# PARADOXES OF COPYRIGHT

**Week 42: 14 - 18 October, 2024**

Location: ZT 5.D02

**Abstract:**

Contemporary art's relation to copyright is paradoxical. Copyright gives artists a claim of ownership over their own work. Yet, it enforces a type of individual original authorship that poorly fits contemporary artistic practices, which are often collaborative, generative, and building on the works of others. Since Dada, many avant-garde movements intended to undermine the notion of artistic control and originality. At least since the 1960s, numerous artists and activists have explored this paradox in their works, coming into conflict with copyright, exposing the weakness of its conceptual foundations in the digital domain, instigating collective practices and, recently, through blockchain-based mechanisms (NFTs) pioneered notions of "ownership" that seemingly abandons copyright entirely. In this module, we approach copyright not as fixed legal system, but as a contested cultural domain, in which artists play a key role in developing new models for 21st century. We will focus on artists such as Andy Warhol, Jeff Koons, Richard Prince, Cornelia Sollfrank, Elaine Sturtevant, and on movements such as "copy-left"and look into the strange case of the model Emily Ratajkowski who sold ownership rights to an image of herself she probably doesn't own. We will also look at the rise (and possible fall) of NFTs as the latest incarnation of the paradoxes of copyright.

**Course requirements:**

Attendance (80%)

Participation in reading, discussions, and group presentations

https://pad.vmk.zhdk.ch/paradoxes_of_copyright_hs24

## Monday: Basics of Copyright Law & Edge Cases

Morning

Background: History of Copyright Wikipedia

**Ulitarian vs author rights argument**

- ArtI.S8.C8.1 Overview of Congress's Power Over Intellectual Property (1789) (US Congress)
- Diderot's Letter on the book trade (1763) (PRIMARY SOURCES ON COPYRIGHT, 1450-1900), Encyclopédie, ou dictionnaire raisonné des sciences, des arts et des métiers (1751–1772)

**Swiss Copyright law**

Bundesgesetz über das Urheberrecht und verwandte Schutzrechte

Art. 2: "Werke sind, unabhängig von ihrem Wert oder Zweck, geistige Schöpfungen der Literatur und

Kunst, die individuellen Charakter haben."

Art. 6: "Urheber oder Urheberin ist die natürliche Person, die das Werk geschaffen hat."

Art. 10: "Der Urheber oder die Urheberin hat das ausschliessliche Recht zu bestimmen, ob, wann und wie das Werk verwendet wird."

Art. 11: Der Urheber oder die Urheberin hat das ausschliessliche Recht zu bestimmen; (a) ob, wann und wie das Werk geändert werden darf.

Afternoon

Defining the edges of copyright: **When a photo is not "individual"**

- Gisela Blau: Bild von Christoph Meili, 1997
- Bundesgrichtsurteil: Gisela Blau Guggenheim vs BBC, 19. April 2004
- Lichtbildschutz, URG Revision, 1. April 2020 (Artikel 2 Abs. 3bis)

**Can a non-human be an author?**

**Animals**

Wikipedia Animal Made Art

The Monkey Selfie (2011-2017)

Fobar, Rachel. „A Person or a Thing? Inside the Fight for Animal Personhood". National Geographic, 4. August 2021

**Machines**

Recker, Jane. „U.S. Copyright Office Rules A.I. Art Can't Be Copyrighted". Smithsonian Magazine (March 24), 2022.

Künstliche Intelligenz: Können KI-Tools Urheberrecht verletzen? Institut für Geistiges Eigentum, Bern (02.2023)

Wem gehört das Gedicht, das Chat-GPT geschrieben hat? Das sagen die Gesetze, NZZ (29.04.2023)

Bundesministerium der Justiz (DE).Künstliche Intelligenz und Urheberrecht - Fragen und Antworten(März 2024)

**The twisted case of Emily Ratajkowski**

- How many layers of copyright infringement are in Emily Ratajkowski's new NFT? The Verge, 21.03.2021
- Emily Ratajkowski Buying Myself Back When does a model own her own image The Cut, 15.09.2020

# Tuesday: Aesthetics, Authorship and counter-movements

Morning

Ortland, Eberhard. 2008. “The Aesthetics of Copyright:” In Proceedings of the XXII World Congress of Philosophy, 227–32. Philosophy Documentation Center. https://doi.org/10.5840/wcp22200811225

PDF

Stalder, Felix. 2014. “Urheberrecht - Wenn das Recht kunstfeindlich wird.” Kunstbulletin, 2014.

