

# Whose Book is it Anyway?

A View from Elsewhere on Publishing,  
Copyright and Creativity

*Edited by Janis Jefferies  
and Sarah Kember*





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## II. Confronting Authorship, Constructing Practices (How Copyright is Destroying Collective Practice)

*Eva Weinmayr*

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This chapter is written from the perspective of an artist who develops models of practice founded on the fundamental assumption that knowledge is socially constructed. Knowledge, according to this understanding, builds on imitation and dialogue and is therefore based on a collective endeavour. Although collective forms of knowledge production are common in the sciences, such modes of working constitute a distinct shift for artistic practice, which has been conceived as individual and isolated or subjective. Moreover, the shift from the individual to the social in artistic production — what has been called art’s ‘social turn’<sup>1</sup> — also shifts the emphasis from the artwork to the social processes of production and therefore proposes to relinquish ‘the notion of the “work” as a noun (a static object)’ and re-conceptualises ‘the “work” as a verb (a communicative activity)’.<sup>2</sup> This shift from ‘noun’ to ‘verb’ promotes collective practices over authored objects and includes work such as developing infrastructures, organising events, facilitating, hosting, curating, editing and publishing. Such generative practices also question the nature of authorship in art.

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1 <https://www.tate.org.uk/art/art-terms/s/social-turn>

2 Carys J. Craig, ‘Symposium: Reconstructing the Author-Self: Some Feminist Lessons for Copyright Law’, *American University Journal of Gender, Social Policy & the Law* 15. 2 (2007), 207–68 (p. 224).

Authorship is no doubt a method to develop one's voice, to communicate and to interact with others, but it is also a legal, economic and institutional construct, and it is this function of authorship as a framing and measuring device that I will discuss in this chapter. Oscillating between the arts and academia, I shall examine the concept of authorship from a legal, economic and institutional perspective by studying a set of artistic practices that have made copyright, intellectual property and authorship into their artistic material.

Copyright's legal definition combines authorship, originality and property. 'Copyright is not a transcendent moral idea', as Mark Rose has shown, 'but a specifically modern formation [of property rights] produced by printing technology, marketplace economics and the classical liberal culture of possessive individualism'.<sup>3</sup> Therefore the author in copyright law is unequivocally postulated in terms of liberal and neoliberal values. Feminist legal scholar Carys Craig argues that copyright law and the concept of authorship it supports fail to adequately recognise the essential *social nature* of human creativity. It chooses relationships qua private property instead of recognising the author as necessarily social situated and therefore creating (works) within a network of social relations.<sup>4</sup> This chapter tries to reimagine authorial activity in contemporary art that is not caught in 'simplifying dichotomies that pervade copyright theory (author/user, creator/copier, labourer/free-rider)',<sup>5</sup> and to examine both the blockages that restrict our acknowledgement of the social production of art and the social forces that exist within emancipatory collective practices.<sup>6</sup>

Copyright is granted for an 'original work [that] is fixed in any tangible medium of expression'. It is based on the relationship between

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3 Mark Rose, *Authors and Owners, The Invention of Copyright* (Cambridge, MA and London: Harvard University Press, 1993), p. 142.

4 Craig, 'Symposium: Reconstructing the Author-Self', p. 261.

5 *Ibid.*, p. 267.

6 See also cultural theorist Gary Hall's discussion of *Pirate Philosophy*, as a potential way forward to overcome such simplifying dichotomies. 'How can we [theorists] operate differently with regard to our own work, business, roles, and practices to the point where we actually begin to confront, think through, and take on (rather than take for granted, forget, repress, ignore, or otherwise marginalize) some of the implications of the challenge that is offered by theory to fundamental humanities concepts such as the human, the subject, the author, the book, copyright, and intellectual property, for the ways in which we create, perform, and circulate knowledge and research?' Gary Hall, *Pirate Philosophy, for a Digital Posthumanities* (Cambridge, MA and London: The MIT Press, 2016), p. 16.

an ‘originator’, being imagined as the origin of the work,<sup>7</sup> and distinct products, which are fixed in a medium, ‘from which they can be perceived, reproduced, or otherwise communicated, either directly or with the aid of a machine or device.’<sup>8</sup>

Practices, on the contrary, are not protected under copyright.<sup>9</sup> Because practice can’t be fixed into a tangible form of expression, intellectual property rights are not created and cannot be exploited economically. This inability to profit from practice by making use of intellectual property results in a clear privileging of the ‘outputs’ of authored works over practice. This value system therefore produces ‘divisive hierarchical splits between those who ‘do’ [practices], and those who write *about*, make work *about* [outputs]’.<sup>10</sup>

Media scholar Kathleen Fitzpatrick observes in her forthcoming book *Generous Thinking*:

[H]owever much we might reject individualism as part and parcel of the humanist, positivist ways of the past, our working lives — on campus and off — are overdetermined by it. [...] c. And the drive

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7 Here ‘the producer is being imagined as the *origin* of the product’. (Strathern, p. 156). Therefore ‘in law, originality is simply the description of a causal relationship between a person and a thing: to say that a work is original in law is to say nothing more than that it originates from [can be attributed to] its creator’ (Barron, p. 56). And conversely, in law ‘there can be no ‘copyright work’ [...] without some author who can be said to originate it’ (ibid., p. 55). Anne Barron, ‘No Other Law? Authority, Property and Aboriginal Art’, in Lionel Bently and Spyros Maniatis (eds.), *Intellectual Property and Ethics* (London: Sweet and Maxwell, 1998), pp. 37–88, and Marilyn Strathern, *Kinship, Law, and the Unexpected: Relatives Are Always a Surprise* (Cambridge: Cambridge University Press, 2005).

See also Mario Biagioli’s and Marilyn Strathern’s discussion of the author-work relationship as kinship in Mario Biagioli, ‘Plagiarism, Kinship and Slavery’, *Theory Culture Society* 31.2–3 (2014), 65–91, <https://doi.org/10.1177/0263276413516372>

8 US Copyright Law, Article 17, §102 (a), amendment 2016, <https://www.copyright.gov/title17/>

9 ‘In no case does copyright protection for an original work of authorship extend to any idea, procedure, process, system, method of operation, concept, principle, or discovery, regardless of the form in which it is described, explained, illustrated, or embodied in such work.’ US Copyright Law, Article 17, §102 (b), amendment 2016, <https://www.copyright.gov/title17/>

10 Susan Kelly, “‘But that was my idea!’ Problems of Authorship and Validation in Contemporary Practices of Creative Dissent”, *Parallax* 19.2 (2013), 53–69, <https://doi.org/10.1080/13534645.2013.778496>. All references to this text refer to the version published on academia.edu, which is slightly different: [https://www.academia.edu/4485538/\\_But\\_that\\_was\\_my\\_idea\\_Problems\\_of\\_Authorship\\_and\\_Validation\\_in\\_Contemporary\\_Practices\\_of\\_Creative\\_Dissent\\_Parallax\\_Volume\\_19\\_2013](https://www.academia.edu/4485538/_But_that_was_my_idea_Problems_of_Authorship_and_Validation_in_Contemporary_Practices_of_Creative_Dissent_Parallax_Volume_19_2013), p. 6.



to compete [...] bleeds out into all areas of the ways we work, even when we're working together.' The competitive individualism that the academy cultivates makes all of us painfully aware that even our most collaborative efforts will be assessed individually, with the result that even those fields whose advancement depends most on team-based efforts are required to develop careful guidelines for establishing credit and priority.<sup>11</sup>

Artist and activist Susan Kelly expands on this experience with her observation that this regime of individual merit even inhibits us from partaking in collective practices. She describes the dilemma for the academic activist, when the demand for 'outputs' (designs, objects, texts, exhibitions), which can be measured, quantified and exploited by institutions (galleries, museums, publishers, research universities), becomes the prerequisite of professional survival.

Take the young academic, for example, who spends evenings and weekends in the library fast tracking a book on social movements about which she cares deeply and wants to broaden her understanding. She is also desperate for it to be published quickly to earn her the university research points that will see her teaching contract renewed for the following year. It is likely that the same academic is losing touch with the very movements she writes about, and is no longer participating in their work because she is exhausted and the book takes time to write no matter how fast she works. On publication of the book, her work is validated professionally; she gets the university contract and is invited to sit on panels in public institutions about contemporary social movements. In this hypothetical case, it is clear that the academic's work has become detached from the movements she now writes and talks about, and she no doubt sees this. But there is good compensation for this uneasiness in the form of professional validation, invitations that flatter, and most importantly, an ease of the cycle of hourly paid or precarious nine-month contracts.<sup>12</sup>

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11 Kathleen Fitzpatrick's working method with her book *Generous Thinking: A Radical Approach to Saving the University* (Baltimore: John Hopkins University Press, 2019) presents an interesting alternative to standard procedures in scholarly publishing. She published the draft of her book online, inviting readers to comment. This could potentially become a model for multiple authorship as well as an alternative to the standard peer review procedures. I am quoting from the published draft version: Kathleen Fitzpatrick, 'Critique and Competition' in *Generous Thinking: The University and the Public Good* (Humanities Commons, 2018), paragraph 1, <https://generousthinking.hcommons.org/>

12 Kelly, "'But that was my idea!'", p. 6.

Kelly's and Fitzpatrick's examples describe the paradoxes that the demand for authorship creates for collective practices. But how can we actually escape regimes of authorship that are conceptualised and economised as 'cultural capital'?

Academic authorship, after all, is the basis for employment, promotion, and tenure. Also, arguably, artists who stop being 'authors' of their own work would no longer be considered 'artists', because authorship is one of art's main framing devices. In the following I will discuss three artistic practices that address this question — with, as we will see, very different outcomes.<sup>13</sup>

## Authorship Replaces Authorship?

In 2011, American artist Richard Prince spread a blanket on a sidewalk outside Central Park in New York City and sold copies of his latest artwork, a facsimile of the first edition of J. D. Salinger's *The Catcher in The Rye*.<sup>14</sup> He did not make any changes to the text of the novel and put substantial effort into producing an exact replica in terms of paper quality, colours, typeset and binding, reproducing the original publication as much as possible except for several significant details. He replaced the author's name with his own. 'This is an artwork by Richard Prince. Any similarity to a book is coincidental and not intended by the artist', his colophon reads, concluding with '© Richard Prince'. Prince also changed the publisher's name, Little Brown, to a made-up publishing house with the name AP (American Place) and removed Salinger's photograph from the back of the dust cover.<sup>15</sup>

The artist's main objective appeared to be not to pirate and circulate an unauthorised reprint of Salinger's novel, because he did not present the book under Salinger's name but his own. Prince also chose a very limited circulation figure.<sup>16</sup> It is also far from conventional plagiarism,

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13 I refer in this chapter to US copyright law, if not indicated otherwise.

14 He also released the book with Printed Matter at the New York Art Book Fair in 2011.

15 It took Prince and his collaborator John McWhinney over a year to find a printer with the guts to print this facsimile. The one he eventually found was based in Iceland.

