***Appropriation art***

***At the verge of the colonization of pre-existing objects, things or images***

***Saliou Traoré***

## *Contents*

# *Introduction*

## *At the verge of the colonization of pre-existing objects, things or images*

In the following paper I will juxtapose the notions of colonization and appropriation. In my perception appropriation in the arts affects the appropriated in similar ways as colonial culture did in history. During colonization, the colonized countries lost part of their own culture because, not only where they forcibly being indoctrinated into a culture that was not their own, but with this indoctrination, their own culture was transformed. Consequently colonized cultures were never able to re-capture their pre-colonial status and up to this present day, there is a phenomenon not simply of political and economic neo-colonization, but of cultural neo-colonization as well.

Appropriation in the arts affects that which was appropriated. The original work ceases to be what it was and starts to be what I call *that which has been colonized*. It loses part of its identity to the detriment of the original work. The process of transforming and colonizing something in order to make it yours is like injecting alien life and otherness into the original. From my point of view it is there - in the mash up of identity and transformation - that appropriation in the arts and colonization in history have affects that resemble. These ways of influencing can be regarded as positive or negative, however their transformative force cannot be reversed.

When the appropriator makes use of the original work, not in order to supersede or duplicate the objective of the original, but rather use it as raw material in a novel way to create new information, new aesthetics and new insights, the result, whether artistically successful or not, affects and transforms what was once regarded as an original work.

**Appropriation**: *"a deliberate act of acquisition of something, often without the permission of the owner"* (according to the dictionary of vocabulary.com*)* **(A)**

*Appropriation originally referred to the taking of private property, usually by the government. Nowadays, appropriation can be positive or negative, but generally refers to taking something and making it your own –- like using melodies from other types of music in your song or your company's appropriation of new technology to improve their product. Appropriation can also refer to the setting aside of funds by the government for a specific purpose, like for improving school systems or supporting the arts*. **(B)**

**Colonization:** *Colonization is the act of setting up a colony away from one's place of origin. You may have heard of an ant colony, which is a community of ants that decided to set up shop in a particular place; this is an example of ant colonization. With humans, colonization is sometimes seen as a negative act because it tends to involve an invading culture establishing political control over an indigenous population (the people living there before the arrival of the settlers).* **(C)**

An appropriation artist takes images or objects from already existing sources without the consent of the owner. By taking them over and transforming them, the appropriated content becomes partly hers or his. This can be compared to stealing a land and setting up a colony. To appropriate an image or object leads to a strange situation that sometimes results in a legal battle or a lawsuit of copyright between the owner and the appropriation artist. This is similar to the occupation-force that the colonized country receives the by the colonizing power. What we have to understand here is the denominator that they both have in common, which is stealing and transforming that which was once the property of the other.

The colonized will always try his best to wage a war or launch other actions that the situation may call for in order to regain control of his or her territory. This is just like what we are witnessing in the realm of visual art today. Appropriation artists are being pursued in court for appropriating artworks of other fellow artists.

### *In court*

The legal case between the French photographer Patrick Cariou versus the American artist Richard Prince shocked the art world at the time of the legal decision.
Richard Prince is an American visual artist who made a name for himself in the second half of the 1970s, primarily through photographing existing photographs and presenting them as his own work. He re-photographed the Marlboro Man endlessly, called it the Cowboys series, and showed it for twelve years.

Fig.1 *Richard Prince (b. 1949),* Untitled (cowboy)*, 1989. Ektacolor photograph, unique, 50 x 70 inches (127 x 177.8 cm)*

Photographer Patrick Cariou published, in year 2000 *"Yes, Rasta"*, a book of photographs of a Rastafarian community in Jamaica. Richard Prince created in 2008 the ″Canal Zone″, a series of art works incorporating Cariou's photographs. Prince's works involved copying the original photographs, and engaging them in a variety of transformations. These included printing them, and then in real size, blurring or sharpening them, adding content (sometimes in color ), and sometimes making compositions of multiple photographs or photographs with other works. Prince exhibited his collection at Gagosian Gallery. The French artist Patrick Cariou sued Richard Prince in court. The court eventually condemned Prince and stated:" to be entitled to a 'copyright "fair use" defense', an allegedly infringing work must comment on, relate to the historical context of, or critically refer back to the copyrighted work. " According to the court the work of Prince did not meet these requirements. Therefore the Second Circuit (One of thirteen courts of appeals in the United States) rejected an appeal of Prince. Thus far, many people in the art world question this verdict of the Second Circuit. The audacity that these appropriation artists show by making works that bring them into court is however questionable. The artists act as if they are saying something critical about the work that they are appropriating, but it's often not more than a temperate statement and well adjusted to the status quo.

## *Is it an original work or merely forgetfulness of the human kind?*

Notwithstanding the intentions of the appropriating artists, maybe in the end nothing is original? The writer Jonathan Lethem has said: *"When people call something original nine out of ten times they don't know the references or the original sources involved"*. **(D)**

And as the French writer André Gide puts it: *"Everything has been said before, but since nobody listens we have to keep going back and beginning all over again."* **(E)**

All these quotations about the fact that nothing is original are *in themselves* not a novelty. There is a time-honored quote from the 2000-year-old Bible that states:

*Ecclesiastes 1:9*

*"What has been will be again, what has been done will be done again; there is nothing new under the sun."***(F)**

The position of the appropriation artist can be seen in the light of forgetfulness of the human kind. The world and the society we live in are a hubbub where nobody seems to listen and where original works are forgotten. Copies of copies can be regarded as true legatees of the past centuries; they convey to us the 'truth' of what has been said.

## *Explosion of appropriation though technology*

As digital media technologies reconfigure the way in which we apply such techniques as collage, quotation, and plagiarism, they comprise a procedural code that is itself a mix, a mash-up, and a version of a version of a version. It seems as if artists are making copies of copies of copies.

*The influential intellectual property lawyer and founder of Creative Commons, Lawrence Lessig, has quoted Greg Gillis, the Mash-up DJ 'Girl Talk,' on this exact proliferation: "We're living in this remix culture. This appropriation time where any grade-school kid has a copy of Photoshop and can in the Mix 213 download a picture of George Bush and manipulate his face how they want and send it to their friends.* **(G)**

In the contemporary moment, the predominance of a medium that effaces its own means of production (behind interfaces, 'pages,' or 'sticky notes'), suggests that we may no longer fetishize the master-copy, or the original script, and that we once again need to re-theorize the term 'author'. We need to ask, for example, how we can instantiate the notion of an author through a medium that abstracts the indelible and rewrites it infinitely.

## *Irreversible transformation*

The use of appropriation has played a significant role in the history of the arts including not only musical and performing arts but also literary and visual arts. In the visual arts, to appropriate means to properly adopt, borrow, recycle or sample aspects (or the entire form) of human-made visual culture. But once a work or a thing is appropriated the original work or thing will never regain the original status, it is affected. Notable in this respect are the ready-mades of Marcel Duchamp. The bottle rack and the snow shovel will never be again just a bottle rack and a snow shovel.

Fig. 2, *In Advance of the Broken Arm*, 1964. Wood and galvanized-iron snow shovel, 52" (132 cm) high

Fig. 3 *Bottle Rack*, Readymade bottle-dryer of galvanized iron overall: 29-1/4 x 16 in. (74.3 x 40.6 cm) Norton Simon Museum, Gift of Mr. Irving Blum, in memory of the Artist *Marcel Duchamp 1914*

***Chapter one***

## *Historical fiction*

1.1 “Apropos Appropriation: Why stealing images today feels different
Jan Verwoert

***The historic momentum of appropriation, in the 1980s and today.***

Appropriation, first of all, is a common technique. People appropriate when they make things their own and integrate them into their way of life, by buying or stealing commodities, acquiring knowledge, claiming places as theirs and so on.
Artists appropriate when they adopt imagery, concepts and ways of making art other artists have used at other times to adapt these artistic means to their own interests, or when they take objects, images or practices from popular (or foreign) cultures and restage them within the context of their work to either enrich or erode conventional definitions of what an artwork can be. As such, this technique could be described as comparatively timeless, or at least, as being practiced as long as modern society exists. For, ever since labor was divided and the abstract organization of social life alienated people from the way in which they would want to live, appropriation has been a practice of getting back from society what it takes from its members. At the same time, appropriation can be understood as one of the most basic procedures of modern art production and education. To cite, copy and modify exemplary works from art history is the model for developing art practice (neo) classicist tendencies have always championed. During the last two centuries this model was repeatedly challenged by advocates of the belief that modern individuals should produce radically new art by virtue of their spontaneous creativity. The postmodern critics of this cult of individual genius in turn claimed that it is a gross ideological distortion to portray the making of art as a heroic act of original creation. Instead they advanced the paradigm of appropriation as a materialist model that describes art production as the gradual re-shuffling of a basic set of cultural terms through their strategically re-use and eventual transformation.

Such a general account of appropriation as a common social strategy and basic artistic operation may help to outline some of the overall implications of the concept. What it cannot capture, however, is the specific *momentum* that gives the debates about appropriation their particular focus and urgency in different historical situations. It might appear futile to reconstruct the exact spirit of the moment when in the late 1970s the notion of appropriation emerged in critical discourse alongside the concept of postmodernism to become one of the key contested terms in the debates of the 1980s. Still, to try and picture the historic momentum of this discourse seems urgent, because there is evidence that the situation today has significantly changed. To practice and discuss appropriation in the present moment means something different than it did before and to bring out this specific difference it seems necessary to grasp what was at stake in the late 1970s for a better understanding of what, by contrast, is at stake now. Let me attempt a first sketchy juxtaposition: The cultural experience the discourse of appropriation conveys under the sign of postmodernity is that of a radical temporal incision. It is the experience of the sudden death of modernism and the momentary suspension of historical continuity. The stalemate situation of the cold war seemed to bring modern history to a standstill and freeze the forces of progress in motion. These

frozen lumps of dead historical time then became the objects of artistic appropriation. Remember Robert Longo appropriating figures of movie actors cut from freeze frames, with their movements suspended in mid-air and bodies arrested in the momentary poses they happened to assume when the film was stopped. Or Cindy Sherman appropriating the visual language of epic Hollywood cinema to halt and arrest the motion of the moving pictures in isolated still images of female figures locked in a spatial *mise-en-scène* with the timeline gone missing. These works convey an intense sense of an interruption of temporal continuity, a black out of historical time that mortifies culture and turns its tropes into inanimate figures, into pre-objectified, commodified visual material, ready to pick up and use.

Now, imagine the reels of the projectors to suddenly start spinning again. As the freeze frame dissolves into motion and the figures Longo suspended in mid-air crash to the ground as the pain of the blow they received from their invisible opponent registers and propels them forward. Sherman's heroines unwind, begin to speak and confess their story to the camera. You could say that this is what happened after 1989. When the superpowers could no longer hold their breath and the wall was blown down, history sprang to life again. The rigid bipolar order that had held history in a deadlock dissolved to release a multitude of subjects with visa to travel across formerly closed borders and unheard histories to tell. Their testimonies went straight down on digital videotape. The dead elegance of the cibachrome print was replaced by the grungy live look of real-time video footage as the signature aesthetic of the new decade. The Cold War had frozen time and mapped it on space as it fixed the historical situation after World War II for over four decades in the form of a territorial order of rigid geopolitical frontiers. It is from this map that a manifold of asynchronous temporalities now begin to emerge along the fault lines drawn by the geopolitical regimes of modernity. Wars erupt over territories that were shaped on the drawing room tables around which the emerging world powers gathered to divide the globe among them. While some countries anticipate a global future by simulating the arrival of the information age, the outsourcing of manual labor from these countries forces other societies back in history to the times and realities of exploitation of early industrialization. In many countries, including possibly the US, social life is organized by two governmental technologies that should exclude, but in fact reinforce each other: the modern secular state and pre-modern theocracy. Religion, a force thought to be crushed and buried under the profanities of capitalism and atheist doctrines of socialism, has resurfaced as a thing of the past that shapes the present.

If we accept this sketchy account as a preliminary description of the current historical condition, it becomes clear that a key difference between the situation at the end of the 1970s and today is that the axes of space and time have shifted into a different angle in relation to each other. The standstill of history at the height of the Cold War had, in a sense, collapsed the temporal axis and narrowed the historical horizon to the timeless presence of material culture, a presence that was further heightened by the imminent prospect that the bomb could wipe everything out any day anyway. To appropriate the fetishes of material culture, then, is like looting empty shops on the eve of destruction. It's the final party before doomsday. Today, on the contrary, the temporal axis has sprung up again, that is, not one of them but a whole series of temporal axes that cross the axis of global space at irregular intervals. Historical time is again of the essence, only that this historical time is not the linear and unified timeline of steady progress imagined by modernity, but a multitude of competing and overlapping temporalities born from the local conflicts that the unresolved predicaments of the modern regimes of power still produce. The political space of the globe is mapped on a surreal texture of crisscrossing time-lines. (In this sense, the question "Que horas sont a Washington?" put forward by Mano Chao, is the formula that sums up the current momentum. It does so through the purposeful misconstruction of the question in the plural - that is through a moment of a-grammaticality Deleuze described as crucial to a formula of resistance, such as that pronounced by Bartleby, the scrivener.)