PDF

Barthes, Roland. 1967. “The Death of the Author.” Aspen, 1967. https://www.ubu.com/aspen/aspen5and6/index.html

Foucault, Michel. 1968. “What Is an Author?”

PDF

Kunstfreiheit.ch

Afternoon: Group Reading

Woodmansee, Martha. 1992. “On the Author Effect: Recovering Collectivity.” Cardozo Arts & Entertainment Law Journal 10: 279–92

PDF

Martin, Tom. „Authorship in Age of AI: From Authors of Words to Authors of Intent“, 20. Mai 2024. https://www.lawdroidmanifesto.com

Gibson, Johanna. „Page against the machine: the death of the author and the rise of the producer?“ *Queen Mary Journal of Intellectual Property* 13, Nr. 3 (12. Oktober 2023): 275–84. https://doi.org/10.4337/qmjip.2023.03.00.

**Free Licenses, Copyleft and Creative Commons**

Free Software Foundation. What is Free Software

GNU General Public License

**Digital Commons**

Creating Commons

Dulong de Rosnay, Melanie, und Felix Stalder. „Digital Commons“. Internet Policy Review 9, Nr. 4 (2020).

Stalder, Felix, und Cornelia Sollfrank. „Introduction“. In *Aesthetics of the Commons*, herausgegeben von Cornelia Sollfrank, Felix Stalder, und Shusha Niederberger, 11–38. Zurich / Berlin: Diaphanes, 2021.

**Blockchain & NFTs**

Stalder, Felix. „From Commons to NFTs: Digital Objects and Radical Imagination“. Makery (31.01), 2022.

# Wednesday: Appropriation: Motives and Strategies

Jean-Luc Godard: »It’s not where you take things from - it’s where you take them to.« source

**Elaine Sturtevant (1924 – 2014)**

Wikipedia entry

Artnet Entry

Introduction to Elaine Sturtevant, The Museum of Contemporary Art, 2015, 9 Min

“Hans-Ulrich Obrist in Conversation with Elaine Sturtevant.” 2008. https://032c.com/magazine/elaine-sturtevant

Lobel, Michael. „Sturtevant: Inappropriate Appropriation“. Parkett, 2005. [

PDF

Heartney, Eleanor, and Eleanor Heartney. 2014. “Re-Creating Sturtevant.” ARTnews.Com (blog). November 1, 2014. https://www.artnews.com/art-in-america/features/re-creating-sturtevant-63492

Phelan, Richard. 2015. “The Counter Feats of Elaine Sturtevant (1924-2014).” E-Rea, no. 13.1 (December). https://doi.org/10.4000/erea.4567

**Jeff Koons**

- Banality Series, 1988 Tate Modern
- - Rogers vs Koons (1992)
- Artist Rights: SIGNIFICANCE: ROGERS V. KOONS
- NYT Article on the case, Sept. 19, 1991

**Fair Use (US Copyright)** Copyright and Fair Use (Standford Library): What Is Fair Use? | Measuring Fair Use: The Four Factors

**Richard Prince**

- Cowboys, 1989, Untitled (Cowboy): Behind Richard Prince's Photographs & Appropriation, Time Magazine, 2016, 14 Min
- "Canal Zone." Gagosian Galery, 2008
- Patrick Carriou. 2000. Yes Rasta.
- 1. Trial: Leigh Anne Miller (2011). Judge Rules Against Richard Prince in Appropriation Case Art in America (March 22)
- Appeal: Prince vs. Carriou, The question of fair use The ‘Transformation’ of Fair Use After Prince

v. Cariou 2014

- Goldsmith, Kenneth. 2012. “Richard Prince’s Latest Act of Appropriation: The Catcher in the Rye.” Poetry Foundation
- New Portraits Gagosian Gallery 2014
- Review of New Portaits. Brooklyn Rail, 2014
- Richard Prince Disowns His Ivanka Trump Portrait, Possibly Increasing Its Value. Hyperallergic, Jan. 2017