16 Prince states in his blog entry 'Second Thoughts on Being Original', that he made 300 copies. 'My plan was to show up once a week, same day, same time, same

because hardly any twentieth century literature is more read and widely known than Salinger's *Catcher*. So the question is, why would Prince want to recirculate one of the most-read American novels of all time, a book available in bookshops around the world, with a total circulation of 65 million copies, translated into 30 languages?<sup>17</sup>

Prince stated that he loved Salinger's novel so much that 'I just wanted to make sure, if you were going to buy my *Catcher in the Rye*, you were going to have to pay twice as much as the one Barnes and Noble was selling from J. D. Salinger. I know that sounds really kind of shallow and maybe that's not the best way to contribute to something, but in the book-collecting world you pay a premium for really collectible books,' he explained in an interview with singer Kim Gordon.<sup>18</sup>

As intended, the work quickly turned into a collectible<sup>19</sup> and attracted lots of applause from members of the contemporary art world including, among others, conceptual writer Kenneth Goldsmith, who described the work as a 'terribly ballsy move'. Prince was openly 'pirating what is arguably the most valuable property in American literature, practically begging the estate of Salinger to sue him.'<sup>20</sup>

## Who has the Power to appropriate?

We need to examine Goldsmith's appraisal more closely. What is this 'ballsy move'? And how does it relate to the asserted criticality of appropriation artists in the late 1970s, a group of which Prince was part?

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place, until all three hundred copies were gone.' *Birdtalk*, 13 April 2015, <http://www.richardprince.com/birdtalk/> Booksellers' web pages, such as Printed Matter, N.Y. and richardprincebooks.com, list an edition of 500. See: <https://www.printedmatter.org/catalog/31158>

- 17 Mark Krupnick, 'JD Salinger Obituary', *The Guardian*, 28 January 2010, <http://www.theguardian.com/books/2010/jan/28/jd-salinger-obituary>
- 18 Kim Gordon, 'Band Paintings: Kim Gordon Interviews Richard Prince', *Interview Magazine*, 18 June 2012, <http://www.interviewmagazine.com/art/kim-gordon-richard-prince#>
- 19 The inside flap of his replica stated a price of \$62. On this afternoon on the sidewalk outside Central Park, he sold his copies for \$40. When I was browsing the shelves at the New York art bookshop Printed Matter in 2012 I saw copies for \$200 and in 2018 it is priced at \$1200 and \$3500 for a signed copy on Abebooks, [https://www.abebooks.co.uk/servlet/SearchResults?isbn=&an=richard%20prince&tn=catcher%20rye&n=100121503&cm\\_sp=mbc-\\_ats-\\_used](https://www.abebooks.co.uk/servlet/SearchResults?isbn=&an=richard%20prince&tn=catcher%20rye&n=100121503&cm_sp=mbc-_ats-_used)
- 20 Kenneth Goldsmith, 'Richard Prince's Latest Act of Appropriation: The Catcher in the Rye', *Harriet: A Poetry Blog*, 19 April 2012, <http://www.poetryfoundation.org/harriet/2012/04/richard-princes-latest-act-of-appropriation-the-catcher-in-the-rye/>

Prince rose to prominence in New York in the late 1970s, associated with the Pictures generation of artists<sup>21</sup> whose appropriation of images from mass culture and advertising — Prince's photographs of Marlboro Man adverts, for example — examined the politics of representation.<sup>22</sup> Theorists and critics, often associated with the academic *October* journal,<sup>23</sup> interpreted the Pictures artists' 'unabashed usurpations of images as radical interrogations of the categories of originality and authenticity within the social construction of authorship. [...] The author had become irrelevant because the original gesture had become unimportant; the copy adequately stood in its place and performed its legitimising function.'<sup>24</sup>

Artist Sherrie Levine, one of the leading figures in American appropriation art, expresses the core theoretical commitment of this group of artists in her 1982 manifesto: 'The world is filled to suffocating. Man has placed his token on every stone. Every word, every image, is leased and mortgaged. [...] A picture is a tissue of quotations drawn from the innumerable centres of culture. We can only imitate a gesture that is always anterior, never original.'<sup>25</sup> This ostensive refusal of originality

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- 21 In 1977 Douglas Crimp curated the exhibition 'Pictures' at Artists' Space in New York with artists Troy Brauntuch, Jack Goldstein, Sherrie Levine, Robert Longo and Philip Smith. Artist Cornelia Sollfrank interprets 'the non-specific title of the show' as a first indication of the aesthetic strategies presented in the exhibition. The presentation of reproduced visual materials marked, according to Sollfrank, 'a major challenge to the then predominant modernist discourse.' Cornelia Sollfrank, 'Copyright Cowboys Performing the Law', *Journal of New Media Caucus* 8.2 (2012), <http://median.newmediacaucus.org/blog/current-issue-fall-2012-v-08-n-02-december-2nd-2012/copyright-cowboys-performing-the-law/>
- 22 As Benjamin Buchloh writes 'these processes of quotation, excerption, framing and staging that constitute the strategies of the work [...] necessitate [the] uncovering strata of representation. Needless to say we are not in search of sources of origin, but of structures of signification: underneath each picture there is always another picture.' Benjamin Buchloh, 'Pictures', in David Evans (ed.), *Appropriation, Documents of Contemporary Art* (London: Whitechapel Gallery, 2009), p. 78. Originally published in *October* 8 (1979), 75–88.
- 23 *October's* editors — including among others Rosalind Krauss, Hal Foster, Craig Owens, and Benjamin Buchloh — provided a theoretical context for this emerging art by introducing French structuralist and poststructuralist theory, i.e. the writings of Roland Barthes, Michel Foucault, and Jacques Derrida to the English speaking world.
- 24 Nate Harrison, 'The Pictures Generation, the Copyright Act of 1976, and the Reassertion of Authorship in Postmodernity', *art&education.net*, 29 June 2012, <https://web.archive.org/web/20120701012619/artandeducation.net/paper/the-pictures-generation-the-copyright-act-of-1976-and-the-reassertion-of-authorship-in-postmodernity/>
- 25 Sherrie Levine, 'Statement//1982', in David Evans (ed.), *Appropriation, Documents of Contemporary Art* (London: Whitechapel Gallery, 2009), p. 81.

poses, no doubt, a critique of the author who creates 'ex nihilo'. But does it really present a critique of authorship per se? I shall propose three arguments from different viewpoints — aesthetic, economic and legal — to explore the assumptions of this assertion.

From the aesthetic perspective, Prince and Levine are making formal choices in the process of appropriating already existing work. They re-photograph, produce photographic prints, make colour choices; they enlarge or scale down, trim the edges and take decisions about framing. Nate Harrison makes this point when he argues that 'Levine and Prince take individual control of the mass-authored image, and in so doing, reaffirm the ground upon which the romantic author stands.'<sup>26</sup> It is exactly this control of, and authority over, the signed and exhibited image that leads Prince and Levine to be validated as 'author[s] par excellence'.<sup>27</sup> Prince, for example, has been lauded as an artist who 'makes it new, by making it again'.<sup>28</sup> This 'making it again', a process that Hal Foster names 'recoding',<sup>29</sup> creates new meaning and must therefore be interpreted as an 'original' authorial act. Subsequently, this work has been validated by museums, galleries, collectors and critics. From an economic perspective one can therefore argue that Prince's numerous solo exhibitions in prestigious museums, his sales figures, and affiliation to commercial galleries are evidence that he has been ascribed artistic authorship as well as authorial agency by the institutions of the art world.<sup>30</sup>

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26 Nate Harrison, 'The Pictures Generation, the Copyright Act of 1976, and the Reassertion of Authorship in Postmodernity', *art&education.net*, 29 June 2012, <https://web.archive.org/web/20120701012619/artandeducation.net/paper/the-pictures-generation-the-copyright-act-of-1976-and-the-reassertion-of-authorship-in-postmodernity/>

27 Ibid.

28 Quoting this line from Prince book, *Why I Go to the Movies Alone* (New York: Barbara Gladstone Gallery, 1994), the sponsor statement in the catalogue for Prince's solo show *Spiritual America* at The Guggenheim Museum in New York continues: 'although his [work is] primarily appropriated [...] from popular culture, [it] convey[s] a deeply personal vision. His selection of mediums and subject matter [...] suggest a uniquely individual logic [...] with wit and an idiosyncratic eye, Richard Prince has that rare ability to analyze and translate contemporary experience in new and unexpected ways.' Seth Waugh, 'Sponsor Statement', in The Solomon R. Guggenheim Foundation (ed.), *Richard Prince* (Ostfildern: Hatje Cantz, 2007).

29 See Hal Foster, '(Post)modern Polemics', in *Recodings: Art, Spectacle, Cultural Politics* (Port Townsend, WA: Bay Press, 1985).

30 See note 47.

Coming back to Prince's appropriation of *Catcher in the Rye*, his conceptual gesture employs necessarily the very rhetoric and conceptual underpinnings of legislation and jurisdiction that he seemingly critiques.<sup>31</sup> He declares 'this is an artwork by Richard Prince, © Richard Prince' and asserts, via claiming copyright, the concept of originality and creativity for his work. By this paradoxical gesture, he seemingly replaces 'authorship' with authorship and 'ownership' with ownership. And by doing so, I argue, he reinforces its very concept.