The challenge of the moment is therefore to re-think the meaning of appropriation in relation to a reality constituted by a multiplicity of spatialized temporalities. The point of departure for such considerations – and also the reason why appropriation remains relevant as a critical (art) practice – is the undiminished if not increased power of capitalist commodity culture to determine the shape of our daily reality. The force that underlies the belief in the potential of appropriation is the hope that it should be possible to cut a slice out of the substance of this commodity culture to expose the structures that shape it in all their layers. It is also the hope that this cut might, at least partially, free that slice of material culture from the grip of its dominant logic and put it at the disposal of a different use. The practical question is then where the cut must be applied on the body of commodity culture and how deep it must go to carve out a chunk of material that, like a good sample, shows the different temporalities that overlie each other like strata in the thick skin of the commodity's surface. The object of appropriation in this sense must today be made to speak not only of its place within the structural order of the present material culture but also of the different times it inhabits and the different historical vectors that cross it. So there is a positive hope that the exhibition of the appropriated object could today still create this sudden moment of insight that we know it can produce ever since Duchamp put a bottle dryer on display in a museum, namely that it could show what (in a particular social context at a specific historical moment) it means for something to mean something. So we trust the appropriated object to be able to reveal in and through itself the riddled historical relations and dynamics that today determine what things mean.

The only thing we should maybe be less optimistic about is the possibility of thinking of the object of appropriation and the knowledge it generates *in terms of property*. No doubt, if you solely map the act of appropriation on a structural topography of social *space* there is little room for ambiguity concerning issues of property: In the moment of its expropriation the object is taken away (bought, stolen or sampled) from one place and put to use in another. There may be quarrels over copyright and property rights violations, but those occur precisely because it can generally be traced where the object was taken from and where it is now, whose property it was and who took it to make it a part of his or her life, art, music and so on. Property is an issue because the position of the appropriated item can clearly be fixed (We found it your house, on your record, in your show!). If you however, try to fix the position of the object of appropriation in *time* and draw the trajectory of its displacement in a coordinate system with multiple temporal axes, it obviously gets more complicated. How would you clarify the status of ownership of something that inhabits different times, that travels through time and repeats itself in unpredictable intervals, like for instance, a recurring style in fashion, a folkloristic symbol that is revived by a new political movement to articulate its revisionist version of a country's history or a complex of second rate modernist architecture occupied by residents who know nothing of its original designs but still have to find a way of living with the ghosts that haunt the building. Who owns a recurring style, a collective symbol or a haunted house? Even if you appropriate them, they can never be entirely your private property. Dead objects can circulate in space and change owners. Things that live throughout time cannot, in any unambiguous sense, pass into anyone's possession. For this reason they must be approached in a different way. Tactically speaking, the one who seeks to appropriate such temporally layered objects with critical intent – that is with an attitude that differs significantly from the blunt revisionism of neo- (or 'turbo'-) folkloristic exploitations of the past - must be prepared to relinquish the claim to full possession, loosen the grip on the object and call it forth, invoke it rather than seize it.

## 2. *From allegory to invocation*

So my claim is that the specific difference between the momentum of appropriation in the 1980s and today lies in a decisive shift in the relation to the object of appropriation – from the re-use of a dead commodity fetish to the invocation of something that lives through time – and, underlying this shift, a radical transformation of the experience of the historical situation, from a feeling of a general loss of historicity to a current sense of an excessive presence of history, a shift from not enough to too much history or rather too many histories. To bring out this difference more clearly, allow me to retrace the steps of the argument and start over from its beginning by calling up some of the theoretical concepts that gave appropriation a specific meaning in the American art-critical discourse of the late 1970s and early 1980s, to then develop some contemporary re-formulations of these ideas.

If you compare, for instance the writings of Douglas Crimp, Frederic Jameson and Craig Owens on the subject of appropriation, you will find a common motif in these texts. It is the idea that the sudden dissolution of historical continuity charges postmodern material with an intense sense of a presence without historical meaning - and that this intensity can be isolated in the object of appropriation as it manifests the breakdown of signification by exposing the empty loop in which the means to make meaning are spinning in and around themselves. In arguably the most beautiful lines of his essay Pictures (1979) Crimp, for instance, evokes the feeling of being spellbound by the silence of appropriated images, by their insistence to remain mute and foreclose historical narratives. He describes the experience of these pictures as marked by "the duration of a fascinated, perplexed gaze, whose desire is that they disclose their secrets; but the result is only to make the pictures all the more picture-like, to fix forever in an elegant object our distance from the history that produced these images. That distance is all that these pictures signify."[1] A similar moment of melancholy, an acknowledgment of the impossibility to grasp history in its images, makes itself felt in the admission Jameson's made in his essay 'Postmodernism and Consumer Society' (1982) that "we seem condemned to seek the historical past through our own pop images and stereotypes about the past, which itself remains forever out of reach".[2] All we can do, Jameson concludes, since the historical depth of the signs we have at our hands is irreversibly voided, is "to imitate dead styles, to speak through the masks and with the voices of the styles in the imaginary museum".[3]

This idea of art as a form of "speech in a dead language" (as Jameson defines pastiche)[4] is then further refined by Craig Owens in his essay *The Allegorical Impulse: Toward a Theory of Postmodernism* (1980)[5] where he frames speaking a dead language, or rather speaking a language that testifies to the death or dying of its historical meaning, as the language of allegory. Owens summarizes Walter Benjamin's account of why allegory became the predominant mode of articulating a sense of culture in decay in the German baroque tragic drama in writing that "from the will to preserve the traces of something that was dead, or about to die emerged allegory".[6] By analogy Owens then infers that the historical momentum of postmodernity, as the modern baroque, lies in the potential to use allegory as a rhetoric form to capture the experience of the present that the historical language of modernism is dead and in ruins. He understands allegory as a composite sign made up of a cluster of dead symbols, which are collaged together to create a shabby composition, a signifier in ruins that exposes the ruin of signification. By defining allegory as a collage of appropriated imagery, Owens in reverse characterizes contemporary art practices of appropriation as producing allegories of the present ruinous state of the historic language of modern art.

The melancholy exercise of speaking or contemplating a dead language in the moment of its allegorical appropriation, however, also delivers a particular kick. Crimp analyses the practice of working with appropriated images as driven by the fetishist desire to get a morbid joy out of the devotion to an opaque artifact: "Such an elaborate manipulation of the image does not really transform it; it fetishizes it. The picture is an object of desire, the desire for the signification that is known to be absent."[7] Jameson draws on another form of neurotic pleasure to describe the intensity of experiencing the breakdown of signification in the moment of encountering the isolated object of appropriation: He uses schizophrenia as a model to outline the postmodern condition of historical experience. According to Jameson, schizophrenia implies a loss of the mental capacity to perceive time as ongoing in a consistent order, which results in the inability to organize experiences in coherent sequences that would allow them to make sense, which in turn generated a heightened sense of the visceral and material presence of the isolated fragments of perception. He writes that "as temporal continuities break down, the experience of the present becomes powerfully, overwhelmingly vivid and 'material': the world comes before the schizophrenic with heightened intensity, bearing a mysterious and oppressive charge of affect, glowing with hallucinatory energy."[8] Like Crimp, Jameson frames a symptomatic moment in which the individual experiences the breakdown of historical interpretation in the face of an opaque artifact as an ambivalent sensation of depression and ecstasy. So, what for Jameson is the quintessential postmodern experience is for Crimp the particular kick appropriation art delivers.

All of these thoughts revolve around an experience of death, the certain death of modernity and the sense of history it implied, an experience of death that is framed and fixed by the object of appropriation through the accumulation of the dead matter of hollowed out signs in the form of allegory, the ruin of language. That these terms sound like the vocabulary of gothic novels, is certainly no coincidence, since the invocation of a sense of gloom seems to have been a key moment in the discourse of postmodernism. It is, however, a gothic novel written in denial of the implications of the atmosphere it conjures up, namely the suspicion that the dead might actually not be as dead as they are declared to be and that they might actually return as revenants to walk amongst the living. Through its relentless repetition the evocation of the emptiness of the signifier and the death of historical meaning comes to sound like a mantra, a spell to keep away the specters of modern history that linger on the margins of the postmodern discourse. The re-emergence of a multiplicity of histories in the historic moment of the 1990s, then, resembles the return of these ghosts to the center of the discourse and equals the sudden realization that the signs do speak as multiple echoes of historic meaning begin to reverberate in their hollow body – the insight that what was deemed dead speech has indeed manifest effects on the lives of the living.

This shock of the unsuspected return of meaning to the arbitrary sign is pictured in the climatic scene of Edgar Allen Poe's *The Fall of the House of Usher* (1839). In a stormy night, the narrator recounts, he tried to comfort and calm his host, the lord of the house of Usher, who is plagued by nervous hypersensitivity and an immense sense of anxiety, by reading a fanciful chivalrous romance to him. Instead of distracting the attention from the surrounding reality, however, the words of the story are in fact answered by immediate echoes in the real world: "At the termination of this sentence I started, and for a moment paused; for it appeared to me (although I at once concluded that my excited fancy had deceived me) – it appeared to me that, from some very remote portion of the mansion, there came, indistinctly, to my ears, what might have been, in its exact similarity of character, the echo (but a stifled and dull one certainly) of the very cracking and ripping sound which Sir Launcelot had so particularly described."[9] It turns out that the literary account of a knight breaking into a dragon's horde is step by step echoed in the real world by the literal procedure of the un-dead twin sister of the Count of Usher

breaking out of the tomb in which she was buried alive to come and take her brother to the shadows with her. It is this sudden realization that words and images, as arbitrarily construed they may be, produce unsuspected effects and affects in the real world which could be said to mark the momentum of the 1990s. A key consequence of this momentum is the shift in the critical discourse away from a primary focus on the arbitrary and constructed character of the linguistic sign towards a desire to understand the *performativity* of language and grasp precisely how things are done with words, that is, how language through its power of interpellation and injunction enforces the meaning of what it spells out and, like a spell placed on a person, binds that person to execute what it commands. In the light of this understanding the aim of appropriation can no longer be analysis alone, quite simply because the effects of staging an object of appropriation can no longer be contained to in a moment of mere contemplation. When you call up a specter, it will not content it with being inspected, it will require active negotiations to accommodate the ghost and direct its actions or at least keep them in check. By the same token, if we understand the evocation of a concept, image or object in the moment of its appropriation and exhibition to have manifest and potentially unsuspected effects on the real world, to isolate, display and, as it were fix this concept, image or object in the abstract space of pure analysis is no longer enough. To acknowledge of the performative dimension of language means to understand the responsibility that comes with speaking to engage in the procedures of speech and face the consequences of what is being said. To utter words for the sake of analysis already means to put these words to work. You cannot test a spell. To utter it is to put it into effect. In this sense, an art of appropriation understood, as invocation must concern itself even more with the practicalities and material gestures performed in the ceremony of invocation. This concern for practicalities simultaneously raises the question to what ends the ceremony is performed, that is, with which consequences the object of appropriation is put to its new use. This is a question of practical ethics: With what attitude should appropriation be practiced? Would it be acceptable for a critical art practice to give in to the power of the performative alone and invoke the ghosts of historic visual languages to command them to work for the interests of the living? There is ample evidence that this is precisely what public address experts do these days anyway. Every orchestrated retro-trend or revisionist resurrection of nationalist histories sees hordes of ghosts pressed into the service of the market and other ideological programs. So, to resist the urge to master the ghosts by programming the effects of appropriation seems like a better alternative. This is always assuming that it were actually possible at all to master ghosts, while the uncanny quality of an encounter with them after all lies precisely in the fact that in the relationship with a specter and the one who invokes it who controls whom will always remain dangerously ambiguous and the subject of practical struggle. This brings us back to the questionable status of property in the act of appropriation discussed before. If through appropriation one seeks to (re-) possess an object, what then if that object had a history and thus a life of its own? Would a force within that object which resists that very desire then not inevitably confront the desire for possession? In his book *Specters of Marx* (1994) Derrida describes this moment of ambiguity and struggle as follows:

"One must have the ghost's hide and to do that, one must have it. To have it, one must see it, situate it, and identify it. One must possess it without letting oneself be possessed by it, without being possessed of it (…). But does not a specter consist, to the extent that it consists, in forbidding or blurring this distinction? In consisting in this very indiscernibility? Is not to possess a spectre to be possessed by it, possessed period? To capture it, is that not to be captivated by it?"[10] On the grounds of this observation, that the relation between the ghost and the one who invokes it will remain in a precarious state of limbo, Derrida then develops an ethics, that is, he formulates the task to find ways to practically approach and do things with ghosts that would do justice to the complex nature of their presence and relation to us. The task is to "learn to live *with* ghosts"[11] and this means to learn "how to let them speak or how to give them back speech"[12] by approaching them in a determined way that still remains undetermined enough to allow them to present themselves: "To exorcise not in order to chase away the ghosts, but this time to grant them the right, if it means making them come back alive, as *revenants* who could no longer be *revenants*, but as other arrivants to whom a hospitable memory or promise must offer welcome – without certainty, ever, that they present themselves as such. Not in order to grant them the right in this sense but out of a concern for *justice*."[13] It seems that this ethical maxim could equally serve as a practical guide to appropriation today. If we assume that horizon of our historical experience today is defined by the ambiguous influences and latent presence of the unresolved histories, the ghosts, of modernity, then an act of appropriation that seeks to show what it means for something to mean something today must expose these unresolved moments of latent presence as they are, and that means first of all, not to suggest their resolution in the moment of their exhibition. Appropriation then is about performing the unresolved by staging object, images or allegories that invoke the ghosts of unclosed histories in a way that allows them to appear as ghosts and reveal the nature of the ambiguous presence. And to do that is first of all a question of finding appropriate ways of going through the practicalities of the performance of evocation, that is: a question of practice."**(H)**

