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Article summaries from the Contemporary Arts and Conservation Practices Bibliography

Buskirk, Martha, “Authorship and Authority”, in *The Contingent Object of Contemporary Art*, MIT Press, 2003

Minimalism, is a term used to describe artworks created in the 1960s that are characterized by an impersonal austerity, plain geometric configurations and simple modular and serial arrangements. This work is also generally characterized by the use of industrial materials and fabrication techniques; processes and materials that intentionally remove all traces of the artist’s hand or physical mark. Conceptual Art, is a term used to define artworks from the mid-1960s that privilege the conceptual basis of an artwork over its physical form. Conceptual works either markedly de- emphasize or entirely eliminate the perceptual encounter between the viewer and the art object in favor of an engagement with the ideas that form the basis of the work. Conceptual artworks are also characterized as ‘variable’ and ‘immaterial’ in that they exist more as conceptual entities than physical forms. These works are mutable. As different instantiations of the work are fabricated over time for specific exhibitions, the work inevitably is expressed through variable physical and contextual means while aiming to remain true to the artist’s original intent.

In discussing notions of authorship, ownership and intent of minimalist and conceptual works, Martha Buskirk poses the question, where does the artwork reside, within the material object created or the immaterial concept of the work? This question of authorship and authority plays a pivotal role in minimalist and conceptual works in that, on the one hand, there is the intentional removal of conventional notions of authorship through the work’s seemingly untouched surfaces. On the other hand, artists sought to maintain direct authority and long-term control over future fabrication, installation, and placement of their work through built-in legal requirements for collectors and institutions to consult the artists on all issues concerning the longevity of the work including placement, replacement of parts and overall fabrication.

Minimalist and particularly conceptual works were the first to make use of certificates, language-based legal contracts that serve to authenticate a work, document the work’s artistic intent and provide explicit guidelines necessary to fabricate the work for future exhibition. “A certificate covers a wide range of purposes. It can simply provide added assurance about the authenticity of a physical object that has a continuous existence; it can represent the continuous existence of an idea that does not have an ongoing physical presence; and it can describe a work not yet made that can be realized on the basis of the certificate.” (p. 53)

Buskirk focuses on the implications established through the use of certificates by artists and private collectors, particularly in terms of the reliance on legal terms and principles to ensure the authentication, longevity and future marketability of a work. “One drawback to depending on descriptions rather than the evidence contained in a material object is the problem of ambiguity or even error.” (p. 43) Buskirk discusses how the externalization of evidence both of artistic intent and authenticity gives rise to a paradoxical situation, in which the long-term existence of an artwork relies on interpretations of language. Other questions that arise from the

use of certificates include the transferability of a work, particularly for works created for site-specific installations, and notions of authorship regarding future realizations of those works.

For the terminology group, keywords and concepts that occur within this work:

- authenticity
- authentication
- authority authorship
- interpretive context
- intent

Dreier, T. K., 1999, “Copyright Aspects of the Preservation of Nonpermanent Works of Modern Art”, *Mortality/Immortality? The Legacy of 20th Century Art*, Los Angeles: The Getty Conservation Institute.

Published as part of the proceedings of the 1999 *Mortality/Immortality* conference held at the Getty Conservation Institute, Thomas Dreier discusses how law plays a fundamental role and is called upon to assist in the conservation philosophy and conservation techniques of the preservation of cultural heritage materials. He discusses specific areas of public and private law and the at times conflicting interests to be accommodated.

Dreier examines the interests of the three principal types of stakeholders, the artist and creator, the owner or collector and the general public. He states that, “the artist, in general, does not wish to have anyone else, including the rightful owner, interfere with the work in a way that is inconsistent with his or her artistic purpose or intent.” (p. 63) Even with philosophical and legal distinctions between the material object and the immaterial work of art embodied therein, the concept of the work remains the work of the artist even after the artist has parted with legal title to the material object. The owner of a work of art, on the other hand, may wish to preserve its material substance in order to enjoy the work for as long as possible. The owner may also wish to alter the work, which may ultimately destroy it. The interests of the general public primarily address the preservation of our common cultural memory through the preservation of individual artistic works. Inevitably, conflicting opinions exist and arguments arise about the issues of whose cultural heritage we are discussing; which individual works are to be considered representative; and who should pay for what and how much.

Museums, Dreier notes, represent two types of interests, those of the collection owners and the public. He further notes that museums that are chartered as public entities and thus entrusted with the common public good, still represent the interests of owners and may not wish to tie up too much of their budgets with conservation and restoration costs of certain works.

