Money Painting and the Duplicitous Multiple: The Interdependence of American Copyright Legislation and Artistic Production

Jaclyn N. Siemers
University of Nebraska-Lincoln, jacisiemers@huskers.unl.edu

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MONEY PAINTING AND THE DUPLICITOUS MULTIPLE:
THE INTERDEPENDENCE OF AMERICAN COPYRIGHT LEGISLATION AND ARTISTIC
PRODUCTION

by

Jaclyn N. Siemers

A THESIS

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MONEY PAINTING AND THE DUPLICITOUS MULTIPLE:
THE INTERDEPENDENCE OF AMERICAN COPYRIGHT LEGISLATION AND ARTISTIC PRODUCTION

Jaclyn Nichole Siemers, M.A.
University of Nebraska, 2012

Advisor: Marissa Vigneault

In this thesis I investigate the interworking and influences of the United States’ federal copyright legislation, specifically its relationship to the history of artistic production from the late nineteenth-century to the present. A detailed analysis of the evolving copyright statute, the social and legal impact of the multiple (including the counterfeit copy), and the progressive recurrence of representational money paintings will reveal the mutually dependent relationship of copyright legislation and artistic production. The progression of styles in America art—nineteenth-century trompe l’oeil illusionism, mid-century Abstract Expressionism, Pop art, and contemporary appropriation art—provides an illustrated roadmap of the complex relationship between the law, visual and consumer culture, and money. I will use this roadmap to reinterpret the work of Andy Warhol and propose that his art making was fundamentally influenced by the tenets of American copyright legislation. To visualize the intricate relationship between art and the law, I trace the progression of the American money painting, and its divisive other, the counterfeit, to illustrate the economic incentive of aesthetic originality and federal copyright legislation. Moreover, I assert that Warhol’s often-segregated late work (1980s) can be cohesively connected to the core of his immense oeuvre when viewed through this legal lens.
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INTRODUCTION:

The major concern of the epoch—the economy—is to today’s art what the nude, the landscape, or the myth of the new were in their time to neoclassicism, impressionism, and avant-garde: both a motivator of creativity and a theme to the taste of the moment.¹

The law governs the social world, art is part of the social world; therefore law governs art. However, as art is part of the social world that exceeds, and often tests, the limits of the law, the simplistic logic of this syllogism is fundamentally flawed. Despite this fault, as a recent graduate of the University of Nebraska College of Law, it the intersection of these two seemingly disparate practices that I find most fascinating. After graduating law school, I found that my approach to art history had been radically altered, and instead of debating the iconology of a work, I immediately questioned its legal issues: is the work obscene, is it protected speech, and is it copyrightable (to name a few)? It is the last of these concerns, whether a work of art is copyrightable, and the aesthetic implications of this legality that became the basis for this thesis.

The recent barrage of high-profile copyright issue: The Associated Press v. Fairey, Cariou v. Prince, Blanch v. Koons, as well as the shelving of both SOPA (Stop Online Piracy Act) and PIPA (Protect Intellectual Property Act), demonstrate the relevance of this type of inquiry. Accordingly, in this thesis I investigate the interworking and influences of the United States’ federal copyright legislation, specifically its relationship to the history of artistic production from the late nineteenth-century to the present. A detailed analysis of the evolving copyright statute, the social and legal impact of the multiple (including the counterfeit copy), and the progressive recurrence of representational money paintings will reveal the mutually dependent relationship of copyright legislation and artistic production.

The progression of styles in America art—nineteenth-century trompe l’oeil illusionism, mid-

century Abstract Expressionism, Pop art, and contemporary appropriation art—provides an illustrated roadmap of the complex relationship between the law, visual and consumer culture, and money. I will use this roadmap to reinterpret the work of Andy Warhol and propose that his art making was fundamentally influenced by the tenets of American copyright legislation. Moreover, I assert that his often-segregated late work (1980s) can be cohesively connected to the core of his immense oeuvre when viewed through this legal lens. To visualize the intricate relationship between art and the law, I trace the progression of the American money painting, and its divisive other, the counterfeit, to illustrate the economic incentive of aesthetic originality and federal copyright legislation.

Capital can be defined as “wealth capable of making more wealth” (or money used to make money), and within America’s financially motivated art world, artwork can be seen as an integral element of capitalist production. Viewed as a tangible product of the capitalist system (although often critical and begrudgingly), artwork parallels both the aura and power of money. On the surface, both paper money and artwork appear to be nothing more than image and medium. The power of money, its exchangeability for objects societal need and/or desire, is according to Katy Siegel and Paul Mattick, its symbolic representation of “the social character of productive labour,” as it “[b]inds all forms of work together to make one economic system.” To this end, Siegel and Mattick assert that “[m]oney is central to modern society, a society based on the principle of individual ownership, because it represents the social character of productive activity in a form . . . ownable by individuals.” The value of money is thus not only its exchangeable value (although significant), but also the national productivity and fiscal success its visual form symbolizes. In this sense, artwork

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4 Ibid.
can be viewed as an exchangeable marker of a society’s intellectual and cultural prowess, and like money, it can be seen to symbolize valuable facets of a nation’s collective identity.

The unsolicited copying of these powerful national symbols is thus tantamount to a breach of national (social and economic) security, and because of this the act of counterfeiting has explicit legal ramifications. Black’s Law Dictionary defines counterfeiting as the:

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\text{[U]lawful[ly] forge[ry], copy[ing], or imitat[ion] [of] an item, especially money of a negotiable instrument (such as a security or promissory note) or other officially issued item of value (such as a postage stamp or a food stamp), or to possess such an item without authorization and with the intent to deceive or defraud by presenting the item as genuine (emphasis added).}^5
\]

In addition, counterfeiting includes the “producing or selling” of an “item that displays a reproduction of a genuine trademark, [that is used] to deceive[er] buyers into thinking they are purchasing genuine merchandise (emphasis added).”^6 The law thus regulates the duplicitous reproduction of both legal tender and commodity goods, and historically, artwork that depicts either of these reproducible symbols has come under critical and legal scrutiny. The relationships between law and money, art and money, and art and the law are interwoven in copyright jurisprudence, and localizing the societal anxiety caused by counterfeit deception highlights the symbiotic relationship between copyright law and American art making.

Trademarks, patents and copyright represent common types of intellectual property, but whereas trademark denotes a distinguishable “word, phrase, or logo,”^7 copyright grants a property right (the exclusive right to copy) in one’s creative expression, otherwise known

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^6 Ibid.
^7 Garner, *Black’s Law Dictionary*, 727: A trademark is “a word, phrase, logo or other graphic symbol used by a manufacturer or seller to distinguish its product or products from those of others.” In addition, the “main purpose of a trademark is to designate the source of goods or services. In effect, the trademark is the commercial substitute for one’s signature.” Distinguishable for copyright, in order to receive federal protection, a trademark must be “(1) distinctive rather than merely descriptive or generic; (2) affixed to a product that is actually sold in the market place; and (3) registered with the U.S. Patent and Trademark office.
as their “original works of authorship.” Therefore, although each area of trademark, patent and copyright law is distinct and unique, they all illustrate the nation’s desire “to protect the commercial value of the productive effort of the individual’s mind (emphasis added).” Since the commercial value—the monetary assignment—of an art object is integrally related to its originality and exclusivity, copyright and trademark law officially protects the unsuspecting American public from art’s duplicitous other: the unsolicited derivative (or counterfeit) reproduction.

The shift to an individualized federal copyright protection did not occur until The Copyright Act of 1976 (signed into law on October 19, 1976, and generally effective January 1, 1978), which, as previously stated, vested protection at the moment of creation rather than the formal act of publication. It took Congress nearly twenty-years of “hard labor” to draft a suitable revision to the then antiquated Copyright Act of 1909. Significantly, the timing of these debates situates the privatization, individual and corporate, of copyright protection amidst a volatile period in America’s art and social history: the ideological shift from the emotive, subjective and individualistic Abstract Expressionist style, to that of a glossy and depersonalized Pop Art. Like other commercial goods, the popular arts are commonly identified as mass-produced products sold to the general populace by profit driven enterprises. On the other hand, “fine” art, like painting, theoretically represents the inimitable and invaluable work of an individual. Therefore, the markers traditionally used to distinguish “high” from “low” art are the same ones currently used to determine an object’s

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8 Ibid, 147-8, and The Copyright Act of 1976. 17 USCA §§ 102-1332: Black’s Law Dictionary defines copyright as “The right to copy a work, specifically, a property right in an original work of authorship (including a literary, musical, dramatic or other work) fixed in any tangible medium of expression, giving the holder the exclusive right to reproduce, adapt, distribute, perform, and display the work.
9 Committee on the Judiciary, United States Senate, Eighty-Sixth Congress, First Session, “Copyright Law Revision,” 71.
11 Siegel and Mattick, Art Works: Money, 17.
copyrightability: the object’s originality and its intimate relationship with the venerated “author” genius.  

To explore this relationship between legal and aesthetic theory, as previously noted, I analyze the continual appearance of American money paintings, in particular how their recurrence systematically coincides with moments of heightened social anxiety instigated by the proliferation of unsolicited copies and counterfeit. In this light, the continual revision of American copyright legislation reflects not only the nation’s sustained technological advancement, but also corresponds to the increasingly market-driven nature of “fine” art. As capitalism progresses, and as wealth, consumption and “[o]bsession with money” become a “conspicuous sign of the times,” copyright statute and case-law continues to illuminated the trajectory of American artistic production.  

Under the prevailing Copyright Act of 1976 the instant an “author” creates a “work of original authorship,” he or she obtains an absolute and exclusive right of property in that piece of work. Under previous acts, this property right is known as “common-law copyright,” and so long as this right persists, with respect to a specific work, no one may reproduce or copy the work without the artist’s expressed permission (the federal government governed copyright protection upon publication so long as the author followed its statutory formalities of registration and notification). The 1976 Act essentially dissolved common-law copyright

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12 According to Justice O’Connor, the “sine qua non of copyright is originality,” and “[t]o qualify for copyright protection, a work must be original to the author.” The opinion continues to state that “[o]riginal, as the term is used in copyright, means only that the work was independently created by the author (as opposed to copied from other works), and that it possess at least some minimal degree of creativity.” The amount of originality requisite for copyright protection is “extremely low,” and “[t]he vast majority of works make the grade quite easily, as they possess some creative spark, ‘no matter how crude, humble or obvious’ it might be.” Furthermore, O’Connor asserts that “[o]riginality does not signify novelty; a work may be original even though it closely resembles other works so long as the similarity is fortuitous, not the result of copying.” Moreover, she states that the legal terms “author” and “writing” presuppose a degree of originality; and quotes prominent copyright scholars Patterson & Joyce to stipulate that “[t]he originality requirement is constitutionally mandated for all works.” *Feist Publications, Inc. v. Rural Telephone Co.*, 499 U.S. 340 (1991), 345-47; Patterson and Joyce, “Monopolizing the Law: The Scope of Copyright Protection for Law Reports and Statutory Complications,” *UCLA Law Review* 36 (1989), 763.


protection, as federal protection now begins at the moment of creation, with the law conferring an individual monopoly to the copyright holder. As such, copyright is commonly criticized as unjustifiably restricting access to American culture. According to legal scholar David Bollier, “[p]art of the problem is that copyright and trademark law, as a matter of principle, declares that individuals are solely responsible for the value associated with creative works.”

Furthermore, Bollier purports that while “[m]embers of the public are cast as passive consumers who have nothing creative of their own to contribute,” media businesses are promoted as the sole proprietors of “valuable (read as profit-making) culture[.]” On the other hand, copyright is justified as benefitting the public by promoting intellectual productivity, and it is argued that protecting an author’s “original expression of an idea” from third party appropriation will encourage creativity, and ultimately, disseminate creative works to the public at large (the public domain).

Given the complexity of modern copyright law in the United States, it is evident that copyright jurisprudence did not develop in a cultural vacuum. Rather, it reflects centuries of oscillating attitudes and values ascribed to artistic production. Consequently, as copyright theory and doctrine are both active reflections of the prevailing worldview, it is not revolutionary to note that the legal understanding of the law changes with the nation’s socio-economic position. What is notable, however, is that intellectual property scholars have been resistant to accept claims of cultural

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15 David Bollier, *Brand Name Bullies: The Quest to Own and Control Culture* (Hoboken, New Jersey: John Wiley & Sons, Inc., 2005), 59.
16 Ibid.
influence in the copyright field, a resistance predicated upon the “disillusioned position that copyright, unlike other bodies of law, is really all about the money; that “[intellectual property] law is simply a machine to generate innovation through economic incentive; and that lawyers are merely engineers called on occasionally to tweak or tinker with the mechanism.”

To fully understand this trajectory and its connection to American copyright jurisprudence, it is necessary to consider the origins of copyright legislation in the United States. As colonial lawyers were presumably familiar with British law, the wording of the United State’s copyright clause directly reflects the world’s first copyright statute, England’s Statute of Anne, passed in 1709-1710. The wording of the Statute of Anne specifically details the plagiarizing culture of eighteenth-century England, and the need for official government protection of “Books and other Writings:”

Whereas Printers, Booksellers, and other Persons, have of late frequently taken the Liberty of Printing, Reprinting, and Publishing . . . Books and other Writings, without the Consent of the Authors or Proprietors of such Books and Writings, to their very great Detriment, and too often to the Ruin of them and their Families[.]"  

Significantly, the Statute of Anne shifted the purpose of statutory copyright from censorship (the preceding Licensing Act of 1694) to authorial protection. The legislative safeguard was necessitated by the increasing availability of the printing press, which, as “the first commercially feasible method of mass production of intellectual property,” threatened to disassemble carefully prescribed social and aesthetics boundaries.

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19 Ibid, at 415-16.  
In the United States, the Continental Congress, aware of the agitated plight of the “author” and the potential consequences of unauthorized duplication, recommended in the late eighteenth-century (around 1783) that the states provide copyright protection to its constituents. Twelve states had passed copyright laws prior to the Constitutional Convention; however statutes were limited in scope to the territorial jurisdiction of the particular state. There was no national uniform copyright protection. Without federal copyright protection creative works were continually exposed to pirating and unlicensed reproduction, thereby threatening the autonomous enclave of art production. To counteract this contentious threat, on September 17, 1787, the Constitution of the United States of America, as the supreme law of the land, specifically empowered Congress to regulate the fraudulent reproduction of both forms of social capital (fiscal and cultural): the production of money and the “useful Arts.” Respectively, Article 1, Section 8, Clause 5 of the Constitution vested in Congress the exclusive right “To coin Money, regulate the Value thereof, and of foreign Coin, and fix the Standard of Weights and Measures; while Article 1, Section 8, Clause 8, commonly known as the Copyright Clause, empowered Congress “To promote the Progress of Science and useful Arts, by securing for limited Times to Authors and Inventors the exclusive Right to their respective Writings and Discoveries.”

Chapter One, entitled, “Money Painting, Counterfeit, and the Origins of Copyright,” analyzes ante bellum art and culture and its affect on the enactment and development of federal counterfeit and copyright statutes. Congress first enacted its

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22 Ibid, 69.
Constitutional grant of power in 1790, only three years after the end of the American Revolution. It is therefore feasible to presume that Congress enacted The Copyright Act of 1790 as a means to solidify the nation’s collective identity, by promoting “[t]he Progress of Science and useful Arts.” As copyright protected an author’s right to publish, and economically profit from his/her creative work, I will identify and locate how copyright regulations worked to pacify America’s growing distrust of cheap, duplicative imagery, in the consumerist economy of the late-nineteenth century. With the rising tide of mass-produced commodities, money became the nation’s most potent symbol. As the federal government moved to solidify a uniform monetary system during a century wrought with financial panics and counterfeit currency; in shift from industrial to consumer capitalism, it also identified the benefit, symbolic and economic, of regulating the nation’s creative currency, its artistic production.

In the nineteenth and early twentieth-centuries, “technological advances, industrial mass-production, new methods of communication, increases in disposable incomes, and proliferating channels of distribution” contributed to the rapid expansion of the retail sector. The rapid growth of mass-produced commodities necessitated new methods of publicity, promotion, and distribution. By the early twentieth-century, these new forms of advertisement featured their own identifiable iconography that “enforced likeness and consolidated a dominant machinery of specifically capitalist representation.” As visual culture developed, the law rapidly evolved to promote and protect these new forms of reproductive imagery while superficially attempting to reinforce traditional aesthetic hierarchies.