[1] Douglas Crimp, 'Pictures', in Brian Wallis (ed.): *Art After Modernism: Rethinking Representation* (New York: The Museum of Contemporary Art New York, in association with David R.Godine, Publisher, Inc., Boston 1984), p. 185. Reprinted from October, no.8 (Spring 1979), pp. 75-88.
[2] Frederic Jameson, 'Postmodernism and Consumer Society', in Hal Foster (ed.), *Postmodern Culture* (London: Pluto Press, 1985), p.118. Originally published as *The Anti-Aesthetic* (Port Townsend: Bay Press, 1983), pp.111-125.
[3] Ibid., p.115.
[4] Ibid., p.114.
[5] Craig Owens, 'The Allegorical Impulse: Toward a Theory of Postmodernism' in Wallis (ed.), *Art After Modernism*, pp. 202-35. Reprinted from *October*, no.12 (Spring 1980), pp. 67-86 and no.13 (Summer 1980), pp. 59-80.
[6] Ibid., p. 212.
[7] Douglas Crimp, 'Pictures', p. 183.
[8] Frederic Jameson, 'Postmodernism and Consumer Culture', p. 120.
[9] Edgar Allan Poe, 'The Fall of the House of Usher' (1839) In: Chris Baldick (ed.), *The Oxford Book of Gothic Tales* (Oxford: Oxford University Press, 1992), pp. 85-101; p. 98.
[10] Jacques Derrida, *Specters of Marx: The State of the Debt, The Work of Mourning, & the New International*, translated by Peggy Kamuf (New York and London: Routlegde, 1994), p.132.
[11] Ibid., p. xviii.
[12] Ibid., p. 176.
[13] Ibid., p. 175.

## 1.2 *Experimental film*

Films of Joseph Cornell

"Joseph Cornell's 1936 found-film montage Rose Hobart was made entirely from splicing together existing film stock that Cornell had found in New Jersey warehouses, mostly derived from a 1931 'B' film entitled East of Borneo. Cornell would play Nestor Amaral's record, 'Holiday in Brazil' during its rare screenings, as well as projecting the film through a deep blue glass or filter, giving the film a dreamlike effect. Focusing mainly on the gestures and expressions made by Rose Hobart (the original film's starlet), this dreamscape of Cornell's seems to exist in a kind of suspension until the film's most arresting sequence toward the end, when footage of a solar eclipse is juxtaposed with a white ball falling into a pool of water in slow motion. Cornell premiered the film at the Julien Levy Gallery in December 1936 during the first Surrealist exhibition at the Museum of Modern Art in New York.Salvador Dali, who was in New York to attend the MoMA opening, was present at its first screening. During the screening, Dali became outraged at Cornell's movie, claiming he had just had the same idea of applying collage techniques to film. After the screening, Dali remarked to Cornell that he should stick to making boxes and to stop making films. Traumatized by this event, the shy, retiring Cornell showed his films rarely thereafter."**(I)**

"**Rose Hobart (1936)**

**Director: Joseph Cornell**

Fig.4 *By Marilyn Ferdinand starring in Rose Hobart Movie directed by* **Joseph Cornell**

Ever since I first laid eyes on them, I've been enamored of the boxes of Joseph Cornell. These assemblages of found objects, neatly arranged in glass-fronted or interactive boxes, create a wonderful feeling of nostalgia, fun, and creative surprise in me the way an absurd joke can make any of us break out in a laugh of recognition. Cornell extended his assemblages to film, buying boxes of films that were languishing in New Jersey warehouses, cutting and cataloging them according to his interests, and eventually splicing them into a number of short films. The most famous of these films is *Rose Hobart*, a 19-minute assemblage of footage taken from the 1931 Universal Pictures film *East of Borneo* and what looks like a motion study that depicts the circular ripples of water after a large rock is thrown into a pond. On the rare occasions when he exhibited the silent film, he accompanied it with a recording of *Holiday in Brazil* (1957) by Brazilian composer Nestor Amaral, who contributed a couple of uncredited songs to The Gang's All Here costarring fellow Brazilian Carmen Miranda. Cornell would project the film at a slowed-down speed through a blue filter, though in later years, he took to using a rose filter.

Fig. 5 images of an eclipse blotting out the masculine sun

For those familiar with silent films and their use of color tints to suggest lighting, blue is the color of night, a perfect complement to the dreamscape Cornell conjures from the remnants of *East of Borneo* and an evocation of the feminine. Together with images of an eclipse blotting out the masculine sun and an erupting volcano, evoking the feminine Pele, he pays homage to the Goddess. Here the Goddess is given form by the star of *East of Borneo*, Rose Hobart. Cornell's editing allows for intense observation of the Goddess, who, like the eclipse suggests, is sensed, even desired, but never really known. Our world, he suggests, may be the conjuring of Her own dreams, as She is shown in the beginning of the film reclining behind a mist of mosquito netting.

Fig. 6  For those familiar with silent films and their use of color tints to suggest lighting.

The Goddess inhabits an exotic land of palm trees, servants in sarongs, and luxurious surroundings. Sitting females praise her with clapping and singing. She is entreated by two men, one of the East and one of the West, but neither finds favor. Her most meaningful interaction is with a wild creature—a monkey delivered to Her by a servant that She talks to and pets until it, too, lays down to slumber.

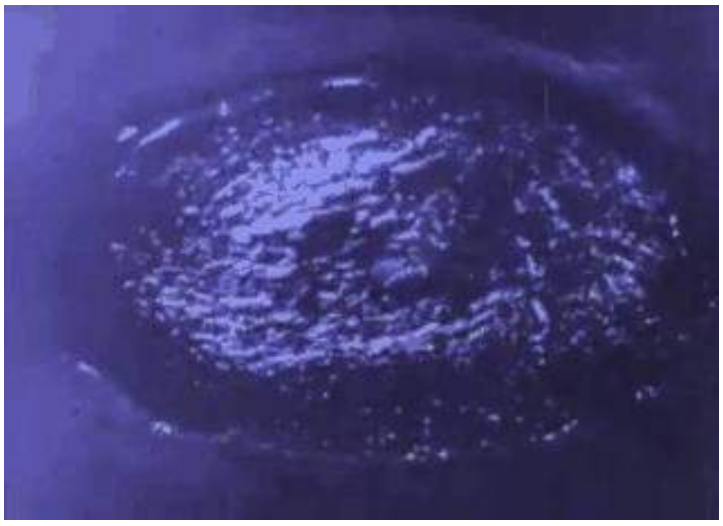

Fig. 7 The image of the concentric rings of displaced water—the pool of the unconscious and it perfect, circular form.

Alone, She is most herself, gathering together Her bag of tricks that includes both a lace handkerchief and a pistol, a reminder that the Goddess responds as often with natural violence as with delicate beauty. The image of the concentric rings of displaced water fascinate Her—the pool of the unconscious and its perfect, circular form. Cornell invites us to enter this pool several times in the film; only the most hard-headed observer will resist.

Fig. 8 one of the Joseph's boxes

It's interesting to consider Cornell's reluctance to share his film creations, the perhaps apocryphal story of Salvador Dali's anger that Cornell had stolen his dreams, the rather corny music Cornell used to suggest a tropical setting. We are dealing here with the deep and vulnerable unconscious of a single man, the collective unconscious for which Dali spoke, and the simple tunes that keep observers anchored in a homey familiarity (this is very reminiscent of the silly tune that recurs in Bruno Dumont's nightmare film Twentynine Palms). Cornell doesn't dwell in the lasciviousness of many dream films, for example, those of Luis Buñuel, declaring as he once did that he did not identify with the dark magic of the surrealists. He preferred the white magic, and that is very plain in his gentle art and films, and the care with which he treated his found objects and reassembled them into works of wonder and delight. Cornell was a pioneer who worked with and influenced such avant-garde filmmakers as Stan Brakhage and Rudy Burckhardt. His films and those of his colleagues in the avant garde are among those most in danger of being lost. Get your hands on this jewel of a film and think about the delights this rich and under-explored corner of cinema offers. **"(J)**

***Chapter two***

## *Appropriation and Authorship in contemporary Art*

l. Draft. For definitive version, see British Journal of Aesthetics 45 (2005), 123-137.

Appropriation and Authorship in Contemporary Art

Sherri Irvin

Abstract

“Appropriation art has often been thought to support the view that authorship in art is an outmoded or misguided notion. Through a thought experiment comparing appropriation art to a unique case of artistic forgery, I examine and reject a number of candidates for the distinct ion that makes artists the authors of their work while forgers are not. The crucial difference is seen to lie in the fact that artists bear ultimate responsibility for whatever objectives they choose to pursue through their work, whereas the forgers central objectives are determined by the nature of the activity of forgery. Appropriation artists, by revealing that no aspect of the objectives an artist pursues are in fact built in to the concept of art, demonstrated artists responsibility for all aspects of their objectives and, hence, of their products. This responsibility is constitutive of authorship and accounts for the interpretability of artworks. Far from undermining the concept of authorship in art, then, the appropriation artists in fact reaffirmed and strengthened it.

# I. Introduction

What it is that makes an artist the author of an artwork? What does the special relation of authorship, such that the work should be interpreted in terms of the artist's meanings (or at least in terms of meanings the artist could have had) consist in? Famously, the notion of the author came into question in the 20th century with thinkers like Roland Barthes, who closes his obituary of the author with the suggestion that 'the birth of the reader must be at the cost of the death of the Author.'1 Michel Foucault agrees, arguing that the concept of the author is a tyrannical one that does little more than restrict the freethinking of readers. 2 The 1960s saw the genesis of an artistic trend that seemed to give substance to the theories of Foucault and Barthes. The appropriation artists, beginning with Elaine Sturtevant, simply created copies of works by other artists, with little or no manipulation or alteration, and presented these copies as their own works. The work of the appropriation artists, which continues into the present, might Well be thought to support the idea that the author is dead: in taking freely From the works of other artists, they seem to ask, with Foucault, 'What Difference does it make who is speaking?' 3 But if we think more carefully about their works, it becomes clear that this impression is misleading: even, and sometimes especially, in the case of the appropriation artists, it does matter who is speaking. I will begin by providing a brief overview of practices in appropriation art to provide some historical grounding. I will then construct a thought experiment comparing appropriation art to a highly unusual case of artistic forgery. Consideration of several possible candidates for the relevant difference between appropriation artist and forger, the difference that makes artists authors of their work while forgers are not, will shed light on the nature of authorship in contemporary art, and in art more generally. We will find that, contrary to what has often been thought, the work of the appropriation artists affirms and exposes, rather than undermining, the artist's ultimate authorial status.

## II. *Appropriation Art*

In art of the last several decades, practices of radical appropriation from other artworks are common. Elaine Sturtevant, often considered the earliest practitioner, began in the 1960s to reproduce, 'as exactly as possible', [4] the works of her contemporaries, including Roy Lichtenstein, Claes Oldenburg, Jasper Johns, Frank Stella and Andy Warhol. 5 She aimed to use the same techniques they used, and in some cases enlisted their aid: on at least one occasion, Warhol lent his screens for her copies of his silkscreen works. [6] sturtevant has said that in the 1960s, she usually allowed in one 'mistake' which distinguished her product from the original work.7 But in general, the results were very close to the originals. Of course, appropriation in art is nothing new. Borrowing from the work of other artists has been a time-honoured practice throughout much of art history: painters, for instance, have often repainted the works of others in order to explore the application of their own style to a familiar composition and subject matter. Sturtevant, however, took appropriation to a new extreme. Simply to paint a precise copy of another artist's work and claim it as one's own artwork, while openly acknowledging that it is a copy, poses a certain kind of challenge to the concept of authorship that had never previously been posed. Even when Marcel Duchamp brought ready-made objects into the gallery and Andy Warhol appropriated from popular and consumer culture, they had to decide to treat certain objects as art. But Sturtevant eschews even this level of decision: the determination of what is worthy to be treated as art is made by the peers whose work she copies, and never by Sturtevant herself. Sherrie Levine, perhaps the best known appropriation artist, produced a substantial body of radical photographic appropriations during the 1980s. For these works, she sought out reproductions of well-known works by artists such as Walker Evans and Alexander Rodchenko in art history books and catalogues, photographed the reproductions, and presented the resulting photographs as her own work. In addition to the photographic series, she created paintings and sculptures based on well-known artworks.


Fig.9 AfterSherrieLevine.com, *Michael Mandiberg , 2001, copy of photographs*

She often produced these works in a medium different from that employed by the original artist: Matisse's paper cut-out Creole Danceris appropriated in watercolour, while Duchamp's Fountain is recreated in polished bronze. Mike Bidlo is another of

the well-known appropriationists, having done in the 1980s projects similar to Sturtevant's in which he repainted works by Warhol, Pollock, Duchamp, de Chirico and others.