The legal framework remains conceptual, theoretical and untested in this case. But on another occasion, Prince's authorship *was* tested in court — and eventually legally confirmed to belong to him. This is crucial to my inquiry. What are we to make of the fact that Prince, who challenges the copyright doctrine in his gestures of appropriation, has been ascribed legitimate authorship by courts who rule on copyright law? It seems paradoxical, because as Elizabeth Wang rightly claims, 'if appropriation is legitimized, the political dimension of this act is

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31 One might argue that this performative act of claiming intellectual property is an attempt to challenge J. D. Salinger's notorious protectiveness about his writing. Salinger sued the Swedish writer Fredrik Colting successfully for copyright infringement. Under the pseudonym John David California, Colting had written a sequel to *The Catcher in the Rye*. The sequel, *60 Years Later Coming Through The Rye*, depicts the protagonist Holden Caulfield's adventures as an old man. In 2009, the US District Court Judge in Manhattan, Deborah A. Batts, issued a preliminary injunction indefinitely barring the publication, advertising or distribution of the book in the US. See Sewell Chan, 'Judge Rules for J. D. Salinger in "Catcher" Copyright Suit', *The New York Times*, 1 July 2009, <http://www.nytimes.com/2009/07/02/books/02salinger.html>

'In a settlement agreement reached between Salinger and Colting in 2011, Colting has agreed not to publish or otherwise distribute the book, e-book, or any other editions of *60 Years Later* in the U.S. or Canada until *The Catcher in the Rye* enters the public domain. Notably, however, Colting is free to sell the book in other international territories without fear of interference, and a source has told *Publishers Weekly* that book rights have already been sold in as many as a half-dozen territories, with the settlement documents included as proof that the Salinger Estate will not sue. In addition, the settlement agreement bars Colting from using the title "Coming through the Rye"; forbids him from dedicating the book to Salinger; and would prohibit Colting or any publisher of the book from referring to *The Catcher in the Rye*, Salinger, the book being "banned" by Salinger, or from using the litigation to promote the book.' Andrew Albanese, 'J. D. Salinger Estate, Swedish Author Settle Copyright Suit', *Publishers Weekly*, 11 January 2011, <https://www.publishersweekly.com/pw/by-topic/industry-news/publisher-news/article/45738-j-d-salinger-estate-swedish-author-settle-copyright-suit.html>

excised'.<sup>32</sup> And Cornelia Sollfrank argues 'the value of appropriation art lies in its illicitness. [...] Any form of [judicial] legitimisation would not support the [appropriation] artists' claims, but rather undermine them.'<sup>33</sup>

## Authorship Defined by Market Value and Celebrity Status?

To illustrate this point I will briefly digress to discuss a controversial court case about Prince's authorial legitimacy. In 2009, New-York-based photographer, Patrick Cariou began litigation against Prince, his gallerist Larry Gagosian and his catalogue publisher Rizzoli. Prince had appropriated Cariou's photographs in his series *Canal Zone* which went on show at Gagosian Gallery.<sup>34</sup> A first ruling by a district judge stated that Prince's appropriation was copyright infringement and requested him to destroy the unsold paintings on show. The ruling also forbade those that had been sold from being displayed publicly in the future.<sup>35</sup>

However Prince's eventual appeal turned the verdict around. A second circuit court decided that twenty-five of his thirty paintings fell under the fair use rule. The legal concept of fair use allows for copyright exceptions in order to balance the interests of exclusive right holders with the interests of users and the public 'for purposes such as criticism, comment, news reporting, teaching (including multiple copies for classroom use), scholarship, or research'.<sup>36</sup> One requirement to justify

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32 Elizabeth H. Wang, '(Re)Productive Rights: Copyright and the Postmodern Artist', *Columbia-VLA Journal of Law & the Arts* 14.2 (1990), 261–81 (p. 281), [https://heinonline.org/HOL/Page?handle=hein.journals/cjla14&div=10&g\\_sent=1&casa\\_token=&collection=journals](https://heinonline.org/HOL/Page?handle=hein.journals/cjla14&div=10&g_sent=1&casa_token=&collection=journals)

33 Sollfrank, 'Copyright Cowboys'.

34 Thirty paintings created by Prince contained forty-one of Cariou's photographs. The images had been taken from Cariou's book *Yes Rasta* (Brooklyn: powerHouse Books, 2000) and used by Prince in his painting series *Canal Zone*, which was shown at Gagosian Gallery, New York, in 2008.

35 It might be no coincidence (or then again, it might) that the district court judge in this case, Deborah Batts, is the same judge who ruled in the 2009 case in which Salinger successfully brought suit for copyright infringement against Swedish author Fredrik Colting for *60 Years Later Coming Through the Rye*, a sequel to Salinger's book. See note 31.

36 'In determining whether the use made of a work in any particular case is a fair use the factors to be considered shall include — (1) the purpose and character of the use, including whether such use is of a commercial nature or is for nonprofit educational purposes; (2) the nature of the copyrighted work; (3) the amount and substantiality

fair use is that the new work should be transformative, understood as presenting a new expression, meaning or message. The appeal's court considered Prince's appropriation as sufficiently transformative because a 'reasonable observer'<sup>37</sup> would perceive aesthetic differences with the original.<sup>38</sup>

Many artists applauded the appeal court's verdict, as it seemed to set a precedent for a more liberal approach towards appropriation art. Yet attorney Sergio Muñoz Sarmiento and art historian Lauren van Haften-Schick voiced concerns about the verdict's interpretation of 'transformative' and the ruling's underlying assumptions.

The questions of 'aesthetic differences' perceived by a 'reasonable observer', Sarmiento rightly says, are significant. After all, Prince did not provide a statement of intent in his deposition<sup>39</sup> therefore the judges had to adopt the role of a (quasi) art critic 'employing [their] own artistic judgment[s]' in a field in which they had not been trained.<sup>40</sup>

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of the portion used in relation to the copyrighted work as a whole; and (4) the effect of the use upon the potential market for or value of the copyrighted work.' US Copyright Act of 1976, amended 2016, <https://www.copyright.gov/title17/>

- 37 'What is critical is how the work in question appears to the reasonable observer, not simply what an artist might say about a particular piece or body of work.' *Cariou v Prince, et al.*, court document, No. 11-1197-cv, page 14, [http://www.ca2.uscourts.gov/decisions/isysquery/f6e88b8b-48af-401c-96a0-54d5007c2f33/1/doc/11-1197\\_complete\\_opn.pdf#xml=http://www.ca2.uscourts.gov/decisions/isysquery/f6e88b8b-48af-401c-96a0-54d5007c2f33/1/hilite/](http://www.ca2.uscourts.gov/decisions/isysquery/f6e88b8b-48af-401c-96a0-54d5007c2f33/1/doc/11-1197_complete_opn.pdf#xml=http://www.ca2.uscourts.gov/decisions/isysquery/f6e88b8b-48af-401c-96a0-54d5007c2f33/1/hilite/)
- 38 The court opinion states: 'These twenty-five of Prince's artworks manifest an entirely different aesthetic from Cariou's photographs. Where Cariou's serene and deliberately composed portraits and landscape photographs depict the natural beauty of Rastafarians and their surrounding environs, Prince's crude and jarring works, on the other hand, are hectic and provocative. Cariou's black-and-white photographs were printed in a 9 1/2" x 12" book. Prince has created collages on canvas that incorporate color, feature distorted human and other forms and settings, and measure between ten and nearly a hundred times the size of the photographs. Prince's composition, presentation, scale, color palette, and media are fundamentally different and new compared to the photographs, as is the expressive nature of Prince's work.' *Ibid.*, pp. 12-13.
- 39 Prince's deposition testimony stated that he 'do[es]n't really have a message,' that he was not 'trying to create anything with a new meaning or a new message,' and that he 'do[es]n't have any [...] interest in [Cariou's] original intent.' Court Opinion, p. 13. For full deposition see Greg Allen (ed.), *The Deposition of Richard Prince in the Case of Cariou v. Prince et al.* (Zurich: Bookhorse, 2012).
- 40 The court opinion includes a dissent by Circuit Judge Clifford Wallace sitting by designation from the US Court of Appeals for the Ninth Circuit, 'I, for one, do not believe that I am in a position to make these fact- and opinion-intensive decisions on the twenty-five works that passed the majority's judicial observation. [...] nor am I trained to make art opinions ab initio.' *Ibid.*, p. 5.



Secondly, trying to evaluate the markets Cariou and Prince cater for, the court introduced a controversial distinction between celebrity and non-celebrity artists. The court opinion reasons: ‘Certain of the *Canal Zone* artworks have sold for two million or more dollars. The invitation list for a dinner that Gagosian hosted in conjunction with the opening of the *Canal Zone* show included a number of the wealthy and famous such as the musicians Jay-Z and Beyoncé Knowles, artists Damien Hirst and Jeff Koons, [...] and actors Robert De Niro, Angelina Jolie, and Brad Pitt’.<sup>41</sup> Cariou, on the contrary, so the verdict argues, ‘has not aggressively marketed his work’, and has earned just over \$8,000 in royalties from *Yes Rasta* since its publication.<sup>42</sup> Furthermore, he made only ‘a handful of private sales [of his photographic prints] to personal acquaintances’.<sup>43</sup> Prince, by contrast, sold eight of his *Canal Zone* paintings for a total of \$10,480,000 and exchanged seven others for works by canonical artists such as painter Larry Rivers and sculptor Richard Serra.<sup>44</sup>

The court documents here tend to portray Cariou as a sort of hobby artist or ‘lower class amateur’ in Sarmiento’s words,<sup>45</sup> whereas Prince is described as a ‘well-known appropriation artist’<sup>46</sup> with considerable success in the art market.<sup>47</sup> Such arguing is dangerous, because it brings social class, celebrity status and art market success into play as legal categories to be considered in future copyright cases and

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‘Furthermore, Judge Wallace questions the majority’s insistence on analyzing only the visual similarities and differences between Cariou’s and Prince’s art works, “Unlike the majority, I would allow the district court to consider Prince’s statements reviewing fair use ... I see no reason to discount Prince’s statements as the majority does.” In fact, Judge Wallace remarks that he views Prince’s statements as “relevant to the transformativeness analysis.” Judge Wallace does not believe that a simple visual side-by-side analysis is enough because this would call for judges to “employ [their] own artistic judgment[s].”’ Sergio Muñoz Sarmiento and Lauren van Haften-Schick, citing court documents. ‘Cariou v. Prince: Toward a Theory of Aesthetic-Judicial Judgements’, *Texas A&M Law Review*, vol. 1, 2013–2014, p. 948.

41 Court opinion, p. 18.

42 *Ibid.*, p. 17.

43 *Ibid.*, pp. 4–5.

44 *Ibid.*, p. 18.

45 Muñoz Sarmiento and van Haften-Schick, ‘Aesthetic-Judicial Judgements’, p. 945.

46 Court opinion, p. 15.

47 The court opinion states: ‘He is a leading exponent of this genre and his work has been displayed in museums around the world, including New York’s Solomon R. Guggenheim Museum and Whitney Museum, San Francisco’s Museum of Modern Art, Rotterdam’s Museum Boijmans van Beuningen, and Basel’s Museum für Gegenwartskunst.’ *Ibid.*, p. 5.

dismisses 'Cariou's claim as a legitimate author and artist'.<sup>48</sup> The parties eventually reached an out-of-court settlement regarding the remaining five paintings, and their infringement claim was returned to the district court meaning that no ruling had been issued. This pragmatic settlement can be interpreted as a missed opportunity for further clarification in the interpretation of fair use. No details about the settlement have been disclosed.<sup>49</sup>

Richard Prince presented himself in his court deposition as an artist, who 'do[es]n't really have a message,' and was not 'trying to create anything with a new meaning or a new message.'<sup>50</sup> Nevertheless the appeal court's ruling transforms the 'elusive artist not only into a subject, but also into an [artist] author'<sup>51</sup> — a status he set out to challenge in the first place. Therefore Richard Prince's ongoing games<sup>52</sup> might be entertaining or make us laugh, but they stop short of effectively challenging the conceptualisation of authorship, originality and property because they are assigned the very properties that are denied to the authors whose works are copied. That is to say, Prince's performative toying with the law does not endanger his art's operability in the art world. On the contrary, it constructs and affirms his reputation as a radical and saleable artist-author.

