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On the Copyright Hermeneutics of the Original

This section of the CIHA Congress asks for definitions of the original. The range of possible answers is broad, and those answers remain inconclusive. From the specific perspective of copyright law, a recent UK textbook states that »it is very difficult if not impossible to state with any precision what copyright law means when it demands that works be original.«[1] Despite these obvious complications, this article attempts to shed some light on the definition of originality in the context of copyright. Far from attempting to paint a complete picture, the present article will first describe the term as a concept linking a work of art to its author, before going on to delineate important steps in copyright history, focusing on a few exemplary artists and their awareness for copyright issues.[2] While the legal definition of the original takes into account artistic categories, these are in turn informed by copyright law, its restrictions and its potential.

Originality has been referred to as the »bedrock principle of copyright« by the US Supreme Court.[3] This observation is true for intellectual property law in many countries.[4] By means of example, in the United States, 17 USC. § 102(a) (2006) provides: »Copyright protection subsists [...] in original works of authorship fixed in any tangible medium of expression.« Similarly, the UK Copyright, Designs and Patents Act 1988 (CDPA) protects »original literary, dramatic, musical or artistic works« in its first provision (s.1, 1 a). Other countries refer not to originality, but to creativity. For example, in Germany, § 2 (2) of the Copyright Act (Urheberrechtsgesetz, UrhG) clearly states that the law exclusively protects personal intellectual creations. Similarly, Art. L-112-1 of the French law on intellectual property (Code de la Propriété Intellectuelle, CPI) declares the protection of all »œuvres d'esprit.«

While the scope of these various laws is expressed slightly differently, ultimately they all protect an almost identical body of works. Originality and creativity seem to be two concepts describing different aspects of a continuous aesthetic process: an author creates an original work. Whereas originality focuses on the work created, creativity highlights the author as the originator of the work. In this way the term of the original connects the work of art with its origin, that is with its author, and is indeed »an inescapable requirement.«[5]

Non-originals: reproductions, copies, series, casts

It is also necessary to examine just what an original is not, even within copyright law. Legal terminology is more often than not systematic, and it is impossible to assess the meaning of one term without recourse to other terms such as opposites or related but varying terms. It is striking that there is no such thing as the opposite of an original. It is an asymmetric term. Very often we understand the original to be the opposite of fakes and forgeries.[6] However, the legal problems of copyright infringement and fakes overlap only coincidentally, both representing concepts that are distinct from one another. While the forger wants his own work to appear to be somebody else's, and the copyright infringer (the »pirate«) uses somebody else's work to appear to be his own, the two situations do not necessarily coincide: »Original and genuine are two different things.«[7]

Within the copyright system, typical non-originals are the reproduction and the copy. The terminology is not always precise, and the law is inclusive. Copyright has a common understanding of replicas, reproductions in other media (for example engravings and photog-

Fig. 1
William Hogarth, A Rake's Progress, 1735, plate II, engraving, 350 x 403 mm. London, British Museum (inv.no. 1868,0822.1529)

raphs), facsimiles and copies in the same medium – they are all »copies.«[8] Nowadays, the right to copy, or copyright, lies exclusively with the author. Copyright guarantees the author's rights to utilise and dispose of their works, namely to copy, to exhibit, to distribute and to exploit these works, and to prevent other people from doing so.[9] It guarantees that artists remain in control of their work. Copyright can be transferred and licensed, but all copies, reproductions, translations etc. made without the artist's consent, constitute a copyright infringement and are illegal.[10]

An original within the meaning of copyright law does not have to be unique. Serial works of art can be original in that they stem from a creative author, while several instances of the work (»copies«) exist. This question is dependent on certain media, and one must be careful not to misinterpret the legal and technical meanings of the original.[11] Perhaps the most prominent example are photographs from the pre-digital age, where prints are made from the negative. While the latter is the technical original, the printed (technical) copies can nevertheless be originals in the sense of copyright law. Prints such as lithographs, engravings and etchings are further examples of media involving techniques of reproduction from a technical original – a lithographic stone or a copper plate. Similarly, bronze casts are created from an original sculpture.

