

## **Response to Natilee Harren’s “Knight’s Heritage: Karl Haendel and the Legacy of Appropriation”**

### **Part I**

In the first part of her three-part essay on the work of Karl Haendel, Natilee Harren thoughtfully proposes a “subjectivist” authorial model that enables us to nuance the complexity of appropriation in contemporary art. Such a proposal is relevant in the current moment, when the act of copying occupies an essential and apparently natural place not only in artistic production but also in what may be called “technological life production.” From post-internet art to Google Books to patents on pharmaceuticals, who copies what has become an increasingly pressing concern. Within the logic of self-individuation and what Jodi Dean terms “communicative capitalism,” we witness the rebirth of the author.<sup>1</sup>

Harren describes Haendel as a “second-generation postmodernist,” an appropriation artist continuing the project of a critique of signification and a politics of representation from luminaries such as Sherrie Levine and Barbara Kruger. What distinguishes Haendel’s artistic approach from his predecessors is exemplified in his “homage” to Anne Truitt. Harren theorizes Haendel’s *For/After Anne Truitt* as the artist’s attempt to resubjectivize the act of appropriation—in Haendel’s case, to work through identifying, as a white male, with past feminist art. Yet what does it mean to operate as a second-generation postmodernist?

Beyond the strictly chronological, perhaps such a first and second differentiation is moot. Identifying texts that have reevaluated 1980s art criticism and its attenuation of the author, Harren points to just how hegemonic a certain strain of poststructuralist-inspired discourse had become in the recent history of art. I would add the scholar Linda Hutcheon’s work as another

example of cultural theory that resisted the full dismantlement of the author so prevalent in the 1980s. “The Romantic creator,” wrote Hutcheon in 1985, “as originating and original source of meaning, may well be dead, as Barthes argued years ago, but the creator’s *position*—a position of discursive authority—remains, and increasingly is the self-conscious focus of much contemporary art.”<sup>2</sup> Hutcheon’s “discursive authority” alludes to the status and power of an enunciating agent in the act of appropriating primary content. So much of the legitimacy of appropriation artists, from the Pictures Generation to artists such as Haendel, has come from their ability to articulate, if not manage outright, a discourse about their practices.

In contextualizing Haendel’s re-creation of Truitt’s work, Harren addresses the problematic of a contemporary white male artist appropriating the work of an under-acknowledged female Minimalist sculptor. Yet I propose to extend this “white male privilege” to a general “artist’s privilege.” That is, it is difficult not to conceive the artist as a discourse-savvy, sovereign agent, and the artwork, therefore, as the privileged object of contemporary cultural expression. This condition becomes apparent as appropriation artists come into tension with copyright law as well as other authorial modes, which I will expand on in the following sections.

1. See Jodi Dean, *Blog Theory* (Cambridge, UK: Polity Press, 2010).
2. Linda Hutcheon, *A Theory of Parody: The Teachings of Twentieth-Century Art Forms* (Champaign: University of Illinois Press, 1985), 85, emphasis in original.

## PART II

The filmmaker Kirby Ferguson recently noted, “Most of us have no problem copying, as long as we’re the ones doing it.”<sup>1</sup> In the second installment of her essay, Natilee Harren details an episode in which the appropriation artist Karl Haendel seemingly finds himself as the subject of appropriation—by none other than the acclaimed postmodernist Robert Longo. This scenario raises issues regarding the ethical conduct between artists operating in the same cultural sector. Recognizing Haendel and Longo both as authors within the specialized world of contemporary art is crucial, for it challenges the implicit hierarchy of authorial modes that has formed the basis of so much appropriation art until the present. From Andy Warhol to Jeff Koons to Richard Prince to Penelope Umbrico’s more recent sunset imagery, artists have often justified their appropriations by claiming to endow otherwise disposable mass-media products with new meanings that function as metacommentary on the state of the image. While amateurs and other non-artists only produce “types,” artists *create meaning*. Thus, while Harren writes that “in the wake of the general acceptance of appropriative gestures the distinction between popular and fine seems increasingly arbitrary and artificial,” the reality is that how an artist positions him- or herself discursively is a matter of great strategic importance.