Dreier focuses on three main areas of art law that illustrate inherent legalistic difficulties within the conservation and preservation of modern and contemporary art: copyright and the interests it protects; the moral right of the author and the preservation of nonpermanent works of modern art; and copyright and digital formats. Dreier focuses on copyright to specifically address the legal basis and mechanisms that secure the artist’s exclusive right to an artwork. He states, “...copyright law is the law that applies to all works of original authorship in which the limited term of protection,...has not yet expired, and most twentieth century works are still covered by

copyright.” (p. 65) Additionally, he states that, copyright law is defined nationally, there is no worldwide copyright. Regarding works in the visual arts, moral rights exist in the EU and UK as an additional right above and beyond copyright that secures the integrity of a work, and proper name attribution. Within these legal parameters, twentieth century works which are still covered by copyright include a third legal component, above and beyond legal components of ownership and public preservation interests, the artists’ copyright to the work. It is this third element that often contributes added complexity to the preservation of contemporary works. Regarding contemporary works considered conceptual or immaterial, Dreier goes on to note that, the artist maintains his or her rights to the work even when the physical object of the work no longer remains.

The moral right to the integrity of a work, which is secured by the Berne Convention for the Protection of Literary and Artistic Works, defines the protection as, “the right to object to any distortion, mutilation or other modification of, or other derogatory action in relation to, the said work, which would be prejudicial to [the artist’s] honor or reputation.” (p. 65) Furthermore, the law states that the integrity right may be infringed by changes made to the work itself, or by placing the work in a derogatory context. The definition of the integrity right poses a potential conflict between the artist and the owner who may wish to modify a work for preservation purposes that the artist does not support. Dreier asks how traditional legal rules would respond to the case of a work intentionally made from friable and non-permanent materials where the artist wishes the work to decay and the collector/ owner of the work wishes to protect and preserve it.

Further complexity accrues with works created in the digital domain. Dreier notes that at least two additional copyright problems arise when it comes to preserving contemporary artworks in digital form. “The first problem is that, at present, in legal terms only, the traditional artist’s right to the integrity of a work serves to protect the authenticity of works in digital format, which are vulnerable to unauthorized change by way of ‘digi’-pulation.”(p. 66) He continues, that no legal rules seem to take into account the public interest in seeing the authenticity of digital works preserved. Although the 1996 WIPO treaties contain binding language to not tamper with digital information, the obligation is limited to “the protection of the authenticity of rights management information...and does not cover the authenticity of the work itself.” (p. 66)

Secondly, since future access to digital works will depend upon access to outdated and obsolete technological hardware and software, this access will be impeded since most national copyright treaties consider any backup copy of a work in digital form, including commercial software, a reproduction of the work, which is subject to the authorization of the author or the respective rights holder. Works created in the digital domain contain multiple rights holders because of copyrights tied to the artistic work and any commercial software or hardware used to run the work. Finally, Dreier notes, the law does not contain any specific obligations or allowances to maintain particular types of hardware or software in order to reconstruct a work created in the digital domain into a perceptible form in the future.

For the terminology group, keywords and concepts that occur within this piece:

- authentication
- intent
- authorization

Hapgood, Susan, July 1990 , “Remaking Art History”, *Art in America*, vol. 78, no.7.

Susan Hapgood examines recent changes in attitudes about art production, preservation, reproduction and display that alter notions of the ‘authentic’ in a work of art. She claims that none of these problems is more complicated than the issue of refabrication, the process of recreating a contemporary work of art for exhibition purposes. Hapgood states that minimal and conceptual artists working in the 1960s and 70s, “...authorized the industrial manufacture of certain works, they transferred ideas and proposals as art works, they made art from friable materials and they deliberately repudiated the permanence of the art object...Many of those same artists are now either remaking works from that earlier period or busily sorting out spurious from authentic objects, a process accelerated no doubt by the burgeoning market for Minimal and Conceptual art.” (p. 115)

Minimalist and conceptual art practices set out to question conventional notions of originality, authorship and longevity. The practice of refabrication has developed out of the current interest in minimal and conceptual works and the desire by museums to exhibit these works from their permanent collections. As the practice grows notions of authenticity become more and more tenuous to maintain, particularly within museum contexts.

Hapgood goes on to discuss three recent controversial cases involving refabricated works, most involving the private collector of conceptual and minimal works, Giuseppe Panza.

For the terminology group, keywords and concepts that occur within this work:

- authenticity
- authentication
- intent

Mirapaul, M., April 29, 2002, “Selling and Collecting the Intangible, at \$1,000 a Share”, *New York Times*.