24 Ibid.
In Chapter Two, entitled, “Money, Marketplace, and the Conflicted Origins of the Copyright Act of 1909,” and Chapter Three, entitled, “Pop Art, Andy Warhol, and the Aesthetic Limitations the Copyright Act of 1909,” I move the discussion of copyright and artistic production into the twentieth-century. In Chapter Two, I identify the Supreme Court case *Bleistein v. Donaldson*, which held a purely commercial chromolithograph to be copyrightable, as the theoretical precursor to Pop art and the work of Andy Warhol. To bolster this assertion, I analyze the semantics and application of the Copyright Act of 1909, and in Chapter Three, I relate it’s economic concerns to Warhol’s Pop art money paintings. In this Chapter, I trace the development of Warhol’s education and career. After a topical, formal, and legal analysis of his art work, I assert that the progression of Warhol’s style, as illustrated through his serial images of money and consumer goods, represents a cynical manipulation of America’s historical distrust of mechanically reproduced imagery, and as such, Warhol’s Pop art reflects the impetus of America’s copyright and counterfeit legislation.

Finally, in Chapter Four, entitled, “Individualized Copyright Legislation and an Indexical Warhol: An Artist’s Legal Critique,” I articulate the applicability of stringent copyright protection in a (arguably) postmodern epoch. The prevailing 1976 Act is the product of a long series of compromises reflecting the “constantly changing technology, commercial and financial interests, political and social conditions, judicial and administrative developments and – not least by any means – individual personalities.” Therefore, the evolving prose of the 1976 Act can be seen to reflect the dramatic aesthetic debates occurring alongside the statute’s negotiation, and the

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statutes phrasing can be viewed as legally articulating the mid-century debate over the merit of Abstract Expressionism and Pop art.

I argue that the drafters of the 1976 Act strategically adopted an Abstract Expressionist ideology, promoting individuality, in order to theoretically justify the increased privatization of culture for corporate interests. An analysis of the business-art phenomenon of the late twentieth-century not only illustrates the coercive nature of copyright statute, but also how its rights and regulations motivated artistic production. The late artwork and business ventures of Andy Warhol tangibly illustrates the complexity of these relationships, and copyright legislation provides a cohesive lens through which to incorporate his often segregated late work into the totality of his artistic oeuvre.
CHAPTER 1: Money Painting, Counterfeit, and the Origins of Copyright

A Society demonstrates its vitality through wealth, power, and culture, high and low. Power alone breeds sterility . . . Wealth alone breeds decadence . . . And culture? 28

Currency, Counterfeit and the Creation of a National Anxiety:

In the nineteenth century, America was a young and rapidly developing nation, pulsating with social and political anxiety, and central to this malcontent was the nation’s evolving national identity and volatile paper currency. Paper money was an integral part of American life by the mid nineteenth-century. In the period between the American Revolution and the Civil War, however, its currency—paralleling the nation’s political atmosphere—was plagued by uncertainty and distrust. Federal power was severely restricted during the Jacksonian era, and as local communities and state governments dominated the political spectrum, they also administered its monies. 29 At the local level, bankers could acquire the right to create money by obtaining a corporate charter from their state bank. After depositing bonds (or other assets) with the state government, a bank could than hire an engraver to design and print its banknotes. Essentially, the resulting printed bits of paper represented a bank-issued loan, a promise between a lender (the bank) and its holders. Banks and bankers thus became the nation’s principal capitalists, and they underwrote enterprise while simultaneously providing a medium of exchange. 30

Compounding the confusion, multifarious state-chartered corporations, like insurance companies, railroads, as well as numerous unchartered banking and

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28 Daniel Bell, “Modernism Mummified,” American Quarterly 39, no. 1, Special Issue: Modernist Culture in America (Spring, 1987), 129.
merchant operations also created their own independently designed bank notes.\(^{31}\)

Not surprisingly, the national monetary system quickly became convoluted and untrustworthy, and counterfeiting became a widespread epidemic. It has been estimated that during the 1850s, almost forty-percent of all circulating paper money was counterfeit.\(^{32}\)

At the time of the Civil War, the term “counterfeiting” embodied all forms of fraudulent production (coins, bonds, and currency), and was broadly defined as a monetary note “[m]ade with the intention of deceit and for use as a genuine bill.”\(^{33}\)

During this period, counterfeiters preferred Confederate currency and bonds because due to the poor quality of their raw materials and the unskilled engravers, the bills could be easily reproduced. They obtained sample material in many ways, including trade, and in some instances the original printing plates were usurped.\(^{34}\)

The capture of Confederate Treasury note plates by Union forces further perpetuated the anxiety of a bifurcated Nation. Southern officials subsequently accused the Union government of counterfeiting its money in order to circulate it back into its financial system, with the intent of devastating the Southern economy.\(^{35}\)

But the Civil War (1861-1865) also ended Jacksonian-style democracy with its decentralized and essentially impotent federal government. The emerging, and soon dominant, Republican Party promoted a “[d]octrine [that] advocated the development of an

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\(^{31}\) Ibid, 3.
\(^{33}\) Judith Ann Benner, *Fraudulent Finance: Counterfeiting and the Confederate States: 1861-1865* (Waco: Texan Press, 1970), 3-4. Counterfeits also fraudulently reproduced stamps and parole certificates issued to captured enemy soldiers. Furthermore, in newspaper accounts of the period, little distinction was made between the terms of fraudulent finance: counterfeits, facsimiles, forgeries, or bogus. Practically speaking, however, there were slight variances between the terms: a facsimile was legitimately reproduced as a souvenir (but it could be used with the intention to fraud); a forgery was a note or bond signed with unofficial dates and signatures, and a bogus note or bond was a work of pure fiction, and never issued under the named authority. Ibid.
\(^{34}\) Ibid.
\(^{35}\) Ibid, 9-12.
infrastructure for a national capital market through the use of centralized state power.”36 Specifically, in response to the economic threat of counterfeit reproduction, the federal government sought to reestablish national confidence by asserting its Constitutional grant of sovereignty over the nation’s banking systems and currency production.37

America’s general aversion to centralized national authority had historically undermined the establishment of a centralized banking system, as it was feared that a strong federal government would infringe upon individual liberties. As such, the nation’s monetary battles—between individuals, businesses and government—was often akin to a debate over control and power. The government asserted its federal control over currency with two legislative acts: the Legal Tender Act of 1862, and the subsequent National Banking Act of 1863. As the now sole purveyor of a national currency, the federal government taxed state bank notes out of existence and permanently enhanced federal power.38 According to historian Bray Hammond, “the establish[ment] of a national monetary medium which derived its value from the will of the government . . . as an exercise of sovereignty advanced the government’s powers far beyond what had been ascribed to it before.”39

The relationship between individual American citizens, the federal government and its currency underwent a profound shift in the last decades of the nineteenth century. The federal government retained its wartime jurisdiction over the nation’s money supply in order to eliminate the anxiety commonly associated with privately created currency and the profusion of counterfeit tender. The promoters of

36 Johnson, Illegal Tender, xi-xii.
37 Ibid, x-xi.
38 Ibid, pp. x-xii.
a federal banking system felt that a centralized currency would inspire confidence in the nation, as “It [was] impossible to alter National Bank Notes from a lower denomination to a higher, and there is not now one dangerous counterfeit where under the old system there were a hundred.”

To protect its new currency, and to combat the country’s lingering apprehensions, the federal government fastidiously safeguarded the new monies, through counterfeit legislation and the enactment of the secret service, from both the contemptuous counterfeiter and the critically disparaged illusionistic artist.

Centralized Money and The Rise of the American Leisure Class: The Social Significance of Commodity Goods and the Origins of Copyright Law

After the Revolution, Americans feared that liberty would become corrupt without the “careful nurture of virtue,” and efforts to construct an “inspiring civil culture” were generally supported. These fears intensified as the government became increasingly democratic, shifting the risk of tyranny to the free will of the people rather than the threat of an omnipotent corrupt ruler. Alexis de Tocqueville, a French political thinker and historian, faulted the “irresistible strength” of America’s popular democracy:

When a man or a party suffers an injustice in the United States, to whom can he turn? To public opinion? That is what forms the majority. To the legislative body? It represents the majority and obeys it blindly. To executive power? It is appointed by the majority and serves as its impassive instrument.

According to de Tocqueville, two situations facilitated majority oppression: first, the decentralized American government, and second, the prestige of lawyers—“a profession

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40 Mihm, A Nation of Counterfeiters, 361-62.
42 Ibid.
43 Alexis de Tocqueville, Democracy in America, translated by George Lawrence, J.P Mayer, ed. (Garden City: Doubleday/Anchor, 1969), 252.
with the “tastes and habits of an aristocracy,” and a “secret scorn [of a] government of the people.”

In 1838, a young Abraham Lincoln advocated the advantage of institutional authority, and proposed a greater “reverence for the constitution and laws” as a cure for the nations escalating instability. Significantly, Lincoln, himself a lawyer, expressly appealed to the supremacy and sanctity of the federal law to protect the nation from “men of ambition and talent,” e.g. lawyers, who in the pursuit of personal grandeur, did not care whether they were “emancipating slaves, or enslaving freemen.” Amidst the growing distrust of democratic ideals, America’s political ideology began to shift and emphasize the Whig-like tenets of coherence and order, and consequently, the benefits of strong federal governance.

As the decades after the Civil War progressed, Americans recognized that its politics, and parties, were largely influenced by external—capitalist—conditions. And as industrial capitalism began to shape American culture, often with the government subsidizing new industries like the railroads, copyright and law developed to regulate its products. In 1850, Americans made much of what they needed domestically, and six out of every ten people worked on personal farms. By 1900, however, only thirty-nine percent of Americans worked on farms, and the impetus of production shifted from personal use to commercial sale. The concept and word “consumer” appeared during this period, as agricultural production shifted to industrial, including factory-made goods. As capital and labor became detached from traditional family and community values and was instead

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44 Ibid, p. 264, as cited in Rose, Voices of the Market Place, 42.
46 Rose, Voices of the Market Place, 47.
47 Ibid. Each half of the bifurcated nation reflected these ideals, albeit with slight variance: the Southern conservatives sought material progress as achieved through duty and respect; while the Northern Unionists focused on geographic and economic expansion effected by self-regulating freeholders, protected by a uniform national policy.
invested in business and market-oriented concerns, the “exchange and circulation of money and goods [became] the foundation of [America’s] aesthetic life and of its moral sensibility[es].”

The shift to consumer capitalism placed an exorbitant amount of cheap manufactured goods in the American marketplace, and as a result, society’s well-being became directly associated with the consumption of goods. The pleasure attached to commodity goods, however, was in tension with the competitive risks of the period’s laissez-faire ideology. From a business perspective, the constant economic risks of laissez-faire competition garnered fear and trepidation: “You know how often I had not an unbroken night’s sleep, worrying about how it was all coming out. All the fortune I had made has not served to compensate for the anxiety of the period. Work by day and worry by night[.]”

The competitive corporate mentality of consumer capitalism thus fostered a wavering sense of personal identity, and the growing influence of a monied class, in a combination with a growing disparity in wealth, exacerbated the American people’s discontent. As wealth and power and became progressively concentrated in a “leisure class,” individuals aggressively competed for their social status. Significantly, social climbing was based on the “acquisition of symbols of status,” and thus social standing could be identified by one’s individual taste, and illustrated by the proper display of commodity goods.

According to sociologist Pierre Bourdieu, “tast[e] [is predisposed] to function as markers of ‘class,’” and correspondingly, historian Linda Young argued that in the nineteenth-century, “refined taste implied refined morality.” As external markers of taste

51 Ibid, 77.
and class, commodity goods not only marked social class, but also the latent fear that “genteel” life—like the arbitrary value assigned to goods and services—was artificial, and that one’s political, social and economic position could be easily usurped by a competitor. Consequently, to solidify the economic and cultural components of social status, the American nouvelle-riche combined their money into massive industrial and financial trusts, and deemed themselves the professional “arbiters of taste.”

By establishing institutions to safeguard his cultural authority, the American businessman asserted the primacy of his mode of aesthetic appreciation, and identified his “mission” to “beautify the world, beginning with [his] own perso[n] and radiating to all [he] possessed and influenced.” The “possession of tasteful goods” not only “evidenced genteel affiliation,” but also cohesively “connect[ed] economic power and encultured learning [to] the practice of consumerism.” As an elitist notion of fine art became the epitome of “tasteful goods,” it was quickly connected to an ideology of consumption. Amid the competitive threat of social displacement, the legal system progressed to insure the original/authentic status of its elite social markers—money and artwork.

The Deceitful Art: Trompe L’Oeil and the Aesthetics of a Counterfeit Culture

At the turn of the century, as the period of “conspicuous consumption” continued to progress, money, especially in its paper embodiment, became a cultural and artistic obsession. From 1877, when William Michael Harnett painted the first

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Australia and Britain (New York: Palgrave Macmillan, 2003), 88. Bourdieu continues to state, “[t]he manner in which culture has been acquired lives on in the manner of using it: the importance attached to manners can be understood one it is seen that it is these imponderables of practice which distinguish the different—and ranked—modes of culture acquisition, early or late, domestic or scholastic, and the classes of individuals which they characterize (such as ‘pendants’ and mondains). Culture also has its titles of nobility—awarded by the educational system—and its pedigrees, measured by seniority in admission to the nobility.” Bourdieu, Distinction, 1-2.

55 Young, Middle-Class Culture in the Nineteenth Century, 91.
image of American paper currency, *Still Life Five-Dollar Bill* (Fig. 1), 1877, through the first decades of the twentieth-century, more than twenty American painters addressed the theme of money. In Harnett’s early money paintings, such as *American Exchange* (Fig. 2), 1878, he painted paper money in combination with other objects—coins, books, inkwells and letters—in a trompe l’oeil manner, and strategically titled the works to relate the objects to the American businessman. In later money works, however, he isolates the paper banknote and meticulously rendered isolated life-size images of government-issued currency. Even though Harnett worked within the worldly and time-honored tradition of trompe l’oeil, as “trompe l’oeil paper money became a predominant and widespread art form only in the [United States,]” his money paintings can be considered uniquely American.

The trompe l’oeil paintings of Harnett and his followers were preceded by the work of the illustrious Peale family, specifically that of Raphaëlle Peale, who was primarily noted for his highly illusionistic, if not trompe l’oeil, still life paintings. While efforts to directly connect Peale to Harnett, stylistically and thematically, have been largely unsuccessful, the similarity of their technique signifies the persevering practice of hyper-illusionism in the United States. Trompe l’oeil, the most extreme

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56 A brief list of trompe l’oeil money painters includes: Jacob Atkinson, Nicholas A. Brooks, Ferdinand Danton, Jr., Victor Dubreuil, John Haberle, Thomas H. Hope, Otis Kaye, Peter McCallon, Charles Alfred Meurer, and John Frederick Peto. For more information see, Chambers, *Old Money*, 121-31.

57 Marc Shell, *Art & Money* (Chicago and London: The University of Chicago Press, 1995), 87. According to Shell, in seventeenth-century Europe, especially in commercial centers, still life works often contained arrangements of realistic monetary tokens, however, “[t]he focus here was not on the unique status of coin or banknote as money but on its mundane position as one visible thing among others.” Ibid.

58 Nicolai Cikovsky, Jr., “‘Sordid Mechanics’ and ‘Monkey-Talents’: The Illusionistic Tradition,” in *William M. Harnett*, Doreen Bolger, Marc Simpson, and John Wilmerding, eds. (New York: Harry N. Abrams, Inc., 1992), 19-20. In his seminal publication *After the Hunt: William Harnett and Other American Still Life Painters*, art historian Alfred Frankenstein tentatively attributes the first money painting to Raphaëlle Peale, stating that he “may have painted a bank note in his picture of 1795 entitled *A Bill* (now lost),” and that “[a]ccording to the *Dictionary of American English*, the use of the word ‘bill’ as a synonym for ‘banknote’ can be found in American documents as early as 1682; if Raphaëlle’s bill was a piece of paper money, this work anticipated one of Harnett’s favorite subjects by more than eighty years, and there are no known examples of the same subjects in American art in all the intervening time.” Alfred Frankenstein, *After the Hunt: William Harnett and Other American Still Life Painters, 1870-1900* (Berkeley and Los Angeles: University of California Press, 1969), 31-32.
form of illusionistic representation, pushes beyond mere convinciness into the realm of deception. According to Nicolai Cikovsky, Jr., “[i]t is the form that is the least likely [t]o be transmitted directly by its precedents,” and moreover, “[trompe l’oeil] is less a matter of individual style than of the stylistic depersonalizing requirements of verisimilitude and strategies of visual deception.” A marginal enterprise, trompe l’oeil paintings and painters were relegated to the lowest echelon of the artistic hierarchy. According to nineteenth-century British painter James Barry, a trompe l’oeil painter was “mere[ly] a sordid mechanic, divested of intellectual capacity; and artist John Opie admonished the technique as a “petty kind of monkey-talent.”