## De-Authoring

A very different approach to copyright law is demonstrated by American artist Cady Noland, who employs the law to effectively endanger her art's operability in the art market. Noland is famously concerned with the circulation and display of her work with respect

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48 Muñoz Sarmiento and van Haften-Schick, 'Aesthetic-Judicial Judgements', p. 945.

49 *The New York Times* reports Prince had not to destroy the five paintings at issue. Randy Kennedy, 'Richard Prince Settles Copyright Suit With Patrick Cariou Over Photographs', *New York Times*, 18 March 2014, [https://artsbeat.blogs.nytimes.com/2014/03/18/richard-prince-settles-copyright-suit-with-patrick-cariou-over-photographs/?\\_php=true&\\_type=blogs&\\_r=0](https://artsbeat.blogs.nytimes.com/2014/03/18/richard-prince-settles-copyright-suit-with-patrick-cariou-over-photographs/?_php=true&_type=blogs&_r=0)

50 Court opinion, p. 13.

51 Sollfrank, 'Copyright Cowboys'.

52 In 2016 photographer Donald Graham filed a lawsuit against Prince with regard to Prince's use of Graham's Instagram pictures. Again, the image shows a photographic representation of Rastafarians. And similar to the Cariou case Prince appropriates Graham's and Cariou's cultural appropriation of Rastafarian culture.

to context, installation and photographic representation. Relatedly, she has also become very critical of short-term speculation on the art market. Noland has apparently not produced any new work for over a decade, due to the time she now spends pursuing litigation around her existing oeuvre.<sup>53</sup> In 2011, she strikingly demonstrated that an artist need not give up control when her work enters the commercial art market and turns into a commodity for short-term profit. She made probably one of the most important stands in modern art history when she 'de-authored' her work *Cowboys Milking* (1990), after it was put up for auction at Sotheby's with the consequence that the work could not be sold as a Cady Noland work anymore.

Swiss-born dealer Marc Jancou, based in New York and Geneva, had consigned the work to Sotheby's a few months after having purchased it for \$106,500 from a private collector.<sup>54</sup> Jancou was obviously attracted by the fact that one of Noland's works had achieved the highest price for a piece by a living female artist: \$6.6m.

At Noland's request, on the eve of the auction, Sotheby's abruptly withdrew the piece, a silkscreen print on an aluminium panel. The artist argued that it was damaged: 'The current condition [...] materially differs from that at the time of its creation. [...] [H]er honor and reputation [would] be prejudiced as a result of offering [it] for sale with her name associated with it.'<sup>55</sup> From a legal point of view, this amounts to a withdrawal of Noland's authorship. The US Visual Artists Rights Act of 1990, VARA, grants artists 'authorship' rights over works even after they have been sold, including the right to prevent intentional modification and to forbid the use of their name in association with

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53 Cait Munro quotes Cady Noland from Sarah Thornton's book *33 Artists in 3 Acts*. Noland gave Thornton her first interview for twenty-four years: 'Noland, an extremely talented artist, has become so obsessed with her old work that she's been unable to create anything new in years. She admits to Thornton that 'I'd like to get into a studio and start making work,' but that tracking the old work has become a 'full-time thing'. Cait Munro, 'Is Cady Noland More Difficult To Work With Than Richard Prince?', *artNet news*, 10 November 2014, <https://news.artnet.com/art-world/is-cady-noland-as-psychotic-as-richard-prince-162310>;

54 Martha Buskirk, 'Marc Jancou, Cady Noland, and the Case of the Authorless Artwork', *Hyperallergic*, 9 December 2013, <http://hyperallergic.com/97416/marc-jancou-cady-noland-and-the-case-of-an-authorless-artwork/>

55 *Marc Jancou Fine Art Ltd. v Sotheby's, Inc.*, New York State Unified Court System, 2012 NY Slip Op 33163(U), 13 November 2012, <http://cases.justia.com/new-york/other-courts/2012-ny-slip-op-33163-u.pdf?ts=1396133024>

distorted or mutilated work.<sup>56</sup> Such rights are based on the premise that the integrity of a work needs to be guaranteed and a work of art has cultural significance that extends beyond mere property value.<sup>57</sup>

Noland's withdrawal of authorship left Jancou with 'a Cady Noland' in his living room, but not on the market. In an email to Sotheby's, he complained: 'This is not serious! Why does an auction house ask the advise [sic] of an artist that has no gallery representation and has a biased and radical approach to the art market?'<sup>58</sup> Given that Noland is a long-standing and outspoken sceptic with respect to speculative dealing in art, he somewhat naively wonders why she would be able to exercise this degree of power over an artwork that had been entered into a system of commercial exchange. His complaint had no effect. The piece remained withdrawn from the auction and Jancou filed a lawsuit in February 2012 seeking \$26 million in damages from Sotheby's.<sup>59</sup>

From an economic perspective, both artists, Noland and Prince, illustrated powerfully how authorship is instituted in the form of the artist's signature, to construct (Prince's *Catcher in the Rye*) or destroy (Noland's *Cowboy Milking*) monetary value. Richard Prince's stated intention is to double the book's price, and by attaching his name to Salinger's book in a Duchampian gesture, he turns it into a work of art

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56 'The author of a work of visual art — (1) shall have the right — (A) to claim authorship of that work, and (B) to prevent the use of his or her name as the author of any work of visual art which he or she did not create; (2) shall have the right to prevent the use of his or her name as the author of the work of visual art in the event of a distortion, mutilation, or other modification of the work which would be prejudicial to his or her honor or reputation; and (3) subject to the limitations set forth in section 113(d), shall have the right — (A) to prevent any intentional distortion, mutilation, or other modification of that work which would be prejudicial to his or her honor or reputation, and any intentional distortion, mutilation, or modification of that work is a violation of that right, and (B) to prevent any destruction of a work of recognized stature, and any intentional or grossly negligent destruction of that work is a violation of that right', from US Code, Title 17, § 106A, Legal Information Institute, Cornell Law School, <https://www.law.cornell.edu/uscode/text/17/106A>

57 Buskirk, 'Marc Jancou, Cady Noland'.

58 Ibid.

59 Jancou's claim was dismissed by the New York Supreme Court in the same year. The Court's decision was based on the language of Jancou's consignment agreement with Sotheby's, which gave Sotheby's the right to withdraw *Cowboys Milking* 'at any time before the sale' if, in Sotheby's judgment, 'there is doubt as to its authenticity or attribution.' Tracy Zwick, 'Art in America', 29 August 2013, <https://www.artinamericamagazine.com/news-features/news/sothebys-wins-in-dispute-with-jancou-gallery-over-cady-noland-artwork/>

authored and copyrighted by Prince. Noland, on the contrary lowers the value of her artwork by removing her signature and by asserting the artist-author's (Noland) rights over the dealer-owner's (Jancou).<sup>60</sup>

However, from a legal perspective I would argue that both Noland and Prince — in their opposite approaches of removing and adding their signatures — affirm authorship as it is conceptualised by the law.<sup>61</sup> After all 'copyright law is a system to which the notion of the author appears to be central — in defining the right owner, in defining the work, in defining infringement.'<sup>62</sup>

## Intellectual Property Obsession Running Amok?

Intellectual property — granted via copyright — has become one of the driving forces of the creative economy, being exploited by

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60 It might be important here to recall that both Richard Prince and Cady Noland are able to afford the expensive costs incurred by a court case due to their success in the art market.

61 The legal grounds for Noland's move, the federal Visual Artists Rights Act of 1990, is based on French moral rights or author rights (*droit d'auteur*), which are inspired by the humanistic and individualistic values of the French Revolution and form part of European copyright law. They conceive the work as an intellectual and creative expression that is directly connected to its creator. Legal scholar Lionel Bently observes 'the prominence of romantic conceptions of authorship' in the recognition of moral rights, which are based on concepts of the originality and authenticity of the modern subject (Lionel Bently, 'Copyright and the Death of the Author in Literature and Law', *Modern Law Review*, 57 (1994), 973–86 (p. 977)). 'Authenticity is the pure expression, the expressivity, of the artist, whose soul is mirrored in the work of art.' (Cornelia Klinger, 'Autonomy-Authenticity-Alterity: On the Aesthetic Ideology of Modernity' in *Modernologies: Contemporary Artists Researching Modernity and Modernism*, exhibition catalogue (Barcelona: Museu d'Art Contemporani de Barcelona, 2009), pp. 26–28 (p. 29)) Moral rights are the personal rights of authors, which cannot be surrendered fully to somebody else because they conceptualize authorship as authentic extension of the subject. They are 'rights of authors and artists to be named in relation to the work and to control alterations of the work.' (Bently, 'Copyright and the Death of the Author', p. 977) In contrast to copyright, moral rights are granted in perpetuity, and fall to the estate of an artist after his or her death.

Anglo-American copyright, employed in Prince's case, on the contrary builds the concept of intellectual property mainly on economic and distribution rights, against unauthorised copying, adaptation, distribution and display. Copyright lasts for a certain amount of time, after which the work enters the public domain. In most countries the copyright term expires seventy years after the death of the author. Non-perpetual copyright attempts to strike a balance between the needs of the author to benefit economically from his or her work and the interests of the public who benefit from the use of new work.

62 Bently, 'Copyright and the Death of the Author', p. 974.

corporations and institutions of the so-called 'creative industries'. In the governmental imagination, creative workers are described as 'model entrepreneurs for the new economy'.<sup>63</sup> Shortly after the election of New Labour in the UK in 1997, the newly formed Department of Culture, Media and Sport established the *Creative Industries Mapping Document* (CIMD 1998) and defined the 'Creative Industries' primarily in relation to creativity and intellectual property.<sup>64</sup> According to the Department for Culture Media and Sport the creative industries have 'their origin in individual creativity, skill and talent, which have a potential for wealth and job creation through the generation and exploitation of intellectual property.'<sup>65</sup> This exploitation of intellectual property as intangible capital has been taken on board by institutions and public management policymakers, which not only turn creative practices into private property, but trigger working policies that produce precarious self-entrepreneurship and sacrifice in pursuit of gratification.<sup>66</sup>

We find this kind of thinking reflected for instance on the website built by the University of the Arts London to give advice on intellectual property — which was until recently headlined 'Own It'.<sup>67</sup> Here, institutional policies privilege the privatisation and propertisation of creative student work over the concept of sharing and fair use.

There is evidence that this line of thought creates a self-inflicted impediment for cultural workers inside and outside art colleges. The College Art Association, a US-based organization of about fourteen

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63 Geert Lovink and Andrew Ross, 'Organic Intellectual Work', in Geert Lovink and Ned Rossiter (eds.), *My Creativity Reader: A Critique of Creative Industries* (Amsterdam: Institute of Network Cultures, 2007), pp. 225–38 (p. 230), [http://networkcultures.org/\\_uploads/32.pdf](http://networkcultures.org/_uploads/32.pdf)

64 UK Government Department for Digital, Culture, Media and Sports, *The Creative Industries Mapping Document*, 1998, <https://www.gov.uk/government/publications/creative-industries-mapping-documents-1998>

65 UK Government, Department for Media, Culture & Sport, *Creative Industries Economic Estimates January 2015*, <https://www.gov.uk/government/publications/creative-industries-economic-estimates-january-2015/creative-industries-economic-estimates-january-2015-key-findings>

66 See critical discussion of the creative industries paradigm and the effects of related systems of governance on the precarisation of the individual: Lovink and Rossiter, *My Creativity*, and Isabell Lorey, *State of Insecurity: Government of the Precarious* (London: Verso, 2015).