These techniques prompt complex issues regarding originality and authorship. For instance, not every cast is automatically an original in the sense of copyright law. The connection between creator and work becomes weaker after the artist's death. A bronze cast may be considered an original if it has been supervised by the artist himself or has at least been personally authorised by him. It has been claimed that under German copyright law, posthumous casts are not considered to be original works.[12] In the words of an American lawyer: »Copies can be authorized, but only works can be authored.«[13] Technically and materially, however, more casts can be produced after the artist's death. Auguste Rodin's »Bourgeois de Calais« have been cast in a limited edition of twelve copies, only four of which were produced during Rodin's lifetime.[14] The other eight were cast under the auspicies of the French State, more specifically the Musée Rodin in Paris, as the inheritor of Rodin's copyright. While copyright in Rodin's work expired 70 years after his death, in France the moral rights of the author are perpetual (Art. L. 121-1 Code de la Propriété Intellectuelle), which is why the Musée Rodin still acts as administrator of the artist's moral rights pursuant to the French Decree 93-163 from 2 February 1993. Although it is a widespread opinion that French copyright law limits the number of original casts to twelve,[15] the opposite is the case, and rules of best practice do not automatically become enforceable. A related rule is to be found in Art. 71, No. 3 of the French Code général des impôts, annexe 3, which defines eight casts as original works of art for the purposes of taxation. However, there is an ongoing demand in the art market for more Rodins, and copies of his sculptures are still being cast. Whether these casts are »original« is no longer a question of copyright, but rather a question of authenticity in terms of connoisseurship, the art market and collectors' demand. In addition to Rodin, Edgar Degas is another recent case that has been the subject of much debate.[16] However, the present article does not provide scope for a lengthy discussion of these intricacies.[17] As mentioned before, the problems of fakes and copyright infringement overlap but are not equivalent. Notwithstanding this fact, many facets of the copyright definition of the original are shared with other meanings within the law, within the market, and within art history. In this sense, »copyright history is not just another branch of positive law,« as the editors of a recent collection of essays on the matter have made clear, but rather one of many indicators of a network of social and aesthetic relationships.[18] In this sense, copyright history is art history, and artists have often intuitively understood these links.

Artists and copyright: Dürer to Hogarth

One of copyright's most famous early cases – Dürer vs. Raimondi – cannot, of course, be overlooked in Nuremberg on such an occasion

Fig. 2
Piracy of plate II of Hogarth's Rake's Progress, 1735, 268 x 327 mm.
London, British Museum (inv.no. 1878,0914.2)

Fig. 3 Napoleon Sarony, Oscar Wilde, No. 18, photograph

as this conference. In the second edition of his »Vite« (1568) Giorgio Vasari gave a lively account of how Dürer sued Marcantonio in Venice for breach of privilege. Raimondi had distributed pirated copies of his prints, including the famous AD monogram. The Signoria of Venice is said to have ordered Marcantonio not to use Dürers signature on his copies, but otherwise dismissed the German's complaint.[19] Since no sources have hitherto been unearthed from the collections of the Archivio di Stato in Venice, we have no written evidence other than Vasari's account. While Marcantonio copied, as a matter of fact, Dürer's »Life of the Virgin« including the German's monogram, Vasari adapted the story of the court case from a decree issued by the city council of Nuremberg.[20] However, Venice implemented laws and administrative regulations on intellectual property as early as 1474, together with a tight-knit system of privileges.[21] Dürer's 1511 privilege, issued by the German Emperor and mentioned in the colophon of his »Life of the Virgin,«[22] is as well known as the fact that his images were for years repeatedly copied by other artists, both in Germany and abroad. Conceding that Dürer's mind was, in Erwin Panofsky's words, »dominated by the idea of ›originality,‹«[23] the kind of originality protected by Venetian laws was more technical than aesthetic: printmakers obtained privileges for new printing techniques, letterforms or printing processes, not for their aesthetically creative work. A prominent example is the privilege from 1500 for the map of Venice, which was designed by Jacopo de' Barbari and published by Anton Kolb.[24] It is therefore likely that the imperial privilege of 1511 was granted to Dürer the publisher rather than Dürer the artist[25] – notwithstanding the contemporary fluidity of the concept of such a profession.[26] Returning to Vasari's case, Raimondi's prints were made using a different technique from Dürer's; they are engravings, not woodcuts. Furthermore, while a privilege is often equated with copyright, the legal differences are pronounced. In particular, the notion of an original work of an individual, which is at the core of copyright, is not part of the system of privileges, which were bestowed by a governmental authority on any individual worthy of distinction and protection, in some instances providing temporary monopolies.[27] The lawyer Édouard Romberg remarked in 1892 that Raphael and Rubens would have been surprised by a conversation about copyright.[28] The facts and fiction of the Dürer-Raimondi episode have recently been the object of a renewed analysis.[29]