The most threatening thing about illusionism was not the artist himself, but the audience to whom the discursive imagery appealed: “illusionism was a popular style, not merely in the sense that it was widely liked, but that it was widely liked by the common people, the populace.” Moreover, and even more ominous, was the danger that the popularity of trompe l’oeil paintings posed to the “[d]ignity and decorum of high art.” Harnett’s oeuvre is the embodiment of these aesthetic and financial concerns. First, his patrons were often self-promoting “progressive men [newspaper men, bankers, stationers, and brewers] who participated in, and even

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60 James Barry and John Opie, in Lectures on Painting, by the Royal Academicians: Barry, Opie, and Fuseli, Ralph N. Wornum, ed. (London: Henry G. Hohn, 1848), 93, 97, 248; as cited in Cikovsky, Jr., “Sordid Mechanics,” 22. Still life imagery was almost universally held in low regard, and in the seventeenth-century it was assigned the lowest rank in the academic classification of subject matter, a sentiment that was maintained two hundred years later. According to this hierarchy, its “low and confined” subject matter “lacked the human interest, moral force, and intellectual substance possessed in highest form by depictions of heroic historical events based on the models of classical antiquity.” Ibid. For further reading see Sir Joshua Reynolds, Discourses on Art, Robert R. Wark, ed. (New Haven and London: Yale University Press, 1975).
62 Ibid, 23.
initiated, the massive social, economic, and technological changes of the age.\textsuperscript{63}

Second, his works were not always displayed in the traditional academic setting, and instead were exhibited in urban spaces of industry and commerce: saloons, drugstores, department stores, factory offices, and “[i]ndustrial fair[s] that catered to the interests and needs of the business community."\textsuperscript{64} And third, in a departure from the standard still life imagery of “nature’s bounty” (luxurious fruits, flowers, deserts, and beverages), Harnett pragmatically depicted material possessions and wealth, mundane and man-made objects suggestive of “[a] turbulent America in the strains of Reconstruction, industrial growth and political and financial corruption.”\textsuperscript{65} The trompe l’oeil canvas, especially the money painting, thus connects both the desire and anxiety associated with consumer capitalism to the artistic production of the day, and visually correlates the mass-produced consumer good to the sacrosanct art object.

According to Michael Leja, to survive the competitive cons and trickery common in late nineteenth-century New York City, one needed to master the art of “see[ing] skeptically:”

To function successfully . . . every inhabitant of the modern city, every target of competitive marketing, every participant in the new mass culture, every beneficiary of modern science and technology, every believer in spiritual realms had to process visual experiences with some measure of suspicion, caution, and guile. The visual arts—including the fine arts and the larger visual culture of commercial amusements, photographic illustrations, and pictorial advertising—played a complex and varied part in this process, fostering this way of looking and responding to it. They helped make “looking askance”—to use the period lingo—a generally shared habit, and they learned to engage in a viewership that peeked out through suspicious eyes.\textsuperscript{66}

\textsuperscript{64} Ibid.
Harnett was the most prominent and influential trompe l'oeil painter working in Philadelphia and New York in the late nineteenth-century. As such, his work actively “participated in [the] prevailing cultural discourse of illusion, deception, fraud and humbug,” and “[w]as closely connected to the tricks of the confidence ma[n], [t]he showmanship of P. T. Barnum and the spectatorship he constructed, and to the controversy over the flimsy representative power of money.”\(^{67}\) Harnett’s money paintings thus functioned as “both an emblem of and a catalyst for” the perceptual confusion and resultant anxiety that is “conventionally associated with the nineteenth-century metropolis.”\(^{68}\)

In 1887, Harnett submitted *Bad Counterfeit*, an oil on panel similar to *Still Life Five Dollar Bill* (Fig. 1), fastidiously depicting a ten-dollar bill, to the annual exhibition of the National Academy of Design in New York. The pithy title demonstrates Harnett’s knowledge of the growing tension between the “replication of money for the sake of art and, conversely, for the sake of fraudulent profit.”\(^{69}\) According to Johanna Drucker, “[t]he thematic range of Harnett’s paintings displays a distinct self-consciousness about the activity of representation,” and by “[b]eginning with the repeated selection of items of paper money, they engage with the codes of image as value—with actual value of a greenback marked $10, [a]nd its value as part of an artistic work.”\(^{70}\) The illusionistic illustration of money thus firmly places artistic

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\(^{69}\) Chambers, *Old Money*, 20. Chambers further considers the title *Bad Counterfeit*, and asks whether it was “bad” because it was poorly made, and not likely to be accepted as authentic, or because, “as an oil painting on a wooden panel, it existed in a realm of “reality” so different from actual counterfeiting that the underlying error of mistaken identity on which counterfeiting rests could never be made.” Notably, the facsimile of the depicted bill was so exact that the Academician on the selection committee were compelled to remove the work’s glass-covered frame to determine its reality. Ibid.

\(^{70}\) Johanna Drucker, “Harnett, Haberle, and Peto: Visuality and Artifice among the Proto-Modern Americans,” *The Art Bulletin* 74, no. 1 (March 1992), 41. Drucker continues to note that the analogy between currency and the
representation within America’s capitalist system of currency and exchange, and, as potent conveyors of national symbols (legal tender and artwork), artistic and counterfeit production became increasingly subject to legal protection and regulations.

Beginning in the 1870s, the Secret Service aggressively captured and convicted counterfeiters, and began to prosecute anyone who impinged upon the symbolic value of currency.\textsuperscript{71} Andrew Drummond, head of the Secret Service from 1891-1894, stated that “The Securities and Coins of all countries should be held sacred, that people, \textit{especially manufacturers}, should not seek to transform them into curiosities (emphasis added).”\textsuperscript{72} Although Harnett’s paintings, like \textit{Still-Life Five Dollar Bill} (Fig. 1), were not counterfeits per se, since their mimetic quality was purely aesthetic rather than spendable, after seeing one of the artist’s money paintings hanging in a prominent New York City saloon (Stewart’s at 8 Warren Street), Secret Service agents raided his studio and proceeded to prosecute him under federal counterfeit law.\textsuperscript{73} Harnett was let go with a warning, but he quickly abandoned the elements of a linguistic system to be one of the overarching metaphors of linguist Ferdinand de Saussure, “who described the means by which elements of language obtain value in terms of a finite and relative system, such as that as money.” Moreover, she asserts that as “[t]he concept of meaning [became] contingent on the place of an element of signifying value within a system of currency and exchange,” there was a theoretical shift away from the nineteenth-century belief in “intrinsic, essential, or transcendent value,” and a move toward a “twentieth-century conception of meaning production.”\textsuperscript{74}

\begin{itemize}
\item \textsuperscript{71} The Secret Service Division was created on July 5, 1865, in Washington D.C. to suppress the production of counterfeit currency. Their responsibilities were broadened in 1867 to included “detecting persons perpetrating frauds against the government.” For more information visit the Secret Service’s webpage at www.secretservice.gov/history.shtml.
\item \textsuperscript{72} Andrew Drummond, as cited in Philip H. Melanson, \textit{The Secret Service: The Hidden History of an Enigmatic Agency, Revised and Expanded Edition} (New York: Carroll & Graft Publishers, 2005), 23. “When it came to the protection of the nation’s currency, not even ‘toy money’ escaped the attention of the Service.” Drummond ambitiously decided that several toy-money manufacturers were crafting bills that looked too authentic, as people were passing them on as the real thing (money) in banks and stores. Ibid.
\item \textsuperscript{73} By 1864, Congress had enacted a law prohibiting all “impressions, prints, and photographs in the likeness of U.S. currency.” Pursuant to Julie Staple, the broad prohibition was in response to the dire financial circumstances of the day. The 1884 Act would eventually become the current counterfeit law, § 474, with very few changes and amendments (despite the change in economic and social situation). Act of June 30 1864, ch. 172 § 11, 13 Stat. 218, 221-22, as cited by Julie K. Staple, “Money Talks: The First Amendment Implications of Counterfeit Law,” \textit{Indiana Law Journal} 7, iss. 1, Article 5 (1995), 157.
\end{itemize}
project under the threat of future litigation: “Harmless though it was, it was clearly against the law, and I was let go with a warning not to paint any more life-like representations of national currency.”\textsuperscript{74} The aforementioned statement clearly illustrates the inherent tension between art and the law in late nineteenth-century America (a tension that continues to the present), and illustrates how the fear of litigation can be an influential factor in artistic production. Furthermore, in a period of ruthless business tactics, competitive social mobility, and vacillating modes of value, the illegality of “counterfeiting” and its increasing legal ramifications clearly illustrates the cultural need (and desire) to properly identify the authentic—the singular “real” object versus its duplicitous reproduction.

By the end of the nineteenth century money had become a sacred and inviolable object that was not to be manipulated by banks, counterfeitors, or artists under the fear of legal prosecution.\textsuperscript{75} Money, specifically paper money, thus became a concentrated symbol of the United State’s increasingly powerful federal government. As a standardized federal currency was integrated into American commerce, it came to signify a freshly minted capitalist elite and the resultant disquiet of an inherently fungible social hierarchy. And while the federal government visually and economically concentrated its authority by implementing a national monetary system, the unstable elite anxiously attempted to control the realm of culture—as the self-appointed “arbiters of taste”—to secure their position. For example, venerable art critics like Clarence Cook issued scathing reviews of trompe l’oeil works in order to clearly delineate the boundaries of high and low culture.

\textsuperscript{74} Mihm, \textit{A Nation of Counterfeiters}, 365-66.
\textsuperscript{75} Ibid.
In the first major newspaper review of Harnett’s work at the National Academy of Design, Cook famously expressed the “indignation of a high cultural gatekeeper coming into contact with an artistic work he perceived as so obviously vulgar and threatening that it must be repressed immediately (the review concerned Harnett’s *The Social Club*, a small still life study of a grouping of pipes and matches in the trompe l’oeil technique).”

Last Year, Mr. William M. Harnett had several pictures in the exhibition of the same general character as this *Social Club*, and they attracted the attention that is always given to curiosities, to works in which the skill of the human hand is ostentatiously displayed working in deceptive imitation of Nature . . . Imitative work is not really so difficult as it seems to the layman, and though there are degrees of it, yet when we come down to works like this of Mr. Harnett, *it is evident that only time and industry are necessary to the indefinite multiplications of them*. There are sign-painters in this city of ours—and in all great cities today—who have only to be discontented with their honest calling to aim at the name of artist, to rival Mr. Harnett (emphasis added). 76

Secret Service agents, in the pursuit of counterfeit money, performed a similar gatekeeping function. During the interrogation of Harnett in his New York art studio, the agent demanded to know whether he had anymore of “those counterfeits” lying around—counterfeit, of course, referring to his paintings. 77 Although probably unbeknownst to the agent, this comparison between art and money not only describe the elite’s admonishment of an increasingly influential “popular” taste (for example, for the spectacle of trompe l’oeil curiosities), but also forecasts the law’s effort to preserve a definition of originality in art resistant to the wiles commodity culture.

**Beautiful Commodities: The Escalating Fear of Mechanical Reproduction**

As previously described, in mid-nineteenth century America, paper bills “were highly-scrutinized, anxiety-inducing objects,” and in order to effectively distinguish

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77 Mihm, 366.
the real from the counterfeit, a variety of bank note reporters and counterfeit
detectors came into print. John Conway, describes a group of these detectors as
“currency aesthetes,” as they shared the mentality that “individual pieces of money
are works of art, and that in order to preserve their economic value as currency, they
must adhere to fine aesthetic standards;” moreover, as Laban Heath, a prominent
currency aesthete, resoundingly states, “The people like, not only a genuine bill, but
a beautiful one.” Currency aesthetes believed that the counterfeit epidemic could
be cured by imbuing paper money with the “timeless qualities of genuine art,” and
sought to categorize formal criteria that could identify real from counterfeit money.

However, as the federal government moved to standardize a centrally regulated
currency an aesthetic debate emerged amongst currency aesthetes as to how the
new money should be produced. On one hand, engraver W.L. Ormsby advocated an
artisanal model of production, whereby one artist should hand engrave a single
vignette of a historical scene to cover the entire surface of the bill. According to
Ormsby, “The protection from counterfeiting in such a vignette, consists, simply, in
the presumed lack of skill on the part of him who attempts. Nothing More.”

Conversely, detectors like Laban Heath promoted a system of production
utilizing the latest mechanical engraving technologies—the geometric lathe: “[t]he
general principle upon which the detection of counterfeits is based is that all parts of
genuine notes are engraved by machinery . . . [w]hile all counterfeit notes are

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79 Ibid, 3. Laban Heath, Heath’s Infallible Government Counterfeit Detector at Sight: illustrated with entire new plates of both Greenbacks and National Bank Notes, the only infallible method of detecting counterfeit, spurious, altered bank notes and government bonds, as now in circulation or that may be issued (Boston and Washington D.C.: Laban Heath, 1878), 17, as cited in Conway, “Making Beautiful Money,” 3.
80 Ibid, 7.
engraved by hand." In a discussion of the geometrical lathe, Frances Robertson notes that “[s]elf-acting tools were not only useful for producing identical banknote images; they were being designed, produced, and installed in factories to allow the rapid, reliable, and cheap production of identical products.” The debate between Ormsby and Heath—the merits of originality versus mechanical reproduction—can thus be read in relation to the elitist’s simmering anxiety over the mechanical reproduction of works of “fine” art (as a form of counterfeit duplication). And as the strong-arm of the government legislatively fought to eradicate the production of counterfeit money, as art became “big business,” the law increasingly regulated the terms and methods of artistic production, reflecting a similar worry over mechanical copying.

In the mid-nineteenth century, reproductive prints of fine art were commonly regarded as a “respectable means of disseminating art and its ideals.” For example, The Nation, in 1865, published a two-part article entitled “Multiplied Art,” in which it passionately advocated the benefits of artistic reproduction: “[i]f one has a child to educate in beauty and thought as seen in graphic art, he can find no way so simple, and no simple way so good, as to familiarize his pupil with the best multiplied art he can procure[,]” and furthermore, “[i]t is certain that Americans can get more good from the contents of their portfolios [of reproductions] than from anything they see of a statelier kind of art.” To perpetuate this didactic sentiment, professional artists like Rembrandt Peale created drawing manuals for the untrained populace.

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82 Heath, Heath’s Infallible Government Counterfeit Detector, 4, as cited in Conway, “Making Beautiful Money, 11.
with the express purpose of “spreading democracy from the political realm to the
world of art.” This educational impetus for democratizing artistic production reflects
the fledgling nation’s fear of an elitist centralized power, something too reminiscent of
the British monarchy and allied institutions (including the Royal Academy’s monopoly
on artistic ideals). As the United States Democratic Review observed in 1858,
“Anyone who can learn to write, can learn to draw,” and the history of art “is a
prolonged record of the patronage of princes and nobles, blossoming only in royal
gardens and beneath the sunshine of opulence and wealth. Democratic art, until
within a few years, was a thing unknown.”

This egalitarian reverence was short lived. As power, illustrated through the
control of money, became corporately centralized, the late nineteenth-century elite
aggressively attempted to solidify their cultural hegemony. In the essay “The
Almighty Dollar: Money as a Theme in American Painting,” Edward Nygren asserts
that the 1880s marked a change in “attitude toward the pursuit and accumulation of
money.” According to Nygren, during this period the aggressive pursuit of wealth
came under popular attack, as increased “[a]ttention [was] given to the growing
financial power of a few industrialists and the increased division between the rich and
the rest of society[.]” As the concentration of money became increasingly taboo,
the art object, rather than legal tender, became the marker of power and prestige.

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87 United States Democratic Review (1858), as cited in Levine, Highbrow/Lowbrow, 154-55.
89 Ibid. Furthermore, in 1881 the Atlantic Monthly printed the first major attack on Standard Oil Company and its
drive to control the oil refining business, and the term “robber barons” was first used by Kansas farmers to
describe railroad magnates. Nygren links the proliferation of money paintings during the 1880s-90s to these
changed attitudes, as the work of John Haberle and Victor Dubreuil often depicted parodic portrayals of the
corrupting influence of money.
Consequently, as America transitioned from industrial to consumer-based capitalism, the late nineteenth-century capitalists, including the cultural capitalists (the “arbiters of taste”) recognized the need “to take broad controls over their world in order to continue amassing wealth peacefully.” To insure the value of their product, capitalists attempted a variety of schemes to restrict production and share markets. Notably, as the consumerist demand for saleable artwork began to rapidly increase, the culturally elite vociferously condemned the morality of the mechanical reproduction—specifically the degenerative qualities of the chromolithograph print.

The Chromo-Counterfeit: Art, Money and the Fear of Cultural Degradation

In 1894 novelist William Dean Howell, in *A Traveller from Altruria*, described the late-nineteenth-century populace as, “[p]urely commercial people; money is absolutely to the fore; and business, which is the means of getting the most money, is the American ideal.” By the last half of the nineteenth century, chromolithography, or colored lithography, was big business, and it effectively placed artwork into the profit-generating world of corporate industry, tangibly equating art with the mass-produced commodity good (Figs. 3-6). It was Alois Senefelder, the inventor of lithography, who first attempted a chromolithograph print (hereinafter “chromo”) in the early nineteenth century. From its beginnings, chromolithography was intended to be a reproductive process: Senefelder himself stated, “[t]he manner of printing in different colors is peculiar to the stone, and capable of such a degree of perfection that I have no doubt the perfect painting will one day be produced by

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90 Ohmann, *Selling Culture*, 56.
91 Ibid.
it. Shortly thereafter it was reported in an American mechanics’ magazine that a “new mode of copying oil paintings, by means of lithography” had been created. The first American chromolithograph was printed in 1840, and by the end of the century its printers were operating multimillion-dollar businesses.

