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THE ART OF THEFT

THE SHEER NUMBER of recent lawsuits and controversies concerning various forms of copyright infringement—ranging from film scripts and art to pop music—indicates that 'intellectual property' and the profits to be gained from it are hotly contested. Stars like Michael Jackson regularly have to defend themselves against accusations of having infringed the copyright of artists they have probably never heard of; though the cases are often far-fetched, there are enormous sums at stake. It is becoming increasingly difficult for many serious artists to work without being completely submerged by legal proceedings. Some sort of appropriation of pre-existing material is, of course, integral to many forms of contemporary cultural practice, but these are increasingly under pressure from armies of lawyers. In the field of music, controversies over samples can be especially stifling for bands or artists without the backing of large corporations with specialized legal departments. The cultural implications of this development are far-reaching. The band Negativland, who are actively involved in the current discussions on sampling and copyright, have noted that 'cultural evolution is no longer allowed to unfold in the way that pre-copyright culture always did. True folk music, for instance, is no longer possible', since folk music thrived on the free re-use of melodies and words.[1] Video artists and filmmakers—like Jean-Luc Godard, whose *Histoire(s) du Cinéma* consists in large part of historical film footage—have to deal with similar problems: daunting sums have to be paid for every snippet of audio-visual material.

The concept of 'fair use' of copyrighted material for private, scientific or artistic purposes is under threat. Copyright is in fact one element of a wider, increasingly integrated field referred to as 'intellectual property', which also includes trademarks and patents. Furthermore, in the realm of computer software and websites, intellectual property rights are

now often guarded by draconian user contracts; paying subscribers to the Billboard.com website, for example, must sign an agreement which states that they can in no way retransmit information from the articles and data they pay for.[2] However, copyright law is still predominant where the right to use music, pictures or text is concerned. In 1997 Mattel mounted a legal challenge against internet artist Mark Napier's *Distorted Barbie* project, considering his altered images of the doll an infringement of copyright. More bizarrely, Warner Brothers' legal department has harassed children who had their own *Harry Potter* fan pages on the internet. Everywhere users are being pressed into becoming passive consumers.[3] Even the private duplication and non-commercial distribution of MP3 audio files has led to huge court cases.

Copyright law thus seems to be at the service of multimedia corporations rather than working for either artists or the public. It has evolved in such a way as to fully participate in the new regime of intellectual property, stifling criticism, parody and creative re-use of copyrighted material. In the current climate, virtually every form of quotation and appropriation is regarded as theft, or at least suspected of being so until proven otherwise. We have reached a strangely archaic state of civilization, where the ideal of emulation has given way to the taboos of copyright—as if Barbie and Harry Potter were images of gods guarded by a caste of priests, and to make unsanctified use of them were blasphemous. Contemporary art and theory may have renounced the Romantic–Modernist cult of originality, but it has now been restored in law.

Perhaps a counter-attack against the dominant legal perspective could take the form of an ironic appropriation of its vocabulary. Why not maintain that theft is an essential part of any culture that wishes to remain dynamic? An evolving and self-critical culture is unthinkable without an art of theft as one of its constituent elements: quoting and appropriating is a way of manipulating material and introducing different meanings. The very fact that artistic theft breaks through the privatized monads that make up contemporary society leads to unease within corporations;

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[1] Negativland, 'Fair Use', http://www.negativland.com/fairuse.html

[2] Siva Vaidhyanathan, *Copyright and Copywrongs: the Rise of Intellectual Property and How It Threatens Creativity*, New York 2001, p. 178.

[3] It should be noted, however, that there have been attempts at digital alternatives to copyright, such as the Open Source movement, or the practice of 'copyleft', which leaves material free to be re-used as long as the original source is indicated.