67 University of the Arts London, 'Intellectual Property Know-How for the Creative Sector'. This site was initially accessed on 30 March 2015. In 2018 it was taken down and integrated into the UAL Intellectual Property Advice pages. Their downloadable PDFs still show the 'Own-it' logo, <https://www.arts.ac.uk/students/student-careers/freelance-and-business-advice/intellectual-property-advice>

thousand artists, arts professionals, students and scholars released a report in 2015 on the state of fair use in the visual arts.<sup>68</sup> The survey reveals that ‘visual arts communities of practice share a great deal of confusion about and misunderstanding of the nature of copyright law and the availability of fair use. [...] Formal education on copyright, not least at art colleges, appears to increase tendencies to overestimate risk and underuse fair use.’ As a result, the report states, the work of art students ‘is constrained and censored, most powerfully by themselves, because of that confusion and the resulting fear and anxiety.’<sup>69</sup>

This climate even results in outright self-censorship. The interviewees of this study ‘repeatedly expressed a pre-emptive decision not to pursue an idea’<sup>70</sup> because gaining permission from right holders is often difficult, time consuming or expensive. The authors of this report called this mindset a ‘permissions culture’, giving some examples. ‘I think of copyright as a cudgel, and I have been repeatedly forestalled and censored because I have not been able to obtain copyright permission’, stated one academic, whose research did not get approval from an artist’s estate. He added: ‘For those of us who work against the grain of [the] market-driven arts economy, their one recourse for controlling us is copyright.’ Another said: ‘In many cases I have encountered artists’ estates and sometimes artists who refuse rights to publish (even when clearly fair use) unless they like the interpretation in the text. This is censorship and very deleterious to scholarship and a free public discourse on images.’<sup>71</sup> One scholar declared that copyright questions

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68 Patricia Aufderheide, Peter Jaszi, Bryan Bello, and Tijana Milosevic, *Copyright, Permissions, and Fair Use Among Visual Artists and the Academic and Museum Visual Arts Communities: An Issues Report* (New York: College Art Association, 2014).

69 *Ibid.*, p. 5.

70 Sixty-six percent of all those who reported that they had abandoned or avoided a project because of an actual or perceived inability to obtain permissions said they would be ‘very likely’ to use copyrighted works of others more than they have in the past were permissions not needed. *Ibid.*, p. 50.

71 The *Copyright, Permissions, and Fair Use Report* gives some intriguing further observations: ‘Permissions roadblocks result in deformed or even abandoned work. Exhibition catalogues may be issued without relevant images because rights cannot be cleared. Editors of art scholarship reported journal articles going to print with blank spots where reproductions should be, because artists’ representatives disagreed with the substance of the article; and one book was published with last-minute revisions and deletions of all images because of a dispute with an estate — with disastrous results for sales. Journal editors have had to substitute articles or go without an article altogether because an author could not arrange

overshadowed his entire work process: 'In my own writing, I'm worrying all the time.'<sup>72</sup> In such a climate of anxiety 'editors choose not to publish books that they believe might have prohibitive permission costs; museums delay or abandon digital-access projects', as Ben Mauk comments in the *New Yorker Magazine*.<sup>73</sup>

The language of law does harm because it has the rhetorical power to foreclose debate. Legal and political science scholar Jennifer Nedelsky traces the problem to the fact 'that many right claims, such as "it's my property", have a conclusory quality. They are meant to end, not to open up debate', therefore 'treating as settled, what should be debated'.<sup>74</sup>

In a similar vein, political scientist Deborah Halbert describes how her critique of intellectual property took her on a journey to study the details of the law. The more she got into it, so she says, the more her own thinking had been 'co-opted' by the law. 'The more I read the case law and law journals, the more I came to speak from a position inside the status quo. My ability to critique the law became increasingly bounded by the law itself and the language used by those within the legal profession to discuss issues of intellectual property. I began to speak in terms of incentives and public goods. I began to start any discussion of intellectual property by what was and was not allowed under the law. It became clear that the very act of studying the subject had transformed my standpoint from an outsider to an insider.'<sup>75</sup>

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permissions in time for publication. In one case, after an author's manuscript was completed, an estate changed position, compelling the author both to rewrite and to draw substitute illustrations. Among other things, the cost of permissions leads to less work that features historical overviews and comparisons, and more monographs and case studies. Scholarship itself is distorted and even censored by the operation of the permissions culture. [...] In some cases, the demands of rights holders have extended to altering or censoring the scholarly argument about a work. Catalogue copy sometimes is altered because scholarly arguments and perspectives are unacceptable to rights holders.' These actions are in some cases explicitly seen as censorship. *Ibid.*, p. 52.

72 *Ibid.*, p. 51.

73 Ben Mauk, 'Who Owns This Image?', *The New Yorker*, 12 February 2014, <http://www.newyorker.com/business/currency/who-owns-this-image>

74 Jennifer Nedelsky, 'Reconceiving Rights as Relationship', in *Review of Constitutional Studies / Revue d'études constitutionnelles* 1.1 (1993), 1–26 (p. 16), <https://www.law.utoronto.ca/documents/nedelsky/Review1.1Nedelsky.pdf>

75 Deborah J. Halbert, *Resisting Intellectual Property* (London: Routledge, 2005), pp. 1–2.



## The Piracy Project — Multiple Authorship or ‘Unsolicited Collaborations’?

A similar question of language applies to the term ‘pirate’.<sup>76</sup> Media and communication scholar Ramon Lobato asks whether the language of piracy used by the critical intellectual property discourse ‘should be embraced, rejected, recuperated or rearticulated’? He contends that reducing ‘piracy’ to a mere legal category — of conforming, or not, with the law — tends to neglect the generative forces of piracy, which ‘create its own economies, exemplify wider changes in social structure, and bring into being tense and unusual relationships between consumers, cultural producers and governments.’<sup>77</sup>

When the word pirate first appeared in ancient Greek texts, it was closely related to the noun ‘peira’ which means trial or attempt. ‘The ‘pirate’ would then be the one who ‘tests’, ‘puts to proof’, ‘contends with’, and ‘makes an attempt’.<sup>78</sup> Further etymological research shows that from the same root stems *pira*: experience, practice [πείρα], *pirama*: experiment [πειράμα], *piragma*: teasing [πειράγμα] and *pirazo*: tease, give trouble [πειράζω].<sup>79</sup>

This ‘contending with’, ‘making an attempt’ and ‘teasing’ is at the core of the Piracy Project’s practice, whose aim is twofold: firstly, to gather and study a vast array of piratical practices (to test and negotiate the complexities and paradoxes created by intellectual property for artistic practice); and secondly to build a practice that is itself collaborative and generative on many different levels.<sup>80</sup>

76 See for example Amedeo Policante examining the relationship between empire and pirate, claiming that the pirate can exist only in a relationship with imperial foundations. ‘Upon the naming of the pirate, in fighting it and finally in celebrating its triumph over it, Empire erects itself. There is no Empire without a pirate, a terrorizing common enemy, an enemy of all. At the same time, there is no pirate without Empire. In fact, pirates as outlaws cannot be understood in any other way but as legal creatures. In other words, they exist only in a certain extreme, liminal relationship with the law.’ Amedeo Policante, *The Pirate Myth, Genealogies of an Imperial Concept* (Oxford and New York: Routledge, 2015), p. viii.

77 Ramon Lobato, ‘The Paradoxes of Piracy’, in Lars Eckstein and Anja Schwarz (eds.), *Postcolonial Piracy: Media Distribution and Cultural Production in the Global South* (London and New York: Bloomsbury, 2014), pp. 121–34 (pp. 121, 123).

78 Daniel Heller-Roazen, *The Enemy of All: Piracy and the Law of Nations* (New York: Zone Books, 2009), p. 35, as cited by Gary Hall, *Pirate Philosophy*, p. 16.

79 ‘Etymology of Pirate’, in *English Words of (Unexpected) Greek Origin*, 2 March 2012, <http://ewonago.wordpress.com/2009/02/18/etymology-of-pirate>

80 The Piracy Project is a collaboration between AND Publishing and Andrea Francke initiated in London in 2010.

The Piracy Project explores the philosophical, legal and social implications of cultural piracy and creative modes of dissemination. Through an open call, workshops, reading rooms and performative debates as well as through our research into international pirate book markets<sup>81</sup> we gathered a collection of roughly 150 copied, emulated, appropriated and modified books from across the world. Their approaches to copying vary widely, from playful strategies of reproduction, modification and reinterpretation of existing works; to acts of civil disobedience circumventing enclosures such as censorship or market monopolies; to acts of piracy generated by commercial interests. This vast and contradictory spectrum of cases, from politically motivated bravery as well as artistic statements to cases of hard-edged commercial exploitation, serves as the starting point to explore the complexities and contradictions of authorship in debates, workshops, lectures and texts, like this one.

In an attempt to rearticulate the language of piracy we call the books in the collection ‘unsolicited collaborations’.<sup>82</sup> *Unsolicited* indicates that the makers of the books in the Piracy Project did not ask for permission — Richard Prince’s ‘Catcher in the Rye’ is one example.<sup>83</sup> *Collaboration* refers to a relational activity and re-imagines authorship

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81 Andrea Francke visited pirate book markets in Lima, Peru in 2010. The Red Mansion Prize residency enabled us to research book piracy in Beijing and Shanghai in 2012. A research residency at SALT Istanbul in 2012 facilitated field research in Turkey.

82 See also Stephen Wright’s *Towards a Lexicon of Usership* (Eindhoven: Van Abbemuseum, 2013) proposing to replace the term (media) ‘piracy’ with ‘usership’. He explains: ‘On the one hand, the most notorious and ruthless cultural pirates today are Google and its subsidiaries like YouTube (through the institutionalized rip-off of user-generated value broadly known as Page-Rank), Facebook, and of course Warner Bros etc., but also academic publishers such as the redoubtable Routledge. On the other hand, all the user-run and user-driven initiatives like aaaaarg, or pad.ma, or until recently the wonderful Dr Auratheft. But, personally, I would hesitate to assimilate such scaled-up, de-creative, user-propelled examples with anything like “cultural piracy”. They are, through usership, enriching what would otherwise fall prey to cultural piracy.’ Email to the author, 1 August 2012. See also: Andrea Francke and Eva Weinmayr (eds.), *Borrowing, Poaching, Plagiarising, Pirating, Stealing, Gleaning, Referencing, Leaking, Copying, Imitating, Adapting, Faking, Paraphrasing, Quoting, Reproducing, Using, Counterfeiting, Repeating, Translating, Cloning* (London: AND Publishing, 2014).