Where Dürer fought for his author's rights on his own, artists' organisations gained more power and momentum. For decades, artists sought to obtain guarantees to protect the commercial potential of their works that reproductions and copies represented. These issues were repeatedly discussed at the Académie Royale in Paris (founded in 1648), but also in associations such as the Academy of St Luke. Sculptors were unhappy that the manufacturers casting their bronzes were apparently selling casts and bypassing the artist. Not until the late 17th century was the relationship between sculptors and founders settled by administrative decrees.[30] Prominent artists such as Rubens made sure that their reproductive engravings enjoyed the protection of several privileges from European monarchs.[31] It was William Hogarth who initiated the next important step in copyright history. In 1735 he petitioned Parliament for an act protecting his prints. After a veritable lobbying campaign,[32] the parliament passed the Engraving Copyright Act (8 Geo. II, c. 13), commonly known as Hogarth Act, the first modern copyright law for images.[33] The artist had deferred the publication of his new series of engravings, »The Rake's Progress,« until the new law came into effect. In the meantime, a piratical print seller sent his agents to Hogarth's shop to report back about the artist's completed but unpublished engravings after his own paintings. They reported back to the dealer's engravers, who immediately set out to complete a series from memory. It is hardly surprising that these illicit prints did not turn out to be exact copies (see figs. 1–2) – Hogarth thought they were »executed most wretchedly both in Design and Drawing.«[34] The new law protected original prints, meaning those that were both designed and printed by the artist, for 14 years. In 1766 this protection was extended to include reproductions and new editions, and the copyright term was extended to 28 years.[35]

It is worth repeating that, in this way, modern copyright law from the outset traced the legitimacy of copyright and its exclusion of other individuals from copying a work of art to that work's author.[36] Legitimacy was no longer derived from the sovereign's power, as was the case with the privilege, but was declared to be rooted in the artist's creative individuality. While this new approach also benefited publishers (perhaps even more so than the artists themselves), these ideas became more convincing in view of the ideals of the Enlightenment and individual freedom of expression. The French writer Simon Linguet observed in 1777 that those copying works of art such as engravings require a certain understanding of art, which makes this activity different from copying for example a machine or a textile pattern design.[37] Here, Linguet described an aspect of creativity that would later become the prerequisite of originality in copyright. A legal breakthrough was the French revolutionary law of 1793, which on the one hand reiterated the prevailing ideas of more progressive circles, while on the other hand describing works of art as the product of spirit or genius, thus emphasising the requirement of originality.[38]

Challenging copyright: reproduction technology in the 19th century

Copyright history of the 19th century is a complex subject, and it is impossible to outline its many branches in this brief article; only a few aspects can be pointed out here. One is the internationalisation of the art market, as reflected in exhibitions and collecting patterns, which in turn led artists to demand international copyright protection. Many international conferences made pleas for a harmonisation of copyright regulations, such as the Congrès de la propriété littéraire et artistique, which was held in Brussels in 1858. There were many more similar events and petitions. The convention of Berne, agreed in 1886, was a major success of these efforts.[39] Copyright laws were consolidated throughout the 19th century, and the generation of copyright laws from about 1900 show a solid degree of maturity and complexity, incorporating laws formerly regulating different media into one statute. Another aspect is the artists' own concern for copyright issues. Just one example is the pamphlet by Horace Vernet dating from 1841, in which he argued against a planned legal provision giving the copyright of a work of art to its buyer, where it should rest with the artist (as it indeed does today).[40] Many artists were capitalising on reproductive engravings from their paintings.[41] For example, many of Edwin Landseer's paintings were made with the engraving in mind.[42] Other stars of reproductive engraving, to mention but two, were Delaroche and Gérôme in France. Both partnered with the influential print publisher, Goupil & Co.[43] The list could be continued. It was important to define the mutual rights and obligations of the artist and the engraver. Derivative works such as engravings may involve creative decisions; as a consequence, they become originals in the sense of copyright, without diminishing the copyright of the original author: the reproductions are legal provided they are authorised by the author of the original (as in »model of the reproduction«).[44]