Fig. 10 '*Fountain' by Marcel Duchamp (R) and 'Fountain (Buddha)' by Sherrie Levine at the Whitechapel gallery in London.*

In none of these works is there any attempt to deceive; indeed, the name of the original artist is often acknowledged within the title of the work. Although radical appropriation peaked in the ’80s, the extensive incorporation of borrowed imagery into artistic practice remains common. In the late 1990s, Glenn Brown took liberally from the works of other artists of diverse styles and historical periods, such as John Martin, Frank Auerbach and Salvador Dali, to create a body of work that has no unified stylistic marker: no visible feature of Brown’s works labels them as the product of a single artist’s activity. In 2000, Mike Bidlo exhibited not Duchamp’s *Bottle Rack, 1914*, in which he presented a number of ready-made *bottle racks* as his own work, just as Duchamp had, in the early 20th century, presented bottle racks and other ready-made objects as his artwork. In his 2000 Rothko's No. 7 *(Black on Dark Maroon)/Blanket*, Stuart Netsky reworked one of Mark Rothko’s large paintings from the Rothko Chapel in Houston as a textile. Finally, to bring the movement full circle, in 2001 Michael Mandiberg created a web site, *AfterSherrieLevine.com*, which appropriates from Sherrie Levine’s many appropriations of the photographs of Walker Evans. Levine, as described earlier, photographed reproductions of Evans’s works in an exhibition catalogue and presented the resulting photos as her own work. Mandiberg took the same exhibition catalogue and scanned the reproductions of Evans’s works at high resolution to make them available on line. A viewer who prints out these high resolution images in accordance with Mandiberg’s precise instructions (which relate to such matters as paper size and centring of images) can have an authentic Mandiberg, with a certificate of authenticity that can be printed out in Adobe Acrobat format.

## III. Appropriation and Compromised Authorship

The appropriation artists are interesting because their authorship relation to their work appears to be compromised from the star t by the inclusion of large components of other peoples artworks, sometimes almost unmediated. our traditional concept ion of the artist holds artists responsible for every aspect of their creations: as Ernst Gombrich suggested, everyone of [an artworks] features is the result of a decision by the artist '. 8 Even if some accident happened along the way, the artist made a choice to allow the results of that accident to remain within the work. And this seems to be what makes artworks interpretable: when we look at a work, we can ask, have any particular detail, why did the artist present it in just that way? Seeking after the meaning of an artwork is, according to many philosophers, reconstructing what the artist meant by making a work with just these features, or at least what it would be reasonable to infer that the artist meant in making such a work. 9 Appropriation artists, though, seem to eschew any responsibility for the details of their work, and to refuse to have meanings attributed to them. By including other artworks virtually unaltered within their own work, they substitute the voices of others for their own. When we look at a Walker Evans photograph, we know that Evans made many conscious choices that resulted in the works appearance: choices about how to pose the subject, exactly how to frame the image, when and under what conditions to shoot d the printing process to bring out contrasts, suppress details, and so on. When we look at one of Levine's copies of an Evans work (or one of Mandiberg's second generation appropriations), we know that its manifest appearance reflects almost no such decisions on the part of Levine (or Mandiberg): instead, it reflects Evans's decisions. One common sense reaction to this work would be to deny that it is, in any meaningful sense, Levine's work and thus to deny that she is, by virtue of making it, an artist. But it's a bit late for that. The work of the most radical appropriation artists has been accepted as art, and they have been accepted as artists, receiving every form of recognition for which artists and artworks are eligible: Levine has works in the collection of the Metropolitan Museum of art, Glenn Brown has been short listed for the Turner Prize, the appropriation artists have been discussed in Art forum, Art in America, Flash Art and other major art criticism venues, and so on. Moreover, the kind of recognition the artists have received suggests that the art world takes them seriously as the authors of their work. If Brown were not considered responsible for his works, however derivative from Dali and John Martin, what would be the point of considering him for a prestigious award? If Levine were not taken seriously as an author, what would be the point of interviewing her in major? Art magazines? 10 Of course, none of this obliges us to say that these artists' works are masterpieces: one could perfectly well acknowledge that Levine is the author of her works while denying that the works are especially good. But if we wish our theories to be responsive to artistic developments, rather than exceedingly revisionist, we must acknowledge that appropriation art is, indeed, art, and that those who practice it are the authors of their works. But as I have suggested, the work of these artists seems to violate the traditional concept ion of authorship, according to which the artist's choice determines every detail of the work, and the details are thus interpretable in terms of the artist's meanings. The quest ion becomes, what constitutes the authorship relation an artist bears to a work, when on one reading the artist may have created lit t le of its content? We will explore this quest ion about authorship by comparing two very similar cases, where one of the chief points of difference between the two is that in one of them we accept the artist's authorship role while in the other case we don't.

To put it differently, in the one case, we accept that there is an artist who has created an artwork, and it is her own artwork; she is the author of that work. In the other case, we do not accept that we have an artist, an artwork and an authorship relation that connects them. In probing this distinction, we will come to a set of insights about what characterizes authorship of artworks in a contemporary context. As we shall see, despite the tenuous appearance of their authorship status, the appropriation artists are, in fact, authors in the full sense of the word? The reasons for this will shed light on authorship in non-appropriation art as well.

## I V. Appropriation v s. Forgery: A Thought Experiment

I propose a thought experiment that invites us to compare the case of the appropriation artist, who has a genuine (if minimal) authorship relation to her work, and a case of artistic forgery, where that authorship relation is absent. The thought experiment involves a very special kind of forgery, one that to my knowledge has never been carried out in the history of art, and that would have been unthinkable until rather recently. Forgeries have traditionally fallen into two categories: outright copies of existing works, and pastiches, or new works that bring together elements of the style and content of the victim, as I will refer to the artist whose works are forged. But the forger I have in mind creates neither copies nor pastiches. She is a forger of contemporary artworks by artists who are still living and working, even as she is producing her forgeries. Rather than copying works her victim has already made, her project is to predict what her victim will do next, and approximate as closely as possible the victim's next artistic product. So she wants to produce the victim's next work, and to do it before the victim does. How might the forger go about this? Well, she will use whatever techniques seem likely to promote success. She will, of course, study the victim carefully and learn as much as she can about the victims work. She will identify trajectories in the cur rent body of work and will learn, from any available source, what the victim has said about the work. She may recreate existing works by the victim so as to gain insight into the processes, both material and intellectual that gave rise to them. She will, perhaps, immerse herself as deeply as possible into the kind of context in which the victim is immersed, so as to have the same kinds of thoughts and ideas the victim has. Or she might adopt a very different approach, simply entering extensive data about the victim and the victims work into a sophisticated software algorithm and applying whatever prediction it generates. In any case, let us suppose that the forger has at least one spectacular success: she manages to produce an artwork that looks the same as the victims next work, and appears to express the same ideas in the same way. But the forger as work was produced prior to the victims. We will assume, further, that the forger somehow manages to pass her product off as a work by the original artist. Perhaps she has a shady intermediary who trades the work in an art market where procedures for checking provenance are a bit lax. Perhaps it never occurs to anyone in the transact ion that someone would have enough chutzpah to blatantly rip off the work of a living artist in this way. In any case, the work am successfully passed off as that of the victim. And this is not surprising, since the work really is an excellent replica, or more accurately replica, of the victim's work, with very similar visible properties and employing identical materials. The two works are visually more or less indistinguishable, providing the viewer with no reason to choose one as the work of the original artist and regard the other as inauthentic. [11]The question we now must ask, given the similarity of the forger's and the artist's products, is, What is the relevant difference between them, the difference that makes for the artist's being an author of her work and the forger's failing to be an author? On one-way of looking at things, the forger and the original artist have done almost exactly the same thing: they have produced the same work at roughly the same time and under similar historical and cultural conditions. I n this way, the case differs markedly from classic cases described in the philosophical literature on forgery.

In these classic cases, the forger is usually working from a posit ion of technical advantage, often due to the elapsing of decades or centuries between the original artist's production and the forger's copies or pastiches. The artist's achievement is thus typically taken to be greater than the forger's, since the forger has taken advantage of artistic developments that weren't available during the period when the original artist was working. [12] For example, Han van Meegeren, who was for some time a highly successful forger of Vermeer, was the beneficiary of centuries of study of Vermeer's paint application, use of light, and so forth. [13] Thus the forger's work may look good in comparison to works of the period forged, but only because the forger has cheated. But in the special case of forgery we are now considering, the situation is quite different. The forger doesn't have any extra tools under her belt; she has access only to the same artistic developments that the victim has access to. Indeed, if there is a difference in what the forger and the artist have done, it seems the forger's project may have been, in an important sense, harder. After all, and this is relevant to forgeries regardless of time period, if you're going to produce, say, a Vermeer work, surely it helps to be Vermeer, to have a history of producing that kind of work and to have Vermeer's mind: to have the thought processes, particular talents, and intentions and so forth that tend to lead to the production of Vermeers. In trying to produce works that will pass as works of the victim, the forger is clearly disadvantaged by not being the victim (that is, by not sharing the qualities of the victim that lead rather naturally to the product ion of the right kind of work). If the forger has no compensating bag of tricks derived from historical advantage, her task is obviously quite challenging, and success represents real achievement. The upshot, for our purposes, is that to say the artist has achieved more than the contemporary forger, or done something more difficult in the creation of this particular work, seems implausible. A difference in level of achievement will not serve to distinguish the artist from the forger.

## V. *Authorship and Innovation*

An interesting fact about the kind of forgery I have described is that the forger's project is much more likely to succeed with some types of artists than with others. Probing the reasons for this may lead us to some helpful insights. Prediction, which is our forger's game, is greatly enhanced by reducing the number of variables (such as size, medium and configuration of colors) to be accounted for, and some artists work with many fewer variables than others, as well as restricting the values of the variables. The appropriation artists are an example of this: If one is able to determine which artwork Levine will photograph next, one can make a highly plausible Levine work. The minimalist / conceptualist artist on Kawara, who made a painting of the current date (e.g., Sept. 16, 1987) in a uniform format each day over a period of many years, would be another prime victim for the contemporary forger. Such artists work in related series, and elements of the work are repeated throughout the series. [14] This is what makes it plausible that the forger could predict what they will do: predictability requires regularity, operation according to rules, restrict ion of future possibilities—and greater predictability thus involves the exclusion of more and more possibilities for innovation. So the potential forge ability of these artists' work is another way of describing an absence of innovation, at least within a particular series. The assumption that continual innovation is necessary for genuine artistic product ion has led one philosopher to accuse artists who produce multiple works in the same vein of 'self-plagiarism'. [15] And certainly, the seeming lack of innovation in the works of the appropriation artists is one thing that makes their authorship relation to their work appears to be compromised. Prior to the advent of appropriation art, we might well have been tempted to suggest that innovation makes for the critical difference between artist and forger. Kant was an early proponent of the view that innovation is essential to art: in section 46 of the Critique of Judgment he suggested that the genius of an artist consists in nature's acting through the artist to create works governed by a new rule, or an organizational principle that has never been seen in earlier artworks. Perhaps this organizational principle, or rule, is what we would call the artist's style. Applying this idea to the present discussion, we might say that the artist creates a new rule, or style, whereas the forger's activity simply reapplies an old one: this is one of the obvious answers to the question, ' what makes the artist, and not the forger, an author of her work? ' Alfred Lessing's account of forgery runs along these Lines. [16] Gombrich advances a related idea: the history of art … may be described as the forging of master keys for opening the mysterious locks of our senses to which only nature herself originally held the key…. Of course, once the door springs open, once the key is shaped, it is easy to repeat the performance. The next person needs no special insight—no more, that is, than is needed to copy his predecessor's master key. [17] But the acceptance of appropriation art and other forgery- vulnerable art forms by the art world suggests that innovation, at least at the level of the individual artwork, cannot be what makes the difference between the artist and the forger with respect to authorship of their work. Perhaps when Sturtevant produced her first radical appropriation work, a substantial innovative leap was made. But Levine is (at best) the second appropriation artist, not the first; and by the time she has appropriated ten or twelve Walker Evans photographs, there seems to be no war rant for saying that further Evans appropriations are innovative. Unless we want to build in some kind of halo effect or afterglow from the first work produced which would war rant calling the whole series innovative, it seems we must deny that innovation is necessary for artistic authorship (though innovation might still contribute to the value of artworks, as John Hoaglund suggests). [18]

## VI. *Artistic Motives*

We are in need of another proposal to explain why the artist is an author of her work while the forger fails to be an author. One might be tempted to suggest that the forger's deceptiveness is what makes it the case that she cannot be considered an author. But in fact, the line between deceptive and non-deceptive activity does not t rack the distinct ion between authors and non-authors. Deceptiveness is not what prevents the forger from being an author. Art students who produce meticulous copies of great artworks fail to be authors for the same sort of reason as the forger does, though they do not at tempt to deceive anyone into thinking his or her products are original artworks. And artists who deceptively present their works as having been produced by someone with a different identity—someone older or younger, living in a different country, of a different gender, and so forth—need not for that reason cease to be the authors of their works. If Schmidt decided to misrepresent his works as the product of someone of a particular nationality or ethnic group, thinking perhaps that works by such artists are fashionable at the moment and thus more likely to receive art critical attention, thiswould not nullify Schmidt's authorship relation to his work. Indeed, the fact that he remains the author is a large par t of what makes the deception objectionable. [19] Here is another candidate: perhaps the relevant difference between the forger and the artist consist in their respective motivations: the forger's artistic considerations are all instrumental, while the artist's are not. The forger, we might say, cares about the wrong things, or fails to care about the right things. She is obsessed with a particular project, producing a this drives successful 'preplica', and all her thinking. She cares about what's happening in the rest of the art world, and about the usual Considerations we attribute to artists, like the desire to make a statement or produce a work that has visual or conceptual strength, only insofar as this will help her to predict what the artist will do and to promote her forgery without detect ion. The artist, on the other hand, has true artistic motivations: she genuinely cares about the art world and wants to make some kind of contribution within it. [20] The problem is that this proposal ignores the realities of artists' decision-making processes. Artists act out of all sorts of motives, some artistic, some not. Sherrie Levine stopped using the photographs of Walker Evans, and star ted copying photos not protected by copyright within the U.S., after Evans's estate put forward a legal challenge. This circumstance played a strong role in her decision to base some of her works on the photographs of Rodchenko, since Soviet material was not then protected by copyright within the U.S. [21] Andy Warhol is said to have polled his art world associates early in his career to see whether they thought his expressionistic renderings of soup cans would sell better than the colder, slicker versions which emphasized the cans' mass-produced quality. The slicker versions won out, and both Warhol's artistic success and his fame were constructed around them. Warhol was, by his own report, obsessed with achieving fame. But even if every artistic decision he ever made were driven by this goal, he would still count as an artist. Other artists may be obsessed by jealousy or admiration; and their obsessions may lead them to focus on some other artist with the same intensity our forger displays in focusing on the victim. But this fact alone does not rule them out of account as artists. We might want to think that some form of authenticity, purity of motive or freedom from instrumental concerns is an ideal for artists; but it would be implausible to claim that lack of authenticity prevents one from being an artist at all. Authenticity of this sort cannot make for the difference between the forgers and the artist in the present discussion.

