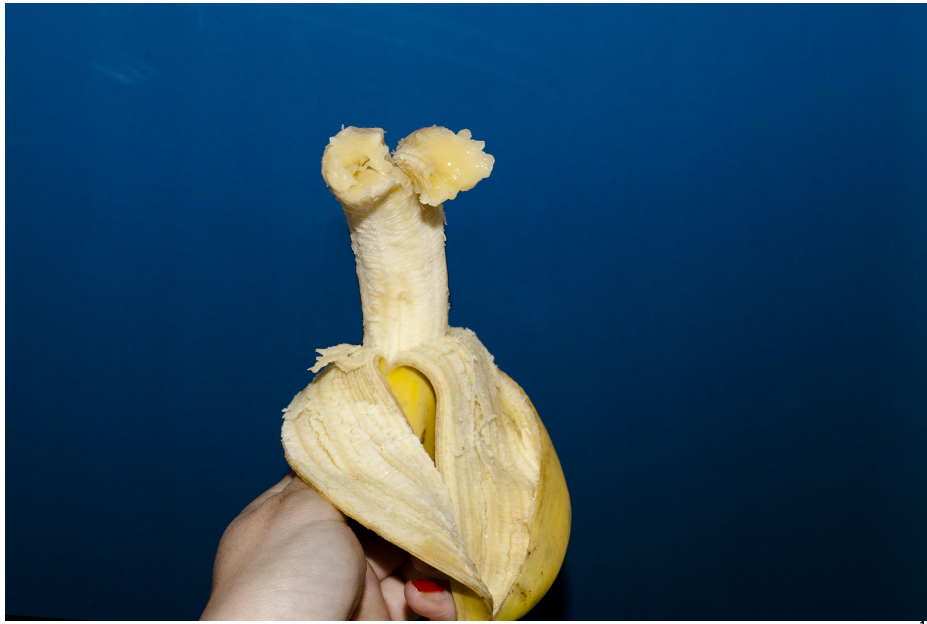


***WHAT DO
YOU KNOW
ABOUT ART***

***YOU'RE NOT
A LAWYER***

Rule #5: *Nothing is original. Steal from anywhere that resonates with inspiration or fuels your imagination. Devour old films, new films, music, books, paintings, photographs, poems, dreams, random conversations, architecture, bridges, street signs, trees, clouds, bodies of water, light and shadows. Select only things to steal from that speak directly to your soul. If you do this, your work (and theft) will be authentic. Authenticity is invaluable; originality is nonexistent. And don't bother concealing your thievery — celebrate it if you feel like it. In any case, always remember what Jean-Luc Godard said: "It's not where you take things from — it's where you take them to."*

Jim Jarmusch



The student eating a banana

In the third week of my studies at the Rietveld Academie in Amsterdam one of my teachers claimed that, from now on and for the next three months, he doesn't want to see any found images again in his classes. "You will all work with your own images", he said. This was the reaction on the very popular practice among his students to work with found images. From the flea market, the internet, magazines and anywhere else we could lay our hands on; found images had a force of attraction we could hardly resist. I think that none of us seriously considered the act of using found images from a legal perspective. I included once a pocket mirror from a well known alternative cosmetic brand in one of my pictures. The logo of the brand was clearly visible. Small, but on a central spot of the image. The reason why I finally erased it in the post-production was not because I could have been sued for using it. The logo simply disturbed me. It would never have come to my mind that a cosmetic company may pay attention to what I was doing as a student. Nevertheless, by this very image I wondered for the first time if I was a copyright infringer; because of its title. "Winning the game when the rules have changed" is the slightly adapted title from feminist art historian Abigail Solomon-Godeau's essay from 1983. All I did was to put the former (correct) passive sentence "... have been changed" in an active form. If Mrs Solomon-Godeau would google the title on the internet, she'd be very likely to find my work (7th result on google search on 29th december 2012, first result in image google search). I wondered: would she care and if she did, what could be the consequences? I favor the method of including appropriated material since many years and in many different ways. One example of a work referring to another was my interpretation of Sarah Lucas' self portrait The artist eating a banana. The last thing I would think of is that someone would tell me that I was a copyright infringer. Still, once the question was brought up I was curious: what are the legal boundaries of my own artistic practice?