Mark Napier may have had a point when he noted, after Mattel had exerted legal pressure to have his project removed from the web, that 'their attack is grounded less in profit than on preserving the fiction of Barbie', adding—rather optimistically—that 'if her meaning is distorted, she will cease to exist.'[4]

Era of emulation

Part of Romanticism's bequest to modern culture was the notion that the authentic artist creates in a state of complete autonomy, like Mother Nature. By contrast, the classical tradition in art—from the Renaissance to the eighteenth century and into the nineteenth—acknowledged the importance of theft as an element of emulation or imitation, which was itself a cornerstone of (Post-) Renaissance art theory. The most important late defence of this doctrine is to be found in Joshua Reynolds's sixth *Discourse on Art* (1774), in which he reminds his audience that 'it is vain for painters or poets to endeavour to invent without materials on which the mind may work, and from which invention must originate. Nothing can come of nothing.'[5]

For the most part, Reynolds speaks of imitation in a general sense: learning from the careful study of Old Masters. There are also, of course, more concrete ways of imitating, and Reynolds admits that the direct lifting of 'a particular thought, an action, attitude, or figure' from someone else's work might be open to the charge of plagiarism. However, such a practice will be justified if the outcome is good, or perhaps even superior to the original work. And while Reynolds gives the artist *carte blanche* only with regard to ancient art, because 'the works of the moderns are more the property of their authors', he still advises students of the Royal Academy to plunder the 'moderns' as well, as long as they try to create a new work of art with what they have pilfered.

> Such imitation is so far from having anything in it of the servility of plagiarism, that it is a perpetual exercise of the mind, a continual invention. Borrowing or stealing with such art and caution, will have a right to the same lenity as was used by the Lacedæmonians; who did not punish theft, but the want of artifice to conceal it.'[6]

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[4] See Mark Napier's account, 'Does *The Distorted Barbie* violate Mattel's copyright?', http://users.rcn.com/napier.interport/barbie/barbie.html
[5] *Discourses on Art* (1797), ed. Robert Wark, New Haven 1975, p. 99.
[6] *Discourses*, p. 106–7.

Reynolds is a voice from another world. Contrary to present beliefs and practices, he maintains that there are distinctions to be made—that artistic theft should not necessarily be treated like theft of property. He closes with the following exhortation:

> Study therefore the great works of the great masters, for ever. Study as nearly as you can, in the order, in the manner, and on the principles, on which they studied. Study nature attentively, but always with those masters in your company; consider them as models which you are to imitate, and at the same time as rivals with whom you are to contend.[7]

Reynolds was already under pressure from a growing, proto-Romantic cult of originality, as is evident from his attacks on people who extolled true creation as being irreconcilable with imitation of works by other artists. He stands at (or near) the end of a tradition in which for centuries greater and lesser masters alike copied certain canonical works—by Leonardo or Raphael, for instance. Most often these were (partial) sketches that were not meant to be exhibited, but kept for future use in new works that would include knowing quotations from a revered master. Artists often undertook travels to Italy to study paintings, sculptures and statues, but the rise of printing techniques led to a much more widespread diffusion of certain compositions than would otherwise have been possible. Raphael's composition of *The Judgement of Paris*, for example, as engraved by Marcantonio Raimondi in the early sixteenth century, was later emulated by artists like Rubens and even (albeit in a more iconoclastic mode) by Manet, whose *Déjeuner sur l'herbe* (1863) is a reworking of Raphael's invention.

Regulating reproduction

Marcantonio Raimondi is a crucial character in the history of the art of theft, and prophetic of the crisis in the classical tradition resulting from the rise of new methods of reproduction. His lasting fame derives from his work for the Raphael studio, whose compositions he transferred into engravings with an unprecedented sense of monumental plasticity, as well as clarity. In his early days Raimondi mainly took his prints from the works of northern artists, such as Dürer. In 1506 Dürer arrived in Venice, infuriated—according to Vasari—by the fact that Marcantonio had engraved copies of his woodcuts, complete with

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[7] *Discourses*, p. 113.

