

PERFORMING THE PARADOXES OF INTELLECTUAL PROPERTY

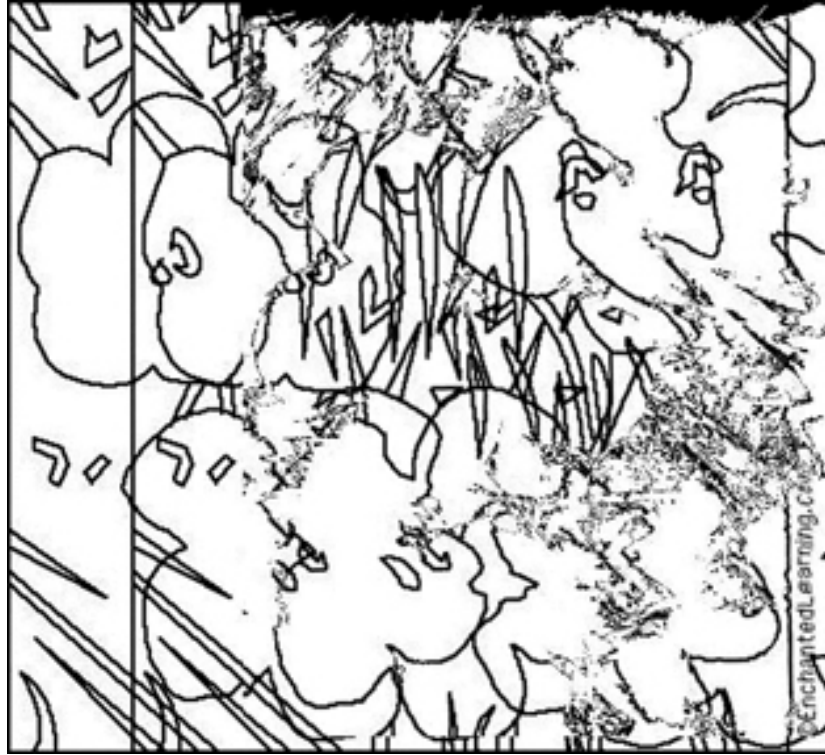
A Practice-led Investigation into
the Conflicting Relationship between Copyright and Art

Cornelia Sollfrank

Submitted in Fulfilment of the Requirements
for the Degree of Doctor of Philosophy

The University of Dundee
Duncan of Jordanstone College of Art and Design

November 2011



anonymous-warhol_flowers@Mar_20_17.53.34_2004

TABLE OF CONTENTS

LIST OF FIGURES	I
DEDICATION/ACKNOWLEDGEMENTS	III
DECLARATION	IV
PREFACE	V
ABSTRACT	VIII
EPIGRAPH	X
INTRODUCTION	001
1. RATIONALE	004
2. AIMS AND OBJECTIVES	005
3. METHODOLOGY	006
4. SCOPE OF THE STUDY	009
5. CONTENT STRUCTURE	011
CHAPTER 1 – GENERATING CONFLICT	015
1. INTRODUCTION	016
2. CONSTITUTIVE PRACTICE	018
1. Project: Female Extension	018
Background	018
Project Description	020
Reflection	024
2. Project: net.art generator	031
Project Description	031
Reflection	038
<i>Collage and Chance</i>	039
<i>Serial Art</i>	040
<i>Generative Art</i>	041
<i>Software Art</i>	045
<i>Art by Machines</i>	048
<i>net.art</i>	052
<i>Contextual Overview</i>	055
<i>Contextualising the net.art generator</i>	058
<i>Conceptual Net Art</i>	060
<i>Authorship Experiments</i>	063
<i>Institutional Recognition</i>	068
Project Map: net.art generator	070
3. THEORETICAL CONTEXT	071
1. Postmodern (Anti-)Aesthetics	071
Modernism	072
The Historical Avant-garde	073
Photography–the Reproductive Medium	075
Postmodernism	080
Parody: A Postmodern Strategy	085
Appropriation Art	088
2. Digital Media Theory	094
3. Authorship	101
4. METHODOLOGY OVERVIEW	114
5. CONCLUDING THOUGHTS	117

CHAPTER 2 – CAUSE OF THE CONFLICT: THE LEGAL FRAMEWORK	120
1. INTRODUCTION	121
2. WHAT IS COPYRIGHT?	123
1. Cultural Provenance and Justifications of Copyright	125
2. Key Concepts	129
3. Infringements and Remedies	132
4. Copyright Terms	133
5. Copyright Exceptions and Fair Use Doctrine	136
Two Exemplary Cases	143
<i>Rogers v. Koons</i>	143
<i>Mattel v. Walking Mountain Production</i>	147
6. Derivative Works	150
7. Limits of Copyright	152
8. Challenges and Changes in the Digital Era	155
9. Conclusion	161
3. MORAL RIGHTS	163
1. Overview	163
2. The Origins of Moral Rights	165
3. National Differences	167
4. International Harmonisation	171
5. Evaluating Derogatory Treatment	174
6. A Cultural Critique of the Right of Integrity	175
7. Conclusion	178
4. HISTORICAL DEVELOPMENT	180
1. Privileges and Early Licences	180
2. Artist’s Rights within the Privilege System	184
3. Control and Censorship	186
4. From Privileges to Rights	187
5. International ‘Harmonisation’	190
6. Conclusion	193
5. THE PARADOXES OF INTELLECTUAL PROPERTY	195
1. A Brief Historical Overview	196
2. But is it Property?	197
Locke’s Labour Theory of Property	198
Hegel’s Personhood Theory of Property	204
3. A Legal Historical Perspective	208
4. Elements of Intellectual Property	211
5. Contemporary Critique	213
6. Summary	217
6. CONCLUDING THOUGHTS	221
CHAPTER 3 – PERFORMING THE PARADOXES	225
1. INTRODUCTION	226
2. METHODOLOGY: PERFORMATIVE RESEARCH	228
1. Performative Research after Haseman	229
2. Performance and Performativity in Context	234
The ‘Performative Turn’	234
Performance and Performativity	235
3. Butler’s Juridical Model	239