¹Céline Manz: Fetish, 2012

Sarah Lucas

The artist eating a banana, 1990



The history of art is a history of sampling

“I was really interested in how they dealt with the idea of originality. If they wanted an image, they'd just take it. It was never an issue of morality; it was always an issue of utility. There was no sense that images belonged to anybody; all images were in the public domain and as an artist I found that very liberating.”

Sherrie Levineⁱⁱ

Appropriation artists don't take photographs, they use them. Maybe that's why some people think of Appropriation Art as stealing or piracyⁱⁱⁱ. The method of appropriating includes recycling, sampling or adopting already existing elements to create a new work, and it's true that this could be seen as stealing. But appropriation of art is a matter of tradition, a procedure that goes back to the beginnings of art history itself.

For centuries, painters applied the method of copying to learn their profession. Thanks to copying they came to the level of mastery as we know it now^{iv}. *“There is as much unpredictable originality in quoting, imitating, transposing and echoing”* art historian Leo Steinberg stated, *“as there is in inventing”*^v. Avant-garde artists Picasso, Braque or Schwitters were all appropriators *avant la lettre* when they integrated everyday's items in their paintings and collages^{vi}. In the second half of the 20th century, pop-art artists started to appropriate source material differently: They exploited the canon of advertisement esthetics. They appropriated popular trademarks. Commercial imagery. Comic-strips. All kinds of pop-cultural icons. Questioned the validity of authorship^{vii}. As a consequence, a lot of pop-art artists (or their assistants) created their works with the help of mass production techniques^{viii}. They celebrated the death of *the Author as Heros*^x on the assembly line. The following generation of post-modernists continued this de-mystification of the author through the principle of demolition by claiming: *Demolition of artistic genius by unembarrassed appropriation of subjects! Demolition of the elite status of art by embracing the popular and trivial! Demolition of the sublime by embracing kitsch and poor taste!*^{ix} etc. Following Elaine Sturtevant's example, artists like Sherrie Levine were no longer satisfied with just appropriating everyday's items or products of mass culture. They came to the conclusion that everything had been done before^{xi} and questioned whether an artist's work can ever be original.^{xii} As a consequence they appropriated whole works of art.

Art historian Martha Burskirk stated that appropriation art used re-contextualization as a critical strategy. To put a familiar image in a different context is like taking a step back from the original material. It “forces the viewer to reconsider how different context affects meaning and to understand that all meaning is socially constructed...”^{xiii}. Gordon Bennet's appropriations on Margaret Preston's studies of aboriginal art exemplary illustrate this; Preston was looking for the beauty of “primitive art” when she made her studies in the first half of the 20th century, Bennet's enlargements with the title “Home décor (After Margaret Preston)” from 2010, though, uncover her colonialist shaped view on the subject she studied, the aborigines.^{xiv}



Kurt Schwitters

Das Unbild, 1919^{xv}



Marcel Duchamp

***Bicycle-Wheel, 1951, artist's reproduction
after first version from 1913 got lost^{xvi}***

Avant-garde artists used collages, assemblages or montages to associate formerly unrelated materials to influence their perception^{xvii}. Objects were extracted from their usual environments, signed and (ironically) claimed works of art; the Readymades^{xviii}

Andy Warhol *Flowers*

1964^{xix}

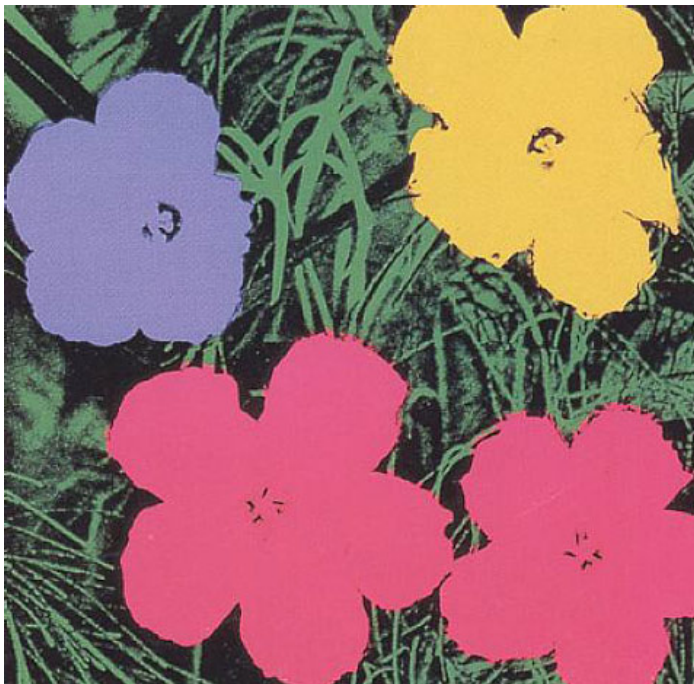
*„Why don't you ask my assistant
Gerard Malanga some questions?*