the 'AD' initials, and that people had bought them as genuine Dürer works. The German artist wanted the authorities to intervene.[8] The legal situation around Marcantonio's act was thoroughly confused, as it was an unprecedented case: 'The rights and privileges of the reproductive engraver were unclear in the early sixteenth century, for this profession developed only as Renaissance artists began to assert a claim to their own inventions and to rely on engravers to make these inventions known.'[9] The Venetian authorities were perhaps not aware of the new importance attached to the 'intellectual' element of art (i.e. the artist's *conceptio*) by the emerging art theory of the Renaissance. They seem to have thought along mediaeval lines, and valued Marcantonio's craft. If he was capable of making fine versions of another artist's compositions, then that was all right. Hence Dürer did not succeed in prodding the Signoria into any legal action beyond prohibiting Marcantonio to use the signature initials. Marcantonio was free to exert, in a literal sense, his *copyright*, his right to copy; he simply was not allowed to pass these copies off as Dürer's own work.[10]

Marcantonio's Dürer prints are in a sense closer to contemporary copyright violations for commercial purposes (like pirated *Calvin and Hobbes* illustrations on clothing) than to the Renaissance practice of emulation. His luck was that his medium of reproduction (engraving) still had an important manual component, and so the authorities let him off the hook—it was 'his own work'. This line of reasoning has become impossible with current digital forms: anyone can download music files or scan illustrations without possessing special skills. But Renaissance artists were not going to watch idly while engravers pirated their designs. They wanted either to make the prints themselves or supervise and control their production: in a move that is somewhat reminiscent of contemporary governments and corporations employing hackers, Raphael hired Marcantonio as his official engraver. Although they could hardly be accused of consistency, Raphael and Marcantonio signed several prints with both their names, in a way that emphasized the distinction between creator and engraver: RAPHAEL INVENTIT and

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[8] Giorgio Vasari, *Lives of the Most Eminent Painters, Sculptors and Architects* (1550/1568), trans. by Mrs. Jonathan Foster, London 1886, vol. III, p. 493.

[9] Elizabeth Broun, 'The Portable Raphael', in *The Engravings of Marcantonio Raimondi*, Chapel Hill, NC 1981, p. 22.

[10] See Hubert Damisch's discussion of this matter in *The Judgement of Paris*, Chicago 1996, pp. 81–83.

MAF (Marcantonio *fecit*). The exact nature of their business arrangement is still rather unclear, and the rules concerning printmaking remained muddled for a long time. Some artists were hired by printers, or contracted printers themselves, but dead artists were fair game for everyone: there were many prints allegedly (but not always in fact) based on works by Hieronymus Bosch produced in the sixteenth century.

But it was the most revolutionary method of reproduction and multiplication that led to the beginnings of state regulation: book printing. Royal 'privileges' gave publishers the exclusive right to publish a certain book during a specified period, but this was not so much copyright law as a form of state control.[11] In England, censorship ceased to be the dominant factor with the 1709 Statute of Queen Anne, but in France the *ancien régime* continued to use its system of privileges to block publication—which led to the blossoming of an underground culture of 'illegal best-sellers'.[12] In contemporary copyright we appear to witness a partial return to the logic behind the old system of privileges, before the advent of modern copyright legislation: like the former, corporate actions against 'copyright infringements' such as Napier's *Distorted Barbie* amount to a regime of censorship.

Copyright legislation in the eighteenth and early nineteenth century was mainly stimulated by the wish to enable authors to make a decent living, and hence be able to create new works. Attention was initially still focused on writers: the first American copyright law of 1790 dealt exclusively with books and maps; but it quickly became clear that this was insufficient. An 1802 amendment extended the law to engravings and etchings, while musical compositions were added in 1831. Popular nineteenth-century painters like Delaroche and, later, Holman Hunt and Alma-Tadema became adept at exploiting their copyright by selling it to enterprising art dealers like Goupil and Gambart, who then hired engravers to produce prestigious prints.

