The Pictures Generation, the Copyright Act of 1976, and the Reassertion of Authorship in Postmodernity

[FIG. 1] In the three decades since artists Sherrie Levine and Richard Prince first exhibited their provocatively infringing appropriated photographs, inexpensive reproduction technologies and distribution systems have further thrown established conventions of authorial control into disarray, and at a seemingly exponential rate. Reactionary focus, then, to both the legal regulation of image production and the prosecution of violators has been rigorous. "Intellectual property" now figures significantly as a cross-over category between legal and cultural discourse.[1] Within the domain of art, appropriation since the Pictures generation might have been determined by artists to be a very risky endeavor. But while there has been the occasional lawsuit, there is nonetheless no doubt that the practice of appropriation in contemporary art is alive and well. **[FIG. 2]** There is a lot of copying going on, with, as scholar Martha Buskirk describes, "The types of copies that appear in contemporary art…as varied as the materials artists have employed."[2]

Some initial observations might help account for this lack of reservation. An obvious one is that most artists, after all, are not legislators, lawyers or judges; they are arbiters not of law but of *culture*, historically tasked with interrogating its significance, even as the sign has become inextricably linked with its regulation through the legal apparatus.[3] Disregard for the rule of copyright law is thus perhaps an anti-establishment refusal, feeding some sort of notion that for artists, *the law does not apply*. And while this, unfortunately, isn't true, it might often appear that way. As Richard Prince **[FIG. 3]** himself has stated in justifying his use of various Marlboro Men, "I never associated advertisements with having an author."[4]

So who evades the law, who doesn't, and why? To understand how appropriation art slips in and out of the grasp of intellectual property regimes, inquiry should be carried out at the level of praxis: what sort of content have artists been appropriating? How, if at all, are they transforming it? And where in the cultural and economic structures of society are the appropriated, the "violated," located, and what bearing does this location have on the potency of appropriation?

My analysis begins with initially setting the discourse of appropriation art within an historical shift that occurred on two registers, beginning approximately in the late 1970s. The first register is characterized as a period during which artists, art critics and cultural theorists in the West were coming to terms with an emergent but elusive "postmodernism." Among others, scholars such as Linda Hutcheon and Frederic Jameson diagnosed the phenomenon by stating that its modes of production differed from those of previous decades in that they increasingly blurred the boundaries between high culture and more overtly commercial, "low" cultural forms, problematizing, as artist Barbara Kruger wryly observed, the newspaper category "Arts and Leisure."[5]

[FIG. 4] One effect generated by this blurring was contemporary art's return to figural representation across a variety of media, beyond the indexing/archiving photographic tendencies of conceptual art. Appropriation art especially reclaimed the figure. Moreover, appropriation based practices triggered a shift in the mode of interpretation of the work of art, from a modernist approach that had privileged the formal and original qualities of a subjective totality to a postmodernist one that emphasized the discursive and allegorical qualities of fragmentation and desire. The use of appropriated photography and the figures it contained seemed particularly suited to the allegorical, precisely because of photography's status as the always-already-seen, with readings thus premised upon some recognition of

deferring authentic determination.[6] **[FIG. 5]** Such deferment does have negative political consequences, however. Through a multiplicity of contents (or what Baudrillard might have termed "floating signifiers"), postmodernist allegory runs the risk of frustrating a sense of historicity and therefore any critical artistic pursuit that depends on historical consciousness. Hal Foster described this allegorical multiplicity as "eclectic historicism," a cherry-picking of the cultural past and present that reduces the work of art to a superficial stylistic pluralism.[7]

Countering such a neoconservative postmodernist art, critics theorized a poststructuralist variant, a type of practice linked to French theory's rhetoric of "the death of man" as the "centered subject of representation and history."[8] Opposed to the embrace of a new pluralist humanism, poststructuralist art was tasked with exposing its own cultural encoding. The appropriation of an indexical (i.e., "natural") image supplemented any originary meanings it might have connoted with critical reevaluation of, to cite Craig Owens, "the degree to which "nature" is always already implicated in a system of cultural values which assigns it a specific, culturally determined position."[9] A certain strain of appropriation practices thus often depended upon an unmitigated poaching of photographic cultural symbols in order to voice its criticisms.