He did a lot of my paintings“

Andy Warhol in an interview xx



ANDY WARHOL FLOWERS



Elaine Sturtevant *Warhol Flowers*

version from 1990^{xxi}

Elaine Sturtevant's oeuvre consists in meticulously copying the style and the works of her male colleagues. In 1965, Andy Warhol lent Sturtevant the screens of his “Flowers” so she could work with them.^{xxii}



Margaret Preston *small, on the left,*

Gordon Bennet *big canvas*

Neue Galerie, Documenta(13), Kassel, 2012^{xxiii}

Hail to the thieves

The internet offers almost endless disposability of digital content. The unembarrassed appropriation of other people's work has reached the next level: the masses. Appropriation is no longer only linked to artistic practice, it's mainstream. Facebook, Flickr, Tumblr etc. show that the answer to the question *Is authorship equal with originality?* is obviously no.

I experience that artists and art students react on this downgrade of authorship through the solemn exaggeration of bad taste and kitsch. In appropriative practice irony seems to be an important way to comment on things. Image material of masterpieces of art is equally treated as random material found with help of google image search. Thanks to these image search engines the amount of appropriated content in art and art schools has considerably increased compared to when I started my art studies. The awareness that this wide-spread use of appropriated material from the internet is illegal is very low. Among my fellow students most are surprised that they violate privacy rights or copyrights in their works. I think this insouciance is problematic because thanks to the internet not only we have access to all sorts of informations but also our own actions become accessible to a wide audience. Copyright infringements and privacy rights violations become more and more easier to trace.

Whether it concerns a clip from Youtube or an image found on the internet; they are always made by an author. The notion of author is linked to intellectual property. Copyright legislation protects intellectual property. To look at copyright law from a artistic point of view it seems like a very restrictive issue. But as a matter of fact it's an ambiguous situation: on the one hand copyright law tends to obstruct artists in their practice, but on the other hand artists are dependent on legal restrictions on their works to be able to make their livings.



2 xxiv

2Roos van Leeuwen, Imaginary Beaches, Bullewijk aan zee, Postcard.

From the website of the Rietveld Academie Amsterdam, January 2013

The word “copy” means very different things to different people

When you enter into a google search engine “appropriation art copyright infringement” the results show a surprisingly high amount of internationally celebrated artists who lost copyright infringement law cases. Even more surprising is the reason they lost: the lack of “originality” in their works. One of the key problems artists face is that from a legal point of view, a work of art has to be “original”, whereas postmodern art practice asserts indeed that originality is nonexistent^{xxv}. In terms of law, copyright protection includes every original representation of authorship, irrespective of its artistic merit, quality or value^{xxvi}. Originality means not that underlying ideas of works have to be original, but it refers to the form ideas are expressed. The expression of an idea must be independently created and manifest its author's originality^{xxvii}. In a lot of cases, appropriation art is doing it the other way around: it does not “independently create”, but take, recycle, sample or adopt already existing material and can therefore not manifest its author's originality. It is the idea behind the work which is the most important.^{xxviii}. Steal from anywhere that resonates with inspiration or fuels your imagination^{xxix}.

According to copyright law expert Johnson Okpaluba there are three different ways to appropriate^{xxx}:

1: Appropriation of images or fragments of images, virtually unaltered and without attribution of the author or copyright owner.

2: Montage. Incorporation of existing images from multiple sources into a new, autonomous work.

3: Simulationism. Appropriation of a style or genre - and usually not an existing work - to produce a new work in that manner.

