by Lange, *Migrant Mother* was freely distributed to newspapers and became one of the key visual symbols of the era. Yet Thompson claimed in 1978 that her identity and likeness has been exploited by Lange: '"I didn't get anything out of it. I wish she hadn't of taken my picture," the full-blooded Cherokee Indian said. "She didn't ask my name," . . . "She said she wouldn't sell the pictures. She said she'd send me a copy. She never did"' (Gross *et al*. 1988, 14). The invasion of privacy in this artistic project concerns the appropriation of an aspect of a person's identity, in combination with the lack of informed consent as to the future uses of the photo. Thompson tried to assert her rights and sought to prevent the publication of the photo only to be advised by lawyers that she would not be successful on the basis that the subject's right to privacy would not be deemed equal to the social value of the image (Gross *et al*. 1988, 14). At the same time as Lange photographed the migration of rural peoples, Walker Evans took photos of white tenant families in Alabama for his book *Let Us Now Praise Famous Men* (1941) co-authored with James Agee. The families in the photos strongly

https://doi.org/10.1017/S1062798720000125 Published online by Cambridge University Press

rejected what they saw as a misrepresentation of themselves as icons of poverty and claimed their privacy had been infringed in terms of the disclosure of private facts (Matthews 2016, 34; Gross *et al*. 1988, 10). As with Lange's work, the infringement of privacy rights is combined with the lack of informed consent, as the families in the project by Evans and Agee claimed they were given assurances that publication would not occur in the South (Matthews 2016, 56). In the service of the wider public interest in the life of the poor, Lange and Evans chose their subjects because they were marginalised, yet for those subjects the photographs compounded their social and economic vulnerability.

These cases suggest that artistic freedom of expression entails the right not only to express opinions without interference, but also the right to employ unethical methods with artistic participants, particularly in order to imbue art with authenticity. The connection between authenticity and artistic freedom is made apparent in Bolt's explanation of why this freedom is a specific ethical issue in artistic research. According to Bolt, the social value of art lies in its ability to provoke political resistance, for which art employs the effects of discomfort and shock in order to 'move people' (Bolt 2016, 190, 195). At this point however, the social good of art comes into conflict with the key value of beneficence in research ethics, for when there are participants involved, the issue of informed consent undermines the authenticity of their reactions of 'discomfort and dis-ease [which] are central to art's potency' (Bolt 2016, 195). Bolt concludes that it is unethical for artistic research not to cause discomfort, and thus she raises – but leaves unanswered – the question of 'how this can be negotiated to minimize harm to participants but still maintain the power and efficacy of the art' (Bolt 2016, 195). To support this connection between artistic freedom and the aim to provoke or disturb the audience, Bolt gives an example of a performance artwork which involved unwitting participants. The performance, called *Nothing to See Here (Dispersal)* (2014) by Amy Spiers and Catherine Ryan, aimed to reveal the forces of political order in public places by using coercive techniques of crowd control on an unwitting audience.

Lack of consent and unwitting participation are devised to be necessary in the realisation of *Nothing to See Here (Dispersal)*, in order for the audience to experience for themselves coercion and disempowerment. But where provocation and transgression are the defining features of artistic freedom, the less value can be given to participants' rights. The reliance on unwitting participation occurs in two more well-known artistic projects: Anna Odell's installation UNKNOWN, WOMAN 2009-349701 (2009), the examination project for her Bachelor of Fine Arts; and Dries Verhoeven's public performance *Wanna Play? (Love in Times of Grindr)* (2014), presented as a research laboratory. Odell staged and filmed her own suicide attempt in a public place leading to members of the public and the police coming to her assistance. After her admission to a psychiatric emergency hospital, she revealed the deception the next day to the medical staff. In this project, members of the public, police, medical staff and patients became unwitting participants in an artistic project aimed to expose problems in the mental health system and its treatment of vulnerable people (Dahlgren 2016, 190–191). Apart from the ethical problems of lack of consent

https://doi.org/10.1017/S1062798720000125 Published online by Cambridge University Press

and breach of privacy, a legal case was taken against the student-artist by seven psychiatric nurses for a fraudulent act and violent resistance. On the other hand, the project was defended for breaking taboos and exposing the imbalance of power between institutions and patients (Biggs and Karlsson 2010, 418–419; Waern 2016, 811). In the second example, Verhoeven presented a performance in a large container-like-theatre in a public site. The performance consisted of the screening of his online exchanges with unwitting respondents, who were later informed of the deception, and public display when they agreed to meet the artist at the same performance site. The aim of the performance was to bring renewed visibility to queer relationships which, according to Verhoeven, had become invisible again due to social media and online dating sites such as *Grindr* (Bachman 2015, 94). Although the performance had been planned for a duration of 15 days, it was cancelled on the fifth day after a complaint from a participant for breach of privacy and lack of consent (Bachman 2015, 89). The performance also caused heated debates in the news and social media, particularly around the problem of forced outings. In response to the criticism, Verhoeven asserted the right to freedom of expression in order to produce art that 'exists to touch sore spots' and 'break-through [sic] the common consensus'(Verhoeven 2014). In these artistic practices, people other than the artist are integral to the realisation of the artwork, and such practices are now commonly found in the research undertaken by doctoral candidates in the performing and visual arts throughout the world. In using these practices of the professional art world, artistic researchers will encounter the conflict between the social benefits of art and the responsibilities in research for the rights of others. To some extent this conflict is addressed in the SATORI report on the humanities, yet by drawing on a social science ethical framework, there are specific ethical issues in artistic research where this conflict occurs that remain unacknowledged.