[FIG. 6] Now, those practitioners affiliated with this version of early appropriation art are often referred to as "Pictures" artists, after the exhibition of the same name curated by Douglas Crimp in Soho's Artists Space in the Fall of 1977.[10] Although *Pictures* displayed the work of just five artists, the exhibition's effect on the discourse appropriation art cannot be overestimated. In particular, Crimp's seminal catalog essay is one of a handful of texts that have formed the backbone of postmodern photographic theory and criticism. Rather than maintain the exhibition as a founding moment however, I would like instead to situate the beginnings of postmodernist appropriation within the context of the second register I

mentioned earlier; that is, within the history of law. In my view a new interpretation emerges when reframing appropriation practices through an event that preceded *Pictures* by a year: the passing of the Copyright Act of 1976. Analyzing appropriation through legislative developments at that time can assist in a better understanding of the wider postmodern moment within which appropriation art has been historicized, a moment whose effects are perhaps all the more pronounced today.

On October 19, 1976, President Ford signed into law the first major revision of United States copyright since 1909.[11] The Copyright Act of 1976 addressed a number of author's rights issues relating to the myriad technological advances (e.g., film, radio, television, etc.) that had occurred in the first three-quarters of the twentieth century. Confronting the accelerated manner in which cultural works could be reproduced, both enhanced legal definitions, as well as measures not previously codified, were included in the new legislation, all of which attempted to maintain the balance between author's rights and fundamental freedom of speech rights. In other words, the 1976 Act attempted to protect new types of authors and the works they produced from would-be counterfeiters or pirates, while avoiding overreach that might foreclose certain artistic possibilities and thus have a "chilling effect" on cultural production as a whole.

With that said, the new law seemed to actually expand authorial rights in several ways. One fundamental change was redefining what sorts of expression qualified for copyright protection. An all-encompassing definition, "original works of authorship fixed in any tangible medium of expression," was introduced.[12] Here, the cliche of any napkin doodle being copyrightable finds its beginning. The Act's supplement, House Report No. 94-1476, reads, "This standard does not include requirements of novelty, ingenuity, or esthetic merit, and there is no intention to enlarge the standard of copyright protection to require them."[13]

Furthermore, it states, "Authors are continually finding new ways of expressing themselves, but it is impossible to foresee the forms that these new expressive methods will take."[14] Thus the law extended copyright protection to an almost unlimited range of activities at the moment of their enactment and in so doing, granted the power of authorship to new classes of creators whose only requirement was that their creations be "original," which is to say, either evincing novelty, or more simply designating an origin, or some ambiguous combination of the two.

Another change to the Act included the authorial control over derivative works, those that are "recast, transformed, or adapted" from the original.[15] Including in copyright's "bundle" of rights the preparation of derivative works granted protection not only over expressions created in the present, but also those possibly made in the future. Thus, for example, a novelist could prevent the production of a film based on a book he or she had written, because copyright law stipulates that it is only the original creator who may exploit the potential derivative work (even if no such work is planned or executed). According to the 1976 Act, for a derivative work to be found in infringement, it must exhibit particular elements of the protected original (e.g., the film and the book would need to share plot, characters, settings, etc.). This would nonetheless seem to allow for a fairly wide latitude in creative license; in theory, it should be possible to produce an action film that follows the exploits of a secret agent without resorting to naming its characters "James Bond" or "Jason Bourne." However, according to law scholar Neil Netanel, both statute and case law have grown increasingly intolerant of secondary authors who "invoke an existing work's "total concept and feel," without literally copying…any of the original's expression…[and that contain] only a resemblance of style, mood, and overall aesthetic appeal."[16] The right over derivative works enacted in 1976 therefore blurred the idea/expression boundary fundamental

to copyright's premise, and revealed the extent to which the law continued to conceptualize the author as one who created *ex nihilo* versus his or her actual tendency to derive inspiration from the external world (including previously existing works).[17]