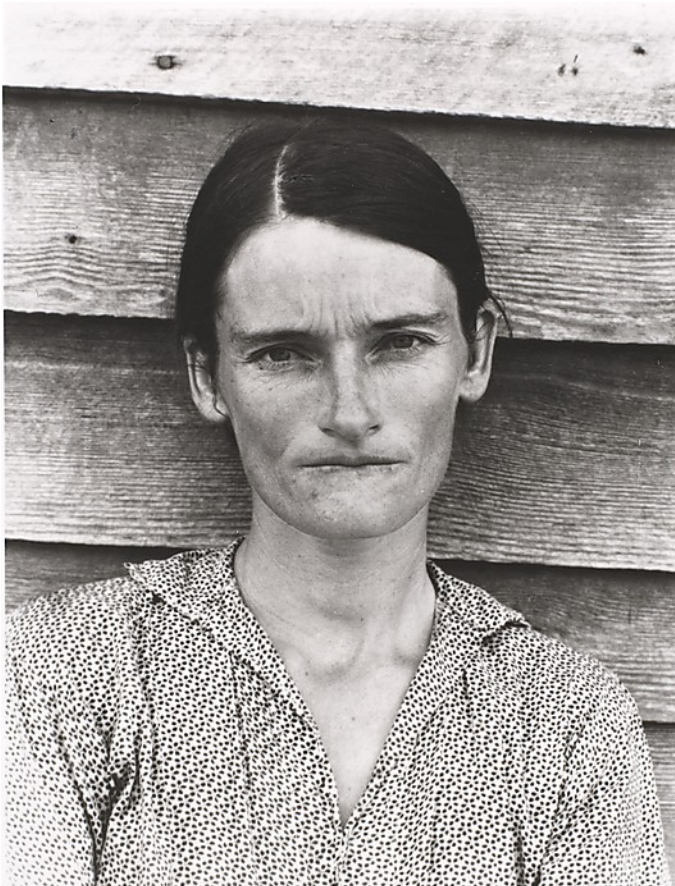
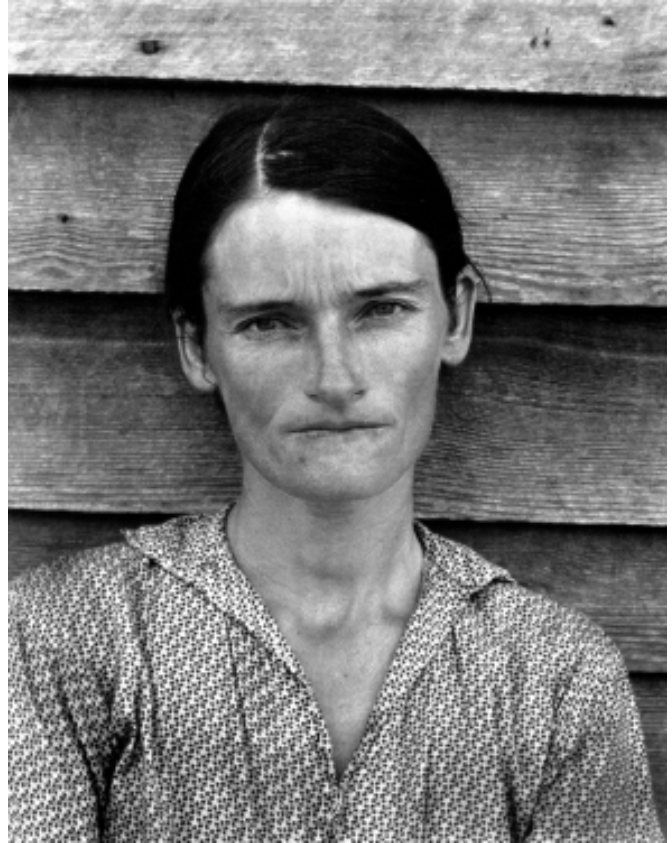
Appropriation of images virtually unchanged

Walker Evans

Alabama Cotton Tenant Farmer's Wife

(Allie Mae Burroughs)

1936^{xxxi}



Sherrie Levine

After Walker Evans

1981^{xxxii}

Montage



Richard Prince

Back to the garden

2008 ^{xxiii}

Simulationism

Can be problematic because on the edge of forgery. From an artistic point of view, Sturtevant *used* the works of arts of other artists for her own work, from a legal point of view, Sturtevant works are *copies*. ^{xxiv}

Elaine Sturtevant

Stella Seven Steps (Study)

1989^{t xxv}



What is a copy?