83 Richard Prince’s ‘Catcher in the Rye’ forms part of the Piracy Collection. Not the book copy priced at £1,500, just an A4 colour printout of the cover, downloaded from the Internet. On the shelf it sits next to Salinger’s copy, which we bought at Barnes and Noble for £20.

not as proprietary and stable, but as a dialogical and generative process. Here, as feminist legal scholar Carys Craig claims, 'authorship is not originitive but participative; it is not internal but interactive; it is not independent but interdependent. In short, a dialogic account of authorship is equipped to appreciate the derivative, collaborative, and communicative nature of authorial activity in a way that the Romantic [individual genius] account never can.'<sup>84</sup>

Such a participatory and interdependent conceptualisation of authorship is illustrated and tested in the Piracy Project's research into reprinting, modifying, emulating and commenting on published books. As such it revisits — through material practice — Michel Foucault's critical concept of the 'author function' as the triggering of a discourse, rather than a proprietary right.<sup>85</sup>

This becomes clearer when we consider that digital print technologies, for example through print on demand and desktop publishing, allow for a constant re-printing and re-editing of existing files. The advent and widespread accessibility of the photocopy machine in the late 1960s allowed the reader to photocopy books and collate selected chapters, pages or images in new and customised compilations. These new reproduction technologies undermine to an extent the concept of the printed book as a stable and authoritative work,<sup>86</sup> which had prevailed since the mass production of books on industrial printing presses came into being. Eva Hemmungs Wirtén describes how the widespread availability of the photocopier<sup>87</sup> has been perceived as a threat to the authority of the text and cites Marshall McLuhan's address at the Vision 65 congress in 1965:

Xerography is bringing a reign of terror into the world of publishing because it means that every reader can become both author and publisher. [...] Authorship and readership alike can become production-oriented under xerography. Anyone can take a book apart, insert parts of other

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84 Craig, 'Symposium: Reconstructing the Author-Self', p. 246.

85 Michel Foucault, 'What Is an Author?', in Donald F. Bouchard (ed.), *Language, Counter-Memory, Practice: Selected Essays and Interviews* (Ithaca, NY: Cornell University Press, 1977), pp. 113–38.

86 See The Piracy Project, 'The Impermanent Book', *Rhizome*, 19 April 2012, <http://rhizome.org/editorial/2012/apr/19/impermanent-book/>

87 It might be no coincidence that Roland Barthes' seminal short essay 'Death of the Author' was published in the magazine *Aspen* at the same time, when photocopy machines were beginning to be widely used in libraries and offices.

books and other materials of his own interest, and make his own book in a relatively fast time. Any teacher can take any ten textbooks on any subject and custom-make a different one by simply xeroxing a chapter from this one and from that one.<sup>88</sup>

One example of a reprinted and modified book in the Piracy Project is *No se diga a nadie* ('Don't tell anyone').<sup>89</sup> It is an autobiographical novel by Peruvian journalist and TV presenter Jaime Bayli. The pirate copy, found by Andrea Francke on Lima's pirate book markets, is almost identical in size, weight, and format and the cover image is only slightly cropped. However, this pirate copy has two extra chapters. Somebody has infiltrated the named author's work and sneaked in two fictionalised chapters about the author's life. These extra chapters are well written, good enough to blend in and not noticeable at first glance by the reader.<sup>90</sup>

The pirates cannot gain any cultural capital here, as the pirating author remains an anonymous ghost. Equally there is no financial profit to be made, as long as the pirate version is not pointed out to readers as an extended version. Such act is also not framed as a conceptual gesture, as it is the case with Prince's *Catcher in the Rye*. It rather operates under the radar of everyone, and moreover and importantly, any revelation of this intervention or any claim of authorship would be counterproductive.

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88 Eva Hemmungs Wirtén, *No Trespassing, Authorship, Intellectual Property Rights and the Boundaries of Globalization* (Toronto: University of Toronto Press, 2004), p. 66.

89 See *No se diga a nadie*, The Piracy Project Catalogue, [http://andpublishing.org/PublicCatalogue/PCat\\_record.php?cat\\_index=99](http://andpublishing.org/PublicCatalogue/PCat_record.php?cat_index=99)

90 In an essay in *Granta Magazine*, Daniel Alarcon explains the popularity of book piracy in Peru due to the lack of formal distribution. 'Outside Lima, the pirate book industry is the only one that matters' explains Alarcon. Iquitos, the largest city in the Peruvian Amazon, with nearly 400,000 residents, had until 2007 no formal bookstore and in 2010 only two. Trujillo, the country's third largest city, has one. According to Alarcon, an officially produced book costs twenty percent of an average worker's weekly income, therefore the pirate printing industry fills this gap — an activity that is not seriously restricted by the state. In fact, Alarcon claims that the government is involved in the pirate printing industry as a way to control what is being read. Pirated books are openly sold in book markets and by street vendors at traffic crossings, therefore they 'reach sectors of the market that formal book publishers cannot or don't care to access. In a similar vein, the few prestigious private universities' book check-out time is exactly twenty-four hours, the very turnaround for the copy shops in the neighbourhood to make a photocopied version of the checked-out library books. Daniel Alarcon, 'Life Amongst the Pirates', *Granta Magazine*, 14 January 2010, <https://granta.com/life-among-the-pirates/>

This example helps us to think through concepts of the authoritative text and the stability of the book. Other cases in the Piracy Project find similar ways to queer the category of authorship and the dominant modes of production and dissemination.<sup>91</sup> Our practice consists of collecting; setting up temporary reading rooms to house the collection; and organising workshops and debates in order to find out about the reasons and intentions for these acts of piracy, to learn from their strategies and to track their implications for dominant modes of production and dissemination.<sup>92</sup>

This discursive practice distinguishes the Piracy Project from radical online libraries, such as [aaaaarg.fail](http://aaaaarg.fail) or [memoryoftheworld.org](http://memoryoftheworld.org).<sup>93</sup> While we share similar concerns, such as distribution monopolies, enclosure and the streamlining of knowledge, these peer-to-peer (p2p) platforms mainly operate as distribution platforms, developing strategies to share intact copies of authoritative texts. Marcell Mars, for example, argues against institutional and corporate distribution monopolies when he states ‘when everyone is a librarian, [the] library is everywhere’. Mars invites users of the online archive [memoryoftheworld.org](http://memoryoftheworld.org) to upload their scanned books to share with others. Similarly, Sean Dockray, who initiated [aaaaarg.fail](http://aaaaarg.fail), a user generated online archive of books and texts, said in an interview: ‘the project wasn’t about criticising institutions, copyright, authority, and so on. It was simply about sharing knowledge. This wasn’t as general as it sounds; I mean literally the sharing of knowledge between various individuals and groups that

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91 A discussion of the vast variety of approaches here would exceed the scope of this text. If you are interested, please visit our searchable Piracy Collection catalogue, which provides short descriptions of the pirates’ approaches and strategies, [http://andpublishing.org/PublicCatalogue/PCat\\_thumbs.php](http://andpublishing.org/PublicCatalogue/PCat_thumbs.php)

92 For the performative debate *A Day at the Courtroom* hosted by The Showroom in London, the Piracy Project invited three copyright lawyers from different cultural and legal backgrounds to discuss and assess selected cases from the Piracy Project from the perspective of their differing jurisdictions. The final verdict was given by the audience, who positioned the ‘case’ on a colour scale ranging from illegal (red) to legal (blue). The scale replaced the law’s fundamental binary of legal – illegal, allowing for greater complexity and nuance. The advising scholars and lawyers were Lionel Bently (Professor of Intellectual Property at the University of Cambridge), Sergio Muñoz Sarmiento (Art and Law, New York), Prodromos Tsiavos (Project lead for Creative Commons, England, Wales and Greece). *A Day at the Courtroom*, The Showroom London, 15 June 2013. See a transcript of the debate in Francke and Weinmayr, *Borrowing, Poaching, Plagiarising*.

93 [Aaaaaarg.fail](http://Aaaaaarg.fail) operates on an invitation only basis; [memoryoftheworld.org](http://memoryoftheworld.org) is openly accessible.

I was in correspondence with at the time but who weren't necessarily in correspondence with each other.<sup>94</sup>

## Practising Critique — Queering Institutional Categories

In contrast to online p2p sharing platforms, the Piracy Project took off in a physical space, in the library of Byam Shaw School of Art in London. Its creation was a response to restrictive university policies when, in 2010, the management announced the closure of the art college library due to a merger with the University of the Arts London. A joint effort by students and staff, supported by the acting principal, turned Byam Shaw's art college library into a self-organised library that remained public, as well as intellectually and socially generative.<sup>95</sup>

As a result of the college taking collective ownership over the library and its books, the space opened up. It had been a resource that was controlled and validated by institutional policies that shaped crucial decisions about what went on the shelves, but it became an assemblage of knowledge in which potentially obscure, self-published materials that were not institutionally validated were able to enter.

For example, artist and writer Neil Chapman's handmade facsimile of Gilles Deleuze's *Proust and Signs*<sup>96</sup> explored the materiality of print and related questions about the institutional policies of authorisation. Chapman produced a handmade facsimile of his personal paperback copy of Deleuze's work, including binding mistakes in which a few

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94 Julian Myers, *Four Dialogues 2: On AAAARG*, San Francisco Museum of Modern Art — Open Space, 26 August 2009, <https://openspace.sfmoma.org/2009/08/four-dialogues-2-on-aaaarg/>. This constructive approach has been observed by Jonas Andersson generally with p2p sharing networks, which 'have begun to appear less as a reactive force (i.e. breaking the rules) and more as a proactive one (setting the rules). [...] Rather than complain about the conservatism of established forms of distribution they simply create new, alternative ones.' Jonas Andersson, 'For the Good of the Net: The Pirate Bay as a Strategic Sovereign', *Culture Machine* 10 (2009), p. 64.

95 This process was somewhat fraught, because at the same time David Cameron launched his perfidious 'Big Society' concept, which proposed that members of the community should volunteer at institutions, such as local public libraries, which otherwise could not survive because of government cuts.