These apparent expansions of authorial rights stem from what legal scholars such as James Boyle identify as copyright's deferential treatment of the "romantic author," a figure constructed towards the end of the eighteenth century when new European social and economic orders were being born, and "art" was separating from mere "craft."[18] However, through a series of court rulings both in England and the United States crossing over the eighteenth and nineteenth centuries, the change in scope over what constituted an author's "work" had the long-term consequence of shifting copyright's emphasis away from authorial intentionality and towards formalist analyses. Even as copyright law uncritically embraced a rhetoric of authorial originality, it nevertheless mitigated its novel or innovative aspects in favor of recognizing the author merely as the work's point of origin. Meanwhile, the components that made up the work were disaggregated and subjected to judicial interrogation in order to determine their degree of derivation—which elements of the romantic author's "total vision" were in fact "original," and which elements were not. In the modern era *the work* displaced the author as the central determining character in copyright doctrine.[19]

If subordination of the author to the work is acknowledged, then the expansion of rights in the 1976 Copyright Act indicates, as legal scholar Marci Hamilton suggests, not deference to but disdain for the romantic image of the author.[20] Expanded author's rights in the 1976 Act, then, while appearing to champion an antiquated figure from the cultural past, seemingly acted more as a foil for copyright's actual purpose: providing the means for an expanding intellectual property market in a post-industrial, information-based economy. One of the Act's clauses in particular suggests an effacement of the romantic author, perhaps more

than any other: that is the "work-made-for-hire" clause. Mentioned only in passing in the 1909 Act, work-made-for-hire was given a thorough treatment in the 1976 revision, providing legal buttressing for a twentieth century economic structure already dependent on the division of labor.[21] Far from facilitating a romantic conception of authorship, copyright's work-made-for-hire doctrine seized control of individual agency, returning the author to his or her place as a "just another cog in the wheel" in the fabrication processes of a postmodern culture industry. Work-made-for-hire had essentially become corporate copyright.

Interpreting copyright in this way provides an alternative theoretical space from which to assess the poststructuralist variant of appropriation art appearing in the late 1970s. In some respects, the "death of the author" proclaimed by poststructuralism and allegorized in appropriation art had already become a reality in American copyright law. Let us now return to the early careers of Richard Prince and Sherrie Levine, in light of the 1976 Act's degradation of the romantic author.

Appropriation art's critique of the ideology of the original and authentic author was premised upon an assumption that such a figure, esteemed in bourgeois culture practically since the advent of modernity, continued to undergird contemporary production. And to some extent this was (and still is) accurate; but appropriation art challenged a discourse of the transcendent, autonomous subject that had begun with nineteenth century romanticism and persisted within several areas of modern art, particularly modernist photography, abstract expressionism in the 1940s and '50s, and neo-expressionism in the 1980s. As mentioned earlier, such a discourse became increasingly problematic with art's infiltration by the mechanical image, as exemplified in Pop Art. Appropriation Art continued the offensive, denying the very possibilities of originality and authenticity through re-presentation as art

images pilfered from an industrially built environment glutted with a mass-circulation of signs. **[FIG. 7]** It is important to recall that both Levine's and Prince's early appropriations were lifted from what were already reproductions—reproductions that had until then performed the meaning-making role the two artists were simply rendering transparent. Levine's appropriation of reproductions of Edward Weston photographs pointed to the fact that they, despite being "unoriginal" halftone copies, were nonetheless mass circulating as representative of Weston's original vision, reaffirming his place, and the patriarchal gaze in general, within the canon of modernist photography in the process. **[FIG. 8]** And Prince's appropriation of reproductions of cowboy images from Marlboro advertising campaigns made plain the notion that images many times removed from their source were being employed in the service of reifying a supposed "authentic" western subject essential to American identity. In short, Levine's and Prince's use of appropriated material starkly asserted that within a postmodern condition, the author had become irrelevant because the original gesture had become unimportant; the copy adequately stood in its place and performed its legitimizing function.

Critics interpreted Levine's and Prince's unabashed usurpations of images as radical interrogations of the categories of originality and authenticity within the social construction of authorship. Writing at the outset of the 1980s, Hal Foster heralded (poststructuralist) appropriation art as critical to the "recoding" process within postmodernity's contests of meaning.[22] **[FIG. 9]** Setting appropriation art in relation not only to the construction of the social codes of representation but also to the actual United States Code and its then newly amended copyright clause, perhaps Foster's characterization can be taken quite literally.