According to copyright law the examples of appropriation art mentioned above are copies. The law says that artists are allowed to use an idea to translate it into their own work, but they are not allowed to copy the substantial part of it^{xxxvi}. With substantial lawyers mean an important, essential or distinct part of the work. The substantiality depends on the quality (what) of the material used and of its quantity (how much)^{xxxvii}. That is one aspect.

Another aspect is the exclusive right of the author in new works that have been based upon his^{xxxviii}. The law requires that artists which modify appropriated material make sure that it differs significantly from the original piece. Is this not the case, the copyright owner of the source material can claim copyright on this new work. This happened to Jeff Koons: he was sued by Art Rogers for using his photography for the sculpture "A string of puppies" in 1988^{xxxix}. An appropriated work must be altered in a way its original source is not recognizable and be put in a new context which does not rely to its original source anymore. Richard Price lost his trial because the images were not modified enough to be seen as independent new work in the eyes of the court^{xl}. In many cases, however, it would not make sense from an artistic point of view to apply this degree of abstraction demanded by the law; since it would vaporize the critical intentions of the artist.

Jeff Koons
String of Puppies
1988^{xli}



Art Rogers
Puppies
1985

The Plesner case

As mentioned above the sensibility of art students for the legal consequences of their actions is rather low. And indeed it is not very likely to be "caught" compared with the masses of appropriated materials actually used by art students. Anyway, in 2008 a student of the Rietveld Academie experienced in what extend the simple choice of integrating an appropriated content could have in her artistic career. Even though this case is primarily treating trademark rights I'd like to include it in this paper because the precautions when working with trademarked items are similar (see The appropriator's user guide).

During her fine art studies Nadia Plesner used the image of a Louis Vuitton handbag for a campaign which aimed to call attention to the Darfur conflict and raise money in favor of its victims. For this she made an illustration of a naked african boy featuring - as the artist called it - "showbiz elements".

Those "showbiz elements" were substituted with Paris Hilton's most famous fashion features; a chihuahua dog and Louise Vuitton's Audra-hand bag. To be able to raise money Plesner made a T-Shirt with this print on it and sold the T-Shirts, benefiting the sale to the victims of the Darfur conflict^{xlii}. When Louis Vuitton found it out they sued her ex parte³ for irreparable damages in reputation^{xliii} and infringement of the rights in respect of the design^{xliv}. Unable to defend herself at the court Louis Vuitton won the trial. Plesner was spared from paying the originally claimed penalties – an amount she wouldn't have been able to pay anyway - but had to quit selling her T-Shirts and to remove the image from her website.^{xlv}

On the website of the artist's foundation, she states "The attorney who advised me through the legal dispute told me, that if only I had made a more classical art work, like an oil painting, I would have been able to paint whatever I liked. This gave me the idea to let the Simple Living boy live on in a modern version of Picasso's famous painting Guernica".^{xlvi}

