Week 46: 14 - 18 November, 2022

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 a fixed legal system, but as a contested cultural domain, in which artists play a key role in developing new models for the 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

Submission of two very short texts (1-2 pages, each)

1. Text. Requirements:

- Use an AI tool to write your essay.
- Rely on it as much as possible.
- The essay must form a coherent, critical argument (no poetry, experimental writing, etc).
- You must fully agree with it, ie. assume full authorship.
- Topic of your choice related to this module
- Length: 300-500 words

2. Text. Requirements:

- Personal reflection on the experience of collaborating with an AI.
- Length: 300-500 words

Monday: Basics of Copyright Law & Notions of Authorship

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.

Background: History of Copyright Wikipedia

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?

The Monkey Selfie (2011-2017)

Reading:

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. https://www.artlog.net/de/kunstbulletin-1-2-2014/urheberrecht-wenn-das-recht-kunstfeindlich-wird.

Kunstfreiheit.ch

Group Readings:

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

PDF

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

Foucault, Michel. 1998. “What Is an Author.” In Aesthetics, Method, and Epistemology, edited by James D. Faubion, 205–22. Essential Works of Foucault 1954-1984, Vol. 2. New York: New Press. https://www.sas.upenn.edu/~cavitch/pdf-library/Foucault_Author.pdf

Tuesday: Appropriation: Motives and Strategies

Jean-Luc Godard: It’s not where you take things from — it’s where you take them to.“ (as quoted by Jim Jarmusch)

Elaine Sturtevant

Wikipedia entry

Artnet Entry

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

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

Jeff Koons

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

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.
- 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. 2015. “In The Wake of Richard Prince and Instagram, Revisiting Copyright Law, Appropriation and History.” AMERICAN SUBURB X (blog). June 4, 2015. https://americansuburbx.com/2015/06/in-the-wake-of-richard-prince-and-instagram-revisiting-copyright-law-appropriation-and-history.html

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

Wednesday: Paradoxes of machine creativity

Cornelia Sollfrank and the net-art Generator

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 -).

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

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.

AI Art and Copyright

- Recker, Jane. 2022 "U.S. Copyright Office Rules A.I. Art Can't Be Copyrighted." Smithsonian

Magazine. March 24, 2022.
- Growcoot, Matt. 2022. "AI-Generated Artwork Is Copyrighted for the First Time." PetaPixel (September, 27).
- Adler, Adam. 2022. "The Horror of AI Art in Copyright Law & Other Legal Horror Stories." The Escapist (blog). October 30, 2022.

Tools to use (registration requirements)

- Open AI: https://beta.openai.com/playground
- SudoWrite: https://www.sudowrite.com

Thursday: Paradoxes of NFT: Ownership without Copyright

Introductory materials NFTs Explained: A Must-Read Guide to Everything Non-Fungible https://nftnow.com/guides/what-is-nft-meaning

- What is the blockchain? And why is it not Bitcoin?
- What is Ethereum and what is a smart contract?
- What is a token and when is it non-fungible?
- What is the difference between "contract" and "artwork"?

Technical Specs:

- https://ethereum.org/en/nft
- https://eips.ethereum.org/EIPS/eip-721
- https://nftschool.dev

Reading in groups

Stalder, Felix, and Janez Fakin Janša, eds. 2022. From Commons to NFTs. Ljubljana: Aksioma – Institute for Contemporary Art. https://aksioma.org/from-commons-to-nfts-book.

- Felix Stalder: From Commons to NFTs: Digital objects and radical imagination
- Cornelia Sollfrank: My first NFT, and why it was not a life-changing experience
- Jaya Klara Brekke: It is getting harder to have fun while staying poor
- Lee Tzu Tung: Sailing in the Pirate Sea of Art

Afternoon: Beyond NFTs, there are DAOs

Catlow, Ruth, and Penny Rafferty, eds. 2022. Radical Friends: Decentralised Autonomous Organisations and the Arts. United Kingdom: Torque Editions. Read: Introduction. What is Radical Friendship made of? 26-46

Jonas Lund Token (JLT) https://jlt.ltd/

Visit: DYOR @ Kunsthalle, Meeting Curator Nina Roehrs

Additional Materials:

Major NFT Market Places

- https://niftygateway.com/

- https://opensea.io/
- https://superrare.co/

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

The even more, yet differently twisted case of Beeple

- Amy Castor. 2021. Metakovan, the mystery Beeple art buyer, and his NFT/DeFi scheme
- https://twitter.com/jonty/status/1372163423446917122
- Comparable Case with Damian Hirst's "For the Love of God" (2007). http://badatsports.com/2007/hirst-reported-as-major-investor-in-the-purchase-of-his-own-diamond-skull/

Friday: Human-Machine Writing

Morning: Finishing up and comparing AI-assisted essays

Afternoon: Writing reflection

From:
https://wiki.zhdk.ch/fs/ - **Felix Stalder, Prof. DfA**

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Last update: **2022/11/15 09:54**