Now, while it is very doubtful Sherrie Levine and Richard Prince intended their early works as rebuttals to the 1976 Copyright Act, they can nonetheless be read as "preemptive strikes" against the *legal* construction of authorship. More than pointing to the loss of determinate social meaning, the works can be understood as allegorizing the impossibility of authorship outside the paradigm of the derivative sanctioned through copyright law. Perhaps Benjamin Buchloh comes closest in acknowledging appropriation art's allegorization of the derivative nature of cultural production. "In the splintering of signifier and signified," he writes, "the allegorist subjects the sign to the same division of functions that the object has undergone in its transformation into a commodity. The repetition of the original act of depletion and the new attribution of meaning redeems the object."[23]

Levine's and Prince's appropriations thus seemingly problematize the author-subject both within a humanities-based discourse of original genius and within a legal-economic one that assigns authority to originality. Yet for the latter critique to retain purchase, it must assume a centered author-subject under the law. Here Buchloh's "division of functions" subtly points to the opposite, for implied in the sign's initial fragmentation is a productive apparatus premised on a division of labor, the very process legitimized by copyright law through its work-made-for-hire clause. The object is "redeemed" precisely by a simultaneous reclamation of authorial agency.

Thus read through the lens of copyright's de-individuation of the author, Levine's and Prince's gestures invite a reading somewhat at odds with a poststructuralist "death of the author" critique. Rather than undermining any romantic notion of authorial originality in a culture of the copy, the works reasserted the very productive core of the romantic authorial mode—one premised on private ownership through labor. In terms traced back to John Locke and early liberalism, Levine and Prince acted upon the "media" environment around them,

defiantly re-centering themselves as possessive individuals, as the authorities over their expressions amidst an impersonal productive apparatus churning out derivatives whose actual creators could not be readily traced.[24] Here any aesthetic novelty almost becomes superfluous; Levine and Prince merely employed those production processes familiar to the nameless technicians working in the creative industries: cutting, cropping, enlarging, editing, printing.[25] What is novel is that, through mixing their labor with their surroundings "in the radical formulation that [the artists preferred]" as scholar Martha Woodmansee asserts, Levine and Prince took individual control of the mass-authored image, and in so doing, reaffirmed the ground upon which the romantic author stands.[26]

In this authority over the image thus lies the contested core of Levine's and Prince's gestures. For with control comes the ability to insert and thereby manage meaning, creating discourse—what Foucault termed the "author-function."[27] Any potential that Levine's and Prince's appropriated photographs had as fomenters of a counter-hegemonic discourse would have been underscored by their status as copyright infringements. In the eyes of the law, their work would almost certainly not have constituted "original works of authorship," which, from the perspective of a critique of the legal construction of authorship, is no doubt part of their reason for being. Consequently, Levine's and Prince's provocations should have invoked the wrath of the appropriated images' copyright holders. And yet exhibition (and collection) of their "rephotographs" was permitted, even encouraged, much to each artist's benefit. **[FIG. 10]** Eventually, Levine and Prince, whose works appeared the most antagonistic towards prevailing social and legal conventions of authorship, were to be validated as authors par excellence by an institution of art that had never been entirely convinced of the so-called death of the author, and could even provide a "second tier" of lax copyright regulation in the name of cultural cultivation.

Fast-forwarding thirty years to Prince's retrospective *Spiritual America* at New York's Guggenheim Museum, his celebration as a romantic author is evident. In the exhibition's catalog, he is described as an artist who

> makes it new by making it again. 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.[28]

It's worth noting that this introduction was penned by a chief executive of Deutsche Bank, the show's major sponsor, for corporate interest in the arts has played a pivotal role in maintaining the artist as a romantic figure. Corporations have used the artist as a public relations tool to both align themselves with the progressive values associated with art and reach new consumer groups.[29] The romantic artist is naturally attractive for the corporation, because he or she embodies the same ethos that drives free market commerce—what critic Richard Bolton, following Marcuse, has termed "enlightened self-interest."[30]

Recognizing the motives corporations have in aligning themselves with art that appears to conflict with their interests may at least partly explain how Prince was able to evade any legal skirmishes over his *Untitled (cowboy)* prints. Phillip Morris USA owns the Marlboro brand, and, of course, the copyrights to the cowboy images from which Prince appropriated. Their tacit approval of Prince's work might contradict the maximum control logic characteristic of intellectual property regulation, but perhaps Phillip Morris' desire to associate itself with artistic innovation has outweighed its commitment to brand management. Or perhaps allowing Prince free reign is precisely part of its branding strategy;

aligning with art enhances Phillip Morris' image, something important for a tobacco company with a less than stellar public reputation.[31]