Plesner finished the painting in 2010 and exhibited it in Denmark in the beginning of 2011.^{xlvii} When Louis Vuitton knew about it they instantly took her (and the gallery concerned) to the court of The Hague – again in absence of the artist, arguing that the artist repeatedly was making financial benefit from using the Audra bag in her work. The court considered the elements of an offense of intellectual property right sufficiently proved and so Louis Vuitton won again. This time Plesner was held to pay the penalties claimed by the fashion label^{xlviii}. Her case was attentively followed by the media and supported the artist's cause. This support might have been an important factor in helping her to decide to countersue Luis Vuitton while still in her studies, insisting on her right of freedom of expression.^{xlix} In The Hague's verdict from May 2011, the court acknowledged: "this case concerns fundamental rights that are on an equal footing but conflicting, (...) a fair balance should be sought between the general interest and the interests of the parties involved.ⁱ (...) in the present circumstances the interest of Plesner to (...) be able to express her (artistic) opinion through the work (...) should outweigh the interest of Louis Vuitton in the peaceful enjoyment of its possession."ⁱⁱ(...) Opposite Louis Vuitton's fundamental right to peaceful enjoyment of its exclusive right to the use of the design, there is, (...) the fundamental right of Plesner - that is high in a democratic society's priority list - to express her opinion through her art. In this respect it applies that artists enjoy a considerable protection with regard to their artistic freedom, in which, (...) art may "offend, shock or disturb"ⁱⁱⁱ(...) In this respect it is furthermore important that the use by Plesner is to be regarded (...) as functional and proportional and that it does not serve a commercial purpose.^{lii}" Confirming the legitimacy of the iconic use of the Louis Vuitton hand bag, the court stated "The circumstance that Louis Vuitton is a very well-known company, the products of (...) a considerable reputation - which it also stimulates through advertising famous people -- moreover implies that Louis Vuitton must accept critical use.^{liiii}" The verdicts concluded that their previous order was entirely quashed in favor of the artist.^{liv} The reputation of Luis Vuitton suffered way more by having her taken to the court than with the artist using the Audra-bag in her work. Even though the penalties were quashed in favor of the artist she still had a considerable amount of lawyer costs for which Louis Vuitton didn't come up. As a conclusion one could say the choice Plesner made to use the illustration of an Audra-Handbag in her work had the effect of a big bang: a lot of international attention and a lot of debts. Anyway; when I asked her if she would make the same choices again, the artist said yes, she would.

³ This means she was not allowed to be present or defend herself at the court

Paris Hilton takes every piece of Louis



Vuitton in America to World Cup

Headliner of an article on purseblog.com^{tv}

Nadia Plesner

Simple Living, 2008^{lvi}



simple living



Nadia Plesner
Darfurnica, 2010^{lvii}

If you want an happy ending that depends on where you stop your story

The law cases of Plesner, Koons and Prince illustrate the friction between art and law. An issue of copyright law is that it is a relatively new reaction on a practice which is relatively old. Appropriation has an extended background in the history of art; albeit its reasons may have evolved from educational purposes to artistic expression. The evolution of art shows that copying and appropriating is closely intertwined with the emergence of new art movements. Without it there would be no Raphael, no Picasso, no Duchamp and no Hirst - appropriation is an essential part of the production, the history and probably the future of art.

Admitting that artists are partly dependent on copyright protection to earn their livings, I think that this protection is going too far. When an artist uses another artist's work, I would propose a further distinction in applying copyright law. Instead of asking: What? (and looking at the extend of the copyright infringement), the criteria should be Why? (and take in consideration the critical intentions of an artist and the context a work has been made for). Then again: what are "suitable" reasons to appropriate and what not? The matter is delicate.

Even though the "freedom of speech" article already permits this kind of approach, the Plesner case demonstrates how difficult it can be for an artist to defend this right.

From the trademark holders' point of view Plesner's action was a violation of their rights. From the artist's point of view she had the right to use the trademarked product as an icon for "showbiz elements" based on her freedom of speech. Both rights are on equal footing according to the court's decision in the Plesner case. The fact that the court weighted the interest of the artist's freedom of speech higher than the economical interests of a world-

wide known fashion label highlights in my opinion the societal value of art. Reasoning that "art may offend, shock or disturb" and that Plesner's use of the Louis Vuitton handbag was "functional", the verdict anticipates that freedom of speech (including the freedom of critical expression through a work of art) is a - if not the - "function" of art. According to this sentence, artists should have the privilege to express themselves critically without fearing legal consequences. In real life things are little bit more complicated; whether the use of an appropriated work is "functional" or not is a decision taken by the courts and differs from case to case. To rely on the verdict in the Plesner case as a precedent would therefore be fallacious. As long as copyright law remains the way is it now there are only two possibilities to avoid the risk of being sued: either to stop using appropriated images or to continue using them - supported by "The Appropriator's User Guide". Given those two options I prefer to take the risk.

Featuring the appropriations

What do you know about music, you're not a lawyer

John Lurie

Title of a song

Down by law **Soundtrack**

The artist eating a banana

Sarah Lucas

Title of an image

The history of art is the history of sampling

Leo Steinberg

Quote^{lviii}

Hail to the thief

Radiohead

Title of an album

The Paradine Case

Alfred Hitchcock

Title of a movie

If you want a happy ending, that depends, of course, on where you stop you story

Orson Welles

Quote^{lix}

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