Although the sale of reproduction rights was an important source of income for such artists, supplementing the sale of the actual paintings, it repeatedly happened that a painter was willing to sell his copyright at a

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[11] Royce Whale, *Copyright: Evolution, Theory and Practice*, London 1971, pp. 1–7.
[12] See Robert Darnton, *The Forbidden Best-Sellers of Pre-Revolutionary France*, New York 1995.

bargain price if the publisher were willing to invest in a superb engraver. These artists were highly aware that reproductions of their works were crucial to their reputation, since the actual paintings were often hidden away in private collections.[13] Goupil and Gambart also quickly realized the possibilities of photography: in 1858, Goupil published a *catalogue raisonné* of Delaroche's work with photographic illustrations, as well as a series of reproductions called *Galerie photographique*. In something close to historical irony, Goupil even published photographs after prints by Raimondi. However, the new form of reproduction proved to be a mixed blessing: it was comparatively easy for others to make photographic copies of the engravings published by Goupil and Gambart, and offer them at a fraction of the cost. The dealers responded to this threat by trying to get the photographers convicted for pirating 'their' engravings. The attempts were usually ineffective, however, because of the limitations of European laws.[14]

However great the turmoil over mechanical reproduction, artists still retained their manual copyright. To this day one can see artists labouring over their copies of Old Master paintings in many European museums; these same museums will, needless to say, milk their copyright for all its worth when it comes to photographic reproduction for books or magazines. As a general rule, 'imitation' in painting and drawing remained free from legal complications but, under the influence of Romantic notions of art, copying and quoting were increasingly seen as *artistic* sins. The cult of originality entailed a kind of possessiveness among artists: certain forms or compositional types were 'theirs'. In this sense, the censorious attitude of Romanticism and its Modernist offspring towards artistic theft may have enabled it to be seen as a legal offence. Perhaps Aby Warburg sensed this when he described the opposition between the modern cult of originality and Dürer's use of an Italian model for his print depicting Orpheus in legal terms. Punningly, Warburg suggested that if a judge were to investigate the evidence of Dürer's 'artistic

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[13] Stephen Bann emphasizes this point with regard to Delaroche in his *Parallel Lines: Printmakers, Painters and Photographers in Nineteenth-Century France*, New Haven 2001.

[14] Robert Verhoogt, 'Kunsthandel in prenten. Over de negentiende-eeuwse kunsthandels van Goupil en Gambart', in *Kunstlicht*, vol. 20, no. 1, pp. 22–29; and 'Artistic Piracy: Modern Conflicts of Artistic Copyright in Historical Perspective', http://www.unites.uqam.ca/AHWA/Meetings/2000.CIHA/Verhoogt.html

Prozess', it would become apparent that he, too, had stolen things and was 'no individual in the modern sense of the word'.[15]

The triumph of legalism is a recent event. For close to two centuries, copyright concerned mainly the protection of authors, publishers or artists against the 'copying' of entire books, paintings (via prints) etc. That is to say, it was concerned with Raimondi's business (reproduction), not with Reynolds's (emulation). Only in the past few decades has copyright been expanded to include snatches of musical compositions, or vague similarities in storylines. Copyright has also inflated in another, scarcely perceived way: for a painter-theorist like Reynolds it was self-evident that painters should depict scenes from great literary works, and it would never have entered his mind that this might cause legal problems (in part, it is true, because the original creators were long dead). But when short stories and novels were used as the basis for films in the early twentieth century, it quickly became the rule that studios should pay the authors for the film rights.[16] Even at that comparatively early date, copyright infringed upon established artistic practice, such as taking a work in one medium as the basis for a work in another. As in more recent cases, this results in a limitation of the possibilities for active cultural intervention: only large studios can buy the rights to certain books, and will sue anyone who makes a different (perhaps superior, perhaps critical) version. 'Officially', all this is of course designed to 'protect authors'; but wouldn't authors in any case benefit substantially from sales of books made into one or more 'major motion pictures'? They might also benefit if a studio deemed it wise to ask them, for a fee, to endorse the film based on their book.