## VII. *Artistic Objectives and Responsibility*

We have considered and rejected a number of candidates for the relevant difference between artist and forger that accounts for the artist's being considered an author while the forger is not. The artist's level of achievement need not be greater than the forger's, and thus cannot be the source of the artist's authorship. Someone may be the author of an artwork despite failing to produce an innovative product. Artists may be deceptive without failing to be authors, while copyists, whose activity and products are very similar to those of the forger, may fail to be authors despite their honesty; thus deceptiveness is not the dividing line between authors and non-authors. Finally, artists and forgers alike may be driven by non-artistic motives. However, the last of these proposals requires further consideration. We entertained and rejected the possibility that the forger fails to count as an author of an artwork because she takes artistic considerations into account only instrumentally, all her activity being driven by a non-artistic motive. Artists may do just the same thing: they may tailor all their artistic activity toward the pursuit of non-artistic goals likes' fame or revenge against a rival. Thus the nature or content of their ultimate motives and objectives cannot distinguish the artist from the forger. But perhaps the difference between artist and forger boils down to something simpler. Rather than supposing that the artist has an artistic motive with particular content that accounts for her being an author, we might think the artist need only have a minimal intent ion that is constitutive of her authorship: namely, the intent ion to produce artworks. [22] that is, the artist is author of her products by virtue of the intent ion that they are artworks, whereas the forger fails to be an artist, and thus to be the author of her works, because she possesses no such intention. [23] This proposal will need to be elaborated further if it is to have any explanatory power. After all, there is lit t le in the not ion of a mere intention to produce artworks that allows us to account for the authorship relation. Simply to say that artists are the authors of their work because they have an intent ion to produce artworks, without further detail, would be to propound an empty view, one that does no philosophical work in helping us to understand the nature of authorship. Thus we must ask, what is it in the formulation of such an intent ion that could transform the situation, so that the artist goes from simply being the maker of a product to being its author? to find the answer, we may begin by considering the situation of the forger, who is not author of her products. The forger, to count as a forger, cannot but pursue the non-artistic objective of producing an object that will pass as the work of the victim: this objective is constitutive of the role of forger. To the extent that she fails to pursue this objective, she is not a forger. [24] She may be a copyist; she may even be an artist. The point is that the objective is built in to the very concept of forgery, and it determines the direct ion of the forger's activity. Moreover, this objective has clear and extensive implications about what the forger should do and, especially, about the nature of the product she should endeavor to create. [25] For the artist, on the other hand, this is far from the case. There is no objective, particular method, set of activities or set of goals (aside from the minimal goal of producing an artwork) that an artist must pursue in order to count as doing art. Art does not carry with it a built - in objective such that violating it rules one out of account as neither an artist; nor does the artist's minimal intention to produce artworks has determinate implications for the nature of the product. The artist, as I suggested earlier, need be neither pure of heart nor pure of motive, because there is no such thing as a pure artistic motive. This helps to explain why efforts to define art—in terms of beauty, representational fidelity, innovation and so forth—have collapsed in the face of contemporary developments. Every potential boundary of the realm of art, when probed, collapses or bulges to

absorb works of art or artistic practices that lie outside or violate that boundary. The crucial result is that the artist's objectives, originating nowhere else, must originate with her. This isn't to say that these objectives aren't highly subject to influence. Certainly they are, which explains the prevalence of styles and schools, the tendency of artists working within the same milieu to produce related work. But influence, while useful in providing suggestions, can never set t le the issue of what the artist should do: she must always decide whether to accept or reject its dictates. The artist, qua artist, has to choose her own objectives; the activity does not choose them for her. The necessity for setting her own objectives provides the artist with a degree of responsibility for her product, which the forger lacks, a degree of responsibility worthy of genuine authorship. The artist's authorship relation to her work, then, does not consist in either her mode of product ion or the type of product. The artist's authorship is defined by the fact that she bears ultimate responsibility for every aspect of the objectives she pursues through her work, and thus every aspect of the work itself, whether it is innovative in any relevant sense or not. This view is under lined in an interesting way by Elaine Sturtevant's claim that she intentionally included errors in many of her copies of other artists' works. By including these errors, she reasserts the fact that she bears the final control: her ceding of authority to others is only temporary and contingent— or rather, in the final analysis, only apparent. And of course, her responsibility for every aspect of her works would have been present whether she had included these errors or not.

## VIII. *Appropriation Art and the Reaffirmation of Authorship*

This view sheds light on the role of innovation, which has tended to take such precedence in much of recent art history. One way for artists to assert their ultimate responsibility for their product ion, and therefore their authorship status clearly is to innovate, to produce distance from what has gone before. This distance from one's predecessors shows one's refusal to be bound by any existing strictures. Innovation is perhaps the clearest way of demonstrating responsibility for a product. This may be one reason why innovation began to look like an objective that was built in to the very idea of art: to be an artist, one had to at tempt to make something new. On one reading of Sherrie Levine's work, and it's a reading she sometimes encouraged, she aimed to throw off the mantle of innovation, and with it the very mantle of authorship, through her radical appropriation of images created by other artists. 26 She aimed to call into question both their authorship and her own. But given the preceding discussion, we can see that her project, as a project that she chose and intentionally pursued, could never relieve her of her responsibility as author of her work. Nor does its appropriative element prevent us from interpreting her work in terms of its author's intentions and meanings. Why did Levine choose only the works of? Male artists to appropriate? Why did she do such an extensive series of the erotic self-portraiture of Egon Schiele, t it ling one of the pieces Self-Portrait(After Egon Schiele) so as to propose an identification of herself with the flagrantly aroused male subject? It is the fact that Levine is author of her works that makes them interpretable, in the sense appropriate to artworks, while the products of the contemporary forger are not. 27 Artists' ultimate responsibility for every aspect of their objectives is precisely what makes interpretation of their works possible. It is point less to ask, of the contemporary forger's work, what she meant in giving it this or that set of features, for the answer simply grows out of the built - in objectives of her activity of forgery: insofar as she is a forger, she had to give it this or that set of features, since those are the features she judged most likely to be manifested in the victim's next work. Insofar as she is a forger of the type I have described, she is constrained to pursue a certain kind of project. At tempts to interpret the forger's product, then, will lead us continually back to the same dead end: it has the features it has because of the objective that is constitutive of the forger's role. When we go to interpret the artist's products, on the other hand, our inquiry will never stop short at the mention of some objective the artist was constrained to pursue simply by virtue of being an artist. An artwork has the features it has not because of the nature of art, but because of the nature of what a particular artist was up to in producing it. The artist's authorship relation to a work consists in the appropriateness of referring back to the artist's purposes (and not simply to the purposes embedded in art - in-general) as we interpret every aspect of it. I should point out that this view of the relationship between authorship and interpretability does not force us to hold that the artist's actual intentions fix the correct interpretation of the artwork; it is compatible with a hypothetical intentionalist approach. In assigning meaning to features of the work, we might well wish to make reference to a reconstruct ion of the artists purposes and objectives based on the evidence found within the work and, perhaps, in other relevant sources, rather than to the artists actual purposes and objectives. By releasing an artwork to an audience, the artist activates the convent ions and relevant background knowledge that this audience rightly brings to bear in understanding it, just as uttering a sentence in English makes the application of certain convent ions and knowledge appropriate. Holding the artist responsible for a work means, in part, holding the artist responsible for having released it into a context where particular interpretative convent ions and knowledge are operative.

Seeing the artist as author war rants us, then, in making certain assumptions, for instance that the artist uses the relevant language (verbal or iconographic) competently possesses certain background information and so forth. The idealized reconstruction of the artist's intentions that will eventuate from these assumptions, along with other relevant information about the artist and the work, may be thought to ground adequate interpretation even if it does not correspond to the artist's actual intentions. Thus interpretation, on the view put forward here, might well proceed on the model of hypothetical rather than actual intentionalism. The appropriation artists may have succeeded in showing that even innovation is not built in to the very idea of art: Mike Bidlo can simply recreate the works of others, even after Elaine Sturtevant has done so, expunging the slightest modicum of originality from his activity. But in so doing, he does not remove himself as author of his work. Instead, he and other appropriation artists reveal a telling element of the artist's situation: Namely, that there are no built - in objectives an artist must pursue. The artists choices go all the way down—for any project the artist sets for him or herself, no matter how dry or rote, it is appropriate for us to seek or construct an explanation that will eventuate in the assignment of meaning to the work; and such an explanation will never come to a halt at the invocation of the artists role. I have suggested that there is a crucial difference between the artists and the forger, and that this difference is what makes the artists works interpretable while the forgers products are not. An object ion that might be raised against this view concerns the possibility of an artist who produces forgeries as his artwork. And, indeed, my view implies that this is a possibility: since art has no built - in objective, there is nothing to bar an artists pursuing forgery as an artistic project. We have been seeking the difference between forgers qua forgers, who are not the authors of their products, and artists qua artists, who are. But it is perfectly conceivable that there might be a case of a forger qua artist who has decided, for example, to under take a guerrilla project of systematically spiking museums with forgeries so as to prompt a reassessment of accepted art historical theses. Does this show that there is no real difference between the artist and the forger?  Not at all, this artist is a forger insofar as he has adopted the objective of making products that can be passed off as original historical works; but his works are fully interpretable, since it is right to seek from him, qua artist, the reasons for adopting the forger's objective. These reasons must be specific to him: they will never simply reduce to the claim, ' I am an artist, and this is the sort of thing that artists do. Of course, if he is a very good (and discreet) artist, we might never learn the true nature of his project. Perhaps such an artist is working away, painting on old canvases and manipulating provenance documentation, even as we entertain these very possibilities. If so, his activity and products look just like those of a mere forger. The difference between artist and forger does not lie in the nature of their outward activities or their products, or in issues of deception or authenticity; it lies in the appropriateness of seeking explanations that go beyond the nature of the artist's role and delve into what this particular artist is trying to do. Such explanations are what allow us to interpret the artist's works, to find meaning in what he has done. While they have often been seen as challenging or undermining notions of artistic authorship, the appropriation artists in fact accomplished something quite different, wittingly or not. By refusing the demands of originality and innovation that had come to seem criteria for art by the mid twentieth century, these artists demonstrated that even originality and innovation are expendable: there is nothing in the nature of art or of the artists role that obligates the artist to produce innovative works. The demand for originality is an extrinsic pressure directed at the artist by society, rather than a constraint that is internal to the very concept of art. As a result, it is up to the artist to decide whether to acquiesce in this demand or not. By revealing this, far from

throwing off the mantle of authorship, these artists have actually reaffirmed the artist's ultimate authorial status." 28 **(K)**