The third important aspect of nineteenth-century developments is the challenge of photography. At the time of its invention in the middle of the century, photography was seen as a non-creative and non-original, purely chemical and mechanical process used to copy nature and images.[45] Only in the course of the following decades did it come to be seen as a creative process, and photographs, thus, potentially original works of art. Different legal systems granted photography copyright protection at different times, and to various degrees.[46] One of the earliest examples is the U.S. Copyright office, which in 1865 added photographs and photographic negatives to the list of protected works. The subsequent Copyright Act of 1870 also mentioned photographs, but the controversy remained as to whether or not this act was constitutional. The Supreme Court settled the issue in 1884, when photographer Napoleon Sarony filed a copyright infringement suit against the Burrow-Giles Lithographic Company, whose advertisement for the Ehrich Brothers' fashion store in New York re-used Sarony's photograph of Oscar Wilde (fig. 3). Emphasising the distinction between patent and copyright law, the court found that the photograph in question was »an original work of art, the product of plaintiff's intellectual invention«[47] – a milestone for the legal approval of photographic art.

Deconstructing copyright: Duchamp and the legal problem of artistic ideas

No sooner was artistic copyright firmly and internationally established than the first artists began to deconstruct it, perhaps most notably Marcel Duchamp, who with his work »Fountain« turned the principle of being an original into being a urinal. Duchamp's oeuvre highlights some complex issues regarding the status of the original and it continues to represent a challenge to copyright law even today. Some modern copyright lawyers claim that a readymade is not an original work of art, since it does not have an author.[48] If we take this legal opinion seriously, the original »Fountain« from 1917 was not a copyrightable work of art, while Alfred Stieglitz's photograph of it in »The Blind Man,« showing the urinal in the exhibition, was. The replicas of »Fountain« from the 1960s, however, were handmade according to Duchamp's own plans and instructions and not ready-made by any means.[49] Since the re-modelling of a urinal is a personal intellectual creation, these are copyright protected works, which, in conceptual terms, are not far removed from casts of Rodin's »Bourgeois de Calais.« Duchamp was very aware of copyright issues and authorship – his large copyright notice in capital letters on »Fresh Widow« does not allow for any uncertainty in this regard: »Copyright Rose Selavy, 1920.« As Molly Nesbit remarked, Duchamp »pulled the culture of the patent over into the culture of copyright« with this notice.[50] She observes that a window is an industrial and therefore not copyrightable good, and that the work gives the impression of a model for a patent office. There is a legal truth behind this observation, since modern law distinguishes between patent law protecting ideas on the one hand, and copyright law protecting original works on the other. With the copyright inscription on »Fresh Window,« Duchamp argued for the work of art as an idea by means of legal hermeneutics. In a further evolution of these ideas, appropriation artists have continued to challenge contemporary copyright law.[51] As copyright protection does not extend to ideas, increasingly conceptual and immaterial creations – if they can be called works at all – pose a particular legal challenge.[52] In a certain way this entails a reversal of spheres for the motto of this congress, »The Challenge of the Object.« Here, it is copyright law's adherence to the understanding of the work of art as object that represents the challenge and the need for reform.

Notes

1 Lionel Bently/Brad Sherman: Intellectual Property Law. Oxford (3rd ed.) 2008, p. 93.

2 By no means can this article provide anything more than a rough outline. Several of the aspects discussed here will be examined in more detail in my forthcoming study on the history of copyright. I would like to take this opportunity to express my gratitude to the Gerda Henkel Foundation, Düsseldorf, for the two-year research grant.