4. Performing the Law	241
Law's Theatricality	241
Everyday Performances of the Law	243
5. Performative Research	245
3. PRACTICE PROJECT: THIS IS NOT BY ME	251
1. Project map: This is not by me	254
2. Project map: Description	255
3. Background to the Project	257
Cause	257
Case History	258
4. Warhol and 'his' Flowers	260
The Conceptual Use of Silkscreen Technology	260
Warhol's Flowers	264
Caulfield's Flowers	268
Sturtevant's Flowers	270
Conclusion	273
5. anonymous-warhol_Flowers	281
Project description	281
Categorisation and Reflection	282
<i>Digital Image Collages</i>	282
<i>Printouts</i>	285
<i>'anonymous_warhol-flowers' Prints</i>	292
<i>Conclusion</i>	295
6. copyright © 2004 cornelia sollfrank	297
Project Description	297
Summary	298
Method: Performative Dilettantism	305
Reflection	309
Conclusion	313
7. Legal Perspective	314
Project Description	314
Method: Semi-structured Interview	315
Summary of the Interviews	318
Data Analysis and Reflection	325
8. I DON'T KNOW	329
Project Description	329
Background	330
Summary of the Conversation	331
Method: Conceptual Montage	333
Applying the Method	338
Legal Continuation	341
Reflection	343
4. CONCLUDING THOUGHTS	345
CONCLUSION	348
1. THE FATE OF ALL CRITICAL ART PRACTICE	349
2. REMIX CULTURE	352
3. THE LEGAL REALITY	357
4. AMATEUR V. PROFESSIONAL	362
5. ART IN THE AGE OF INTELLECTUAL PROPERTY	366

6. INVOLVEMENT IN A COPYRIGHT CRITICAL CONTEXT	372
7. OUTCOME	375
FUTURE RESEARCH	376
APPENDICES	377
APPENDIX 1: SUPPORTING MATERIAL PROJECTS	
1.1. copyright © 2004 cornelia sollfrank, Cornelia Sollfrank	378
1.2. Legal Perspective – Interview Guide	393
1.3. Legal Perspective – Interview Transcripts	396
1.4. I DON'T KNOW – Interview Transcript	410
1.5. Interview with Elaine Sturtevant Transcript	418
1.6. Letter of Complaint by Gideon Bachmann, translation	425
1.7. Artist Note on Censorship	426
APPENDIX 2: ACTIVITIES	431
2.1. net.art generator and follow-up projects exhibitions	431
2.2. EXHIBITIONS (other than listed under 2.1)	433
2.3. PERFORMANCES	433
2.4. LECTURES	434
2.5. PANEL DISCUSSIONS (PARTICIPATION)	435
2.6. PANEL DISCUSSIONS (ORGANISATION)	435
2.7. SYMPOSIA ORGANISATION	437
2.8. WORKSHOP DIRECTION	440
2.9. DIVERSE	444
APPENDIX 3: ARTWORKS	445
3.1. Automatically Generated Authorship (2004)	445
3.2. Re-visiting Feminist Art (since 2006)	448
3.3. MuseumShop (2007/09)	452
3.4. DEJAVU® Speculative Software (2009)	456
3.5. Another Originality (2010)	458
APPENDIX 4: INTERVIEWS with Cornelia Sollfrank	460
4.1. Hackers are artists – and some artists are hackers. Interview by Tilla Telemann (1999)	460
4.2. Interview by Maider Zilbeti, Zehar Magazine no.63 (2008)	467
APPENDIX 5: REVIEWS	475
5.1. Book review Expanded ORIGINAL, Alessandro Ludovico (2009)	475
5.2. 'Keep on Generating,' Jacob Lillemose (2009)	476
5.3. 'net.art generator,' book review, in: neural, no. 23 (2006)	486
5.4. Book review net.art generator, Matthias Weiss (2006)	487
5.5. 'Authorship and Subjectivity,' Florian Cramer (2004)	492
5.6. 'Net.art generator,' Inke Arns (2000)	495
5.7. 'neural' magazine, no.27, 'Copyright Guerilla' (2007)	496
APPENDIX 6: DVDs (attached)	
6.1. DVD 1: copyright © 2004 cornelia sollfrank (2004)	
6.2. DVD 2: Legal Perspective (2004) I DON'T KNOW (2006)	
BIBLIOGRAPHY	497