

Copyright as Material and Object of Art

Copyright not only protects the material and ideal interests of artists, it also increasingly causes problems, especially for artists working with collage procedures and drawing from existing images and other material. To address this conflict and to fight for the freedom of art, more and more artists are making copyright the theme of their artistic practice.

anonymous-Warhol_flowers

As so often in art, in the beginning there was chance. I never planned to spend meanwhile more than six years dealing with copyright and intellectual property as an artist. The topic did not suddenly “occur to me”, but rather imposed itself. It “fell on my head”, so to speak – in the form of a cancellation of an exhibition.

What was planned was an exhibition in Fall 2004 in the forum for new media plug.in in Basel. The net.art generator [<http://net.art-generator.com>] was to be at the center of the exhibition. This is a computer program I developed, accessible to everyone online and through a web site, which automatically generates collages when a search term is entered. The basic idea of the project is to explore typical image and discourse production in a networked culture. The program version nag_05, which works exclusively with images, proved to be especially suitable for continuing collage techniques – as they were developed by Cubism and Dadaism in the early 20th century – in the digital and networked age. Images emerge in a network that stand for more than themselves: they stand for the way they were created, for being embedded in processes of dialogue and exchange, for dynamic connections and for a continuous data stream. Since the new images were made with the help of a computer program conceived by me and realized by a programmer, and since this program works with principles of chance and uses images that can be called up on the Internet, set in motion by a user entering a search term, the question arises as to who is actually to be designated as the author of this kind of collage. It is not possible to produce the same collage twice with the nag_05; each result is therefore an original. But how original can an image be that is simply composed of parts of other images, where their selection and composition is not due to a human mind arranging them according to aesthetic criteria, but rather to a

computer program? Questions like this impelled my aesthetic experiments. At the same time, again completely by chance, a certain motif sneaked into the center of these experiments: the famous Warhol Flowers.

Suddenly they were there and not to be overlooked in their iconicity. Even if there were only parts of them, as a central motif of the art history of the 20th century they possess a kind of inviolable recognition value; neither small formats, a low image quality as conditioned by the web, nor digital de- and reconstruction are capable of making the motif unrecognizable. Background research on the motif also made it clear that it not only symbolically stands for the supra-individual image production perfected by Warhol. Through the history of multiple appropriation, the discourse of the artistic disruption of concepts of originality and authorship are inscribed in it, and it has thus become an ideal motif for my aesthetic experiments.

What was to be shown in Basel was my engagement with and continuation of the art of the Pop Art protagonist Andy Warhol in the digital age. He was not only one of the first artists to conduct an artistic appropriation of images from pop culture, art and advertising, but in addition he also practiced – according to the myth, at least – a production of works detached from his person by commissioning assistants to print “his” pictures. Machine and serial production and automation are further procedures, with which Warhol experimented all his life, and it is in this tradition that I also situate my net.art generator. And Warhol’s love of machinic, impersonal and dispassionate art-making is also continued, not least of all, in the motto of my net art generators: “A smart artist makes the machine do the work.” My tool is the computer and as an inexhaustible source for image material I use the Internet.

Warhol not only questioned the two central categories of art – the original work and its author – he wanted to destroy them, or at least significantly disrupt them. How little successful he was in this endeavor, how much Warhol “made a name for himself” specifically as the author of artworks, whose authorship is actually unclear and which represent anything but an original work in the conventional sense, became clear to me at the latest in the moment when the director of the exhibition venue conveyed to me the news that she could not carry out my planned exhibition due to the threat of copyright conflicts. She, or rather her legal advisor, was afraid of having problems with the rights

holders representing Warhol's rights in Switzerland. My joy in experimentation came to a sudden halt. My artistic freedom had been limited – due to feared violations of copyright.

Legal Perspective

To learn to better understand copyright and its effects that I experienced as limitation, I decided to present my “case” to several experts for examination. I questioned four specialized lawyers [1] about the authorship of the digital Flowers collages and asked them for their assessment of the legality of the production and exhibition of the images. None of the specialists was able to resolve who – from a legal perspective – could be unequivocally called the author of a newly created flower image. And on the question about whether I might exhibit the digital collages, the experts came to very different conclusions. The “right to free speech” was cited, as well as the constitutionally anchored “artistic freedom” (Art. 5 §. 3 GG) – both as possible strategies for arguing for the legality of exhibiting the digital collages. The other two experts proved to be more concerned and advised me against exhibiting and against publication on the web site. For me, these discussions resulted in two insights. First: the use of found images as raw material for artistic treatment generally leads into a legal grey area. The distinction cited in (German) copyright law between a “dependent” or “subject to authorization” treatment and a “free” treatment is often ambiguous in the individual case and is thus subject to the discretion of a judge. This leads to the second insight: no legal advisor can say with certainty whether artistic freedom carries more weight in an individual case, or the equally legally secured right of the author or the author's legal successors to determine what may be done with the work. This means that a legal judgment is needed to come to an unequivocal decision. If I insist as an artist on my right to artistic freedom, I must also be prepared to defend it in court. It is more than likely that many artists flinch at the associated costs and risks and exercise self-censorship in case of doubt. This may be one of the reasons why relatively few disputes of this kind are carried out in court.