Harrison, Nate. „The Pictures Generation, the Copyright Act of 1976, and the Reassertion of Authorship in Postmodernity“. Art & Education (blog), 2012. (archive.org)

PDF

Nate Harrison Can I Get An Amen?, 2004

**Further Reading:**

Metropolitan Museum of Art, The Pictures Generation, 1974–1984, 2009

- Jerry Saltz Great Artists Steal, ArtNet, 2009

Evans, David, ed. 2009. Appropriation. Documents of Contemporary Art. London : Cambridge, Mass: Whitechapel ; MIT Press. Read Introduction. p.12-23

Replicas. Originality on Trial in and around Olivier Mosset’s Collection. 30.06 –29.10.2017. Musée Des Beaux-Arts, La Chaux-De-Fonds. Catalogue

# Thursday: Paradoxes of machine creativity

**Cornelia Sollfrank and the net-art Generator** Guest: Cornelia Sollfrank (via Zoom)

Net.Art Generator

Warhol's Flowers:

Patricia Caulfield Hibiscus Blossoms (1964) – Andy Warhol Flowers (1964) – Elaine Sturtevant Warhol Flowers (1967) – Cornelia Sollfrank. Anonymous Warhol Flowers (2004 -). OG flowers (2010-2021).

Legal Perspective, 2004

I don't know, 1968/2006

**Readings Net.Art Generator:**

Sollfrank, Cornelia, and Winnie Soon. 2021. Fix My Code. Berlin: EECLECTIC. Introduction & Chapter 3, Ebook Creative Commons: Attribution-ShareAlike 4.0 International (CC BY-SA 4.0)

Jacob Lillemose. 2009. Keep on Generating. On Cornelia Sollfrank's Multiple Authorships. In: Himmelsbach, Sabine (ed) Expanded original: Cornelia Sollfrank [anlässlich der Ausstellung “Cornelia Sollfrank. Originale und Andere Fälschungen”, Edith-Ruß-Haus für Medienkunst, Oldenburg, 24. Januar

bis 19. April 2009]. Ostfildern: Hatje Cantz.

Sollfrank, Cornelia. 2010. Anonymous Warhol Flowers: Urheberrecht als Material und Gegenstand der Kunst. Irights.Info

Guest: Cornelia Sollfrank, via Zoom 15:30

**Collaborating with AI**

- Dirk Knemeyer and Jonathan Follett (2020). Making Art with AI. Human and Machine Collaboration for Unexplored Territory. towardsdatascience.com (Dec. 11)
- Marche, Stephen. 2021. "The Computers Are Getting Better at Writing." The New Yorker, April 30, 2021. (archived, full version)

Infinite Conversation: an AI generated, never-ending discussion between Werner Herzog and Slavoj Žižek.

# Friday: The Copyright Case of Training Data and Generative AI

**Artist against a provider of a training data set**

Reflections on Kneschke v. LAION, Hamburg Regional Court 09.2024

Massive Data Sets, eg. LAION vs small and curated data sets, eg. Source.plus

**Artists against AI Companies** (Stability.ai and others)

Edwards, Benj. „Artists File Class-Action Lawsuit against AI Image Generator Companies". Ars Technica, 16. Januar 2023.

Belanger, Ashley. „Artists Claim "Big" Win in Copyright Suit Fighting AI Image Generators". Ars Technica, 14. August 2024.

Malevé, Nicolas. „Style and Revenge: The Vagaries of the Artistic Class in Generative AI". The Nordic Journal of Aesthetics 33, Nr. 67 (23. August 2024).

Phillip Schmidt: https://humans-of.ai

https://haveibeentrained.com

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