Yet still left unaccounted for **[FIG. 11]** is photographer Jim Krantz who, as a work-made-for-hire employee, actually took some of those photos for Marlboro but does not enjoy the benefits of their copyrights. With singular authorial control, Prince becomes Krantz's surrogate, the self-possessive author Krantz cannot be. This however can only provide cold comfort, for Prince has never acknowledged Krantz, who has been replaced now twice over as the author of the photographs. **[FIG. 12]** And eventually, under Prince's authority, the images travelled full-circle; advertising-became-art-became-advertising, when Krantz's images lined Manhattan streets in posters and banners that promoted Prince's exhibit.[32]

Levine's *Untitled (After Edward Weston)* series **[FIG. 13]** has had no less help from a type of institutional para-regulation. Her appropriation of Weston's 1925 images was perhaps riskier, for she was taking from a canonized figure in modernist photography itself; any legal skirmish would pit artist against artist. The exhibition of the work in 1980 did catch the attention of the Weston estate, and while the details are vague, by 1981 Levine had moved on to appropriating the FSA work of Walker Evans, whose government commissions remain in the public domain.[33]

But 1981 was also the year that Weston's archive and copyrights were sold to the Center for Creative Photography at the University of Arizona, which spends "a lot of time encouraging fair use, discouraging censorship, and preserving the work of artists…so that they can be appreciated by generations to come."[34] The Center is aware of Levine's practice, but has, like Phillip Morris with its Marlboro images, given tacit approval to it. Since 1981, the *Untitled (After Edward Weston)* series have not only been exhibited but also reproduced in a variety of journals, magazines, art history books and, pertinent for our contemporary

digital moment, online image databases that attribute Levine as the author. In addressing the limits of what may be produced, Amy Rule, Head Archivist at the Center, writes, "We might go after someone using [Weston's] images to sell laundry soap, but I doubt that we would try to stop an artist's exploration of legitimate aesthetic issues."[35]

Within the narratives I have just presented, there appears a veneer of artistic liberation; Prince and Levine seem to have "gotten away with it." And not even with the proviso that their appropriation art refrain from sell something, as Prince's posters and banners mentioned before demonstrate. It is that, to some extent, this sort of blatant appropriation art is, if the examples I have laid out are any indication, limited to selling itself, as a concept of art, as a concept of transgression that is arguably ultimately experienced only in the imaginary realm provided by—to once again invoke Herbert Marcuse by borrowing his term—"affirmative culture." **[FIG. 14]** Recalling his response in the 1930s to the apparent displacement of political struggle into the fairly innocuous realm of cultural consumption coinciding with the very real threat of a rising fascism, Marcuse word's continue to impact. "What counts as utopia, phantasy, and rebellion in the world of fact," he would write, "is allowed in art…It displays what may not be promised openly and what is denied the majority."[36] This assessment inverts the appropriation artist's self-asserted authority, for it seems it is less the artist who decides how the law functions within art (culture), and more the laws regulating Marcuse's "world of fact" that decide how art functions within society. "To pose real trouble for the author in copyright doctrine," scholar Jane Gaines concludes, "Sherrie Levine would have to reproduce her own copies of Edward Weston as postcards and then sell them—the stiffest test of "free commercial speech.""[37]

I end with another quote from Jane Gaines. Writing in 1991, she states, "As yet, we have too few ethnographies of the use of popular icons in their travel from the avant-garde to

the popular and back again…it would be a mistake…to look to the law instead of to use and custom as the primary indication of how ideological domains are configured."[38] This essay, however preliminary, has been an attempt at just such a study. In it, I have tried to look to custom, use and the law, analyzing the parallel histories of appropriation strategies in art and copyright law's transformation since the late 1970s and the ways each approached the construction of authorship. Setting Richard Prince's and Sherrie Levine's early work against the revisions of the Copyright Act of 1976, I have attempted to link the postmodern avant-garde to a reassertion of the author-subject, even as the discourse that enveloped the Pictures generation at the time nurtured a critique of originality and authenticity. What I find remarkable in examining the period's criticism is its insistence upon the superiority of the "poststructuralist" variant of appropriation, given the fact that much of it was ultimately recuperated within the institution of art and the culture industry generally. In the age of YouTube and social media, it is the "remix" collage format—what Hal Foster might describe as "eclectically neoconservative"—that has become one of the major flash points in the struggle over the reins of meaning-making, as new generations of technologically savvy producers enter (at their own legal risk) the domain of cut/paste culture (or what be might called a now wide-spread "aesthetics of deregulation").