96 See the Piracy Project catalogue: Neil Chapman, *Deleuze, Proust and Signs*, [http://andpublishing.org/PublicCatalogue/PCat\\_record.php?cat\\_index=69](http://andpublishing.org/PublicCatalogue/PCat_record.php?cat_index=69)

pages were bound upside down, by scanning and printing the book on his home inkjet printer. The book is close to the original format, cover and weight. However, it has a crafty feel to it: the ink soaks into the paper creating a blurry text image very different from a mass-produced offset printed text. It has been assembled in DIY style and speaks the language of amateurism and makeshift. The transformation is subtle, and it is this subtlety that makes the book subversive in an institutional library context. How do students deal with their expectations that they will access authoritative and validated knowledge on library shelves and instead encounter a book that was printed and assembled by hand?<sup>97</sup> Such publications circumvent the chain of institutional validation: from the author, to the publisher, the book trade, and lastly the librarian purchasing and cataloguing the book according to the standard bibliographic practices.<sup>98</sup> A similar challenge to the stability of the printed book and the related hierarchy of knowledge occurred when students at Byam Shaw sought a copy of Jacques Rancière's *Ignorant Schoolmaster* and found three copied and modified versions. In accordance with, or as a response to, Rancière's pedagogical proposal, one copy featured deleted passages that left blank spaces for the reader to fill and to construct their own meaning in lieu of Rancière's text.<sup>99</sup>

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97 Of course unconventional publications can and are being collected, but these are often more arty objects, flimsy or oversized, undersized etc. and frequently end up in the special collections, framed and categorised 'as different' from the main stack of the collections.

98 When The Piracy Project was invited to create a reading room at the New York Art Book Fair in 2012, a librarian from the Pratt Institute dropped by every single day, because she was so fixed on the questions, the pirate books and their complex strategies of queering the category of authorship posed to standardised bibliographic practices. Based on this question we organised a cataloguing workshop 'Putting the Piracy Collection on the shelf' at *Grand Union* in Birmingham, where we developed a new cataloguing vocabulary for cases in the collection. See <https://grand-union.org.uk/gallery/putting-the-piracy-collection-on-the-shelves/>  
See also Karen Di Franco's reflection on the cataloguing workshop 'The Library Medium' in Francke and Weinmayr, *Borrowing, Poaching, Plagiarising*.

99 See Piracy Project catalogue: Camille Bondon, *Jacques Rancière: le maître ignorant*, [http://andpublishing.org/PublicCatalogue/PCat\\_record.php?cat\\_index=19](http://andpublishing.org/PublicCatalogue/PCat_record.php?cat_index=19). Rancière's pedagogical proposal suggests that 'the most important quality of a schoolmaster is the virtue of ignorance'. (Rancière, 2010, p. 1). In his book *The Ignorant Schoolmaster: Five Lessons in Intellectual Emancipation* Jacques Rancière uses the historic case of the French teacher Joseph Jacotot, who was exiled in Belgium and taught French classes to Flemish students whose language he did not know

This queering of the authority of the book as well as the normative, institutional frameworks felt like a liberating practice. It involved an open call for pirated books, a set of workshops and a series of lectures,<sup>100</sup> which built a structure that allowed the Piracy Project to share concerns about the wider developments at the university and the government's funding cuts in education, while the project could at the same time playfully subvert the dire and frustrating situation of a library that is earmarked for closure.

The fact that the library's acquisition budget was cut made the pirating action even more meaningful. Many books were produced on the photocopy machine in the college. Other copies were sent to the project by artists, writers, curators and critics who responded to the international call. The initial agreement was to accept any submission, no matter how controversial, illegal or unethical it might be. This invited a variety of approaches and contradicting voices, which were not muted by the self-censorship of their originators, nor by the context in which they circulated. By resisting generalised judgments, the project tried to practice critique in Judith Butler's sense. For Butler 'judgments operate [...] as ways to subsume a particular under an already constituted category, whereas critique asks after the occlusive constitution of the field of categories themselves. [...] Critique is able to call foundations into question, denaturalise social and political hierarchy, and even establish perspectives by which a certain distance on the naturalised world can be had.'<sup>101</sup>

To create such a space for the critique of the naturalisation of authorship *as* intellectual property was one of the aims of the Piracy

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and vice versa. Reportedly he gave his students a French text to read alongside its translation and, without mediation or explanation, let the students figure out the relationship between the two texts themselves. By intentionally using his ignorance as teaching method, Rancière claims, Jacotot removed himself as the centre of the classroom, as the one who knows. This teaching method arguably destabilises the hierarchical relationship of knowledge (between student and teacher) and therefore 'establishes equality as the centre of the educational process'. Annette Krauss, 'Sites for Unlearning: On the Material, Artistic and Political Dimensions of Processes of Unlearning', PhD, Academy of Fine Arts Vienna, 2017, p. 113. Jacques Rancière, *Education, Truth and Emancipation* (London: Continuum, 2010). Jacques Rancière, *The Ignorant Schoolmaster: Five Lessons in Intellectual Emancipation* (Stanford: University Press California, 1987).

100 'AND Publishing announces The Piracy Lectures', *Art Agenda*, 4 May 2011, <http://www.art-agenda.com/shows/and-publishing-announces-the-piracy-lectures/>

101 Judith Butler, 'What is Critique? An Essay on Foucault's Virtue', *Transversal* 5 (2001), <http://eicpc.net/transversal/0806/butler/en>



Project: firstly by understanding that there is always a choice through discovering and exploring other cultures and nations dealing with (or deliberately suspending) Western copyright, and secondly through the project's collective practice itself.

## Collective Authorship, Institutional Framing

The collaborative mode and collectivity within the Piracy Project differentiates its artistic strategy in principle from Prince's or Noland's approaches, who both operate as individuals claiming individual authorship for their work.

But how did the Piracy Project deal with the big authorship question? There was an interesting shift here: when the project still operated within the art college library, there was not much need for the articulation of authorship because it was embedded in a community who contributed in many different ways. Once the library was eventually shut after two years and the project was hosted by art institutions, a demand for the definition and framing of authorship arose.<sup>102</sup> Here the relationship between the individual and the collective requires constant and careful negotiation.<sup>103</sup> Members of collectives naturally develop different priorities and the differences in time, labour and thought invested by individuals makes one contributor want to claim 'more authorship' than another. These conflicts require trust, transparency and a decision

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102 Institutions that hosted long and short-term reading rooms or invited us for workshops included: The Showroom London, Grand Union Birmingham, Salt Istanbul, ZKM Academy for Media Arts Cologne, Kunstverein Munich. The Bluecoat Liverpool, Truth is Concrete, Steirischer Herbst Graz, Printed Matter New York, New York Art Book Fair at MoMA PS1, 281 Vancouver, Rum 46 Aarhus, Miss Read, Kunstwerke Berlin. Institutions that invited us for talks or panel discussions included: Whitechapel Art Gallery, Open Design Conference Barcelona, Institutions by Artists Vancouver, Academy of Fine Arts Leipzig, Freie University Berlin, and various art academies and universities across Europe.

103 At times, we signed 'the Piracy Project' (the title) under our own names (the artist-authors), because it felt suitable to take the credit for all our personal work, instead of strengthening the 'umbrella organisation' AND. When the editor of *Rhizome* asked us to write about the project, we authored the jointly written text as 'by Piracy Project'. On other occasions we framed it 'The Piracy Project is a collaboration of the artists x and y, as part of AND Publishing's research program.' At some point, the Piracy Project outgrew AND Publishing because it took up all our time, and we began to question whether the Piracy Project was part of AND, or whether AND was part of the Piracy Project.

to value the less glamorous, more invisible and supportive work needed to maintain the project as much as the authoring of a text or speaking on a panel.<sup>104</sup> We also do not necessarily speak with one voice. Andrea grew up in Peru and Brazil, and I in Germany, so we have different starting points and experiences: ‘we’ was therefore sometimes a problematic category.

## Our Relationships Felt Temporarily Transformed

Walter Benjamin, in his text ‘The Author as Producer’, rightly called on intellectuals to take into account the means of production as much as the radical content of their writings.<sup>105</sup> In theoretical writing, modes of production are too often ignored, which means in practice that theorists uncritically comply with the conventional micropolitics of publishing and dissemination. In other words, radical men and women write radical thoughts in books that are not radical at all in the way they are produced, published and disseminated. Cultural philosopher Gary Hall recounts with surprise a discussion headlined ‘Radical Publishing: What Are We Struggling For?’ that was held at the Institute of Contemporary Arts (ICA) in London in 2011. The invited panel speakers — Franco ‘Bifo’ Berardi, David Graeber, Peter Hallward, and Mark Fisher among others — were mostly concerned with, as Hall remembers,

political transformations elsewhere: in the past, the future, Egypt, [...] but there was very little discussion of anything that would actually affect the work, business, role, and practices of the speakers themselves: radical ideas of publishing with transformed modes of production, say. As a result, the event in the end risked appearing mainly to be about a few publishers, including Verso, Pluto, and Zero Books, that may indeed publish radical political content but in fact operate according to quite traditional business models [...] promoting their authors and products and providing more goods for the ticket-paying audience to buy. If the content of their publications is politically transformative, their publishing models certainly are not, with phenomena such as the student

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104 This less glamorous work includes answering emails, booking flights, organising rooms and hosting, in short the administrative work required to run and maintain such a project. The feminist discourse of domestic and reproductive labour is relevant here, but a more detailed discussion exceeds the scope of this text.

105 Walter Benjamin, ‘The Author as Producer’, *New Left Review* 1.62 (1970), 83–96. See also Hall, *Pirate Philosophy*, pp. 127–232.

protests and ideas of communism all being turned into commodities to be marketed and sold.<sup>106</sup>

That truly radical practices are possible is demonstrated by Susan Kelly, when she reflects on her involvement in collective practices of creative dissent during the austerity protests in the UK in 2010 — roughly at the same time and in the same climate that the panel at the ICA took place.<sup>107</sup> Kelly describes occasions when artists and activists who were involved in political organising, direct action, campaigning, and claiming and organising alternative social and cultural spaces, came together. She sees these occasions as powerful moments that provided a glimpse into what the beginnings of a transversal and overarching movement might look like.<sup>108</sup> It was an attempt to

devise the new modes of action, and new kinds of objects *from* our emerging analyses of the situation while keeping the format open, avoiding the replication of given positions, hierarchies and roles of teachers, students, artists, onlookers and so on. [...] We met people we had never met before, never worked with or known, and for many of us, our relationships felt temporarily transformed, our vulnerabilities exposed and prior positions and defenses left irrelevant, or at least suspended.<sup>109</sup>

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106 *Ibid.*, p. 129.