3 Feist Publications, Inc. v. Rural Tel. Serv. Co, 499 U.S. 340, 347 [1991].

4 On this emerging international consensus see Daniel Gervais: Feist Goes Global: A Comparative Analysis of the Notion of Originality. In: Journal of the Copyright Society of the USA, 49, 2002, pp. 949–981. – Elizabeth F. Judge/Daniel Gervais: Of Silos and Constellations: Comparing Notions of Originality in Copyright Law. In: Cardozo Arts and Entertainment Law Journal, 27, 2009, pp. 375–408.

5 Nadia Walravens: The Concept of Originality and Contemporary Art. In: Dear Images: Art, Copyright and Culture. Ed. by Daniel McClean/Karsten Schubert. London 2002, pp. 171–195, esp. 171.

6 See for example the recent essay collection, Kunst und Philosophie: Original und Fälschung. Ed. by Julian Nida-Rümelin/Jakob Steinbrenner. Ostfildern 2011.

7 Haimo Schack: Kunst und Recht. Tübingen (2nd ed.) 2009, para. 22.

8 Cf. the definition in s. 17 (2) CDPA: »Copying [...] means reproducing the work in any material form.« The German § 16 UrhG speaks of a comprehensive »Vervielfältigungsrecht.« Art. L 122-3 CPI states »La reproduction consiste dans la fixation matérielle de l'oeuvre par tous procédés qui permettent de la communiquer au public d'une manière indirecte. Elle peut s'effectuer notamment par imprimerie, dessin, gravure, photographie, moulage et tout procédé des arts graphiques et plastiques [...].«

9 Cf. s. 16 (1) CDPA – § 15 UrhG – Art. 122 CPI.

10 Cf. s. 16 (2) CDPA – §§ 97–105 UrhG – Art. 131, 331 CPI.

11 Schack (note 7), para. 23. – Cf. Thomas Dreier: Original und Kopie im rechtlichen Bildregime. In: Déjà-vu? Die Kunst der Wiederholung von Dürer bis YouTube. Exhb.cat. Staatliche Kunsthalle Karlsruhe. Ed. by Ariane Mensger. Bielefeld 2012, pp. 146–155, esp. 147–148.