Discusses the strategy used by artist Mark Napier to sell a limited number of shares of his online artwork, “The Waiting Room”. Napier calls the work participatory and says that the 50 shares approach emphasizes the work’s participatory nature. “When multiple viewers view it online at the same time, they can produce shapes that complement - or obliterate - those made by others. The work is the visual equivalent of an Internet chat room with ‘conversations’ occurring in geometric shapes instead of words.” Buyers of the work receive a CD-ROM that contains the software that runs the work and a certificate of authenticity. Napier’s answer to the ephemeral quality of the work and issues of its limited longevity, is that when the time comes that he or an associate cannot maintain the work, the shareholders will get copies of the computer code Napier wrote for the work. With the code, Napier says, the work could be updated to run on the technology of the time.

Napier’s strategy is the latest attempt to find a workable model for selling online art. The traditional art world economy is built on the premise of the rare and unique object, and with an online work, there is no tangible object to own, nor can a work that can be accessed from any computer and copied be considered rare. Interest in online art has increased, and museums have

commissioned online works, but the artists have generally been stymied in their efforts to receive financial compensation for works they create. Some online artists, such as John F. Simon Jr. have returned to more conventional high tech media where they can better control uniqueness and reproducibility.

For the terminology group, keywords and concepts that occur within this work:

- authenticity

Rhinehart, R., 2002, “Preserving the Rhizome ArtBase, online publication, <http://rhizome.org/artbase/report.htm>

Established in 1998, the Rhizome ArtBase is an artist-driven, web-based archive of new media art assembled and maintained by Rhizome.org a non-profit arts organization based in New York City. All works submitted to the ArtBase for consideration are submitted by the artists or rights holder. As of 2002, the ArtBase contained over 650 new media works. Works within the online archive are maintained either as linked objects or cloned objects, linked works are maintained on outside servers; cloned works reside on Rhizome maintained servers.

For his recommendations report prepared in 2002 on the preservation of the Rhizome ArtBase, Richard Rhinehart, defines ArtBase as Rhizome’s online archive of new media art. “Initially conceived and developed as an archive of net art projects exclusively, the scope of the ArtBase has since been expanded to include other forms of new media art such as software, games, and web-based documentation of installation and performance works”. (p. 2) The purpose of Rhinehart’s paper is to outline recommended steps he suggests Rhizome should take in preserving the works of art included in the ArtBase, with particular emphasis placed on emulation as a long-term preservation strategy. Rhinehart goes on to state that, “...this paper defines a research agenda for a long-term new media preservation project to be undertaken by the arts and cultural community in the future, with the ultimate goal of developing solutions for the preservation of new media art.” (p. 2) In this sense, this paper consists of both suggested recommendations for Rhizome and the broader arts and cultural community’s contributions towards the larger efforts of preserving digital and variable media-based works. This paper focuses on three main areas: emulation as the recommended long-term preservation strategy; creation of robust metadata, particularly to support emulation; and expansion of Rhizome’s collection policy to reflect in contractual language the responsibilities Rhizome assumes in the preservation of works included in the ArtBase.

Although, other preservation strategies are mentioned, including migration, and refabrication, based on existing documentation of the original work, Rhinehart’s premise for the report is that emulation is a key component of any long-term preservation strategy. As a result, little time is spent discussing other strategies, but to Rhinehart’s credit, he does discuss both the advantages and disadvantages of emulation. Rhinehart lays out 6 recommendations that Rhizome will have to implement to support future emulation initiatives for the ArtBase. The recommendations include: (1) capture metadata about the original work and the original software needed to actualize the work in the future; (2) develop a tool for collecting and managing this data; (3) draft internal collection policies which document Rhizome’s archiving policies; (4) obtain and store legal copies of software, including operating systems, browsers, plug-ins, etc.; (5) develop

a strategy for migrating the original software and documentation for future emulations; (6) and finally, participate in collaborations with other institutions in the preservation of new media art.

Rhinehart devotes a significant part of the report to metadata and suggested developments for Rhizome to expand the richness of the metadata captured about each submitted work. It is Rhinehart's suggestion that at the very least, descriptive, administrative and technical metadata be captured for both the original artwork and the original software/ technology needed to run the work, and that the metadata standards used, reflect national and international standards.

The final recommendation made by Rhinehart discusses the need for Rhizome to develop a collections policy that formalized the processes for accessions, deaccessions and their rights and responsibilities for the long-term maintenance of works in the ArtBase. It is also suggested that the policy outline the preservation, through storage and migration of unique and commercial software for the purposes of future emulation.

Rhinehart's conclusion focuses on the area he considers most important for the preservation of new media works, emulation and his final recommendation, that Rhizome actively participate in collaborative new media preservation efforts with other arts and cultural organizations to further the development of best practices for the preservation of new media works.

For the terminology group, keywords and concepts that occur within this work:

- emulation
- variability