The chromolithograph technique made it possible to produce thousands of full-color art reproductions at a moderate cost, which in turn made viable reproductions of oil paintings available to a large, image and status hungry, middle-class audience. The process of making a chromo was similar to black-and-white lithography, except that layers of transparent ink were used to build up a full range of color. Unlike modern processes that photomechanically isolate its color components, nineteenth-century chromo stones were manually drawn based upon human observation. A chromiste, a skilled color lithographer, would determine how many tints and shades the original artwork involved, and using transfer paper to copy the image to each stone, would draw in only the parts of the picture that used a single chromatic element. The finest chromolithographs, such as Thomas Moran’s and Louis Prang’s Yellowstone portfolio, were created from as many as fifty-six registered stones, and tremendous skill and precision was necessary for accurate results.

In order to increase the verisimilitude of the print when reproducing an oil painting, the chromo was embossed with a canvas-like pattern, mounted on heavy fiberboard, and varnished in order to convincingly mimic the original work’s distinguishing shine and

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96 Marzio, The Democratic Art, 8.
98 Ibid.
Joni Kinsey asserts that unlike more “honest” forms of artistic reproduction, such as wood engravings and black-and-white lithographs, chromolithographs, “[w]ith their coats of varnish and gilt frames like those of fine oils, the modest prints were transformed into trompe l’oeil facsimiles of the art they reproduced, fooling all but connoisseurs.” It was the chromo’s highly illusionistic, arguably deceptive, appearance that sparked the culturally contentious chromo-controversy in the late nineteenth-century.

The supporters of chromolithography advocated its democratic and anti-elitist potential, as an advertisement for L. Prang and Company, the national leader in the chromo industry, suggestively stipulated:

**PRANG’S AMERICAN CHROMOS. ‘THE DEMOCRACY OF ART’. . . Our Chromo Prints are absolute FACSIMILES of the originals, in color, drawing, and spirit, and their price is so low that every home may enjoy the luxury of possessing a copy of works, which hitherto adorned only the parlors of the rich.**

According to Michel Clapper, to their advocates, “chromos represented not only a triumph of art but also social justice and American political ideology through cultural achievement.” On the other hand, the flagrant deception of the chromo print prompted nineteenth-century art critic Clarence Cook (the same critic who admonished Harnett’s trompe l’oeil still life painting) to state, “[a] clever imitation is nothing but an imitation after all. It can teach nothing nor benefit anybody; and as every art has its own particular application and field of work, we hinder progress by every effort to wrest it to the cheap imitation of the results of some other art.”

Furthermore, E.L. Godkin, the sanctimonious editor of *The Nation* (the same

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100 Clapper, “I Was Once a Barefoot Boy,” 18.
103 Ibid, 21.
publication that had previously praised the merits of multiplied art), acrimoniously coined the phrase “chromo-civilization” to describe the debasement of high culture in general. Notably, the editorial utilizing the phrase did not reference chromolithography.\textsuperscript{105} The term “chromo” and its offspring “chromo-civilization,” thus came to acerbically characterize the highbrow condemnation of everything “mass produced, false, tasteless, and lacking in high moral value.”\textsuperscript{106}

Clapper, a chromolithograph scholar, asserts that the “critics [a]ttacked the chromolithographic process because the social functions of art were deemed too important to risk being tainted.”\textsuperscript{107} He locates this fear in the “mechanical, deceptive, and commercial” nature of the chromo, recognizing that each individual objection signified a “social concern [f]ar beyond [the prints] themselves.”\textsuperscript{108} In this sense, the anxiety surrounding the chromo (mechanical) reproduction reverberates the societal discord that stemmed from the volatile nature of paper money. And as the United States’ government enacted a counterfeit statute and instated the Secret Service to protect the value of its currency, federal copyright legislation can be viewed as an attempt to insure the value—both social and financial—of artistic production against cultural counterfeiting. However, as the value of art is arguably more subjective than that of money, the struggle of the federal copyright statute to protect artistic production denotes not only the instability of the medium, but also the instability of society itself.

\textbf{Nineteenth-Century Copyright Statute: The Intricate Intersection of the Law, Monies and Popular Culture}

\textsuperscript{106} Kinsey, \textit{Thomas Moran’s West}, 27.
\textsuperscript{107} Clapper, “I Was Once a Barefoot Boy,” 21.
\textsuperscript{108} Ibid.
Federal copyright statute was revised multiple times over the course of the century to accommodate the ever-evolving nature of intellectual property. But as federal copyright law primarily sought to inspire artistic creation through the federal grant of limited monopolies (as states chartered corporations for the same reasons), its overt economic incentive shifted the nation’s aesthetic ideology and identity. In the United States copyright is part of federal law and its protection originates in the Constitution. Although it is not expressly named this, Article 8, Section 8, Clause 8, has come to be known as the “Intellectual Property Clause,” because it states: “The Congress shall have Power…to Promote the Progress of Science and useful Arts by securing for limited Times to Authors and inventors the exclusive Right to their respective Writings and Discoveries.”

Even though copyright protection was probably not a primary consideration for the Framers of the Constitution, the language empowered Congress to introduce such doctrine into federal law as it became necessary. And as the freshly emancipated country struggled to form its national identity, the U.S. Congress first exercised this Constitutional grant of authority by enacting The Copyright Act of 1790.

The Copyright Act of 1790 granted rights only to U.S. authors (and their executors, administrators, and assigns) and was limited to the “printing, reprinting, publishing and vending” of maps, charts and books. It did not provide protection for any other type of

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109 United States Constitution, Article 8, Section 8, Clause 8. According to Christopher Springman, this clause is often referred to as the Patent Clause, the Copyright Clause, or the Intellectual Clause, but the term “intellectual property” was unknown at the time of the framing of the Constitution. The concept of intellectual property covers more than just patents and copyrights, but the term is useful in reference to the congressional power of the Constitutional clause because it captures both types of exclusive rights the clause specifically authorizes. Christopher Springman, “Reform(aliz)ing Copyright,” Stanford Law Review 57, no. 2 (November 2004): 491.

110 David L Lang. and H. Jefferson Powell, No Law: Intellectual Property in the Image of an Absolute First Amendment (Stanford: Stanford University Press, 2009), 34-5. The framers were most likely more interested in patent law than copyright law. “Copyright law and patent law are the yin and the yang of intellectual property.” Copyright law confers protection for expressive works such as those dealing with the arts, entertainment, or the information industries. On the other hand, patent law provides protection primarily for practical works of utility, “any new and useful process, machine, [article of] manufacture or composition of matter, including any new and useful improvement thereof[,]” Ibid.
work—e.g. artwork. The term of protection the Act offered was relatively short: it would be maintained for a fourteen-year term with the right of renewal for one additional fourteen-year term only if the author remained alive. In addition, works would receive protection only if the author strictly adhered to its rigid statutory formalities, such as copyright registration and notice. Given this narrowness, it was not until the late nineteenth century that the revised copyright law began to have a significant impact on American society. ¹¹¹

Copyright law underwent a series of amendments and revisions during the nineteenth century, always in the direction of broadening the protection against unlicensed imitation. The Copyright Act was amended in 1802 to extend copyright protection to those “[W]ho shall invent and design, engrave, etch, or work, or from his own works and inventions, shall cause to be designed and engraved, etched or worked, any historical or other print or prints.”¹¹² Notably, the statute seemingly limits protection to printed imagery that falls within the didactic prescriptions of “high” art, as it expressly granted copyright to prints that replicated “historical” works of art—art already deemed to be art. The statute was first revised with the Copyright Act of 1831, and as the new revision dropped the limiting language of “historical or other print or prints,” it broadened the scope of copyright protection to include those “[W]ho shall invent, design, etch, engrave, work, or cause to be engraved, etched, or worked from his own design, any print or engraving[.]”¹¹³

By rejecting the limiting language of the 1802 amendment, the 1831 legislation subtly reflects art’s egalitarian purpose in the early nineteenth century, as it explicitly broadened its

¹¹¹ Ibid, 34.
protection to include all mechanically produced art.\textsuperscript{114} The Copyright Act of 1870 further expanded the list of copyrightable items to include “[P]hotograph[s] or negative thereof, or of a painting, drawing, \textit{chromo}, statute, statuary[,]” and by enumerating specific mediums, Congress statutorily included chromolithographs in the ambient of “works of fine art.”\textsuperscript{115} The 1870 Act, however, recognized the potentially negative implications of extending copyright protection to these new mechanical mediums, and it tactically limited its protection to only, “[M]odels or designs intended to be perfected as works of the fine arts[]”\textsuperscript{116} The 1874 amendment expanded this sentiment by stating: “the words ‘Engraving,’ ‘cut’ and ‘print’ shall be applied only to pictorial illustrations or works connected with the fine arts, and no prints or labels designed to be used for any other articles or manufacture shall be entered upon the copyright law, but may be registered in the Patent Office.”\textsuperscript{117}

The evolution of nineteenth-century copyright legislation tangibly illustrates the country’s deeply conflicting cultural ideologies. On one hand, copyright protection served as an elitist means of asserting individual economic control over culture. On the other hand, the text of the 1870 Act, and the litigation decided under it, progressively increased the validity of “low” art forms, and legally authenticated mechanically produced and reproduced artwork. The Supreme Court’s decision in \textit{Bleistein v. Donaldson Lithography Company} (1903) poignantly illustrates these competing notions, as it denotes the incongruities between the written law and judicial (arguably capitalistic) application.


\textsuperscript{116} Ibid.

In 1898, George Bleistein of the Cincinnati-based Courier Lithography Company sued the Kentucky-based Donaldson Lithography Company for copyright infringement. They alleged that Donaldson produced approximately 23,800 unauthorized copies of three chromolithograph posters advertising the Wallace Shows, a circus (fig. 7). At issue in the case was whether Courier’s chromolithograph designs, which were used strictly for advertising purposes, fell within the umbrella of copyright protection. In 1903, the Supreme Court held that Courier’s posters could indeed be protected under copyright law. Justice Oliver Wendell Holmes Jr.’s infamous, and often quoted, majority opinion effectively codified mass-produced commercial prints as “high” art:

[C]opyright would be denied to pictures which appealed to a public less educated than the judge. Yet if they command the interest of any public, they have a commercial value- it would be bold to say that they have not an aesthetic and education value- and the taste of any public is not to be treated with contempt (my emphasis).118

Moreover, Justice Holmes’ opinion tangibly demonstrates the intricate relationship between America’s evolving socio-economic ideologies and the construction of its artistic/cultural tastes; Bleistein v. Donaldson and the textual evolution of nineteenth-century copyright statute thus illustrate the direct influence of money on the law, as well as the law’s complex relationship with art.

CHAPTER TWO: Money, Marketplace, and the Conflicted Origins of the Copyright Act of 1909

Others are free to copy the original. They are not free to copy the copy. The copy is the personal reaction of an individual upon nature. Personality always contains something unique. It expresses its singularity even in handwriting, and a very modest grade of art has in it something irreducible, which is one man’s alone. That something he may copyright.\[119\]

_Bleistein v. Donaldson_, and the eloquently pragmatic opinion of Justice Holmes, cited in Chapter One, is not only the apex of nineteenth-century copyright law and the consistently expanding scope of copyright protection, but is also, as I will argue, the theoretical precursor to Pop art and the work of Andy Warhol. Furthermore, Justice Holmes’ opinion can be viewed to evidence the complexity and hypocrisies of nineteenth-century consumer capitalist anxiety—an anxiety that is sardonically investigated in the work of the Pop artists. As a prominent member of the American elite, Holmes’ refusal to deny copyright protection to a commercial chromo illustrates not only the indivisibility of art, law and money, but also demonstrates the incongruity between the law and the fine arts. Under the 1870 Act, chromos were provided copyright protection as “works of fine art,” however, the statute classified this protection by limiting it to works “intended to be perfected as fine arts.” Consequently, Holmes’ refusal to deny copyright protection for the adversarial chromo legally elevated its aesthetic status to a “work of fine art” under the prevailing statute. By equating commercial and fine art, Holmes’ effectively neutralized the didactic impetus of mechanical reproduction and judicially authorized its purely economic value.\[120\]

Justice Holmes’ test of originality, whether the work exhibits “the personal reaction of an individual,” illustrates the contractions and inherent misgivings of the self-appointed and

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\[119\] Ibid, 250.
\[120\] According to Zimmerman, Holmes’ had created designs for advertising cards while at Harvard, and was particulalry unlikely to agree with the argument that commercial use was enough to make pictorial illustrations uncopyrightable. Furthermore, Holmes can be viewed to understand the value of copyright protection, as he tried to stop the unauthorized printing of one of his father’s famous books, *Autocrat of the Breakfast Table*. His effort failed because the book’s essays had been previously published without copyright notice. According to the court, collecting the essays into one publication did not alleviate this mistake. Zimmerman, “Bleistein v. Donaldson,” 94-95.
self-interested “arbiters of taste.” To distinguish the Bleistein chromos from opposing precedent, and bolster his test of originality, Holmes’ turned to one his favorite authors, prominent aesthete John Ruskin. In his Supreme Court opinion he quoted Ruskin to state: “if any young person, after being taught what is, in polite circles, called ‘drawing,’ will try to copy the commonest piece of real work — suppose a lithograph on the title page of a new opera air, or a woodcut in the cheapest illustrated newspaper of the day – they will find themselves beaten.” Notably, Holmes overlooked the context of this statement, a beginning drawing lesson, and his use of Ruskin, a highly regard art critic noted for his “believe[f] [that] all chromos should be burned,” illustrates the confused nature of Holmes’ aesthetic position. According to legal historian Diane Leenheer Zimmerman, “Holmes saw the attack on the originality and inherent worth of circus posters both as a threat to great art that had as its subject matter the appearance of the real world or that might, by its very novelty and experimental qualities, seem to the uninitiated to be ugly and worthless.” Rather than distinguish an uncopyrightable art form, Holmes issued an opinion that broadened not only the text of the 1870 Act (as revised in 1874), but as his opinion significantly the potential subject matter of copyright to include purely commercial objects, he also set the theoretical precedent for Pop art.

After the case concluded, Justice Holmes glibly stated, “I fired off a decision upholding the cause of law and art and deciding that a poster for a circus representing decolletes and fat legged ballet girls could be copyrighted. Harlan, that stout old Kentuckian, not exactly an esthete dissented for high art.” By simultaneously upholding the “cause of art” while scoffing at the non-esthete notion of “high art,” Holmes’ opinion

121 Ibid.  
122 John Ruskin, Elements of Drawing 3 (1st ed., 1857), as cited in Bleistein, 250.  
124 Ibid, 95.
collapsed the “high” and “low” aesthetic distinction in the legal field. Combined with the expanded scope of the ensuing Copyright Act of 1909 (hereinafter “The 1909 Act”), copyright jurisprudence can be seen to anticipate the development of the nation. And over the course of the twentieth century, as artists persistently questioned notions of originality, authorship and hierarchical designations, the relationship between copyright legislation and artistic production became increasingly antagonistic. The serial, commercially stimulated imagery of Pop artist Andy Warhol can, I believe, be viewed to anticipate the inevitable clash between art and law. Moreover, analyzing the course of Warhol’s education and career through the scope of the 1909 Act sheds a fascinating light not only on the artist’s *modus operandi*, but also the often-hostile interaction between economics, market influence, and the legality of artistic production.

**The 1909 Act: Cheap Art & the Social Significance of Counterfeit Reproduction**

On its face, nineteenth-century copyright statute claimed to govern the realm of “fine arts” (amongst other creative endeavors). However, its limited scope primarily protected the copyright holder’s (often the publisher’s) economic—versus creative—interests. Thus, copyright did not protect the “work of fine art” for the benefit of the creator/author, but instead protected the work for the benefit of the market and the entrepreneur. To protect the rapidly expanding creative market, American copyright law, like that of its counterfeit statutes, developed from the administrative need to alleviate the anxiety caused by depreciating financial and social values by policing unauthorized counterfeit reproduction.

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126 Federal trademark law did not come into affect until June 6, 1946, with the enactment of the Lanham Act. The act was signed into law by President Harry Truman (taking effect on July 6, 1947), and it provides “federal protection for distinctive marks used in commerce.” According to Martha Buskirk, while copyright law is premised upon “public benefit,” trademark law lacks such an “elevated purpose,” and as such, it had to “develop under the rubric of the Constitution’s interstate commerce clause.” Martha Buskirk, “Commodification as Censor:
Consequently, while on one hand the 1909 Act continued to democratize American art, with the art object statutorily indistinguishable the mundane mass-produced consumer good, the Act also sought to ensure the authenticity of American culture as attached to market value, by increasingly regulating the reproductive rights of the art-object.\footnote{This sentiment is most evident in the Copyright Act of 1976.} (a sentiment most evident in the Copyright Act of 1976).