12 See Artur-Axel Wandtke/Winfried Bullinger: Praxiskommentar zum Urheberrecht. Munich (3rd ed.) 2009, § 26, para. 8. – But cf. Gunda Dreyer et al.: Urheberrecht. Heidelberg (2nd ed.) 2009, § 26 para. 13, with further references.
13 Jeffrey Malkan: What is a Copy? In: Cardozo Arts and Entertainment Law Journal, 23, 2005, pp. 419–463, esp. 425.
14 They are documented in a series of photographs by Candida Höfer, exhibited at the Documenta 11, 2002. See Candida Höfer: Zwölf/Twelve. Munich 2001.
15 See for example the website of the Musée Rodin, which erroneously claims that this regulation is part of Art. R 122-3 of the Code de la Propriété Intellectuelle, URL: http://www.museerodin.fr/fr/professionnels/respect-du-droit-moral [23.09.2012].
16 See for example Martin Bailey: Degas bronzes controversy leads to scholars' boycott. In: The Art Newspaper, 21, May 2011, p. 1, 7.
17 A good place to start would be the exchange of arguments in Rosalind Krauss: The Originality of the Avant-Garde: A Postmodernist Repetition. In: October, 18, 1981, pp. 47–66. – Albert E. Elsen: On the Question of Originality: A Letter. In: October, 20, 1982, pp. 107–109. See also Alexandra Parigoris: Truth to Material: Bronze, on the Reproducibility of Truth. In: Sculpture and its Reproductions. Ed. by Anthony Hughes/Erich Ranfft. London 1997, pp. 131–151.
18 Introduction. In: Privilege and Property: Essays on the History of Copyright. Ed. by Ronan Deazley/Martin Kretschmer/Lionel Bently. Cambridge 2010, p. 6.
19 Giorgio Vasari: Le Vite de' più eccellenti pittori, scultori et architettori: Nelle redazioni del 1550 e 1568. Ed. by Paola Barocchi/Rosanna Bettarini. 6 vols, Florence 1966–1987, vol. 5, pp. 6–7, esp. 7.
20 Cf. Lisa Pon: Raphael, Dürer, and Marcantonio Raimondi: Copying and the Italian Renaissance Print. New Haven/London 2004, p. 140.
21 Cf. the compilation by Rinaldo Fulin: Documenti per servire alla storia della tipografia veneziana. In: Archivio Veneto, 23, 1882, pp. 82–212, 390–405. – See also chapter 1 (»Privilegi«) of Venezia 1469: La legge e la stampa. Ed. by Tiziana Plebani. Venice 2004. – Joanna Kostylo: From Gunpowder to Print: The Common Origins of Copyright and Patent. In: Privilege and Property (note 18), pp. 21–50. – An invaluable instrument for the research of copyright history is the online edition of Primary Sources on Copyright (1450–1900). Ed. by Lionel Bently/Martin Kretschmer, URL: www.copyrighthistory.org.
22 See Hans Rupprich: Dürer. Schriftlicher Nachlaß. 3 vols. Berlin 1956–1969, vol. 1, p. 76, no. 23. In the translation by Joseph Koerner: The Moment of Self-Portraiture in German Renaissance Art. Chicago 1993, p. 213, it reads: »Beware, you envious thieves of the work and invention of others, keep your thoughtless hands from these works of ours. We have received a privilege from the famous Emperor of Rome, Maximilian, that no one shall dare to print these works in spurious forms, nor sell such prints within the boundaries of the Empire [...].«
23 Erwin Panofsky: Albrecht Dürer. 2 vols. Princeton (3rd ed.) 1948, vol. 1, p. 44.
24 ASV, CN, reg. 18, f. 26r, 30 October 1500, listed in Fulin 1882 (note 21), 142, no. 105. – Pon 2004 (note 20), p. 46.
25 Cf. Thomas Würtenberger: Albrecht Dürer und das Strafrecht der Stadt Nürnberg. In: Zeitschrift fur die gesamte Strafrechtswissenschaft, 61, 1942, pp. 139–165, esp. 152. On Dürer's legal position as publisher see also Werner Schultheiß: Albrecht Dürers Beziehungen zum Recht. In: Albrecht Dürers Umwelt. Festschrift zum 500. Geburtstag Albrecht Dürers. Ed. by Verein für Geschichte der Stadt Nürnberg. Nuremberg 1971, pp. 220–254, esp. 232. – Koerner 1993 (note 22), p. 213.
26 Cf. Michael Bury: The Print in Italy 1550–1620. London 2001, pp. 9–10, 68–75. – Pon 2004 (note 20), pp. 49–50.
27 Pon 2004 (note 20), p. 43.
28 Édouard Romberg: Études sur la propriété artistique et litteraire. Brussels/Paris 1892, p. 244.
29 Cf. the questions raised by Christian Tico Seifert: Dürer's Fame. Edinburgh 2011, pp. 13–15, and my forthcoming article, »Der Fall Dürer vs. Raimondi. Vasaris Erfindung«.
30 Cf. Robert Laporterie: Du Délit en matière d'art. Paris 1898, pp. 48–49. – Albert Vaunois: La condition et les droits d'auteur des artistes jusqu'à la revolution. Paris 1892, pp. 19–22.