The exercise of balancing and the principle of proportionality are recommended in the SATORI report on the humanities in order to address ethical issues in both human research and the social impact of research. In these two areas, individual rights are balanced with communal interests, and any erosion of an individual right should be in proportion to those communal interests. In the category of societal impact, the individual right of 'the freedom of expressions is considered a higher value in most cases' where it is balanced with public interest (Benčin *et al.* 2015, 13). Conversely, in human research, the SATORI report finds that those circumstances which allow for compromises to participants' individual rights are when the communal interests may yield greater benefit than protecting those rights (Benčin *et al.* 2015, 14). More specifically, the circumstance allowing communal aims to override individual rights is when the research is 'deliberately and legitimately opposed to the interests of the research subjects'; for example, research that is 'critical of public personalities or organisations' (Gurzawska and Benčin 2015, 13, quoting Interagency Secretariat on Research Ethics, *Ethical Conduct for Research Involving Humans*, Ottawa, 2005, p. i.7.). In each area, the balancing exercise apportions greater value to freedom of research when either presenting views that are not accepted by the community or when limiting the rights of public individuals where the research is of public interest.

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In this approach, the right of freedom of expression outweighs attempts to impose restrictions on the content of artistic research by the community or by public officials. Moreover, the aims of the research and the communal interests prevail over ethical principles for the conduct of the research, such as beneficence and respecting the privacy of public officials. The same balancing exercise is recommended in the SATORI report on the social sciences when the research is 'deliberately and legitimately opposed to the interest of the research subjects' (Gurzawska and Benčin 2015, 13, quoting Interagency Secretariat on Research Ethics, *Ethical Conduct for Research Involving Humans*, Ottawa, 2005, p. i.7.). Freedom of expression in the SATORI report is, therefore, content-based and does not address the conflict between artistic freedom and the rights of private, not public, individuals in the research process. There is a missed opportunity for the SATORI project to formulate guidelines to resolve the tension between artistic freedom and ethical conduct with participants. In conclusion I propose a rights-based approach towards this conflict that would support the SATORI project's acknowledged commitment to human rights and expand its coverage to include ethical conflicts distinctive to the visual and performing arts.

## Conclusion

In the *European Convention of Human Rights*, freedom of expression is a qualified right and, as such, subject to a list of possibilities for restriction; limitations of these restrictions, relevant to this paper, are 'for the protection of the reputation and rights of others' and 'for preventing the disclosure of information received in confidence' (Article 10(2)). The entirety of Article 10 thus recognises the competing right of privacy protected under Article 8. In the jurisprudence of the European Court of Human Rights, the right to privacy has been interpreted to include both the narrow conception of 'the right to live as far as one wishes, protected from publicity' and the wider conception of 'the right to establish and to develop relationships with other human beings, especially in the emotional field, for the development and fulfilment of one's own personality' (Marshall 2008, 56). These conceptions are reflected in legal scholarship where privacy is considered necessary to individual freedom and dignity, insofar as privacy protects 'the desire of people to choose freely under what circumstances and to what extent they will expose themselves, their attitudes and their behaviour to others' (Marshall 2008, 51). Freedom of expression may thus not only clash with privacy, but is also dependent on privacy, which protects an individual's capacity to decide on the conditions of her self-expression.

In the artistic projects described above, the privacy of participants was not protected, according to the corresponding ethical principles of free and informed consent, confidentiality and anonymity. Nor were participants afforded protection from harms such as intrusion, distress, personal embarrassment, indignity or psychological harm. More specifically, freedom of expression as articulated in the projects *Nothing to See Here* and *UNKNOWN, WOMAN* was the justification for the

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infringement of the right of others to be free from the intentional infliction of emotional distress. Participants in *Wanna Play?* experienced intrusion into their private lives and public exposure of their lives. This latter aspect of privacy, which involves the right to decide on how one is represented to others, was disregarded in all the projects described. These artistic projects are aligned with the College Art Association's Artist Code of Ethics in which artistic freedom takes priority over the rights of others, but as a consequence of this absolutist position the participants are treated largely as means to artistic ends. As artistic researchers have found, when an absolutist approach to freedom of expression operates in research, the conflict of rights can appear to be irresolvable, since artistic professional codes provide no common ground or standard for regulating freedom of expression. In the current field of ethical guidance for artistic research there is now the opportunity, and the obligation, to resolve this conflict in artistic professional codes by formulating a well-developed and generally accepted alternative to unlimited freedom of expression, one that pays particular attention to the rights of private individuals as research participants.

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