Notes

1. Reports of intellectual property infringement lawsuits abound in the mass media, and scholarly texts that attempt to frame the debates are plentiful. Just some over the last two decades include Jane Gaines, *Contested Culture: The Image, the Voice, and the Law* (Chapel Hill: University of North Carolina Press, 1991); Rosemary J. Coombe, *The Cultural Life of Intellectual Properties: Authorship, Appropriation, and the Law* (Durham: Duke University Press, 1998); Siva Vaidhyanathan, *Copyrights and Copywrongs* (New York: New York University Press, 2001); Lawrence Lessig, *Free Culture: The Nature and Future of Creativity* (New York: Penguin Books, 2005).

2. Martha Buskirk, *The Contingent Object of Contemporary Art* (Cambridge, Mass.: MIT Press, 2003), 61. Probably the most recent lawsuit involves one of the artists in this text, Richard Prince, who was found guilty of infringing the copyrights of photographer Patrick Cariou. See, among many recent articles, "Judge Rules Against Richard Prince in Appropriation Case," http://www.artinamericamagazine.com/news-opinion/news/2011-03-22/richard-prince-canal-zone-cariou-gagosian-lawsuit/ (accessed March 23, 2011). The judgement against Prince is his first.

3. On the commodification of the sign, see Jean Baudrillard, "For a Critique of the Political Economy of the Sign," in Jean Baudrillard and Mark Poster, *Jean Baudrillard: Selected Writings* (Stanford, Calif.: Stanford University Press, 2001), 60-100. For an art-theoretical perspective and the relation of sign value to the cultural "symbolization" of the economic, see Hal Foster, "For a Concept of the Political in Contemporary Art," in *Recodings: Art, Spectacle, Cultural Politics* (Port Townsend, Wash.: Bay Press, 1985), 139-155

4. Randy Kennedy, "If the Copy Is an Artwork, Then What's the Original?," *New York Times*, December 6, 2007.

5. Frederic Jameson, "Postmodernism and Consumer Society," in Foster, *The Anti-Aesthetic,* 127-129. On the problematics of what constitutes "art" and "leisure," see Barbara Kruger, *Remote Control: Power, Cultures, and the World of Appearances* (Cambridge, Mass.: MIT Press, 1993), 3.

6. On photography being the always-already-seen, see Douglas Crimp, "The Photographic Activity of Postmodernism," in *On the Museum's Ruins* (Cambridge: MIT Press, 1993), 118-119.

7. Hal Foster, "(Post)modern Polemics," in *Recodings: Art, Spectacle, Cultural Politics* (Port Townsend, Wash.: Bay Press, 1985), 124.

8. Ibid., 121. On the de-centering of the author-subject, see also Michel Foucault, "What is an Author?" in *Language, Counter-Memory, Practice: Selected Essays and Interviews* (Ithaca, N.Y.: Cornell University Press, 1980); Roland Barthes, "The Death of the Author," in *Image, Music, Text* (New York: Noonday Press, 1988). The degree with which "postmodern" art is joined with poststructuralist theory is open for debate: it is difficult to determine how much appropriation artists at the time were directly influenced by poststucturalism, and how much of the theory was overlaid onto the work by critics and historians. In the case of Sherrie Levine, it's safe to say she was indebted to poststucturalism and used it in the formulation of her work. For an exhibition in

1981 she appropriated segments of Barthes' "Death of the Author" text for use as an artist statement (substituting "painter" for the word "author"); she is further reported to have been a reader of the then newly formed journal *October,* which often relied on poststructuralist theory. "Levine read back issues avidly…and also books by…Jacques Derrida, Roland Barthes, Michel Foucault—whom *October* occasionally published or, more frequently, cited in footnotes." On Levine's appropriations of Barthes, see Sherrie Levine, "Five Comments," in Brian Wallis, *Blasted Allegories: An Anthology of Writings by Contemporary Artists* (New York; Cambridge, Mass.: New Museum of Contemporary Art; MIT Press, 1995), 92. On Levine's *October* reading, see Gerald Marzorati, "Art in the (Re)Making," *ARTnews* 85, no. 5 (May 1985): 96.