In addition to the numerous chromolithograph enterprises, at the turn of the century cheap paintings, also known as daubs, or inexpensive mass-produced oil works, became big business. During the 1880s numerous manufacturing companies such as frame and molding manufactures) issued wholesale catalogs that "offered oil paintings of various subjects, sizes, and grades both framed and unframed."\footnote{Saul E. Zalesch, "What the Four Million Bought: Cheap Oil Paintings of the 1880s," \textit{American Quarterly} 48, no. 1 (March 1996), 77-78.} While highbrow circles adamantly abhorred commercially produced art, cheap paintings and chromolithographs became the proud possessions of middle and working class families “eager to decorate their homes and simultaneously demonstrate their cultural standing and sophistication through the possession of original paintings.”\footnote{\footnotemark[2] As the definition and economic potential of works of art continued to expand, copyright legislation developed to underwrite the profitability of the creative market against the flood of counterfeit reproductions.} As social designations became increasingly blurred, purchased objects, often mass-produced, became vital indicators of one’s social status, and according to art historian Samuel Zalesch, Gilded Age Americans “[c]limbed the ladders of social mobility by purchasing symbols of gentility.”\footnote{Ibid, 82.} As the art market rapidly developed, and the value of the art object steadily increased, copyright legislation developed to underwrite the profitability of the creative market against the flood of counterfeit reproductions.

\footnotetext[127]{This sentiment is most evident in the Copyright Act of 1976, as further discussed in Chapter Four.}
increased, counterfeit reproduction quickly ensued. Daubs were manufactured in three primary fashions: an assembly line of artists, an assembly line utilizing stencils to apply outlines and background colors, or by extremely expeditious artists painting standard subjects.\textsuperscript{131} Cheap paintings presented an interesting paradox: although they were mass-produced by large-scale manufactures, they remained actual oil paintings in contrast to the printed chromo. It is this contradiction that rendered daubs even more deceiving than the chromo, and several etiquette and household guides from the late nineteenth-century bemoaned their purchase. One writer lauded chromos as “inexpensive gems of true art,” that are “[w]orth far more than a roomful of daubs[.]\textsuperscript{132} Indicative of one’s social status, like paper money, the fervent desire to own art objects manifested in the cultural knock-off or counterfeit reproduction.

In \textit{Fake? The Art of Deception}, Mark Jones describes the nineteenth century as the “great age of faking,” and asserts that the rise of forgery arose from the “mania for collecting” (as well as the lack of authentication).\textsuperscript{133} The insatiable demand for art objects, illustrated by the popularity of chromos and daubs, has thus been attributed to the rise of counterfeit, pictures bearing fake signatures of “modern masters,” artwork in the late nineteenth century.\textsuperscript{134} It is within this deceptive marketplace that authenticity and originality became crucial to the valuation of art objects, and tellingly, cheap painting proprietors promoted the sale of their goods by negating the previously the assembly line process of their production. One prominent “picture factory” owner defensively insisted that all the paintings he sold were the work of a single artist, and exclaimed “No, they do not do parts of

\begin{itemize}
\item \textsuperscript{132} The \textit{Housewife’s Library} (no location, 1885), 454, as cited in Zalesch, “What Four Million Bought,” 82. It is noted that the same sentiment was expressed in \textit{How to Make a Happy Home} (New York, 1884), 112.
\item \textsuperscript{133} Mark Jones, ed., \textit{Fake? The Art of Deception} (Berkeley and Los Angeles: University of California Press, 1990), 162.
\item \textsuperscript{134} Zalesch, “What Four Million Bought,” 96.
\end{itemize}
a picture, one putting in the sky, another the foreground, another the figures. That is nonsense. One man does the canvas throughout.”

The essence of the capitalist process, pursuant to American economist Robert Heilbroner, is “the continuous transformation of capital-as-money into capital-as-commodities,” and the subsequent “retransformation of capital-as-commodities into capital-as-money.” In accordance with Heilbroner’s systematic analysis, as art commodities (chromos and cheap paintings) proliferated the market they made artwork accessible to a broader sector of the populace, thereby creating a popular demand for such works and competitive pricing. Cheap paintings became so ubiquitous that trompe l’oeil painter John Haberle, a contemporary of Harnett and fellow money painter, that they inspired a small series of works centered upon cheap landscape paintings. Entitled *Torn in Transit*, these works depict a cheap painting shrouded in tattered remnants of packing material and postage stamps (fig. 8). Illustrated in the same fashion as trompe l’oeil money paintings, Haberle visually relates the cheap painting to paper money. The illusionistic twine wrapped around the works surface emphasizes the flatness of the pictorial space, and the brown shipping paper melds seamlessly into the daub’s canvas. Moreover, as the work is plastered with colorful postage stamps and well-worn packing materials, Haberle visually placed the cheap painting in the stream of commerce, and its ragged appearance emphasized the art object’s exchangeability.

As artworks were increasingly placed within the stream of commerce, the law increasingly intervened to protect the nation’s economic interests and, similar to the enactment of its counterfeit statute, confidence in the value of its cultural production.

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135 Ibid.  
The progression of copyright statute, case law, and artistic production demonstrates the tenacious but influential nature of these relationships, as the regulatory nature of the law effectively reduced works of art to their ultimate commodity value: money. As technology rapidly developed to accommodate America’s desire for cultural and consumer objects, and President Theodore Roosevelt appealed to Congress to “update and modernize” its copyright statute:

Our copyright laws urgently need revision. They are imperfect in definition, confused and inconsistent in expression; they omit provision for many articles which, under modern reproductive processes, are entitled to protection; they impose hardships upon the copyright proprietor which are not essential to the fair protection of the public; they are difficult for the courts to interpret and impossible for the Copyright Office to administer with satisfaction to the public (emphasis added).  

In accordance with this request Congress radically revised the prevailing copyright legislation. On February 15 (calendar day, February 17) 1909, New Hampshire Representative Frank Dunklee Currier introduced House Report 28192, and accompanied by the report of the Committee on Patents on February 22nd, President Theodore Roosevelt, as one of his last official acts, on March 4th signed the general revision of U.S. copyright law.  

The 1909 Act extended copyright protection to a broader variety of industrially produced goods and reproductive processes. Premised upon the nation’s need to protect

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139 Ibid.

140 See Copyright Act of 1909. U.S. Statutes at large 60-349 (1909), §§ 1-5, http://www.megalaw.com/top/copyright/1909/1909ch1.php (accessed November 21, 2011): Section 5 — Classification of works for registration, the application for registration shall specify to which of the following classes the work in which copyright is claimed belongs (emphasis added):

- (a) Books, including composite and cyclopedic works, directories, gazetteers, and other compilations.
- (b) Periodicals, including newspapers.
- (c) Lectures, sermons, addresses (prepared for oral delivery).
- (d) Dramatic or dramatico-musical compositions.
- (e) Musical compositions.
- (f) Maps.
- (g) Works of art; models or designs for works of art.
- (h) Reproductions of a work of art.
- (i) Drawings or plastic works of a scientific or technical character.
objects based on “[t]he progress of [their] commercial development,” copyright legislation echoes the ideology of the nineteenth-century counterfeit statute: as the counterfeit statute attempts to solidify the value of national currency through stringent government regulation, copyright statute struggled to solidify the value of American culture.141 And just as counterfeit currency generated social anxiety in the nineteenth-century, America’s fear of the “copy” became manifest in the artistic production—and its ensuing legislative protection—of the twentieth-century.

The phrasing of the 1909 Act reduced the elitist notion of “fine art”—as worded in nineteenth-century copyright statutes—to the more egalitarian “works of art.” The removal of the “fine” preface, when read collectively with the extended list of enumerated copyrightable “works” (see footnote 140), illustrates the vacillating definition of art in American society.142 In addition to the expanded definition, the 1909 Act also enhanced the

(j) Photographs.
(k) Prints and pictorial illustrations including prints or labels used for articles of merchandise.
(l) Motion-picture photoplays.
(m) Motion pictures other than photoplays.
(n) Sound recordings.

141 Committee on the Judiciary, United States Senate, 86th Congress, 1st Session, Copyright Law Revision: Studies Prepared for the Subcommittee on Patents, Trademarks and Copyrights, Washington: United States Government Printing Office, 1960, p. 75. The thought process behind the expansion of copyrightable objects is illustrated in the arguments for the protection of composers against unauthorized mechanical reproduction of music. In the minority view of the preliminary report (later adopted into the final report) it is stated: “If it is proper to extend copyright protection to these technical forms of reproducing music, an express provision should be inserted in the law. That was the course adopted when the improvement of photography made a change in the law necessary. Photographs and the negatives thereof were expressly added to the list of subjects of copyright.” Ibid.

142 Legislating the ephemeral definition of “art” has also been problematic for the United States’ Customs Court, as seen in Constantine Brancusi v. United States (1927), No. 209109, held in U.S. Customs Court, Third Division. At issue was whether Brancusi’s bronze sculpture, Bird in Space, was an original work of art and entitled to duty-free entry into the United States. Under paragraph 1704 of the 1922 Tariff Act, the duty-free importation of works of art included “original sculptures or statuary.” The U.S. customs officials who ensnared the sculpture, however, did not consider the object to be an “original sculpture”, and instead classified the object as a “lump of bronze” under paragraph 39 of the Tariff Act: “Articles or wares not specially provided for, if composed wholly or in chief value of platinum, gold or silver[,]” Thomas Jones, an expert witness for the customs office, testified the Bird was “too abstract and a misuse of the form of sculpture” (the court also wrestled with the issue of “originality”). Fortunately, the court ruled in favor of Brancusi, and Justice Waites stated, “The object under consideration…is beautiful and symmetrical in outline…and we hold under the evidence that it is the original production of a professional sculptor and is in fact a sculpture[.]” For more information see: Laurie Adams, Art on Trial: From Whistler to Rothko (New York: Walker and Company, 1976), 35-58, Stephanie Giry, “An Odd Bird,” Legal Affairs: The Magazine at the Intersection of Law and Life (September/October 2002), http://www.legalaffairs.org/issues/September-October-2002/story_giry_sepoct2002.msp (accessed April 17,
author-creator’s copyright monopoly. By extending the “right to copy” to all copyright holders it assertively, although probably unwittingly, regulated unlicensed third-party—counterfeit—reproduction of art (cultural) objects.\textsuperscript{143}

Section 1(a) of the 1909 Act extended a copyright owner’s rights by stipulating that “[a]ny person entitled thereto, upon complying with the provisions of this title, shall have the \textit{exclusive right:} (a) To print, reprint, publish, \textit{copy}, and vend the copyright work” (emphasis added).\textsuperscript{144} Even though the 1870 Act (and its subsequent revisions) provided the copyright owner with “the sole liberty of . . . \textit{copying} (emphasis added)[,]” as technology progressed, the practical application of the 1909 Act’s right to copy drastically expanded the scope of federal copyright protection.\textsuperscript{145} Section 41 of the 1909 Act clarifies this discrepancy by stipulating:

\begin{quote}
The copyright is distinct from the property in the material object copyrighted, and the sale or conveyance, by gift or otherwise, of the material object shall not of itself constitute a transfer of the copyright, nor shall the assignment of the copyright constitute a transfer of the title to the material object; but nothing in this Act shall be deemed to forbid, prevent, or restrict the transfer of any copy of a copyrighted work the possession of which has been lawfully obtained.\textsuperscript{146}
\end{quote}

While the House report denotes that section 41 separated copyright from the material object copyrighted in order to protect user rights, practically speaking, it prevented users—at trial, typically competitors—from making reproductions. As such, by treating the term “copy” in a general sense (as a verb and not a noun), the 1909 Act prompted a questionable legal doctrine: that the right to copy a work is exclusive and absolute.\textsuperscript{147}

The progression of the United States’ copyright statute, from its inception in 1790 to

\begin{footnotes}
\item[Patterson & Lindberg, \textit{The Nature of Copyright}: A Law of User’s Rights, 81.]
\item[Copyright Act, Washington D.C. (1870), “Primary Sources on Copyright (1450-1900),” L. Bently & M. Kretschmer, eds., www.copyrighthistory.org (retrieved June 28, 2012).]
\item[Patterson & Linberg, \textit{The Nature of Copyright}, 83-85.]
\end{footnotes}
the 1909 Act, illustrates the American legal system’s escalating distrust of mass-production. As the scope of federal copyright protection expanded to incorporate more copyrightable objects, it systematically vested the copyright owner(s) with stringent control, basically an individual monopoly over its reproduction. Artistic production thus became increasingly privatized, and as the economic incentive motivating copyright jurisprudence became more pervasive, evidenced by the extended length of copyright duration and the numerous ensuing infringement suits, works of art became increasingly integrated to the realm of commercial production. And, according to artist and critic Suzi Gablik, during the twentieth-century artistic production came to represent a “bureaucratic, managerial type of culture characterized by mass consumption and economic self-seeking.”

I adore America and these are some impersonal comments on it. My image is a statement of the symbols of the harsh, impersonal products and brash materialistic objects on which America is built today. It is a projection of everything that can be bought and sold, the practical but impermanent symbols that sustain us.  

It is within this legal and cultural milieu that Andy Warhol entered the New York art scene. While Warhol’s oeuvre has been viewed as both a reaction against high modernism and as a critical response to American consumerism, his serial display of mundane consumer products can be seen to sardonically parody America’s fear of counterfeit reproduction. Through his use of the mechanical silk-screen process appropriated photographic images, Warhol pithily reproduced copyrighted and trademarked objects of “low” consumer culture. Although he never intended to foist the objects he reproduced, such as the Brillo boxes, as “originals,” he did intend for these objects to be placed into the realm of fine art. Warhol, to the admonishment of many of the cultural elite, effectively created an innovative form of counterfeit art.

Interestingly, Warhol appropriated the “low” subject matter and representational renderings (albeit without the same degree of illusionism) of the popular, yet denigrated, nineteenth-century trompe l’oeil painters. Bruce Chambers, has noted the resurgence of popular and scholarly interest in trompe l’oeil money paintings during the late 1980s. He notes that by the 1950s, a “[f]resh appreciation of the artifacts of popular culture” developed, largely due to the significance attributed to still life imagery by Dada and Surrealist artists. Moreover, Chambers attributes the twentieth-century interest in trompe l’oeil money paintings to the revival of a “gilded age” culture, as “[o]ur own passion for and about money

150 Chambers, Old Money, 16.
is a major reason for our growing intrigue with the [trompe l’oeil] money painters.\textsuperscript{151}

Although a direct connection between Warhol and the money painters of the nineteenth-century is speculative, there is well-documented evidence detailing the overarching influence of money in Warhol’s artistic career. Notably, Warhol created money paintings throughout the course of his career: as a commercial illustrator in the 1950s (Fig. 14), in his career as a fine artist during the 1960s (Fig. 18), and as a business-artist in the 1980s (Fig. 25). Warhol flamboyantly amassed a personal fortune through his mass-production of unlicensed images of popular culture, and arguably, his extravagance motivated a series of copyright suits in the mid-1960s. The progression of Warhol’s “money paintings” thus depicts not only a satirical account of American culture (what is commonly advocated by scholars), but also connects his artistic production to the evolving trajectory of copyright jurisprudence. Analyzing Warhol’s art education and commercial and fine art careers through the lens of the presiding 1909 Act will shed light not only on the artist’s modus operandi, but also the narcissistic interaction between economics, market influence and the legality of artistic production.

According to sociologist Pierre Bourdieu, “[t]he law [represents] the quintessential form of "active" discourse, able by its own operation to produce its effects. It would not be excessive to say that it creates the social world, but only if we remember that it is the world that first creates the law.”\textsuperscript{152} As such, to appreciate the relationship between artistic production and copyright legislation, one must first consider the cultural and legal atmosphere that stimulated Warhol’s artistic development. As Gablik has theorized, when the elitist notion of American artistic production dwindled into capitalistic drivel during the mid-twentieth century, influential art critic Clement Greenberg ardently fought to reclaim

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\textsuperscript{151} Ibid, 17.
artistic autonomy and redefine the blurred hierarchical boundaries between high and low culture (fine and commercial/popular art). In his 1960 essay “Modernist Painting,” Greenberg reclaimed the term “Modernism” to represent a “pure” and autonomous fine (high) art:

The task of self-criticism became to eliminate from the effects of each art any and every effect that might conceivably be borrowed from or by the medium of any other art. Thereby each art would be rendered ‘pure’, and in its ‘purity’ find the guarantee of its standards of quality as well as its independence.  

Modernism thus came to signify a visually and intellectually challenging “high art,” epitomized by the work of Jackson Pollock, that was both spiritually and culturally segregated from modern society’s duplicitous capitalistic motivations. Consequently, hierarchical designations were solidified by cultural tastes, and just as fine art was segregated from commercial art, the art object was elevated above the denigrated consumer good.