107 Several gatherings, such as 'Direct Weekend' and 'Long Weekend' at various art colleges in London involved Precarious Workers Brigade, Carrot Workers, tax evasion campaigners, UK Uncut, alternative media groups, feminist alliances, anti-poverty groups. See Precarious Workers Brigade, 'Fragments Toward an Understanding of a Week that Changed Everything...', *e-flux* 24 (April 2011), <http://www.e-flux.com/journal/24/67844/fragments-toward-an-understanding-of-a-week-that-changed-everything/>

108 Susan Kelly describes Felix Guattari's use of the term transversality 'as a conceptual tool to open hitherto closed logics and hierarchies and to experiment with relations of interdependency in order to produce new assemblages and alliances [...] and different forms of (collective) subjectivity that break down oppositions between the individual and the group.' Susan Kelly, 'The Transversal and the Invisible: How do You Really Make a Work of Art that Is not a Work of Art?', *Transversal* 1 (2005), <http://eipcp.net/transversal/0303/kelly/en>. See also Gerald Raunig's description of transversal activist practice: as 'There is no longer any artificially produced subject of articulation; it becomes clear that every name, every linkage, every label has always already been collective and must be newly constructed over and over again. In particular, to the same extent to which transversal collectives are only to be understood as polyvocal groups, transversality is linked with a critique of representation, with a refusal to speak for others, in the name of others, with abandoning identity, with a loss of a unified face, with the subversion of the social pressure to produce faces.' Gerald Raunig, 'Transversal Multitudes', *Transversal* 9 (2002), <http://eipcp.net/transversal/0303/raunig/en>

109 Kelly, "'But that was my idea!'", p. 3.

Exactly because these moments of protest produced actions and props that escaped authorship, it was even more alienating for the participants when a collectively fabricated prop for a demonstration, a large papier-mâché carrot<sup>110</sup> that became a notorious image in the press at the time, was retrospectively ascribed in an *Artforum* interview to be the ‘authored’ work of an individual artist.<sup>111</sup>

Kelly, correctly, is highly critical of such designation, which re-erects the blockages and boundaries connected to regimes of authorship that collective action aimed to dismantle in the first place. It is vital not to ignore the ‘complex set of open and contingent relationships, actions and manifestations that composed this specific collective political work.’ We would have to ask, to which of the activities in the making of the papier-mâché carrot would we attribute authorship? Is it the paper sourcing, the gluing, the painting, the carrying or the communicative work of organising the gatherings? What if the roles and practices are fluid and cannot be delimited like this?

## How Not to Assign Authorship?

What about this text you are reading now? It is based on a five-year collaboration to which numerous people contributed. Pirated books were given to the Piracy Project as well as arguments, ideas, questions, knowledge and practices in the form of conversations and workshops.

In that regard, this text is informed by a myriad of encounters in panel discussions and debates, as well as in the classrooms supported by institutions, activist spaces and art spaces.<sup>112</sup> All these people donated their valuable ideas to its writing. Various drafts have been read and commented on by friends, PhD supervisors and an anonymous peer

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110 The carrot is used as ‘a symbol of the promise of paid work and future fulfilment made to those working under conditions of free labour in the cultural sector.’ *Ibid.*

111 In an interview published in *Artforum*, David Graeber says: ‘Another artist I know, for example, made a sculpture of a giant carrot used during a protest at Millbank; I think it was actually thrown through the window of Tory headquarters and set on fire. She feels it was her best work, but her collective, which is mostly women, insisted on collective authorship, and she feels unable to attach her name to the work.’ ‘Another World: Michelle Kuo Talks with David Graeber’, *Artforum International* (Summer 2012), p. 270, <https://www.artforum.com/print/201206/michelle-kuo-talks-with-david-graeber-31099>

112 Artist Rosalie Schweiker, who read a draft of this text, suggested that I make a list of the name of every person involved in the project in order to demonstrate this generative and expansive mode of working.

reviewer, and it has been edited by the publishers in the process of becoming part of the anthology you now hold in your hands or read on a screen. In that light, do I simply and uncritically affirm the mechanisms I am criticising by delivering a single-authored text to be printed and validated within the prevailing audit culture?

What if I did not add my name to this text? If it went unsigned, so to speak? If anonymity replaced the designation of authorship? The text has not been written collectively or collaboratively, despite the conventional processes of seeking comments from friendly and critical readers. This is my text, but what would happen if I did not assert my right to be its named author?

How would the non-visibility of the author matter to the reader? We are used to making judgements that are at least partially based on the gender, status, authority and reputation of a writer. There are also questions of liability and accountability with respect to the content of the text.<sup>113</sup> Given the long struggle of women writers and writers of colour to gain the right to be acknowledged as author, the act of not signing my text might be controversial or even counter productive. It would also go against the grain of scholarship that aims to decolonise the canon or fight against the prevailing gender inequality in scholarly publishing.<sup>114</sup> And more, we have to ask who is actually in a position to afford not to assign individual names to works given that authorship — as discussed above — is used as a marker for professional survival and advancement.

In this specific context however, and as practice based research, it would be worth testing out practically what such a text orphan would trigger within dominant infrastructures of publishing and validation. How would bibliographers catalogue such a text? How could it be referenced and cited? And how would it live online with respect to

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113 Such an action might even infringe legal requirements or contracts. Open Book Publishers' contract, for example, states: 'The author hereby asserts his/her right to be identified in relation to the work on the title page and cover and the publisher undertakes to comply with this requirement. A copyright notice in the Author's name will be printed in the front pages of the Work.' Open Book Publishers, *Authors' Guide*, p. 19, <https://www.openbookpublishers.com/shopimages/resources/OBP-Author-Guide.pdf>

114 For a discussion of gender inequality in recent scholarly publishing see Chad Wellmon and Andrew Piper 'Publication, Power, Patronage: On Inequality and Academic Publishing', *Critical Inquiry* (21 July 2017), [http://criticalinquiry.uchicago.edu/publication\\_power\\_and\\_patronage\\_on\\_inequality\\_and\\_academic\\_publishing/](http://criticalinquiry.uchicago.edu/publication_power_and_patronage_on_inequality_and_academic_publishing/)

search engines, if there is no searchable name attached to it? Most of our current research repositories don't allow the upload of author-less texts, instead returning error messages: 'The author field must be completed'. Or they require a personalised log-in, which automatically tags the registered username to the uploaded text.

What if I used a pseudonym, a common practice throughout literary history?<sup>115</sup> Multiple identity pseudonyms, such as 'Karen Eliot' or 'Monty Cantsin' used by the Neoist movement in the 1980s and 1990s could be interesting as they provide a joint name under which anybody could sign her or his work without revealing the author's identity.<sup>116</sup> This strategy of using a multi-identity avatar is currently practiced by a decentralised, international collective of hacktivists operating under the name 'Anonymous'. The 'elimination of the persona [of the author], and by extension everything associated with it, such as leadership, representation, and status, is', according to Gabriella Coleman, 'the primary ideal of Anonymous.'<sup>117</sup>

What if we adopted such models for academia? If we unionised and put in place a procedure to collectively publish our work anonymously, for example under a multi-identity avatar instead of

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115 See Gérard Genette's discussion of the 'pseudonym effect' as conceptual device. He distinguishes between the reader not knowing about the use of the pseudonym and the conceptual effect of the reader having information about the use of a pseudonym. Gérard Genette, *Paratexts, Thresholds of Interpretation* (Cambridge University Press, 1997).

116 The Neoist movement developed in Canada, North America and Europe in the late 1970s. It selected one signature name for multiple identities and authors, who published, performed and exhibited under this joint name. It is different from a collective name, as any person could sign her or his work with these joint names without revealing the author's identity. See letter exchanges between cultural theorist Florian Cramer and artist and writer Stewart Home: 'I would like to describe "Monty Cantsin" as a multiple identity, "Karen Eliot" as a multiple pen-name and, judging from the information I have, "Luther Blissett" as a collective phantom.' Florian Cramer, 2 October 1995, in Stewart Home and Florian Cramer, *House of Nine Squares: Letters on Neoism, Psychogeography & Epistemological Trepidation*, <https://www.stewarthomesociety.org/neoism/ninesq.htm>. See also Nicholas Thoburn's research into the political agency of anonymous authorship. Nicholas Thoburn, *Anti-Book, On the Art and Politics of Radical Publishing* (Minneapolis and London: University of Minnesota Press, 2016) pp. 168–223.

117 Anonymous started on 4chan, an online imageboard where users post anonymously. 'The posts on 4chan have no names or any identifiable markers attached to them. The only thing you are able to judge a post by is its content and nothing else.' Gabriella Coleman, *Hacker, Hoaxer, Whistleblower, Spy: The Many Faces of Anonymous* (London and New York: Verso, 2014), p. 47.

individual names — how would such a text, non-attributable as it is, change the policies of evaluation and assessment within the knowledge economy? Would the lack of an identifiable name allow the text to resist being measured as (or reduced to) a quantifiable auditable ‘output’ and therefore allow the issue of individualistic authorship to be politicised? Or would it rather, as an individual and solitary act, be subjected — again — to the regimes of individualisation? It seems that only if not assigning individual authorship became a widespread and unionised practice could procedures be put in place that acknowledged non-authored, collective, non-competitive practices.<sup>118</sup>

However, as tempting and urgent as such a move might appear in order to allow individualistic authorship to be politicised, such a step also produces a challenging double bind. According to Sara Ahmed it actually does matter who is speaking. ‘The ‘who’ does make a difference, not in the form of an ontology of the individual, but as a marker of a specific location from which the subject writes’.<sup>119</sup>

From a feminist and postcolonial perspective, the detachment of writing from the empirical body is problematic. Ahmed points out: ‘The universalism of the masculine perspective relies precisely on being disembodied, on lacking the contingency of a body. A feminist perspective would surely emphasise the implication of writing in embodiment, in order to re-historicise this supposed universalism, to locate it, and to expose the violence of its contingency and particularity (by declaring some-body wrote this text, by asking which body wrote this text).’<sup>120</sup> Gayatri Spivak for example insists on marking the positionality

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118 I thank Susan Kelly for making this point while reviewing my text.

119 It is interesting to come back to Foucault’s text ‘What is an author’ and complicate his own position as authorial subject. Referring to Naomi Schor and Gayatri Spivak, Sara Ahmed suggests, that ‘Foucault effaces the sexual specificity of his own narrative and perspective as a male philosopher. The refusal to enter the discourse as an empirical subject, a subject which is both sexed and European, may finally translate into a universalising mode of discourse, which negates the specificity of its own inscription (as a text)’. See Naomi Schor, ‘Dreaming Dissymmetry: Barthes, Foucault and Sexual Difference’, in Elizabeth Weed (ed.), *Coming to Terms: Feminism, Theory, Politics* (London: Routledge, 1989), pp. 47–58; and Gayatri Chakravorty Spivak, ‘Can the Subaltern Speak?’, in Cary Nelson and Lawrence Grossberg (eds.), *Marxism and the Interpretation of Culture* (Urbana, IL: University of Illinois Press, 1988), pp. 271–313.

120 Sara Ahmed, *Differences That Matter, Feminist Theory and Postmodernism* (Cambridge, UK: Cambridge University Press, 2004) p. 125.

of a speaking subject in order to account for the often unacknowledged eurocentrism of western philosophy.<sup>121</sup>

If we acknowledged this double bind, we might eventually be able to invent modes of being and working together that recognise the difference of the 'who' that writes, and at the same time might be able to move on from the question 'how can we get rid of the author' to inventing processes of subjectivation that we want to support and instigate.

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121 Spivak, 'Can the Subaltern Speak?', pp. 271–313.



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