9. Craig Owens, "The Allegorical Impulse, Part 2," in *Beyond Recognition: Representation, Power, and Culture*(Berkeley: University of California Press, 1992), 74.

10. Sherrie Levine participated in *Pictures*; Richard Prince was not part of the show. He and other artists not involved have nevertheless at times been categorized as "Pictures" artists in consideration of their mode of production at the time—photographic appropriation. See Douglas Crimp's modified catalog text, "Pictures," *October* Spring (1979): 75. See also the catalog to the recent survey show at the Metropolitan Museum of Art, which includes both Levine and Prince: Douglas Eklund and Metropolitan Museum of Art, *The Pictures Generation, 1974-1984* (New York; New Haven: Metropolitan Museum of Art; Distributed by Yale University Press, 2009).

11. See "Copyright Law of the United States and Related Laws Contained in Title 17 of the United States Code," http://www.copyright.gov/title17/circ92.pdf (accessed January 10, 2009). While it has been occasionally modified over the past forty years, the 1976 Act remains the general framework for current U.S. copyright law. Substantial additions include the Sonny Bono Copyright Term Extension Act and the the Digital Millennium Copyright Act, both from 1998.

12. U.S. Code Title 17, Section 102, http://www.copyright.gov/title17/circ92.pdf (accessed January 20, 2009).

13. "Historical and Revision Notes," House Report No. 94-1476, Title 17, Section 102 (accessed March 9, 2009).

14. Ibid.

15. U.S. Code Title 17, Section 106, http://www.copyright.gov/title17/circ92.pdf (accessed March 10, 2009). See also "Historical and Revision Notes," House Report No. 94-1476, Title 17, Section 106, http://uscode.house.gov/download/pls/Title_17.txt (accessed March 9, 2009).

16. Netanel, *Copyright's Paradox,* 60. Netanel cites court rulings in favor of plaintiffs who claimed copyright infringement even though the defendant's work did not use any of the specific components of the original.

17. With the derivative clause, we can immediately see the problems appropriation artists, especially the "poststructuralist" type such as Sherrie Levine and Richard Prince, face.

18. See generally James Boyle, *Shamans, Software, and Spleens: Law and the Construction of Information Society*, (Cambridge: Harvard University Press, 1996). Scholars have claimed that until the 1990s, copyright jurisprudence has taken the romantic figure as the author as "given" rather than as a construct because in general, the law has avoided delving into matters that involve making subjective decisions (i.e., aesthetic judgements of taste). As law scholar Peter Jaszi notes, this attitude has also extended into law scholarship. Jaszi acknowledges the parallel tracks literary criticism and critical legal studies have taken in pursuit of "deconstructing" the romantic author, and suggests the latter, in its tardiness in examining the construction of authorship, has been influenced by the former. See Peter Jaszi, "Toward a Theory of Copyright: The Metamorphoses of "Authorship"," *Duke Law Journal*, Vol. 1991, No. 2 (April 1991): 457-560.

19. Jaszi, "Toward a Theory of Copyright," 473-474. Jaszi's examples of English and American lawsuits from the eighteenth and nineteenth centuries demonstrate how court judgements initially favored defendants who were not copying existing works wholesale but altering them in varying degrees (e.g., translations, abridged editions, etc.). This changed over time, and by the mid-nineteenth century in the United States, the author's property rights in the "work" extended beyond the specific text in question to include derivatives that were "substantially similar" to the original.

20. Marci Hamilton, "Appropriation Art and the Imminent Decline in Authorial Control over Copyrighted Works," *Journal of the Copyright Society of the USA* 42 (Winter 1994): 102.