The indexical gestural marks of Pollock and other Abstract Expressionist artists not only visually separated fine art from popular culture, but also defended it against counterfeit reproduction. *Times Magazine* art critic Robert Hughes declared “[i]t [to be] impossible to make a forgery of Pollock’s work,” because imitations “always end up looking…like spaghetti, whereas Pollock—in his best work—had an almost preternatural control over the total effect of those skeins and receding depths of paint.” As exemplified in *Number 1, 1950 (Lavender Mist)* (Fig. 9), not only did the intricately laced skeins of his mature drip paintings deny the visual formation of discernible contours and an accessible compositional axis, they also moved the work beyond the profit margins of capitalist reproduction.

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153 Clement Greenberg, “Modernist Painting,” *Art and Literature*, no. 4 (Spring 1965), 194: Realistic, illusionist art had dissembled the medium, using art to conceal art. Modernism used art to call attention to art.


such, the work of Abstract Expressionist artists mitigated the damage of the popular counterfeit by elevating society’s definition of “works of art,” and, as will I will contend in Chapter Three, it is this ideology that is specifically incorporated in the Copyright Act of 1976.

Despite the formalists attempt to segregate high culture, America’s multifarious popular culture resisted this demarcation. In the post-war consumer boom of 1949, Life Magazine posed the question “Is he [Jackson Pollock] the greatest living painter in the United States (Fig. 10)?”\(^{156}\) In this article, colorful reproductions of Pollock’s paintings are sandwiched between vibrant advertisements for luxury Ford automobiles, decadent cheeses, and alluring shaving cream. Mass-produced color copies of Pollock’s “works of art” thus became cohesively integrated with images of America’s commodity culture. By asking the rhetorical question, Life effectively dictated the parameters of good taste to the masses, and the popular publication relegated Pollock’s paintings to the realms of consumer culture.

Four years after the Life Magazine spread, the United State’s Supreme Court judicially mandated an increasingly democratic definition of “works of art.” In Mazer v. Stein (1954), the Supreme Court determined federal copyright protection of a utilitarian mass-produced statuette to be constitutional (fig. 11). In defense of their copyright, the Respondents stipulated that they created “original works of sculpture in the form of human figures by traditional clay-model technique.”\(^ {157}\) The Art Deco inspired statuette was submitted to the United State’s Copyright Office for registration without electronic components as a “wor[k] of art,” however, it was originally sold as a fully embodied lamp.

\(^{156}\) “Jackson Pollock: Is he the greatest living painter in the United States,” Life Magazine 27, no. 6 (April 8, 1949), 42-45.
The Plaintiffs, competitor lamp manufacturers, copied the Defendant’s statuette without permission and also sold them as fully embodied lamps. In their petition for certiorari, the Plaintiffs asked the Supreme Court one question: “[c]an statuettes be protected in the United States by copyright when the copyright applicant intended primarily to use the statuettes in the form of lamp bases to be made and sold in quantity and carried the intentions into effect?” The Supreme Court upheld Stein’s copyright; predating its decision upon relevant case law, and an analysis of the governing 1909 Act and its legislative history.

In addition to the continuously expanding list of copyrightable objects (Section Five, see footnote 140), the 1909 Act provided the first “catch-all phrase” in copyright law. In Section Four Congress arguably expanded the scope of copyright protection to its full constitutional limits by stipulating, “all writings of author [are] included,” and, “The works for which copyright may be secured under this title shall include all the writing of an author (emphasis added).” Furthermore, following the enumerated list of copyrightable objects, Section 5 states that, “The above specifications shall not be held to limit the subject matter of copyright as defined in Section 4 of this title[.]” When read together, Sections 4 and 5 allows copyright protection to specifically contour to the developing needs of America’s cultural market. The progression of copyright law thus seems not to be based upon whether

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158 Ibid. Argued February 3, 1953
159 Ibid. The plaintiffs asserted in their reply brief that copyright does not cover industrial reproduction, and is “subject to the limitations of design patents.” However, their brief accepted the copyrightability of Cellini’s carved golden salt cellar but not if “Cellini designed and manufactured this item in quantity so that the general public could have salt cellar, than an entirely different conclusion would be reached.”
160 1909 Copyright Act, “Section 4—All writings of author included,” http://www.megalaw.com/top/copyright/1909/1909_4.php (accessed February 11, 2012). Moreover, in a report accompanying the final draft of the bill as passed, it was stated that: “Section 4 is declaratory of existing law. It was suggested that the word “works” should be substituted for the word “writings”, in view of the broad construction given by the courts to the word “writings”, but it was thought better to use the word “writings”, which is the word found in the Constitution. The report also notes “Congress and the courts have always given a liberal construction to the ‘writings.’” Committee on the Judiciary, United States Senate, 86th Congress, 1st Session, Copyright Law Revision: Studies Prepared for the Subcommittee on Patents, Trademarks and Copyrights, Washington: United States Government Printing Office, 1960, p. 74.
a particular object could be protected, but upon whether it “needed protection because of the progress of its commercial development.” On this legal basis, Justice Reed theorized, in his opinion for *Mazer v. Stein*, that the “[i]ndividual perception of the beautiful is too varied a power to permit a narrow or rigid concept of art.” By determining a lamp base to be a copyrightable “work of art,” *Mazer v. Stein* further expanded the legal definition of art, and specifically situated “works of art” according to their legal status amongst popular, mass-produced, commodity goods. As such, I assert that by analyzing the course of Warhol’s education and artistic career, through the lens of the presiding 1909 Act, will shed light on the artist’s *modus operandi* and the self-conscious interaction between economics, market influence and the legality of artistic production.

**Andy Warhol: Commercial Beginnings and Financial Success**

It is within the fluctuating artistic, social and legal atmosphere of mid-century America that Andy Warhol began his artistic career. Andrew Warhola was born in Pittsburgh, Pennsylvania, on August 6, 1928. His parents, Andrej and Julia Warhola, were working class Rusyn emigrants from Mikó (located today in northeastern Slovakia). As a child, Warhol took free art classes at the Carnegie Institute (now The Carnegie Museum of Art), and subsequently attended Carnegie Institute of Technology (now Carnegie Mellon University) from 1945-49, earning a Bachelor of Fine Arts degree in Pictorial Design.

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161 Committee on the Judiciary, United States Senate, 86th Congress, 1st Session, *Copyright Law Revision*, 75.
162 *Mazer v. Stein*, 347 U.S. 201 (1954), 214. Justice Reed’s opinion notes the difference in Congress’ phrasing of copyrightable subject matter in the 1909 Act, “Works of art,” and the 1870 Act, “[s]tatue, statuary, and models or designs intended to be perfected as works of fine art.” He goes on to state, “[t]he court once essayed to fix the limits of fine art. That effort need not be raised in relation to this copyright issue . . . Herbet Putnam, Esq., then Librarian of Congress and active in the movement to amend the copyright laws, told the join meeting of the House and Senate Committees: ‘The term ‘works of art’ is deliberately intended as a broader specification than ‘works of fine arts’ in the present statute with the idea that there is subject-matter (for instance, of applied design, not yet within the province of design patents), which may properly be entitled to protection under the copyright law.’” Ibid, 209-13.
While at Carnegie Tech, Warhol was a student in Robert Lepper’s course “Pictorial Design.” The course was designed around seven coordinated problems: the first half of the two-year course was spent collecting and analyzing “objective” data in order to generate the “general viewpoint of a cultural anthropologist;” the second half of the course was devoted to “subjective data,” whereby students gathered facts about the “molding influences” of their own personalities. In a 1948 report on the teaching techniques used in the course, Lepper stated his educational motives as follows:

> The pictorial artist is concerned with the perception and projection of meaningful experience. A greater portion of meaningful experience stems from the social flux by which is meant the ever-changing relation of the individual to the community of which he is a member. A formal study of this flux and of its components is important to him in its potential for broadening his field for pictorial expression.

As a whole, the course was intended to give the general “effect of increasing sharpness of observation and retention of data,” and to have students “produce a single work of art that was socially and historically conscious and personally meaningful.”

Lepper significantly contributed to the reframing of Carnegie’s Tech’s mission during his tenure. Carnegie Tech, like many schools of the time, ascribed to the teaching methods, social ambitions, and “artist-cum-engineer professional ethos” of the Bauhaus pedagogy.

In a 1940 article, Lepper explained his beliefs and interests in a “vulgar art:”

> Our common art is really common . . . so much a part of life that the scholarly critic might easily miss it . . . the paraphernalia of the railroads and of building industry, aviation and the automobile, all of these mobile sculpture. Add the highway system and all the thousands of utensils, tools, instruments and appliances that are the common equipment of the farmer, craftsman and housewife . . . It is submitted that the vast majority of these structures are genuine, earnest and obviously vulgar (common); that they possess an honest dignity, are

164 Robert Lepper, “Processes in Professor Lepper’s Course in Pictorial Design.” Dept. of Painting and Design, ts. Aug. 1948, Lepper archive, box 2. ff. 51, 1, as cited in Blake Stimson, “And Warhol’s Red Beard” The Art Bulletin 83, No. 3 (Sep., 2001), 531. For the final project, Warhol and his fellow students were asked to work with Robert Penn Warren’s 1946 novel, All the King’s Men. The novel has been interpreted to make allusion to the populist leader and 1930s Louisiana governor and senator Huey Long. The novel was a general allegory of the intellectual culture of the 1930s, and the narrative focused “complex psychological identification of an upper-middle-class intellectual with the populism and mass politics of the period.”

165 Ibid.

166 Ibid.

167 Ibid, 533. Lepper’s generation came to age with art forms developed by the Social realists, Mexican muralists, and Bauhaus-influenced industrial designers of the 1930s that drew their sense of meaning and purpose from “proletarian labor and industrial production.” Ibid.
Out of these populist artistic values, Lepper cultivated a system of associations between the requisite formal properties of visual artists and their industrial equivalents (Fig. 12). According to Lepper, the artist constructed a “work of art” out of “line, area, and volume” similar to industrial laborers who construct a machine out of “wire, sheet metal, and casings.”

As a student, Warhol was asked to ascribe to and achieve the aforementioned social values, whereby artistic success was predicated upon the ability to achieve a functional “paraphernalia of the railroads” value. Warhol, however, arrived at Carnegie Tech with generationally inspired theories of art in regards to its public function and sources of legitimation. Like his professor, he subscribed to a form of aesthetic populism in which “high art” was indistinguishable from low, mass-produced culture. Warhol’s populist mentality, however, rather than motivated by Lepper’s “industrial equivalents” or “artist-cum-worker” ideology, emerged from the childlike innocence—although sardonically synthetic—he adopted in order to shield from the surrounding world.

While at Carnegie Tech, Warhol carefully crafted his childish persona as the impish, yet innocent, “class baby.” In the role of “child-adult” he could address and manipulate adult themes and situations without bearing adult responsibility, that is, until he faced legal consequences in the 1960s. I argue that this superficial anonymity provided Warhol with the confidence to work outside of the conceptually constrictive formal, social and legal codes.

After graduating from Carnegie Tech in 1949, Warhol moved to New York City to

170 Ibid, 534.
171 Ibid, 539.
pursue a career as a commercial artist; his work debuted in *Glamour* magazine in September of the same year.\(^{172}\) He went on to become an extremely successful commercial artist, and throughout the 1950s he worked for several high-class clients ranging from *Vogue* and *Harper’s Bazaar* to Bergdorf Goodman and Bonwit Teller. In addition, Warhol designed album covers for Columbia records, Christmas cards, book jackets, and department store windows, and created several retail campaigns, including the famous shoe advertisements for I. Miller in the mid-1950s.\(^{173}\)

In December 1956, the Bodley Gallery, a New York City art gallery who featured several of Warhol’s early exhibitions, displayed his shoe art in an exhibition titled “Andy Warhol: The Golden Slipper Show or Shoes Shoe in America.” The exhibition consisted of shoes named after celebrities, and tellingly, *Life* Magazine reprinted some of the work in a two-page spread in their January 21, 1957 issue (Fig. 13). Eight years after *Life’s* article on Pollock, Warhol’s illustrations were displayed amongst the same type of commercial advertisements featured in the Pollock issue. Unlike the Pollock exposé, the validity of Warhol’s commercial work—notably, not referred to as “art” by *Life*—was not questioned, and the prominently displayed illustrations were lauded as being “eagerly bought up for decoratio[n].”\(^{174}\)

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\(^{173}\) Paul Alexander, *Death and Disaster: The Rise of the Warhol Empire and the Race for Andy’s Millions* (New York: Villard Books, 1994), 25. By hiring Warhol as their sole illustrator, I. Miller was attempting to modernize their image through innovative graphic design. According to Geraldine Stutz, I. Miller’s vice-president, it was the start of an era when one “sold the sizzle and not the steak,” I Miller was selling a lifestyle, not just shoes. The I. Miller ads featured stylized versions of their shoes rather than facsimile reproductions. *Repetition was sometimes employed to emphasize a product—advertisement proclaiming “the well-heeled look on fashion” featured Warhol’s drawings of heels repeated across the ad* (emphasis added). Ibid.  
\(^{174}\) “Crazy Golden Slippers: Famous People Inspire Fanciful Footwear,” *Life* Magazine 42, no. 3 (January 21, 1957), 12-13. The two-page spread of “pictures,” is accompanied by brief descriptions of the footwear, for example, “James Dead inspired spurred western boot to convey a rugged character, though he never made cowboy movies.” In addition, *Life* provides a brief explanation of the exhibition: “[w]hile drawing shoes for advertisements, Andy Warhol, a commercial artist, became fascinated with their designs and began to sketch imaginary footwear as a hobby. His work grew more and more ornate until completed with some 40 slippers made entirely of gold leaf ornamented with candy-box decorations. Each was created to symbolize a well-known personality (emphasis added).” Ibid. Notably, *Life* avoids calling Warhol’s “pictures” art, and by labeling Warhol a
The “Crazy Golden Slippers” works were priced between fifty and two hundred and twenty-five dollars apiece. At the height of his career as a commercial artist, Warhol was earning a staggering one hundred thousand dollars a year (on the I. Miller account alone he made fifty thousand dollars one year). In 1957, shortly after the lucrative shoe illustrations and during a period of personal wealth, he created *Money Tree* (Fig. 14). The illustration can be seen as an early example of Warhol’s money painting, a theme that he consistently revisited throughout his expansive career. The piece depicts a whimsical polka-dotted tree, blossoming with plumes of symbolic, non-denominational, paper currency.

Typical of Warhol’s commercial work, *Money Tree* was created in his hallmark blotted line technique, one he started using in college to make his work look “printed.” A drawing was first made in lead on water resistant Strathmore paper. The lines were then retraced with black ink on top of the lead, and the paper wetted. While the drawing was wet, it was pressed onto a second sheet. The first printed sheet thus became the “original” print. The process could be repeated indefinitely, and carried out by another person if desired. Critics have considered this method of drawing, essentially a graphic process for mechanically multiplying or reproducing an artist’s drawings, to be the first step in Warhol’s adoption of mechanical reproductive processes.

Poking fun at the popular idiom “money doesn’t grow on trees,” Warhol’s early illustration sardonically characterized his ability to both earn, and create, vast sums of money. By creating easily reproducible illustrations, Warhol capitalized upon his commercial success, while at the same time mischievously prodding the inscribed social- and eventually "commercial artist," it distinguishes his work from the artist-genius of Pollock (“Is he the greatest living painter in the United States”).

175 Ibid, 13.
176 Alexander, *Death and Disaster*, 25.
legal—boundaries of “works of art.” While the idiom cautions consumers to spend carefully, in Warhol’s world, money, the ultimate commodity, literally “grows on trees,” whereby every mechanical reproduction becomes a tangible dollar amount. By the end of 1958, Warhol was so successful as a commercial artist that in a novelty book entitled 1001 Names and Where to Drop Them, he was listed under “Fashion” rather than “Artists.”

Andy Warhol: Pop Art and The Commodification of Fine Art

Richard Hamilton, a British Pop artist, defined “Pop Art [as]: Popular (designed for a mass audience). Transient (short-term solution). Expendable (easily-forgotten). Low cost. Mass produced. Young (aimed at youth). Witty. Sex. Gimmicky. Glamorous. Big Business (emphasis added)].” Pop art reached the United States in the early sixties, and its arrival brought Clement Greenberg’s previously mentioned cultural fears to fruition, as it brazenly blurred the hierarchical divide between fine art and popular culture. As Pop art deified the commodity object and manipulated the external signs of America’s capitalist society, its overt representational nature castrated Greenberg formal definition of “pure” art.

Rebelling against the manifestation of the internal psychological state of Abstract Expressionism, Pop art illustrates how, in a consumerist and technologically advancing economy, objects and images tend to become “serial and simulacral.” Warhol’s automated “fine” art and constructed persona illustrates his embrace of the repetitive

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consumerist landscape. Infamously stipulating, “Everybody should be a machine,” Warhol adamantly perpetuated the “compulsive habits of repetition enforced by a late capitalist society of serial production and consumption.”