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1 Barthes, the Death of the Author ', trans. Stephen Heath, in Image, Music, Text (New York: Hill and Wang, 1977), p. 148.
2 Foucault, what I s an Author, trans. Josué V. Harar I, in Paul Rainbow (ed.), The Foucault Reader (New York: Pantheon Books, 1984), pp. 101-120.
3 Foucault, what Is an Author, p. 120. The passage alludes to a line from Samuel Beckett's Texts for Nothing.
4 Elaine Sturtevant as quoted by Dan Cameron in 'A Conversation', Flash Art, No. 143 (1988), p. 76.
5 Of course, Marcel Duchamp and Andy Warhol before her had engaged in Projects involving appropriation from non-art areas of culture. But Sturtevant was the first to appropriate wholesale from other artworks. See Further discussion below.
6 See Bill Arning's interview with Elaine Sturtevant, Sturtevant ', Journal of Contemporary Art, vol. 2 (1989), p. 43.
7 Arning, Sturtevant ', p. 46.
8 Gombrich, introduction: On Art and Artists', in The Story of Art, 16th edn (London: Phaidon Press Limited, 1995), p. 32.
9 Actual intentionalists hold that the meaning of a work is determined by the Artist's intention. See, for example, E. D. Hirsch, Jr., Validity in Interpretation (New Haven, CT: Yale U. P., 1967) and The Aims of Interpretation (Chicago: University of Chicago Press, 1976). Hypothetical Intentionalists hold that the meaning of the work is determined by the Intentions a competent interpreter would attribute to the artist, based on the Available information. See especially Alexander Nehamas, 'The Postulated Author: Critical Monism as a Regulative Ideal', Critical Inquiry, vol. 8 (1981), pp. 133-149 and 'Writer, Text, Work, Author ', in Anthony J. Cascardi (ed. ), Literature and the Quest ion of Philosophy (Baltimore, MD: Johns Hopkins U. P., 1989), pp. 267-291, as well as Jerrold Levinson, 'Intention and Interpretation in Literature, in The Pleasures of Aesthetics: Philosophical Essays ( I thaca, NY: Cornell U. P. , 1996) , pp. 175-213.
10 See, for instance, Jeanne Siegel, 'After Sherrie Levine, Arts Magazine, vol. 59 (1985), pp. 141-144; Paul Taylor, 'Sherrie Levine Plays with Paul Taylor ', Flash Art, no. 135 (1987), pp. 55-59; Constance Lewallen, 'Sherrie Levine', Journal of Contemporary Art, vol. 6 (1993), pp. 59-83; and Martha Buskirk, 'Sherrie Levine', October, no. 70 (1994), pp. 98-103.
11 As Nelson Goodman has argued, the visual in distinguishability of two Works need not be thought to imply that there are no significant aesthetic Differences between them. See Languages of Art, 2nd edn ( I ndianapolis, IN: Hackett, 1976).
12 Denis Dutton argues that forgeries harm precisely by misrepresenting the Forger's level of achievement, and thereby prompting inflated estimations of Their worth. See 'Artistic Crimes: The Problem of Forgery in the Arts, British Journal of Aesthetics, vol. 19 (1979), pp. 302-324. Reprinted in slightly Modified form as 'Artistic Crimes' in Denis Dutton (ed.), The Forger's Art: Forgery and the Philosophy of Art (Berkeley: University of California Press, 1983), pp. 172-187.
13 The van Meegeren case is probably the most discussed in philosophical Accounts of forgery. Van Meegeren created works that were considered by Some art historians to be among Vermeer's greatest masterpieces. For a Detailed account, see Hope B. Werness, "Han van Meegeren fecit, " in Dutton (ed. ), The Forger's Art, pp. 1-57.
14 I should acknowledge that Kawara's Date Paintings are a somewhat Controversial example, since it is possible to see them either as a series of Individual works or as a single work with many components, completed over A long period of time. Under the construal of Date Paintings as a single Artwork, a person who made one such painting before Kawara did would not Have succeeded at forging one of Kawara's works, but only a small fragment Of it. To delve into the art historical evidence about which construal is more Plausible is beyond the scope of this paper.
15 David Goldblatt, 'Self-plagiarism', Journal of Aesthetics and Art Criticism, Vol. 43 (1984), pp. 71-77.
16 Alfred Lessing, ' what is Wrong with a Forgery? ', Journal of Aesthetics and Art Criticism, vol. 23 (1965), pp. 461-471.
17 E. H. Gombrich, Art and Illusion: A Study in the Psychology of Pictorial Representation (New York: Pantheon Books, 1960), pp. 359-360.

18 John Hoaglund holds that certain kinds of originality contribute to aesthetic Value. See originality and Aesthetic Value, British Journal of Aesthetics, vol. 16 (1976), pp. 46-55. Bruce Vermazen denies this claim in the Aesthetic Value of Originality, Midwest Studies in Philosophy, vol. XVI (1991), pp. 266-279.

19 Of course, artists might have valid reasons for disguising their identities: Female writers have adopted male pen names to prevent their work from Being stigmatized within sexist societies. In such a case, we might hold that The deception is not morally objectionable. (For similar reasons, the Deception involved in forgery need not always be morally objectionable, as When the forger is pressed into service in, say, the apprehension of an art - Loving serial killer. ) However, as long as the deception remains in place it May serve as a barrier to our full understanding of the work, and thus May Be objectionable from an interpretative standpoint.

20 A reader who is dissatisfied with this account of appropriate artistic Motives may feel free to substitute a different account. Any proposal for Distinguishing authors from non-authors on the basis of their motives will be Susceptible to the concern raised here.

21 Gerald Marzorati, 'Art in the (Re) making, ART news, vol. 85 (1986), p. 97.

22 In Jerrold Levinson's terms, this would be a categorical intention, which Govern[s] not what a work is to mean but how it is to be fundamentally Conceived or approached. The most general of categorial intentions of Concern here would be the intent ion that something be regarded as literature (Or as art) at all, which obviously enjoins certain modes of approach as Opposed to others. ' See Levinson, intention and Interpretation in Literature, p. 188.

23 Below, I discuss the possible case of a forger who does, in fact, intend his Products to be artworks.

24 Failure to satisfy the objective, however, will not rule her out as a forger; Bad forgers are still forgers.

25 This is not to say that the forger's objective determines every aspect of her Product. Traditional forgers, who create pastiches, rather than copies, have Considerable leeway in the particular features with which they will imbue Their forgeries. Nonetheless, there are parameters within which such forgers must operate, and these parameters place severe restrictions on what they May do. With respect to the forgery of paintings, for example, the relevant Parameters will restrict the type of materials, the scale, the color palette, The subject matter and its treatment, the thickness of paint application and So on. Of course, an artist might accept similar restrict ions in order to Produce work for a particular patron. The crucial difference is that by violating the restrictions, the artist would not cease to be an artist (though the patron's support might be lost); the forger, though, would cease to be a forger upon willfully abandoning the parameters that make it possible for the objective of successful forgery to be satisfied.

26 In a statement to accompany a 1982 exhibit ion at the Vancouver Art Gallery, Levine said, ' we know that a picture is but a space in which a variety of images, none of them original blend and clash…. We can only imitate a gesture that is always anterior, never original. ' the statement closes with an allusion to Barthes not ion of the death of the author: the birth of the viewer must be at the cost of the painter. ' See statement ', reprinted in Charles Harrison and Paul Wood (eds), Art in Theory 1900-1990: An Anthology of changing I deas (Oxford: Blackwell, 1992), p. 1067. Some critics adopted a similar stance in relation to her work; for instance, Stuart Morgan suggests That the self of the artist is eliminated in appropriation works, and that the works themselves are presented as unauthored objects. See Morgan, 'Ceci Est un Warhol; Ceci n'est pas un Warhol', Beaux Arts Magazine, no. 92 (1991), p. 61. Levine eventually expressed regret that she had collaborated In such readings of her work. See Marzorati, 'Art in the (Re) making, p. 92.

27 of course, it will be possible to offer minimal interpretations of the representational content of the forger's products, just as we interpret road Signs. But this is not interpretation in the sense that interests us here. See Arthur Danto's related distinction in interpretation and Identification, The Transfiguration of the Commonplace (Cambridge, MA: Harvard U. P., 1981), Pp. 115-135, especially p.135, and in works of Art and Mere representations, also in The Transfiguration of the Commonplace, pp. 136-164.

28 I would like to thank Martin Montminy for extended discussions of the topic and Peter Lamarque for helpful comments on the manuscript. I have also Profited from discussions with audiences at the Rochester Institute of Technology, the University College of Cape Breton, the Université du Québec à Montréal and a joint session of the Canadian Society for Aesthetics and the Universities Art Association of Canada.

## *Appropriation art and copyrights*

“Despite the long and important history of appropriation, this artistic practice has recently resulted in contentious copyright issues which reflects more restrictive copyright legislation. The U.S. has been particularly litigious in this respect. A number of case-law examples have emerged that investigate the division between transformative works and derivative works. Many countries are following the U.S lead toward more restrictive copyright, which risks making this art practice difficult if not illegal.


Fig. 11 *Campbell's Soup (1968). Andy Warhol.*

Andy Warhol faced a series of lawsuits from photographers whose work he appropriated and silk-screened. Patricia Caulfield, one such photographer, had taken a picture of flowers for a photography demonstration for a photography magazine. Warhol had covered the walls of Leo Castelli's New York gallery in 1964 with the silk-screened reproductions of Caulfield's photograph. After seeing a poster of their work in a bookstore, Caulfield claimed ownership of the image and while Warhol was the author of the successful silk screens, he settled out of court, giving Caulfield a royalty for future use of the image as well as two of the paintings. On the other hand, Warhol's famous Campbell's Soup Cans are generally held to be non-infringing, despite being clearly appropriated, because the public was unlikely

to see the painting as sponsored by the soup company or representing a competing product. Paintings and soup cans are not in themselves competing products", according to expert trademark lawyer Jerome Gilson. [10] Jeff Koons has also confronted issues of copyright due to his appropriation work (see *Rogers v. Koons*). Photographer Art Rogers brought suit against Koons for copyright infringement in 1989. Koons' work, *String of Puppies*

Art Rogers vs. Jeff Koons

Fig.12 Left: Art Rogers, Puppies, and 1985 © Art Rogers. Right: Jeff Koons, String of Puppies, 1988

sculpturally reproduced Rogers' black and white photograph that had appeared on an airport greeting card that Koons had bought. Though he claimed fair use and parody in his defense, Koons lost the case, partially due to the tremendous success he had as an artist and the manner in which he was portrayed in the media. The parody argument also failed, as the appeals court drew a distinction between creating a parody of modern society in general and a parody directed at a specific work, finding parody of a specific work, especially of a very obscure one, too weak to justify the fair use of the original. In October 2006, Koons won one for fair use. For a seven-painting commission for the Deutsche Guggenheim Berlin, Koons drew on part of a photograph taken by Andrea Blanch titled *Silk Sandals by Gucci* and published in the August 2000 issue of *Allure* magazine to illustrate an article on metallic makeup. Koons took the image of the legs and diamond sandals from that photo (omitting other background details) and used it in his painting *Niagara*, which also includes three other pairs of women's legs dangling surreally over a landscape of pies and cakes. In his court filing, Koons' lawyer, John Koegel, said that *Niagara* is “an entirely new artistic work... that comments on and celebrates society's appetites and indulgences, as reflected in and encouraged by a ubiquitous barrage of advertising and promotional images of food, entertainment, fashion and beauty.”

*Fig. 13 Niagara, 2000. Oil on canvas, 9 feet 10 inches × 14 feet 2 inches (299.7 × 431.8 cm). Solomon R. Guggenheim Museum, New York, Commissioned by Deutsche Bank AG in consultation with the Solomon R. Guggenheim Foundation for the Deutsche Guggenheim, Berlin 2006.54 © Jeff Koons*

In his decision, Judge Louis .L. Stanton of U.S. District Court found that *Niagara* was indeed a transformative use of Blanch's photograph. “The painting's use does not 'supersede' or duplicate the objective of the original", the judge wrote, "but uses it as raw material in a novel way to create new information, new aesthetics and new insights. Such use, whether successful or not artistically, is transformative”. The detail of Blanch's photograph used by Koons is only marginally copyrightable. Blanch has no rights to the Gucci sandals, "perhaps the most striking element of the photograph", the judge wrote. And without the sandals, only a representation of a women's legs remains—and this was seen as "not sufficiently original to deserve much copyright protection”. In 2000, Damien Hirst's sculpture *Hymn* (which Charles Saatchi had bought for a reported £1m) was exhibited in *Ant Noises* in the Saatchi Gallery. Hirst was sued for breach of copyright over this sculpture despite the fact that he transformed the subject. The subject was a Young Scientist Anatomy Set belonging to his son Connor, 10,000 of which are sold a year by Hull (Emms) Toy Manufacturer. Hirst created a 20 foot, six ton enlargement of the Science Set figure, radically changing the perception of the object. Hirst paid an undisclosed sum to two charities, Children Nationwide and the Toy Trust in an out-of-court settlement. The charitable donation was less than Emms had hoped for. Hirst sold three more copies of his sculpture for similar amounts to the first. Appropriating a familiar object to make an artwork can prevent the artist claiming copyright ownership. Jeff Koons threatened to sue a gallery under copyright, claiming that the gallery infringed his proprietary rights by selling bookends in the shape of balloon dogs. [11] Koons abandoned that claim after the gallery filed a complaint for declaratory relief stating, "As virtually any clown can attest, no one owns the idea of making a balloon dog, and the shape created by twisting a balloon into a dog-like form is part of the public domain”. [12] In 2008, photojournalist Patrick Cariou sued artist Richard Prince, Gagosian Gallery and Rizzoli books for copyright infringement. Prince had appropriated 40 of Cariou's photos of Rastafarians from a book, creating a series of paintings known as “Canal Zone”. Prince variously altered the photos, painting objects, oversized hands, naked women and male torsos over the photographs, subsequently selling over $10 million

Fig: 14 Richard Prince Tales of Brave Ulysses, 2008. Inkjet, acrylic and collage on canvas 84 x 132 inches (213.4 x 335.3 cm)

worth of the works. In March 2011, a judge ruled in favor of Cariou, but Prince and Gargosian appealed on a number of points. Three judges for the U.S. Court of Appeals upheld the right to an appeal. [13] Prince's attorney argued that "Appropriation art is a well-recognized modern and postmodern art form that has challenged the way people think about art, challenged the way people think about objects, images, sounds, culture"[14] on April 24, 2013, the appeals court largely overturned the original decision, deciding that the paintings had sufficiently transformed the original images and were therefore a permitted use. [15] **(L)**

## *Clowns of America Speechless at Koons Balloon Suit*

by Kyle Chayka on January 7, 2011

Fig. 15 Clown of America with Koons ballon dog

"The art world presents an overwhelming threat to clowns everywhere as Jeff Koons sues San Francisco store Park Life and Toronto creators imm Living for producing and selling balloon dog bookends that look only slightly similar to the famous artist's balloon dog sculptures in that they both look like puffy dogs. A cease and desist letter from Koons commanded that the bookends no longer be sold and the objects are now removed from Park Life's shelves. If Koons should succeed in his suit to have utter dominion over all the balloon dogs he surveys, we all know who would be hurt the most: clowns, America's greatest balloon dog producers.