My discussions with the lawyers were recorded on video and shown in Basel as an installation with the title Legal Perspective – as an alternative to the originally planned

exhibition. The entire material is also available on the Internet.[<http://artwarez.org/projects/legalperspective/>]

This is not by me

Although the legal situation remained unclear, Thomas Kaestle, then head of the Kunstverein Hildesheim, found the courage to invite me for a solo exhibition in 2006. In this exhibition he wanted to show not only the video interviews with the lawyers, but also large format prints of the treated flower motif for the first time. He was conscious of the situation that in case of a warning letter, he would also have to share in bearing the consequences.

To further develop the subject matter of the work, in the meantime I had developed a concept intended to counteract the legal uncertainty: I simply wanted to obtain Andy Warhol's agreement in a conversation with him. The video documentation of our conversation was then to be shown in Hildesheim as a new work. Since Warhol had already been dead for nearly twenty years at this time, I had to take recourse to a collage procedure again and edited excerpts from old film interviews with him together with new shots of me as the interviewer.

The artist proved to be as taciturn as ever in the conversation. The discussion about our comparable aesthetic strategies of treating found material and our shared passion for automated, machine- or software-based art production fell mainly to me. It was only when it came to making fun of traditional notions of creativity and originality that the Pop Art artist became more involved. We also talked about his own experiences with censorship. Like almost all of "his" pictures, his Flowers are also not by him. The magazine *Modern Photography* had printed replicas of hibiscus blossoms by the photographer Patricia Caulfield in 1964. Warhol discovered them there and subsequently further processed them into his screenprints. This appropriation of the Flowers led to his first lawsuit. Yet for Warhol, who does not understand, as he himself explains, why he does not automatically acquire with the purchase of a magazine the right to use the images depicted in it, the concept of intellectual property remains abstract. My request for permission consequently leaves him somewhat perplexed. With

my convincing demonstration of the net.art generator, however, I was able to talk him into allowing me to use the Flowers. The problem thus seemed to be solved – at least initially. Since then, not only the colorful prints of the digital collages, but also the video installation with the lawyers and my conversation with Warhol have been shown in several exhibition venues – with no problems [2].

Yet the story does not end there by far, because the film clips used for the Warhol interview also have an author, who asserted his rights and intervened when I published the video. However, we were able to settle the case among ourselves, among artist colleagues, without legal assistance...

In the Artists' Interests?

What has held my interest in the topic of copyright, and ultimately even motivated me to engage with it academically in the form of a doctoral dissertation, is the question of the interlocking of copyright and aesthetic theory. As the philosopher Eberhard Ortland explains, European copyright, which centers around the person of the author as creator and especially takes the author's ideational relationship to the work into consideration, could not exist without recourse to certain notions of the artwork and of artistic creativity.[3] At the same time, generations of artists have worked on undermining traditional concepts of authorship and work. What is the relationship then between these developments and copyright?

In addition, the contradiction, which arose for me in practice, of a copyright that is based on the one hand on the idea of aesthetic autonomy, but which increasingly limits this autonomy on the other hand, provides questions for an academic investigation. Without really being able to go into detail at this point, in conclusion I would still like to make a connection between current developments – the stricter laws, their more rigorous execution, and especially the general “copyright panic” triggered by various campaigns of the media industry – and global economic development. Intellectual property is the foundation of the “knowledge economy”. It is only through a worldwide enforcement of intellectual property rights – the principle concern of the TRIPS agreement – that global corporations see their investments and profits as being secure.

In this overall scenario artists play a rather subordinate role. The internationalization of intellectual property rights has introduced a development that brings the concept of intellectual property back closer to its beginnings, as a way of regulating competition independent from authors. In this context, the moral rights in European copyright are increasingly becoming a disruptive factor in unobstructed global trade. Nevertheless, artists still have one important role. The purported protection of their interests is excellently suited to passing more rigorous laws. It seems that most have not yet noticed, though, that artists are thus being used merely as a pretext for asserting completely different interests. Against this background, I regard my work as striving for an emancipated artistic position in the discussion of intellectual property.

[1] Thanks to the participating lawyers: Peter Eller, Munich; Jens Brelle, Hamburg; Dr. Rolf auf der Maur, Zürich; Dr. Sven Krüger, Hamburg.

[2] Selected: Mag:net Gallery, Manila (2006), FRISE, Hamburg (2007), Medienkunstverein Dortmund (2008), Mejan Labs, Stockholm (2009), hub:kunst.diskurs, Hanover (2009).

[3] Eberhard Ortland, Urheberrecht und ästhetische Autonomie, in: "Geistiges Eigentum", Deutsche Zeitschrift für Philosophie, 5, 2004, S. 775. Hrsg.: Ulrich Steinvorth, Michael Schefczyk, Christian Schmidt, Eberhard Ortland.

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