In 1961, Warhol displayed his first works of “fine art” at the locus of American consumer culture, in a widow display for the exclusive New York City department store Bonwit Teller (Fig. 15). While the department store employed many prominent artists to style their window displays, from Salvador Dali to Jasper Johns and Robert Rauschenberg, Warhol was the first to utilize the window space to exhibit his latest paintings at the prominent locale on the fashionable intersection of Fifth Avenue and 57th Street, which effectively introduced his “fine” art to the public, and led to his first contact with an art dealer.

The canvases Warhol displayed in the Bonwit Teller window appropriated imagery from American popular culture: works based on small newspaper ads and comic book illustrations. According to Warhol’s archive, his early comic book appropriations, such as

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183 Ibid, 110.
184 Mass wholesaling emerged as a significant business practice in the 1850s, and reached the height of its development just after 1880. The department store assumed its modern form in the 1870s, and the elegant large-scale buildings—the largest in New York—visibly evidence that selling had become a new type of activity. These retailers bought in volume, sold cheap, had hundreds of employees, and served tens of thousands of customers. For further information on the development of America’s “selling culture” see Ohmann, Selling Culture, 66-67.
185 Francis, Pop, 85.
186 Warhol and Roy Lichtenstein simultaneously created their comic book artwork in New York City, but neither artist admits to being aware of the others work. Ted Carey, one of Warhol’s assistants, portrayed the following account of this situation: “[s]o, I went home and called Andy - no, I think, I went right over to Andy's house... and so, I said, 'Prepare yourself for a shock.' And he said, 'What?' I said, 'Castelli has a closet full of comic paintings.' And he said, 'You're kidding?!' And he said, 'Who did them?' And I said, 'Somebody by the name of Lichtenstein.' Well, Andy turned white. He said, 'Roy Lichtenstein.' He said, 'Roy Lichtenstein used to... ' - as I remember, he used to be a sign painter for Bonwit Teller... the implication was: Andy felt that Lichtenstein had seen the paintings in the window and gave him the idea to do his paintings. Now, whether this is true or not, I don't know, but at this time, this is what Andy had felt.” There is a scholarly debate as to whether Lichtenstein copied Warhol’s comic book imagery, as Warhol momentarily believed. Warhol was the first to create a single-cell, with speech bubble paintings, and as the paintings were displayed in a public locale, it is probable that Lichtenstein would have had access to the work (although this is denied by Lichtenstein). Interestingly, Warhol displayed a Popeye painting in the Bonwit Teller window and Lichtenstein’s subsequent painting of the same subject included a copyright symbol, alongside the artist’s monogram and date of the painting. Moreover, the copyright symbol is duplicated in the formal elements of the opened can of spinach, located directly above previously mentioned symbol, and I assert that this blatant assertion of copyright ownership may be in response to Warhol’s accusations of copying. Lichtenstein was the first to be represented by an agent, and upon seeing Warhol’s
Superman (Fig. 16), combined the influence of multiple frames (rather than copying one concrete image), and retain traces Abstract Expressionist painterliness, seen in the self-conscious drips and crayon drawing.  

Warhol quickly abandoned this personalized aesthetic, however, in favor of the reproductive techniques of commercial advertisement.

Compounding the duplicative nature of his commercial blotted-line technique, Warhol adopted the mechanical processes of reproduction to reject the constraints of the individualistic Abstract Expressionist style. Moreover, as his works of art became increasingly mechanized, Warhol began to brashly serialize appropriated images of the American cultural landscape. Through the mechanical silk-screen process and the use of copied photographic images, Warhol pithily counterfeited both the subject and art of “low” consumer culture.

In 1962, Warhol created his first serial works by using a mechanical silk-screen technique. Although Warhol considered his 32 Soup Can paintings to be a series, according to The Andy Warhol Catalogue Raisonné Volume One, his 200 Campbell’s Soup Cans, 100 Cans (Fig. 17), 100 Campbell’s Soup Cans, and Campbell’s Soup Box were the first works to “consolidate the principle of repetition within single works.” It has been hypothesized that Warhol’s Campbell soup can and money paintings were conceived at the same time. According to Warhol’s friend and assistant Ted Carey, it was gallerist Murriel Latow who

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comic book imagery he exclaimed, “I saw Andy’s work at Leo Castelli’s about the same time I brought mine in, about the spring of 1961... Of course, I was amazed to see Andy’s work because he was doing cartoons of Nancy and Dick Tracy and they were similar to mine.” Gary Comenas “The Origins of Andy Warhol’s Soup Cans or The Synthesis of Nothingness” (London 2003, revised 2010), warholstars.org, http://www.warholstars.org/art/warhol/soup.html (accessed February 13, 2012).

Francis, Pop, 85. Superman is based on a panel from Superman’s Girl Friend, Lois Lane (24, DC/National Comics, April 1961).


According to Irving Blum, director of the Ferus Gallery, Warhol’s 32 Campbell’s Soup Can paintings, exhibited July 9 to August 1, 1962, could be considered a series as Warhol had told him the paintings had been “conceived as a series.” Patrick S. Smith, Andy Warhol’s Art and Films (Ann Arbor: UMI Research Press, 1986), 220.

came up with the idea for both subjects:

[T]his particular day, after going to the Oldenburg Store, I called him [Warhol] when I got home, and I said 'John, Muriel, and I are having dinner tonight. Do you want to have dinner with us?' And he said, 'No, I'm just too depressed'... so, after dinner we went to Andy's, and he was very depressed. And Muriel was depressed because she was either at this time declaring bankruptcy or was about to declare bankruptcy... And so Andy said, 'I've got to do something.' He said, 'The cartoon paintings... it's too late. I've got to do something that really will have a lot of impact, that will be different enough from Lichtenstein and Rosenquist, that will be very personal, that won't look like I'm doing exactly what they're doing.' And he said, 'I don't know what to do.' 'So,' he said, 'Muriel, you've got fabulous ideas. Can't you give me an idea?' And, so, Muriel said, 'Yes.' 'But,' she said, 'it's going to cost you money.' So Andy said, 'How much?' So she said, 'Fifty dollars.' She said, 'Get your cheque book and write me a cheque for fifty dollars.' And Andy ran and got his cheque book, like, you know, he was really crazy and he wrote out the cheque. He said, 'All right, Give me a fabulous idea.' And so Muriel said, 'What do you like more than anything else in the world?' So Andy said, 'I don't know. What?' So she said, 'Money'... And so Andy said, 'Oh, that's wonderful.' So then either that, or, she said, 'you've got to find something that's recognizable to almost everybody. Something you see everyday that everybody would recognize. Something like a can of Campbell's Soup (emphasis added).\footnote{Patrick S. Smith, Warhol: Conversations about the Artist (Ann Arbor: UMI Research Press, 1988), 90-91. There is a scholarly debate about Warhol's money paintings origins, as the credibility of Carey's statement (the soup can's seem like an afterthought) is questionable. In another account printed in The Andy Warhol Catalogue Raisonné, according to gallerist Eleanor Ward and Emile de Antonio, Ward promised Warhol a one-person exhibition in the Stable Gallery if he would paint her a lucky two-dollar bill. See Patrick Smith, Andy Warhol's Art and Films: Studies in the Fine Arts Avant-Garde (Ann Arbor: UMI Research Press, 1986), 512, and Victor Bockris, The Life and Death of Andy Warhol (New York, Bantam Books, 1989), 111.}

Regardless of the origins of either subject matter, it appears that Warhol’s embrace of repeated images of mundane consumer objects coincides with his literal printing of paper money.

Warhol’s artistic production of the early 1960s thus illustrated his obsession with America’s consumer capitalism, and his mechanized technique illustrated the desires and fears of America’s consumerist culture.\footnote{Thierry de Duve, “Andy Warhol, or The Machine Perfected,” translated by Rosalind Krauss, October 48 (Spring, 1989), 3. Commodities are both artifacts (manmade products), and goods (wares possessed by a man). As artifacts they are the “fruit of someone’s labor,” as goods they allow someone (else) the enjoyment of this materialized labor. Under these two aspects wares possess use-value (the use of the labor-power spent for their production; the use of this same labor-power in their consumption. But it is the entry of artifacts and goods into the circuit of exchange that makes commodities of them. Anything whatever becomes a commodity once the use of the labor power invested in it is postponed in order that it be traded against another thing into which an equal amount of labor-power has been invested, money serving as general means of equivalency. Ibid, 6-7.} In 1962, the same year as the Campbell’s Soup series, Warhol began using the mechanical silk-screen printing process, which he first employed for a group of money paintings (Fig. 17). As the works depict images of printed one and two-dollar bills, Warhol systematically matched the subject to its duplicative
technique, and disconnected it by way of the artistic impulse. Furthermore, Warhol’s money paintings blatantly link his works of art to the realm of commodities, and displays, literally and figuratively, “money on walls.” As Warhol impishly declared, “I like money on the wall. Say you were going to buy a $200,000 painting. I think you should take that money, tie it up, and hang it on the wall. Then when someone visited you the first thing they would see is the money on the wall.” The “money on the wall,” however, is superficial—merely image—and Warhol’s hand-drawn silk-screened facsimiles demonstrate the “devaluation [of the image] through counterfeiting.” The money silkscreens thus exemplify the instabilities of cultural, aesthetic and legal value in images.

Warhol first created his dollar-bill paintings using hand-cut stamps (Fig. 19), but he quickly realized they could not accurately replicate the complex design of America’s paper money and he approached Tiber Press about making printing screens. However, Tiber Press informed Warhol that he could not use photographs of “real money” as it would run afoul of anti-counterfeit legislation. To controvert these limitations he created hand-drawn facsimiles. Similar to the nineteenth-century trompe l’oeil painters, namely William Harnett, Warhol was forewarned that his money images would run afoul of the United State’s counterfeit statutes, and ultimately the law dictated Warhol’s involvement—the application of his hand—in the final work.

Counterfeit and Copyright: The Protection of Fiscal and Cultural Capital

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192 Livingstone, *Pop Art*, 159.
193 Ibid.
196 According to printer Floriano Vecchi, Warhol had frequented Tiber Press since the mid-fifties, selling him drawings to print on greeting cards. He continues to state that Warhol had observed him working on silkscreen prints, and that “[h]e was totally aware of [the] silkscreen [process],” although he originally showed no interest in. Vecchi assumed like most artists of the day, Warhol also distained the printing process. Tony Scherman and David Dalton, *POP: The Genius of Andy Warhol* (New York: Harper Collins Publishers, 2009), 103-105.
The word “counterfeit” historically described forged money or documents, however, the term inevitably expanded as technology advanced. Consequently, “counterfeiting” became associated with the devaluation of intellectual property, and its definition expanded to include “any manufacturing of a product [that] so closely imitates the appearance of the product of another to mislead a consumer that it is the product of another (emphasis added).”

Reliability is critical to the value of money, and as technology progressed, credibility became increasingly important to the value of cultural objects. By vesting control in the author, copyright performs many of the same functions as America’s counterfeit statute. However, while counterfeit legislation primarily protects the value of currency, copyright legislation can be viewed to protect the economic value of creative production.

As discussed in chapter one, money has signified a nation’s “social, political and cultural values like credibility, political unity and ‘national’ identity;” however, in post World War Two America, the mass-produced consumer good was again elevated to this esteemed position. Consequently, just as counterfeit and copyright statutes were rapidly enacted (and amended) during the nineteenth-century, they were also expanded throughout the twentieth-century to protect the commercial (exchange) value of commodity goods, including works of art. Warhol’s serial imagery can be seen to mischievously prod at the historical distrust in mass-produced art making, and his repetitious replicas of commodity objects pointedly toy with both aesthetic and legal institutions. Critical interpretations of Warhol’s oeuvre commonly read the artist’s work, including its serial structure, in terms of the cultural and political environment in which it was created. In the majority of these interpretations, the repetitive structure of Warhol’s images obtains its meaning in relation to its

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I argue, that in addition to these discussions, it is also pertinent to interpret the repetitive structure of Warhol’s images in relation to the nature of the materials he appropriated and social and legal codes that he chose to violate. I believe a legal reading of Warhol’s work will reveal important facets of his creative process and provide a means to integrate his often-neglected late work into the totality of his fine art oeuvre.

With the advent of Pop art, works of art increasingly became the subject of lawsuits, and artists were frequently cited with copyright infringement: Robert Rauschenberg, Roy Lichtenstein, Frank Stella, etc. Jennifer Dyer, “The Metaphysics of the Mundane: Understanding Andy Warhol’s Serial Imagery,” Artibus et Historiae 25, no. 49 (2004), p. 34-35. Throughout the course of the article, Dyer provides a cohesive historiography of scholarship on Warhol’s serial imagery. A summary of this scholasticism is included below:

Arthur Danto: Warhol’s work “remains political” because it embodies “the American soul, mis a nu,” and thus Warhol should be read as a “symptom of his media-oriented culture at a unique historical moment.” Ibid, 34.

Simon Watney: Warhol’s creative activity needs to be analyzed in terms of “Warhol’s construction of the persona ‘Warhol.’” He argues that Warhol is important because he represents a new type of artist and type of artistic production, that forces viewer to reconfigure the division between art and life: the “Warhol effect.” Accordingly, according to Watney, Warhol’s relation to his life explains his relation to his art. Ibid.

Benjamin Buchloh and Rainer Crone: they both argue that there is a “developmental consistency to Warhol’s practice which shows him to be a serious originator of novel aesthetic objects.” His work and practice thus must be read in terms of the works that preceded him. Accordingly, Warhol does not deviate from the model of the “heroic originator,” but instead develops the trope by presenting himself as a unique author/creator. In this role, he “politically and culturally problematizes traditional conceptions of the significance of iconography” by repeatedly presenting contemporary icons as to render them meaningless. Warhol’s artworks are therefore interpreted with reference to his persona, and this relationship informs the viewer how to interpret his art. Ibid.

Hal Foster: distinguishes three types of critical analysis. First, the “simulacral view” (similar to Buchloh and Crone), in which icons are treated as arbitrary and meaningless because they reflect “apathetic commercialism and commodity fetishism (in both content and structure).” Second, the “referential view,” which citing Thomas Crow, claims the themes of Warhol’s serial imagery reveals something tragic and real about culture. Warhol thus specifically selected imagery to affect/startle the viewer, and the repetition of the image forced the viewer to consider hotly contested subjects such as the death penalty, racism and late modern capitalism. Third, “traumatic realism,” whereby traumatic iconology of car crashes, criminals and death is directly linked to the repetitive structures Warhol employed. This juxtaposition simultaneously distances viewers from the traumatic affect of the icon, while forcing them to be affected. According to Foster, “multiplicity makes for the paradox not only of images that are body affective and affectless, but of viewers that are neither integrated . . . nor dissolved.” Ibid, 34-35.

Jennifer Dyer: asserts that Warhol’s serial images present the structure of the mundane as a “dynamic structure of serial actualization, and that everything in the mundane world, including Warhol himself, is taken to be an instance of the structure.” Therefore, his serial imagery is meaningful because it reveals the significance of the banal, which includes the features of everyday life and the world. She argues that his oeuvre should be considered ironic, as it reveals “the activity of making things the same also makes them different.” Ibid, 35-36.

According to David James, generally speaking, the “good Warhol” is thought to be the artist operating between 1961-1968. The art of this period is distinguished from his late works, as “some painterly or compositional strategy is proposed as the signal of the works’ difference from the newspaper, advertising, or publicity photographs from which their imagery derives.” Moreover, the “good” Warhol’s are thought to “operate[e] a self-conscious denaturing of th[e] icons that make them, on some level, critical of late capitalism.” James goes on to disavow this assumption, and I continue to assert that by analyzing Warhol’s oeuvre through a legal lens, his late works can be viewed as even more “critical,” and as important as his Pop art, as they critique the legal system directly governing their production: copyright. David E. James, “The Unsecret Life: A Warhol Advertisement,” October 56 High/Low: Art and Mass Culture (Spring, 1991), 26-27.
and Andy Warhol were all accused of copyright infringement, by individual copyright holders, in the 1960s. As previously discussed, the 1909 Act expanded and enhanced the individual monopolies granted to copyright holders. In combination with the progressively expanding legal definition of “works of art” (Bleistein and Mazer), and the increased duration of copyright protection, copyright legislation can be seen to judicially privatizing creative expression in order to protect (elevate) its commercial and tradable value.202

Between the years of 1962 and 1964, however, Warhol produced an astonishing number of artworks, almost 2000. Creating more than one work a day, the sheer proliferation of his oeuvre threatened to flood the art markets and devalue the “fine” art designation as a whole.203 When read in connection with his excessive artistic production, the use of mundane iconography, the gradual removal of the artist’s hand, and eventual appropriation of published and copyrighted photographic works, I believe that Warhol’s serial imagery can be interpreted as a personal attack on American copyright law. As a highly successful commercial illustrator, it is likely that Warhol was familiar with the general working concepts of copyright law. When doing business with large-scale corporations like I. Miller and Bonwit Teller (whether he was hired as an employee or remained an independent contractor), Warhol was more than likely exposed to contractual clauses regarding licensing and/or copyright ownership and/or assignment. Consequently, it seems unlikely—despite his childish and naïve persona—that Warhol would have been unaware of the legal implications of appropriating (without permission) published works of art.