31 Cf. from the perspective of copyright history Vaunois 1892 (note 30), p. 40. – Nico van Hout: Copyright Rubens: Cum privilegiis .... In: Copyright Rubens: Rubens en de grafiek. Ed. by Nico van Hout. Gent/Amsterdam 2004, pp. 30–39.
32 Hogarth had even published a pamphlet, The Case of Designers, Engravers, Etchers, &c., stated in a Letter to a Member of Parliament. [London 1735].
33 For an account of the petitioning and legislation process see Ronald Paulson: Hogarth. High Art and Low, 1732–1750. Cambridge 1992, pp. 35–44.
34 Paulson 1992 (note 33), pp. 42–43.
35 7 Geo. III, c. 38.
36 Cf. Mark Rose: Technology and Copyright in 1735: the Engraver's Act. In: The Information Society, 21, 2005, pp. 63–66, esp. 63.
37 Simon Nicolas Henri Linguet: Arrêt du Conseil d'État du Roi portant Réglement sur la durée des Priviléges en Libraire. In: Annales politiques, civiles, et littéraires du dix-huitième siècle, vol. 3, London 1777, pp. 9–57, esp. 24–25.
38 A scan of the original Décret-loi from 19–24 July 1793, today at the Archives nationales in Paris (BB/34/1/46) can be found on the website of Primary Sources on Copyright (note 21), URL: http://copy.law.cam.ac.uk/record/f_1793 [28.09.2012].
39 For a comprehensive account from an Anglo-American perspective see Catherine Seville: The Internationalisation of Copyright Law: Books, Buccaneers and the Black Flag in the Nineteenth Century. Cambridge 2006.
40 Horace Vernet: Du Droit des peintres et des sculpteurs sur leurs ouvrages. Paris 1841. – See also Stephen Bann: Parellel Lines: Printmakers, Painters and Photographers in Nineteenth-Century France. New Haven/London 2001, pp. 35–37.
41 A thorough triple-case study analysing the field is Robert Verhoogt: Art in Reproduction: Nineteenth-Century Prints after Lawrence Alma-Tadema, Jozef Israël and Ary Scheffer. Amsterdam 2007.
42 On Landseer's engraving business see Richard Ormond: The Monarch of the Glen: Landseer in the Highlands. Edinburgh 2005, pp. 100–105.
43 See Pierre-Lin Renié: Œuvres de Paul Delaroche reproduites et éditées par la Maison Goupil. In: Paul Delaroche: Un peintre dans l'Histoire. Exhb.cat. Musée des Beaux-Arts, Nantes/Pavillon du musée Fabre, Montpellier. Ed. by Claude Allemand-Cosneau/Isabelle Julia. Paris 1999, pp. 200–218. – Gérôme & Goupil: Art et Entreprise. Exhb.cat. Musée Goupil/Dahesh Museum/The Frick Art and Historical Center. Paris 2000.
44 For a discussion of the visual language and creative potential of different reproduction media in the nineteenth century see Bann 2001 (note 40). – Stephan Brakensiek: Unter der Lupe: Fragen zur Rezeption, Bedeutung und den Ausdrucksmöglichkeiten der Reproduktionsgraphik vor 1850. In: Gestochen Scharf! Die Kunst zu reproduzieren. Ed. by Dirk Blübaum/Stephan Brakensiek. Heidelberg 2007, pp. 50–83.
45 Anne McCauley: Merely Mechanical: On the Origins of Photographic Copyright in France and Great Britain. In: Art History, 31, 2008, pp. 57–78.
46 See McCauley 2008 (note 45) for a discussion of French and English law. On German law see Stefan Ricke: Entwicklung des rechtlichen Schutzes von Fotografien in Deutschland unter besonderer Berücksichtigung der preußischen Gesetzgebung. Münster 1998.
47 Burrow-Giles Lithographic Co. v. Sarony, 111 U.S. 53 (1884), p. 60. – See also Daniel Girardin/Christian Pirker: Controverses: Une histoire juridique et éthique de la photographie. Lausanne 2008, pp. 43–45.
48 Schack (note 7), para. 16.
49 For an account of Duchamp's post-War replicas see the article by Séverine Gossart in this volume (pp. 158–161) and the chapter »Proliferation of the Already Made« in Francis M. Naumann: Marcel Duchamp: The Art of Making Art in the Age of Mechanical Reproduction. New York 1999, pp. 208–254.
50 Molly Nesbit: Ready-Made Originals: The Duchamp Model. In: October, 37, 1986, pp. 53–64, esp. 63.
51 Cf. Schack (note 7), paras. 351–357. – Johnson Okpaluba: Appropriation Art: Fair Use or Foul? In: Dear Images 2002 (note 5), pp. 196–224. – See also the article by Marina Markellou in this volume (pp. 171–173).
52 Walravens 2002 (note 5), pp. 173–175.

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London, The Trustees of the British Museum: 1-2. – Washington, D.C., Library of Congress, Prints and Photographs Division: 3.