There are exceptions to the authorial hierarchy I describe. Famously, Sherrie Levine appropriated photographic images by Edward Weston, which also pitted artist against artist (Levine discontinued the work after receiving a cease-and-desist letter from the Weston estate). More recently, and in a similar critical vein, the artist Lauren Clay borrowed forms from the sculptor David Smith. After being threatened with copyright litigation, Clay eventually settled with Smith’s estate.<sup>2</sup> The experience of being appropriated by another artist, then, can test the acceptable limits of the seemingly innocuous act of copying. To his credit, Haendel tried to

engage Longo in conversation about their mutual use of the knight image. Such an attempt signals a willingness to understand Longo's work as less of a "wink, I caught you," as Harren writes, than as an example of the ideal, dialogical exchange between like-minded authors. Yet central questions remains: Who was the photographer who originally took the knight image? How does he or she participate in such an exchange, if at all?

1. See Ferguson's film, *Everything Is a Remix* (2011–12), at <http://everythingisaremix.info/watch-the-series/>, as of March 1, 2016.
2. See Brian Boucher, "David Smith Estate Settles Copyright Tiff," *Art in America*, October 15, 2013, at <http://www.artinamericamagazine.com/news-features/news/david-smith-estate-settles-copyright-tiff-/>, as of March 1, 2016.

### **PART III**

In the conclusion of her essay, Natilee Harren recounts a dramatic moment in 2013 when Karl Haendel received a copyright cease-and-desist letter from the photographer Robert Schultze, after the artist had used one of Schultze's photos as the basis for the drawing *Man* (2010). It is through this confrontation that Harren reveals Haendel as a card-carrying member of the postmodernist club: an artist skeptical of the very construct of authorship, who believes that "images comprise a language as communal as the spoken and written word." At the core of this philosophy lies an insistence on the inherent instability of the "sign." Until recently, this philosophy has rubbed up against copyright law's upholding the stable sign, which it couches in terms of a distinction between an idea and its expression. While an idea (such as a type of "man") is not copyrightable, a particular expression of such an idea (Schultze's photo) warrants protection.

This understanding begs still another question, one that Patrick Cariou's lawyers posed to Richard Prince during his testimony at the outset of *Cariou v. Prince*: of all the available images that fit the need, why did the artist choose *this* one? In Prince's case, it was simply a matter of whether he "love[d] the way [the image] looked."<sup>1</sup> No doubt the intellectual sensitivity of Haendel's artistic rationale far surpasses that of Prince. As Harren aptly describes, Haendel is a considerate appropriationist. Yet if "all 'types' of images have already been produced," as Haendel states, and therefore no one type is better than another, then the ultimate choice must be considered as one made through artistic prerogative. This freedom of choice, championed by so many artists, forms the core of an image neoliberalism. But like the related economic philosophy, it can sound much better in theory than it works in practice. Anxiety within the

commercial photography industry today for instance, has much to do with the loss of licensing revenue due to the technologically enabled free flow of images.

The good news for Haendel and artists like him is that with the recent rise of a “transformative” fair-use discourse in copyright jurisprudence, the law is now more amenable to appropriation practices than it has ever been. We are witnessing what I call copyright’s “postmodern turn.” Twenty-first-century copyright doctrine may well be catching up to the sensibilities of late-twentieth-century, postmodernist appropriation art. As we account for more subjectivist approaches in contemporary appropriation art, it is incumbent on artists to examine their roles as image recyclers in such a way so as not to weaken the privilege of authorship they hold dear.

1. Greg Allen, ed., *The Deposition of Richard Prince* (Zurich: Bookhorse, 2012), 192.
2. At the civil institutional level, see for example the College Art Association’s recent *Code of Best Practices for Fair Use in the Visual Arts*, at <http://www.collegeart.org/pdf/fair-use/best-practices-fair-use-visual-arts.pdf>, as of March 2, 2016 .