Semiological warfare

Culture has become big business, but big business has also increasingly become culture: this is certainly one cause for the current legal fundamentalism regarding copyright. Capitalism has entered its neo-Platonic phase, with a hint of German idealism, or its debasement in theosophy: spirit triumphs over matter as images, brands and experiences prevail

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[15] The word means both process and trial in German. Manuscript by Aby Warburg quoted in Charlotte Schoell-Glass, *Aby Warburg und der Antisemitismus. Kulturwissenschaft als Geistespolitik*, Frankfurt 1998, p. 87.
[16] Vaidhyanathan, *Copyright and Copywrongs*, pp. 81–116 and p. 125.

over more down-to-earth commodities. The answer proposed by some critical groups and individuals has been 'culture jamming.' Mark Dery popularized the term, which had also been used by Negativland, with his 1993 manifesto *Culture Jamming: Hacking, Slashing and Sniping in the Empire of Signs.*[17] If culture is largely controlled by multinational corporations, then to point to alternatives it needs to be subjected to critical interventions. The signs have to be manipulated, mutilated; such acts of 'semiological guerrilla warfare' (as Dery quotes Eco) have a liberating power; they constitute 'radical politics in the empire of signs'.

Culture jamming can take on different guises. For the Canadian Adbusters group, it mainly means the manipulation of advertisements, especially for clothing, alcohol and tobacco products. However, Adbusters' commercialism (one can buy culture-jamming merchandise from them) makes them seem like another—hip, progressive, 'critical'—brand.[18] A further, more substantial problem is that their message often merely consists of politically correct truisms in graphic form: smoking and alcohol are bad for you, etc. A version of the Absolut Vodka ad with a limp bottle and the slogan 'Absolut Impotent' is weak humour blended with a degree of puritan self-righteousness. It certainly remains within the bounds of conventional satire—more Alfred E. Neuman than Guy Debord. Adbusters may be a particularly pallid example of contemporary culture jamming, which also includes more intelligent practices, but its limited aims are characteristic of the current situation. Dery invokes Situationist *détournement* as a historical precedent for the practices he avows. A more detailed comparison might be useful in order to understand the transformations of the art of theft in the past decades.

In their 1956 article on the subject, Debord and Gil Wolman clearly distanced the concept of *détournement* from mere parody for the sake of 'comical effects'. Traditional parody still presupposes the notion of an original—MAD magazine parodies remain dependent on the films and TV shows they mock—whereas the Situationist regards his 'sources' as null and void.[19] This is true even when acknowledged masterpieces, like

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[17] See http://www.essentialmedia.com/Shop/Dery.html; Dery's essay can also be found on several other websites.

[18] See Carrie McLaren, 'Culture Jamming™ Brought to you by *Adbusters*', http://www.ibiblio.org/stayfree/9/adbusters.htm

[19] Guy Debord and Gil Wolman, 'Mode d'emploi du détournement', in *Les Lèvres nues*, no. 8 (May 1956), p. 3.

a Griffith film, are to be détourned. What is amazing about Situationist *détournement* (the concept and, at times, the practice) is precisely the belief that the capitalist world was doomed, and so were the images and other materials that were to be appropriated. To the Situationists, the glittering signs surrounding them already looked like ruins. Marilyn Monroe was a corpse under a layer of make-up; her days were numbered. This is a marked difference from most contemporary culture jammers, who are less sure that history is on their side rather than that of Bill Gates or Michael Eisner. If anything, there is a sense that one's own existence is threatened by forces that are much stronger than previously thought. As it is hard to believe that the 'decline and fall of the spectacular commodity economy' is at hand, the Situationists' arrogant sense of superiority has given way to more modest practices. But even these constantly risk being persecuted as copyright infringements, whereas the Situationists' critique of the cult of originality and of the commodified work of art took place in a period when acts of 'borrowing or stealing' were not all treated as such.

The Situationists' attitude towards public activity varied over the years. The initial founding of the SI, with the participation of well-known artists, was a step out of the utter obscurity of the Internationale Lettriste into something distantly resembling limelight, but Debord and his allies seem to have strongly believed that one could simply sit back and await the system's impending collapse. (When the time was finally ripe, one should of course be ready to produce pamphlets to give the revolutionaries a solid theoretical base.) Today's culture jamming, on the other hand, starts from the presupposition that even the smallest changes have to be fought for, and most other changes will be for the worst and, what's more, highly unlikely to provoke an insurrectionary uprising against the system. While *détournements*, like those in Debord's films, were often esoteric and demanding, culture jamming is often populist precisely because its impact is thought to matter. This is true even with artists who refer explicitly to the Situationists, such as director Craig Baldwin, whose film *Sonic Outlaws* is based on Negativland's troubles over sampling. Baldwin's comparatively moderate stance is evident from his opinion (which has also been voiced by Negativland) that the concept of 'fair use' in copyright law should be extended to include new works that are created from fragments of other works.[20] The impulse seems