Clowns of America International, our country's august organization of "ambassadors of joy," was unable to be reached for comment this morning, but we're sure that COAI's board members must be shaking in their oversized red shoes at the prospect of Koons' legal actions. What would clowns be without balloon animals!? Clearly just a shell of their former joyful selves. Will the maniacal Koons target mustaches and lobsters next!?

Fig.16  At left, Koons' balloon dog, at right, imm Living's bookend (images from baycitizen.org)

We didn’t really have a chance to find out what Koons is plotting since contacting Gagosian gallery (who represent the artist) for comment is like dropping message-filled bottles into a big black hole of “not at their desk.” I can only imagine that the gallery would have few comments to offer, save that they’ll keep selling Koons anyway and don’t really care that targeting the little guy making bookends clearly aesthetically different from Koons’ non-bookends is not only stupid, it’s illogical. Koons no more owns the copyright on balloon dogs than Botero owns the rights to fat people  Shepard Fairey has also been at the center of more than a few appropriation battles, chief among them the accusation by Mannie Garcia that Fairey’s Obama portrait failed to appropriately credit (or license) Garcia’s AP photograph that forms the basis for Fairey’s portrait. Damien Hirst, an even famous-er artist, once threatened to sue a teenager who used images of Hirst’s diamond skull in art work that he had sold. The young artist actually had to surrender the works he made and pay Hirst a fine. In a reverse, Hirst has been accused of copying the idea for his diamond skull from John LeKay, who claims to have been making such works in the early nineties. Quite a mess


Fig.17 Mannie Garcia's AP photo at left, at right Shepard Fairey's portrait (image from huffingtonpost.com)

What these stories should teach us is that all art is appropriation art. Every artist is working in dialogue with the visual culture of their times, and we shouldn't declaim artists for freely grabbing from the world's visual detritus. That's what artists do. It's terrible that better-known or sexier artists can steal ideas from those without voice, and it's illegal for commercial organizations to steal artists' work for their own profit-directed ends, but there are uses of appropriation that are totally respectful and artistically interesting. What we have to do is to be aware of how appropriation works and judge the fair cases from the unfair. In this case, Jeff Koons is totally in the wrong, and forgetting his roots as an artist. It's not like Spalding is suing him for appropriating their basketballs. Or was that just sponsorship? At present, Park Life has pulled the bookends from their shelves but seems to plan to get them back in stock ASAP. Koons has demanded that imm Living dispose of all their stock of bookends and ship them to the artist. Fuck that. Koons doesn't own the copyright to balloon dogs, and the balloon dog bookends are different enough from Koons' piece that fair use doesn't even apply. It's a different object and Koons has no right to be such an asshole about it." **(M)**

[10] as quoted in Grant,Daniel, *The Business of Being an Artist* (New York: Allworth Press, 1996), p. 142

[11] Whiting, Sam (February 4, 2011). "Jeff Koons' balloon-dog claim ends with a whimper". The San Francisco Chronicle.

[12] http://www.artinfo.com/news/story/36786/6-hilarious-zingers-from-the-balloon-dog-freedom-suit-filed-against-jeff-koons/

[13] Corbett, Rachel; "A Win for Richard Prince in Copyright Case", *Artnet Magazine*, 2011

[14] Pollack, Barbara, "Copy Rights", ARTnews LLC, March 22, 2012.

[15] RANDY KENNEDY (April 25, 2013). "Court Rules in Artist's Favor". The New York Times. Retrieved 2013-04-26.

Aesthetics is for the artist as Ornithology is for the birds. -Barnett Newman (1952)

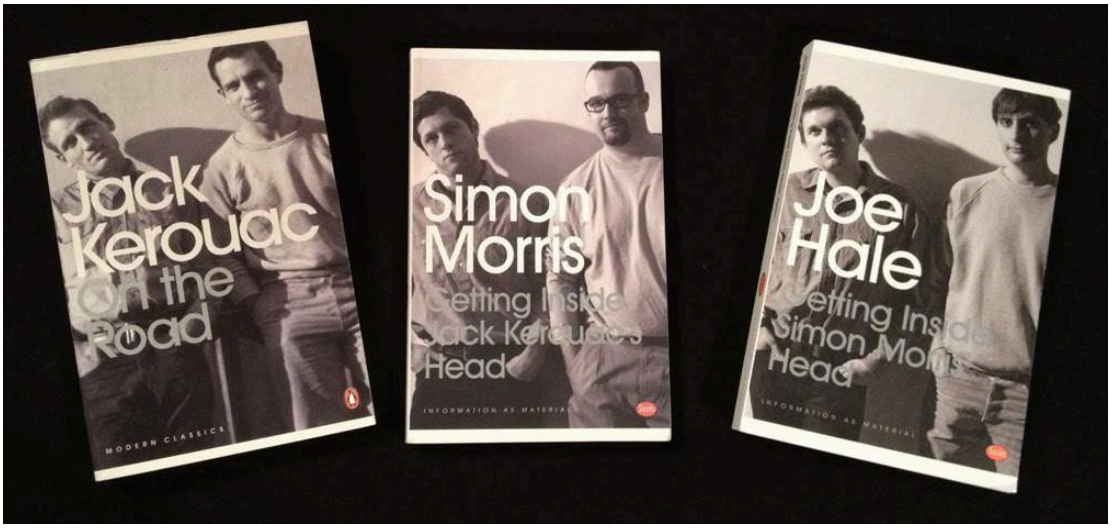
**Wednesday, September 24, 2014**

**Darren Hudson Hick Interviews Simon Morris**

Darren Hudson Hick & Simon Morris

*"Though he seems to spend most of his time playing with cats,* ***Darren Hudson Hick*** *is a Visiting Assistant Professor of Philosophy at Texas Tech University, where his research focuses on the ontology of art, philosophical problems in intellectual property law, and related issues. He is the author of* Introducing Aesthetics and the Philosophy of Art *(Continuum, 2012). For more on Darren, go to www.typetoken.com* ***Simon Morris*** *(b.1968) is a conceptual writer and teacher. He is a Reader in Fine Art at the University*

*of Teesside in the UK. His work appears in the form of exhibitions, publications, installations, films, actions and texts which all revolve around the form of the book and often involve collaborations with people from the fields of art, creative technology, literature and psychoanalysis. In 2002, he founded the publishing imprint information as material. He is the author of numerous experimental books, including;* Bibliomania *(1998);* The Royal Road to the Unconscious *(2003);* Re-Writing Freud *(2005);* Getting Inside Jack Kerouac's Head *(2010); and* Pigeon Reader *(2012). He is an occasional curator and a regular lecturer on contemporary art and also directed the documentary films* sucking on words: Kenneth Goldsmith *(2007) and* making nothing happen: Pavel Büchler *(2010). Further information can be found here: www.informationasmaterial.org*




**DARREN HUDSON HICK: About a year ago, I published my article, "Ontology and the Challenge of Literary Appropriation" (*JAAC* 71(2), 155-165), focused on Simon Morris's book, *Getting Inside Jack Kerouac's Head*. As I explain in the article, Morris is what's called a "conceptual writer," effectively a literary appropriation artist. When the article went to press, I sent a copy to Kenneth Goldsmith, another conceptual writer, who wrote the introduction for Morris's book, and who I quote from in the article. Goldsmith in turn sent the article on to Morris. A few weeks later, a package arrived at my door from Morris containing a selection of his other recent "bookworks". I've been chatting with Morris on and off for the past year about literary appropriation. Earlier this year, Christy Mag Uidhir suggested I interview Morris for Aesthetics for Birds, and Morris cheerfully agreed**

**DARREN HUDSON HICK: What is "conceptual writing"?**

SIMON MORRIS: Conceptual writing is a fusion or a (con)fusion of art and literature. Conceptual writing's significance is in establishing new modes of production for literary works and different ways of reading.

This type of activity is what my co-editor, Nick Thurston at Information as Material has referred to as a *conceptualist reading performance*.

I think Thurston's collaging of these three distinct terms may be a useful way for understanding how artists are approaching literature.

The American artist Mark Dion has commented on how the artist has a different relation to theory from the academic or the scientist. The artist is not trying to establish some law or rule based on reason. Quite the opposite, he or she explores the potential of the irrational…he or she celebrates the nonsensical. Dion reflects:

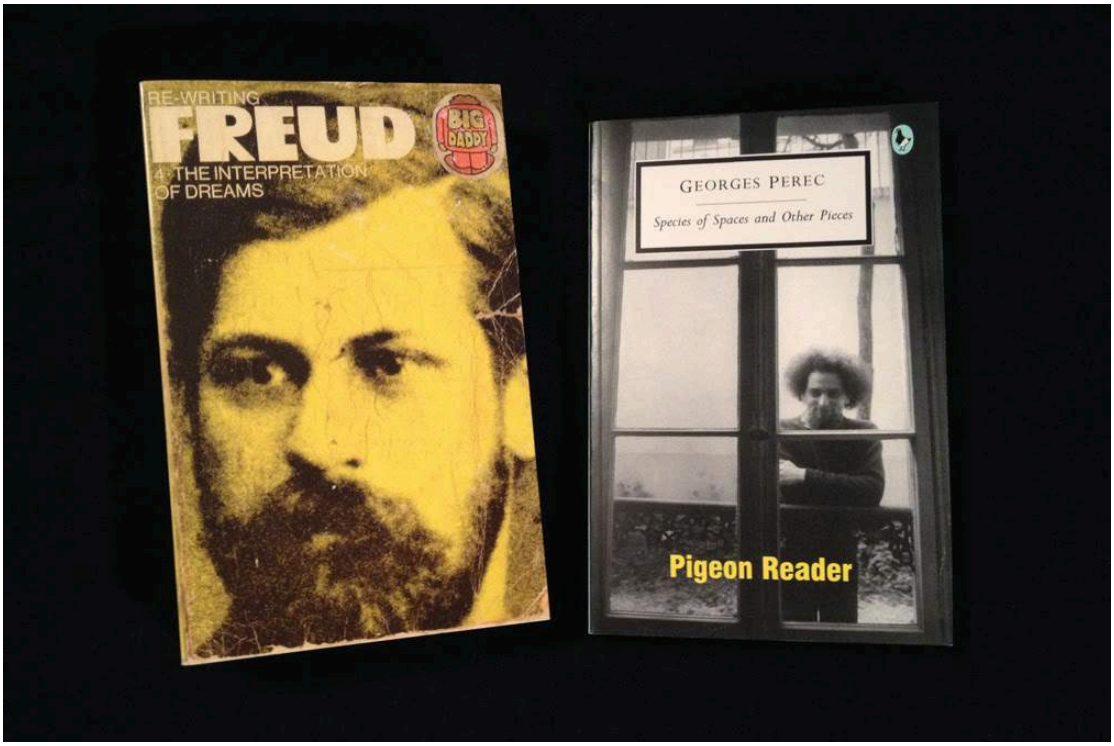
Artists are not interested in illustrating theories as much as they may be in testing them. This is why artists may choose to ignore contradictions in a text or choose to explode those contradictions. The art work may be the lab experiment which attempts equally as hard to disprove as prove a point. (Mark Dion, 'Field Work and the Natural History Museum', *The Optic of Walter Benjamin*, ed. Alex Coles, Vol. 3 of *de-, dis-, ex-*[(London: Black Dog , 1999] 38-57: 39.)

In Thurston's compound descriptor the first term *conceptualist* relates to our intention that the concept is privileged in the making of the work…as Sol Le Witt would maintain in his Paragraphs on Conceptual Art which appeared in 1967: "The idea becomes a machine that makes the art". But not just in the making of the work but in the engagement with the work as well…in its subsequent reading or thinking about.

The *reading* takes into account a sensitivity to the act of reading which can be read as an aesthetic experience in and of itself. Reading is usually a private act but these performed readings are always intended as public works…they are consciously made to be shared. It's important to understand its reproducibility and its performativity are built in to its mode of production.