21. The Copyright Act of 1909 included sixty-four sections; in the last sentence of the sixty-second, it states merely "…and the word "author" shall include an employer in the case of works made for hire." No further details are given. See the Copyright Act of 1909, http://www.copyright.gov/history/1909act.pdf (accessed March 20, 2009). It could be argued that the fair use doctrine, itself codified for the first time federally in the 1976 Act, also compromises the "total vision" of the romantic author significantly by setting up a legal mechanism that allows secondary authors to incorporate elements of existing (protected) work, such as in the case of appropriation art. While not a guarantee, fair use has allowed for the legitimate reuse of certain "original" works of authorship. Yet as James Boyle notes, even if the concept of fair use might seem to challenge the primacy of the author, it actually perpetuates the romantic authorship paradigm by requiring any fair uses to show their "transformative" qualities. In other words, the works in question must show the extent to which they make something original out of the process of derivation, or as Boyle states, "Authors may only be trumped by *other* authors." Boyle, *Shamans, Software, and Spleens*, 131.

22. Foster, *Recodings*.

23. Benjamin Buchloh, "Allegorical Procedures: Appropriation and Montage in Contemporary Art," *Artforum* (September 1982): 43-56.

24. On possessive individualism, see C. B. Macpherson, *The Political Theory of Possessive Individualism: Hobbes to Locke* (Oxford: Clarendon Press, 1962).

25. Richard Prince himself could be described as having been one of the "nameless technicians" within the creative industries; in his early career, Prince was employed in the tear-sheet department of Time Life, "where he clipped and filed articles for editors." This helps explain Prince's interest in commercial images and the source of his subsequent appropriations. See Nancy Spector and Richard Prince, Solomon R. Guggenheim Museum, Walker Art Center, and Serpentine Gallery, *Richard Prince* (New York: Guggenheim Museum, 2007), 26-27.

26. Martha Woodmansee, "The Genius and the Copyright: Economic and Legal Conditions of the Emergence of the 'Author'," *Eighteenth-Century Studies*, Vol. 17, No. 4 (Summer 1984): 430.

27. Foucault, *Language, Counter-Memory, Practice*.

28. Seth Waugh, "Sponsor's Statement," in Spector and Prince, *Richard Prince*.

29. On the development of corporate arts funding in the 1980s in the United States and the United Kingdom in the Reagan/Thatcher era, see Chin-Tao Wu, *Privatising Culture: Corporate Art Intervention since the 1980s* (London; New York: Verso, 2002.)

30. Richard Bolton, "Enlightened Self-Interest: The Avant-Garde in the '80s," in Grant Kester, *Art, Activism, and Oppositionality: Essays from Afterimage* (Durham NC: Duke University Press, 1998), 30. Bolton is developing this term from Herbert Marcuse's notion of the "affirmative character of culture," which laments the impotence of political agency with its relegation to the autonomous sphere of art. See Herbert Marcuse, "The Affirmative Character of Culture," in *Negations: Essays in Critical Theory*, MayFly Books, http://mayflybooks.org/?page_id=18 (accessed May 27, 2011).

31. Part of corporate image enhancement includes direct support of the museum. Phillip Morris, now the Altria Group, continues to be one of the Guggenheim's major corporate donors. See the Guggenheim Foundation's 2008 Annual Report, http://www.guggenheim.org/images/content/pdf/education/2010/new_york_2008.pdf (accessed March 25, 2010).

32. Kennedy, "If the Copy Is an Artwork, Then What's the Original?."

33. In a 1986 ArtNews interview with Sherrie Levine, Gerald Marzorati writes, "Lawyers from the Weston estate…suggested the courts might be the proper venue to settle this epistemological argument [over whether Levine was copying Weston, or whether Weston was "copying" classic sculpture]." Attempts to clear up the nature of any legal threats by the Weston estate with Sherrie Levine were unsuccessful, with her gallery stating that Levine's schedule didn't allow her time to answer my questions. E-mail correspondence with Ona Nowina-Sapinski, Paula Cooper Gallery, January 29, 2009.

34. Correspondence with Amy Rule, Head of Research, Center for Creative Photography, December 12, 2008.

35. Ibid.

36. Herbert Marcuse, "The Affirmative Character of Culture," in *Negations: Essays in Critical Theory*, http://mayflybooks.org/?page_id=18 (accessed July 14, 2011).

37. Gaines, *Contested Culture*, 236.

38. Ibid., 237.