[20] See 'No Copyright? A Talk with *Sonic Outlaws* Director Craig Baldwin', at http://www.deuceofclubs.com/write/baldwin.htm

to be less to destroy current capitalist culture than to curb its excesses and to make sure that artistic creation, of which an art of theft is a necessary element, remains possible at all. Siva Vaidhyanathan is another proponent of this tendency; apart from advocating a more liberal interpretation of 'fair use', he argues that copyright should be seen not as a property right but as a privilege accorded to a producer for a limited number of years.

During the 1990s, forms of culture jamming have been adopted by people who are nobody's idea of daring semiotic terrorists: it has become part of the mainstream as well. The various 'attacks' on Barbie might serve as an example. It is not surprising that this ubiquitous plastic ideal of womanhood has had its share of mutilations; they range from a girl at my local supermarket who wears a T-shirt with the text 'BARBIE IS A SLUT' to a variety of Barbie web sites and even to the 1997 Aqua hit song *Barbie Girl*. While Aqua's bland pop confection was probably not what Dery had in mind when he wrote his manifesto, it proved threatening enough—'Life in plastic is fantastic'—for Mattel to sue. Perhaps the mere mention of unspeakable things like 'hanky-panky' in the lyrics was seen as an attack on the Barbie essence: a shiny, spotless fetish without orifices. To Mattel, this *was* hardcore culture jamming. Their lawyers immediately went into action, but Aqua had behind them a major record company willing to enter a costly legal fight, and emerged victorious.[21] Mark Napier, since he had no such corporate backing, chose to make a more abstract version of his *Distorted Barbie* web project, in which the images were not recognizable as Barbie dolls anymore. The work may actually have profited from this: the later images have an uncanny power that was lacking in the earlier, more literal ones. Still, it is a sobering illustration of the state of things. One might regard mainstream forms of culture jamming with distrust: once again, something radical is co-opted. On the other hand, the fact that the attacks on Barbie come from different quarters, and range from mainstream entertainment to art and the subculture, could be seen as a hopeful sign: the copyrighted culture is everywhere under attack, and the very companies who exploit it are at times forced to turn and fight.

Although it is not very likely that these contemporary *détournements* will lead to the destruction of such an icon of pop-culture, as Napier believes,

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[21] Naomi Klein, *No Logo*, London 2000, pp. 180–1.

they can certainly introduce meanings that are undesirable from Mattel's point of view. This means not the destruction, but the transformation of the icon—a process with an unforeseeable outcome. Once again, it appears that present-day culture jamming does not aim at the destruction of capitalist society, but rather to make spaces from which it can be criticized and changed. In this regard, the historical precedent for many contemporary practices is not so much the extreme ambitions of Situationist *détournements* as the Barthesian idea of a 'second-degree mythology'—a hijacking of the 'myths' of mass culture for critical purposes, without necessarily presupposing that the end of capitalism is just around the corner.[22]

To the Situationists, of course, Barthes was about as radical as Eisenhower or De Gaulle; but while a retreat from maximalism can lead to a kind of Biedermeier criticism content to set itself small, immediate goals (as with Adbusters), a sober appraisal of the possibilities and problems of 'culture jamming' is in itself positive, and some contemporary *détournements* (for instance on various websites) are quite aggressive and cunning. The problem remains that such practices are likely to meet legal challenges; but this only emphasizes the necessity of a broadly practised art of theft—of many parallel arts of theft, both mainstream and marginal. Only the continuation and intensification of culture jamming can give momentum to necessary initiatives to reform copyright law.