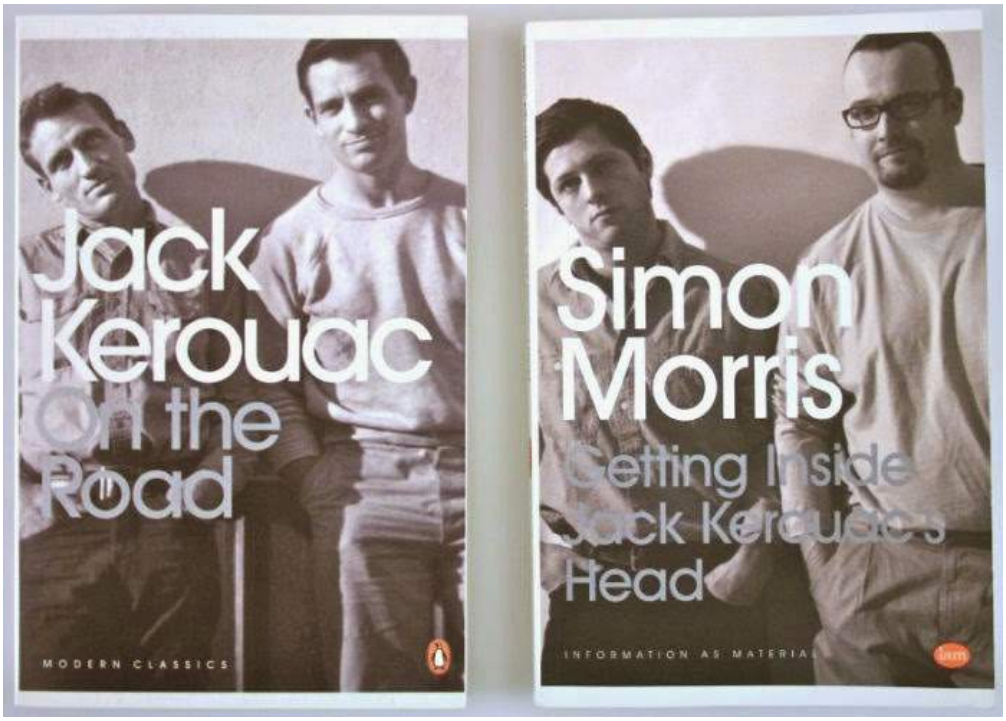
Making a reading act on the understanding that what you are going to present will be an artwork. And the *performance* in the physicality of the engagement with extant material, the existing words of others. A violation occurs in relation to the source material that may involve a re-writing, a re-reading or a miss-reading of the source material.

Conceptual writing has seen the development of new forms of art through *conceptualist reading performances*. This method grafts the aesthetic legacy of Conceptual Art on to various notions of writing (from literary composition to data management) in order to produce materially-specific poems as artworks that have in some way re-read a found object. This is an art of reading things differently. It starts from a premise proved by the impossibility of making purely conceptual art: that art is always aesthetical and conceptual. To that it couples an obsession with language as both material signifier and social activity. In doing so it establishes a mode of making art that asks: What could we write if reading could be a materially productive act of making art? How might a certain kind of reading-as-making problematise the understandings of authorship, production and reproduction ensconced in our cultural industries? Works of conceptual writing celebrate reading differently as a praxis of exploring the elsewhere of what languages and their users can mean and do. Conceptual writers are committed to working collaboratively and against all-too-certain counter-productive divisions between contemporary art and contemporary literature.




**DHH: What are "bookworks"?**

SM: "Bookworks" was a term first used by Clive Phillpot, one of the world's leading authorities on artist's books. I believe he used the term to separate traditional books (what I would call 'information carriers') from artworks that use the form of the book to convey an idea, in much the same way a more traditional artist might use paint on canvas or a block of marble and a hammer & chisel to express their ideas.



**DHH: Your bookwork, *Getting Inside Jack Kerouac's Head* is essentially a page-reversed but otherwise word-for-word retyping of the Original Scroll Edition of Kerouac's *On the Road*. As the title suggests, your impetus for writing *GIJKH* was to get a sense of what it was like to be Kerouac typing those words. Now, because I'm a completist, I bought a copy of your book. But if *GIJKH* isn't an "information carrier," is there any point in my reading it?**

SM: No, I wouldn't recommend that you read *GIJKH* in the traditional manner. If you want to read *On the Road* I would recommend you go out and buy Jack Kerouac's book. But, on the other hand if you want to engage with an artwork that considers issues of identity, authorship and ownership then I would recommend mine. But I still see no reason for you to read my edition. My works necessitate a different form of engagement, you need to learn to read differently. Information as material turns readers into thinkers. These works are meant to be thought about which, as the New York poet Rob Fitterman has commented, means they require a 'thinkership' rather than a 'readership'.

One is a work of literature and the other one is a work of art. The text found in the two works may be virtually indistinguishable, but the meaning is totally different. I like that—that two works can look virtually identical but have completely different meanings. Richard Prince's appropriation of JD Salinger's *Catcher in the Rye* in 2011 also made the distinction between art and literature very clearly. Penguin books brought out a deluxe facsimile edition of JD Salinger's first edition of *Catcher in the Rye* and were selling it for $32 a-pop. Richard Prince appropriates this version, making an identical facsimile edition, save for swapping his name for that of Salinger's and charging $64 a copy on the basis that art is worth twice as much as literature. He also offers a signed edition of his work for around $59,000 which is what a signed first edition of Salinger's work would cost you in auction. Prince's appropriation in 2011 of the hardback first edition of JD Salinger's *Catcher in the Rye* was referred to as a sculptural edition and in the disclaimer in the front, it clearly states that this is art rather than literature. It was a dead-ringer through and through for Salinger's text—not a word was changed—with the exception that the following disclaimer was added to the colophon page: "This is an artwork by Richard Prince. Any similarity to a book is coincidental and not intended by the artist." The colophon concluded with: © Richard Prince.


**DHH: In his introduction to *GIJKH*, Kenneth Goldsmith suggests, "Morris has only had a handful of commenters/passengers, curiously, none of them have been Kerouac's estate or his business representatives calling foul play for freely republishing a very lucrative artwork. Morris' work, then, is an anomaly—not a pirated edition worth legally pursuing—and as such, becoming functionless and aestheticized, it can only be a work of art." Goldsmith seems to put the issue aside, but do you have any worries about the Kerouac estate coming after you for copyright infringement?**

SM: I guess it comes down to two basic questions:

1. Financially, is it worth suing me? Do I have any assets? Richard Prince made this quite clear in his recent court case testimony for the Patrick Cariou vs Richard Prince case (from which a selection of papers from the court case were wittily appropriated by Greg Allen and produced print-on-demand. It includes the longest known interview with Richard Prince). In his affidavit, Prince states: "When I started out, no one was paying any attention to me.Who would have been concerned by a guy who appropriated an image from an ad? *What purpose would it serve to sue me?* [my italics] I was living in an apartment - in the East Village, where the rent was $75 a month. My job earned me $100. I had enough left to eat, drink, and buy supplies to paint. But if, unfortunately, I were to be sued today, I would call upon a law firm."

2. Is it possible to sue me? Because it would probably come down to a very tricky philosophical argument over the distinction between art and literature (one where you might be called as an expert witness, Darren). If it functions completely differently to Kerouac's literary work and isn't even meant to be read, does it actually represent any kind of economic threat to his estate?

**DHH: More generally, what role do you see copyright having in the arts?**

Because life is short and transitory and because I believe in sharing and collaborating to push things forward, I think all music, art, literature, scientific and academic papers should be as free as possible from copyright restrictions (shareware). For this reason, I think Creative Commons offers a much more intelligent solution to copyright for the arts. As their Licence states: "You are free to share or remix this work but should always attribute the work in the manner specified by the author."

We all learn from what already exists in the world so to put restrictions on how things can be remixed seems very counter-productive. For example, as the celebrated American author of *The Adventures of Tom Sawyer* and *The Adventures of Huckleberry Finn*, Mark Twain recounts:

"Oliver Wendell Holmes…was…the first great literary man I ever stole any thing from—and that is how I came to write to him and he to me. When my first book was new, a friend of mine said to me, "The dedication is very neat." Yes, I said, I thought it was. My friend said, "I always admired it, even before I saw it in The Innocents Abroad."

I naturally said, "What do you mean? Where did you ever see it before?"

"Well, I saw it first some years ago as Doctor Holmes's dedication to his Songs in Many Keys."

…Well, of course, I wrote to Dr. Holmes and told him I hadn't meant to steal, and he wrote back and said in the kindest way that it was all right and no harm done; and added that he believed we all unconsciously worked over ideas gathered in reading and hearing, imagining they were original with ourselves." (N)

*(Anecdote taken from a footnote in Oliver Sachs' essay, 'Speak, Memory', which can be found online here*

Posted by Christy Mag Uidhir at 12:00 AM
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## Footnote

### Sources

### Internet

[A] (according to the dictionary of vocabulary.com)
[B] Meaning of appropriation:
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[D] Joanne McNeil, Best of Rhizome , A conversation with Jonathan Lethem (2012), ISBN 978-1-291- 32991-9, p. 70.
[E] Austin Kleon (Author, Artist) Steal Like an Artist: 10 Things Nobody Told You About Being Creative (2012) ISBN-10: 0761169253, ISBN-13: 978-0761169253, p.56.
[F] Bible (New international Version), Ecclesiastes 1: 9
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[I] http://en.wikipedia.org/wiki/Joseph_Cornell (last visited October 20th, 2014)
[J] http://www.ferdyonfilms.com/2010/rose-hobart-1936/573/ (last visited September18th, 2014)[D] Appropriation and authorship in Contemporary art, Sherri Irvin
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[N] Darren Hudson Hick Interviews Simon Morris, http://www.aestheticsforbirds.com/2014/09/darren-hudson-hick-interviews-simon.html last visited September 18th 2014)

## Images

**Fig**.1 *Richard Prince, Untitled (cowboy), 1989. Ektacolor photograph, unique, 50 x 70 inches (127 x 177.8 cm)*: http://www.brianappelart.com/art_criticism.htm , last visited (last visited November 4th, 2014)

**Fig**.2 *In Advance of the Broken Arm*(1915) , 1964. Wood and galvanized-iron snow shovel, 52" (132 cm) high: http://www.artnet.com/magazine/FEATURES/naumann/naumann6-15-7.asp (last visited December 12th 2014)

Fig.3 *the Bottle Rack,* Readymade bottle-dryer of galvanized iron overall: 29-1/4 x 16 in. (74.3 x 40.6 cm) Norton Simon Museum, Gift of Mr. Irving Blum, in memory of the Artist *Marcel Duchamp 1914*: http://s3.amazonaws.com/presspublisher do/upload/2654/1Duchamp_Bottle_Rack_1963_hi_res.jpg (last visited December 12th 2014)

**Fig**.4 *Marilyn Ferdinand starring in Rose Hobart Movie directed by* **Joseph Cornell**: http://www.ferdyonfilms.com/2010/rose-hobart-1936/573/ (last visited September18th, 2014)

**Fig**.5 images of an eclipse blotting out the masculine sun: http://www.ferdyonfilms.com/2010/rose-hobart-1936/573(last visited September18th, (2014)

**Fig**.6 For those familiar with silent films and their use of color tints to suggest lighting: http://www.ferdyonfilms.com/2010/rose-hobart-1936/573/ (last visited September18th, 2014)

**Fig**. 7 The image of the concentric rings of displaced water—the pool of the unconscious and it perfect, circular form: http://www.ferdyonfilms.com/2010/rose-hobart-1936/573/ (last visited September18th, 2014)

**Fig.** 8 one of the Cornell Joseph's boxes: http://www.ferdyonfilms.com/2010/rose-hobart-1936/573/ (last visited September18th, 2014)

**Fig**. 9 *AfterSherrieLevine.com*, *Michael Mandiberg , 2001, copy of photographs* : http://aftermichaelmandiberg.com/ (last visited August 18th 2014)

**Fig**.10 Fountain' by Marcel Duchamp (R) and 'Fountain (Buddha)' by Sherrie Levine at the Whitechapel gallery in London, (image from): http://artdaily.com/news/38644/Whitechapel-Gallery-Presents-the-D--Daskalopoulos-Collection--Greece#.VSqTRHaWZYI (last visited December 27th(2014)

Fig.11Andy Warhol (American, 1928-1987). Small Torn Campbell's Soup Can, (image from): http://en.wikipedia.org/wiki/Andy_Warhol (last visited November 20th 2014)

**Fig**.12 *Niagara, 2000. Oil on canvas, 9 feet 10 inches × 14 feet 2 inches (299.7 × 431.8 cm*, (image from): http://tranauskascuratorialproject.weebly.com/jeff-koons.html (last visited March16th 2015)

**Fig**.13, At left, Koons' balloon dog, at right, imm Living's bookend, (image from) http://hyperallergic.com/16215/clowns-balloon-sui/ (last visited October 20th, 2014)

**Fig**.14 Mannie Garcia's AP photo at left, at right Shepard Fairey's portrait (image from) http://hyperallergic.com/16215/clowns-balloon-sui/ (last visited October 20th, 2014)

**Fig**.15, At left, Koons' balloon dog, at right, imm Living's bookend (images from baycitizen.org)

**Fig**.16 Richard Prince Tales of Brave Ulysses, 2008. Inkjet, acrylic and collage on canvas 84 x 132 inches (213.4 x 335.3 cm)

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