Institutionalized appropriation

In the late 1970s and the 1980s, appropriation was regarded as a quintessential strategy of postmodern art: the appropriation of pre-existing material sabotaged the Modernist cult of originality and authenticity.[23] Artists like Richard Prince and Sherrie Levine 'rephotographed' both advertisements and works by classic photographers like Evans and Weston. Levine also copied paintings and drawings by Schiele, Stuart Davis and other Modernists. Theorists found precedents for this appropriation art in the readymade and the collage; these were contrasted, as radical avant-garde strategies, with 'official' Modernism, which aimed at depth, authenticity and originality.

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[22] Roland Barthes, *Mythologies* (1957), trans. Annette Lavers, New York 1972, p. 135.
[23] See Douglas Crimp, *On the Museum's Ruins*, Cambridge, MA 1993; and Craig Owens, *Beyond Recognition: Representation, Power and Culture*, Berkeley 1992.

However, the postmodern critique of originality clashed with the now thoroughly established concept of intellectual property. As we have seen, the Situationists were more or less free to criticize both the Modernist belief in originality and the reign of spectacle by détourning media images and texts, without having to face legal consequences. In the sixties, much more publicly, Andy Warhol re-used publicity stills and news photographs (as well as the designs of products like Coca-Cola and Brillo soap pads) without getting himself into trouble. But when Jeff Koons made use of images from kitsch postcards for some of his 1980s sculptures, it led to lawsuits. In the court case concerning Koons's sculpture *String of Puppies* (1988) the artist and his lawyer used a strategy derived (consciously or unconsciously) from Marcel Duchamp's defence of his *Fountain* (1917), the famous urinal signed 'R. Mutt'. Duchamp anonymously defended the work of 'Mr. Mutt' on the grounds that he had 'created a new thought for that object.'[24] Duchamp, of course, was not arguing a legal case; reacting against the cult of originality, he defended the *artistic* right of 'Mr. Mutt' to sign a urinal and present it as a work of art. Along similar lines Koons claimed that he had imbued the postcard's picture with 'spirituality' and 'animation' by taking it 'to another vocabulary'. This line of defence failed; in 1990, Koons was found to have violated the photographer's copyright.[25]

If there is a danger in the art of theft as practised inside the art world, it lies in the widespread silence regarding such cases and copyright issues in general. The recent debates over artistic theft have been curiously neglected by the more established art institutions and publications—as if these matters are better left to activists whose financial stakes are not so high. In spite of this code of silence, artists who appropriate images (from magazines, films or television) now have to spend a considerable amount of time and money on legal issues. This may not be so arduous for 'big' artists, but it certainly is for less commercially successful ones. It is to be hoped that artists will start to deal with this more overtly, letting it flow over into their work so as to make it a more public concern.

An example of such an approach is the Ann Lee project by Pierre Huyghe and Philippe Parreno. These artists have purchased the copyright of a

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[24] Anonymous [Marcel Duchamp, possibly with Beatrice Wood], 'The Richard Mutt Case', in *The Blind Man*, no. 2 (May 1917), unpaginated.
[25] Geoffrey Batchen, 'Post-Photography', in *Each Wild Idea: Writing, Photography, History*, Cambridge, MA 2001, p. 124.

Japanese manga character, Ann Lee, and made her the subject of several computer animation videos. In Huyghe's video *Two Minutes Out of Time* (2000) Ann Lee talks to the viewer about being a 'sign' designed by a company and 'proposed for sale'. At the beginning, she asks the viewer for two minutes of his or her attention, 'two minutes of your linear time. That's more than I would have spent anyway in a story before being forgotten . . .' This remark refers to the fact that Ann Lee was given attributes that would have made her a very minor, barely noticeable character (as if to reflect this, the artists variously spell her name Ann Lee, AnnLee and Annlee). Huyghe and Parreno have, as it were, rescued her from this fate and given her a voice. Huyghe's video is strangely touching: seeing this computer-generated being with its alien eyes is like watching a slave speaking about life as someone's property—Ann Lee is a virtual serf. By purchasing her, the artists participate in the copyright economy, but by making this act of purchase public and elaborating on it in their videos, they break the art world's silence.

Huyghe, who often utilizes old film material, has had more than his share of copyright struggles, and has repeatedly referred to them in his works. In the video installation *The Third Memory* (2000), two adjacent projections feature former bank robber John Wojtowicz, whose story was told in the Sidney Lumet film *Dog Day Afternoon* (1975).[26] Huyghe shows Wojtowicz—now an elderly and voluminous man—in an abstracted, simplified version of the bank set from *Dog Day Afternoon*; Wojtowicz tells his version of the historical truth, while complaining about the FBI's manipulations and about Warner Brothers, who he claims still owe him money. At the beginning of this work, Huyghe shows an FBI warning about the illegal copying of videos: it constitutes a federal offence. In spite of his underdog position, Wojtowicz is in a sense just like Warner Brothers and similar corporations: he wants to milk his copyright to the fullest. What makes his case different is that he also wants to reclaim his life's story—only he can tell the truth. Payments from Warner Brothers may perhaps come in handy financially, but one gets the impression that what Wojtowicz really wants is what Huyghe offers him: the opportunity to say what happened in the bank, how the FBI betrayed him and told lies about him, and how Warner Brothers continued in the same vein.

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[26] See the exhibition catalogue *Pierre Huyghe. The Third Memory*, Paris 2000.

However, as the lights over the unreal, stylized set go up and then go out, one gets the impression that it is all just a dream constantly worked over by Wojtowicz. He gets to repeat everything, but this time he is in control, even if only by being the narrator of a story whose outcome is already determined. In this way, Huyghe shows not so much 'the truth behind *Dog Day Afternoon*' as a man who is entangled in the myth his life has become. The FBI warning included by Huyghe makes it clear that working with such a copyrighted mythology, in which *Dog Day Afternoon* is a central element, is a difficult undertaking. As a Barthesian *détournement* of *Dog Day Afternoon,* as a second-degree myth realized in spite of such obstacles, *The Third Memory* is one of the most complex and thought-provoking meditations on the current state of our copyrighted culture.

But how persuasive are the claims that have been made for the critical nature of appropriation art if one perceives that artists such as Sherrie Levine or Richard Prince, as well as younger artists such as Huyghe, have remained largely within the confines of art-world institutions, and that their work is thoroughly commodified? One could see appropriation art as the domestication of *détournement,* by an art world eager for some semblance of critical intellectual engagement. The Situationists had a rather uneasy relationship with art; the IS defined itself as a *revolutionary* rather than *artistic* avant-garde, and the fact that Asger Jorn and other artist-members sold their work in order to make a living was never really accepted.[27] *Détournements* in the contexts of art and literature were acceptable only in order to show that 'the old cultural spheres' were obsolete. The real arena of the *détournement* was outside those specialized fields—in pamphlets, magazines, posters or films. By contrast, many contemporary practitioners who appropriate imagery appear to be quite content to remain within the art world, by now a subdivision of the culture industry, but still one with special rules of its own.

This means that the reception of their work is largely conditioned by the category of the *œuvre*: Richard Prince's rephotographed Marlboro cowboy is at least as much an icon of the work of Richard Prince (presented in retrospectives and in catalogues) as it is a deconstruction of an icon of masculinity and its instrumentalization by the tobacco industry.

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[27] Anonymous, 'L'Avant-garde de la présence', *Internationale Situationniste*, no. 8, January 1963, pp. 20–21.

However, it is precisely because the Marlboro man takes his place in Prince's work among, for instance, rephotographed 'biker chicks' that the result is something more interesting than a tobacco version of 'Absolut Impotent'. An *œuvre* like that of Prince may be commodified and firmly locked within the art world, but this position enables it to go beyond the sloganesque. More direct, activist forms of the art of theft are needed as well, but it would be an immense impoverishment to brush aside sophisticated approaches. In a culture largely owned by monolithically intolerant companies, initiatives to reform copyright law can only gain momentum if the art of theft is practised in widely different contexts and in different ways—ranging from complex to inane, from belligerent to subtle, from subculture to mainstream and from high art to pop songs.