Almost fifteen years after printing their article on Jackson Pollock, Life Magazine cynically...

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202 Both Bleistein v. Donaldson and Mazer v. Stein increased the potential scope of federal copyright protection: as discussed in Chapter One, Bleistein broadened copyright to include commercial advertisements, and as discussed in Chapter Three, Mazer expanded copyright to include a utilitarian lamp base. In addition to this expanded scope of protection, the 1909 Act expanded the duration of copyright from a potential forty-two year period to a potential fifty-six years (twenty-eight years with a twenty-eight year renewal option). Therefore, individuals could claim copyright ownership to a wider degree of objects, and maintain that protection for a longer period of time. See the Copyright Act of 1909. U.S. Statutes at large 60-349 (1909), http://www.megalaw.com/top/copyright/1909/1909ch1.php (accessed November 21, 2011).

203 Foster, The First Pop Age, p. 133.
revisited the subject of fine art. Whereas the 1949 article subtly advertised Pollock as the “greatest living painter,” in 1964, it charged Roy Lichtenstein, and Pop art, with the denigration of fine art in America. The article entitled, “Is He the Worst Artist in the U.S.,” critiqued Lichtenstein’s work as depicting “tedious copies of the banal,” and in contrast to the earlier article on Pollock, the reproduced artwork was virtually indiscernible from the surrounding commercial advertisements. In response to the question, “[d]oes Lichtenstein transform his source material or does he merely copy it,” Lichtenstein suggestively retorted, “[t]he closer my work is to the original, the more threatening . . . the content.”

The threat that Lichtenstein identifies—the distinction between the original and the copy—is at the heart of the fear of the counterfeit, or its twentieth-century manifestation, the copy or multiple. As consumerism progressed, and as mass-produced objects became increasingly identified with American culture, the severance of fine art from commercial imagery served to distinguish the reproducible commodity from an invaluable original creation. As the 1909 Act was interpreted to vest the author with an exclusive right to copy, Warhol’s serial imagery not only illustrates the banality of American culture, but also visually mitigates the constraints of copyright law. In a 1963 interview with Gene Swanson, Warhol famously proclaimed, “I think somebody should be able to do all my paintings for me,” and “I think it would be so great if more people took up silk screens so that no one would know whether my picture was mine or someone else’s.”

While this statement is typically read in terms of Warhol’s duplicative machine aesthetic, it can also be interpreted as a direct assault on the governing 1909 Act. By confusing the act of creation, Warhol’s mass-produced artworks castrated the principles of intellectual property, and I argue that the Flowers series demonstrates that this assault was more conceived than happenstance.

204 Dorothy Seiberling, “Is He the Worst Artist in the U.S.?” Life (January 31, 1964), 79-82.
For his first show at the prominent Leo Castelli Gallery, Warhol displayed just one image, a grouping of four hibiscus flowers, photo silkscreened in numerous color configurations (Fig. 21). Warhol’s friend Henry Geldzahler, curator and art critic, is quoted to take credit for the idea of the series: “[I] looked around the studio and it was all Marilyn and disasters and death. I said, Andy, maybe it’s enough death now.’ He said, ‘What do you mean?’ I said, ‘Well, how about this?’ I opened a magazine to four flowers.”

The magazine that Geldzahler alleged to have opened was the June 1964 issue of *Modern Photography*, and the photograph was part of a two-page spread shot by the publication’s executive editor, Patricia Caulfield (Fig. 22). Warhol cropped the photo, cutting out three of the seven flowers, and ran the photo multiple times through the Photostat machine to flatten the image. According to assistant Billy Linich, “[h]e didn’t want [the painting] to look like a photo at all. He just wanted the shape, the basic outline of the flowers.”

Although Warhol intended to transform the source photograph, he did not secure permission from its original author, Caulfield, to make the reproductions. In 1965, Caulfield discovered the use of her photo when she came upon a poster of Warhol’s *Flowers* in a New York bookstore, and “struck by it’s familiarity, she bought one, compared it to a picture she had taken, and called her lawyer.” Advocating his client to the press, Caulfield’s lawyer stated that if she won the case, she would have the right to “impound, and even destroy, every *Flowers* painting sold;” inciting Warhol’s facetiously response “wouldn’t that be marvelous!”

This reaction, when read in relation to the previously mentioned Swanson interview, illustrates the conscious subversion of Warhol’s *Flowers* series. In a letter describing the terms of Warhol and Caulfield’s settlement, Jerald Ordover, representation for Warhol and Castelli in the

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207 Billy Linich, as cited in Scherman and Dalton, *Pop*, 236.
208 Ibid, 237.
negotiations, revealed that Warhol had spoke to Caulfield before creating the series. According to Ordover, Warhol contacted Caulfield, in her position as Executive Editor of Modern Photography, to request a print or transparency of the published photograph, and she promised to send one without mentioning that she was the author of the work or requesting a licensing fee.\textsuperscript{210} The fact that Warhol recognized the need to request permission to use the photo evidences his awareness of copyright restrictions, and I assert demonstrates that he consciously created artwork that ran afoul of copyright law.\textsuperscript{211} Despite his carefully crafted naïf persona, according to Ivan Karp “[Warhol] was very innocent of doing a disservice to this photographer[,]” I argue that he reproduced and published copyright works as a reaction against the oppressively expanded scope of federal copyright protection.\textsuperscript{212}

In this critique of twentieth-century copyright law Warhol specifically equates his fine art paintings to mundane commodity goods, and when negotiating to resolve his multiple lawsuits he specifically used his commandeered artworks as exchangeable tender: to function as money. According to the previously mentioned letter written by Jerald Ordover, “While Alan [, the trial counsel retained to represent Castelli and Warhol[,] was explaining the intricacies of the copyright law as it applied to the case, Andy suddenly spoke up and asked whether he couldn’t satisfy the claim by giving Caulfield a painting,” and excited by the proposition, “Alan and I proceeded to

\textsuperscript{210} Jerald Ordover, as cited in Carlin, “Culture Vultures,” 128.
\textsuperscript{211} This assertion is additionally bolstered by Warhol’s interaction with James Harvey, the Abstract Expressionist artist who, in 1961, designed the Brillo box that Warhol famously appropriated. According to Louis Menand, critic for The New Yorker, after attending Warhol’s 1964 show at the Stable Gallery, Harvey was “stunned to see his design replicated, and, later his dealer protested.” Louis Menand, “Top of the Pops: Did Andy Warhol change everything?,” The New Yorker, January 11, 2010, 60. However, while Menard conveys that Warhol offered Harvey one of his Brillo Box sculptures to compensate for his copyright infringement, and that he also suggested that Harvey give him an autographed box in return; art historian Martha Buskirk notes that Irving Sandler, a New York City art critic, “[s]uggested to Harvey that he should counter Warhol’s show by signing the actual boxes himself,” and that “Warhol found out about [the signing] and called Harvey and offered to trade.” Irving Sandler, as cited in Martha Buskirk, The Contingent Object of Contemporary Art (Cambridge and London: The MIT Press, 2003), 80-1. Despite the validity of either account, the conflict provides further evidence that Warhol was aware of copyright law and consciously chose to push the boundaries of its restrictions.
\textsuperscript{212} Ivan Karp, as cited in Buskirk, The Contingent Object, 85. Ivan Karp, co-director at the Leo Castelli Gallery, continued to state that Warhol was not doing Caulfield a “disserve” because “this photograph was not what you might call a ‘remarkable photograph.’ It was not an earth shaking photograph, but Warhol made a remarkable series of paintings out of it . . . they were totally successful, and we sold them all!” Ibid.
negotiate a settlement that was based on Andy giving her two *Flowers* paintings or $6000.” The irony would not have been lost on Warhol, as he offered to pay Caulfield with the exact implement of his transgression. Moreover, Warhol specifically made and sold four new *Flowers* paintings to pay off the claim and its legal fees (Fig. 23), “[w]ith some left over for Leo and Andy.” By reprinting copies of the infringing artwork, with the express intent that they equate the abstracted value of money, he cleverly conflated the tenets of copyright and counterfeit laws.²¹³

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²¹³ Jerald Ordover, as cited in Carlin, “Culture Vultures,” 128-9. While Caulfield originally opted to take the money, the $6000, the settlement also provided that she get a share of any “future exploitation of the image,” and when Warhol decided to make a subsequent print edition of *Flowers*, “[Ordover] had to negotiate a further payment. This time, they wisely took their payment in prints.” Ibid.
American copyright legislation underwent a significant revision in the late twentieth-century, resulting in the presently governing Copyright Act of 1976 (hereinafter “the 1976 Act”). While the statutory changes represent practical considerations, such as rapidly developing technology and the desire to join the Berne Union, by formally codifying the cult of the original, it also tangibly locates America’s egocentric fear of the multiple.\textsuperscript{215} Barbara Ringer, Register of Copyrights, and an important player in the revision process stated: “[T]he new statute makes a number of fundamental changes in the American copyright system, including some so profound that they may mark a shift in direction for the very philosophy of copyright itself.”\textsuperscript{216} However, none of the thirty-four separate studies prepared under the Copyright Office to provide background information for Congress focused on the philosophy (or history) of copyright, and consequently, the centuries-old debate concerning the

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\item \textsuperscript{215} The Berne Convention for the Protection of Literary and Artistic Works is an international agreement that governs copyright, first accepted in Bern, Switzerland in 1886. The agreement established a system of equal treatment by requiring its signatories to recognize the copyright of works of authors from other signatory countries in the same manner provided to its nationals. In addition, the Berne Convention required member states to provide strong minimum standards for copyright; for example, copyright must be automatic (it is prohibited to require formal registration), and as a minimum, all works shall be copyrighted for at least fifty years after the author’s death. The United States became a signatory on March 1, 1989, after its copyright legislation conformed to the Convention’s standards. For more information, including a full text PDF of the Berne Convention and a list of its contracting parties, visit the WIPO (World Intellectual Property Organization) website at www.wipo.int/treaties/en/ip/berne/.
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fundamental nature of copyright—whether it is a natural-law property right or a statutory
grant of a limited monopoly—remained unresolved.\textsuperscript{217}

Throughout the twentieth and twenty-first centuries copyright has become a hotly
contested topic, and it is an issue that is felt by every facet of the art world: artists, gallery
owners, curators and museum staff.\textsuperscript{218} Significantly, it is well documented that the 1976 Act
was principally promoted by private sector lobbying demands, such as Disney Corporation,
resulting in the drafting of narrow legislation by private sector stakeholders in favor of their
own interests. It is argued that the resultant legal doctrine privileges the private (corporate)
interests of authors and owners, while negating the public’s interest in, and use of,
copyrighted material.\textsuperscript{219} According to Jessica D. Litman, noted copyright expert, “One can
choose a statutory provision almost at random; a review of the provision’s legislative history
will show that credit for its substance belongs more to the representatives of interested
parties negotiating among themselves then to the member of Congress who sponsored,
reported or debated the bill.”\textsuperscript{220} Tellingly, in the late 1980s, Disney sued a Florida day-care
center for their unsolicited use of Mickey, Minnie, Donald and Goofy on the external walls of
their playground.\textsuperscript{221} According one of Disney’s intellectual property lawyers, “a nursery
school is no less a profit-making enterprise just because little children are involved.”\textsuperscript{222} As
such, the text of the 1976 Act blatantly fuses the art world/market to the economic and legal
realms, and it provides an intriguing lens through which to view the artistic production of the
day.

\textsuperscript{217} Ibid, 91-91.  
\textsuperscript{218} Daniel McClean, “Introduction,” in Dear Image: Art, Copyright and Culture, Daniel McClean and Karsten
\textsuperscript{219} Christopher May and Susan K. Sell, Intellectual Property Rights: A Critical History (Boulder: Lynne Rienner
\textsuperscript{221} Gail Diane Cox, “Don’t Mess with the Mouse” The National Law Journal (July 31, 1989), 1, as cited in
Buskirk, “Commodification as Censor,” 82. Moreover, when approached by phone in November 1991, a Disney
representative refused to comment on the matter, stating that it was a “closed issue.” Ibid.  
\textsuperscript{222} Ibid.
In the critically controversial late artwork of Andy Warhol (1980s), the intricate relationship between money, copyright jurisprudence, and artistic production is manifest, as is the increasingly codependent relationship between art, law, and cultural identification. Analyzing the constantly evolving text of American copyright statute not only reveals the subtle nuance implicit in these complex relationships, but also characterizes and affirms the notorious “business art” of the 1980s and 90s. In this chapter I will demonstrate how the aforementioned artwork is more than a product of the big business zeitgeist of the go-go eighties and nineties. As Warhol’s late work chronologically illustrates not only the inherent insufficiency of copyright jurisprudence (the confused divergence between natural property rights and statutorily granted limited monopolies), but also how the legal world interprets and consequently attempts to establish—through the codification of modernism’s perpetuating antagonisms: “unique/reproduced,” “original/copy,” “high culture/mass culture”—the nation’s cultural identity.223

The 1976 Act was the product of twenty years of “scholarship, analysis, documentation, negotiation, lobbying, drafting, re-drafting and talk.”224 Notably, the drafting period of the statute directly correlates with the development of the American Pop movement. It does not, however, adopt the egalitarian message of Pop art’s cultural critique, but instead statutorily reasserts the importance of the “original,” a principle tenant of Abstract Expressionism. It is thus arguable that the 1976 Act is inherently backwatered in both its scope of protection, and as case law suggests, its application.

While the application of an arguably antiquated copyright statute has a chilling effect upon artistic production, an opinion well documented in legal scholarship, I will argue that

223 Buskirk, The Contingent Object, 11.
the constricting word of law simultaneously stimulated a rebellious (pirating) creative response. As such, Warhol’s “business art” not only represents a satirical critique of contemporary consumer culture, it also serves to negate the confining pillars of copyright jurisprudence through its brazen creation of the counterfeit (the high art knock-off), and purposefully marks the contentious divide between the art world/market and the omnipresent legal institution. According to Daniel McClean, “[f]or many artists and curators, the ‘intrusion’ of law into the hallowed sphere of artistic production is perceived to be, at the least, nothing short of perverse and, more ominously, to set a precedent for state restrictions on artistic freedom and individual creativity.”

The Copyright Act of 1976

The 1976 Act substantially expanded the scope of federal copyright protection offered under the 1909 Act, whereby “[t]he ‘scope’ of a copyright is the range of rights granted by law.” While the scope of the 1790 Act was very narrow, covering only “maps, charts, and books,” and granting the author the exclusive right to “publish” copyrighted works, the 1976 Act covers practically any creative work (as long as it is reducible to a tangible form), gives the author the exclusive right of control over “copies” of that work, and expands the author’s control over copyrighted works to include any “derivative work.” As the scope of federal copyright protection expanded, the word of law became manifest in the artistic production of the day, visually and textually illustrating economist Ernest Mandel’s observation of late capitalism: “Mechanization, standardization, over-specialization and

227 In addition, as the scope of copyright protection expanded, procedural limitations on the right simultaneously relaxed. The 1976 Act did way with the 1909 Act’s requirements of renewal (in 1992 Congress abandoned the renewal requirement for all works created before 1978, and all works still under copyright were accorded the maximum term then available), registration and notice. Consequently, copyright is now automatic, and it exists whether or not the author marks his or her work with a ©. Ibid, 135-37.
parcellization of labour, which in the past determined only the realm of commodity
production in actual industry, now penetrates into all sectors of social life.\textsuperscript{228}

The specific text of the 1976 Act provides unique insight into Warhol's late work,
which has been commonly denounced as "capitulations to money."\textsuperscript{229} Analyzing the
semantics of the evolving copyright statute illustrates how the "avid collecting of [duplicative]
works raises the further issue of how art that incorporates a questioning of originality,
uniqueness, artistic skill, tough, longevity, or even materiality can and has been enfolded
into a system of collecting and valuation founded on those very qualities."\textsuperscript{230} I believe that
connecting the evolving text of the 1976 Act to Warhol's works of art produced after its
enactment, will illustrates the "parallels between such artworld conventions as the limited
edition and broader efforts to limit the proliferation and thereby insure the value of inherently
reproducible forms through legal controls."\textsuperscript{231} Furthermore, this comparison will localize an
instance where broader cultural changes have specifically influenced how the artworld
values the reproductive image, and in turn, facilitates the formation of America's collective
(and consumptive) identity.

Under the 1909 Act copyright was more regulatory than proprietary, and it was
premised upon the publication of a work with proper copyright notice and registration (if a
work was published without proper notice, ©, it immediately fell into the public domain).\textsuperscript{232} In
contrast, under the 1976 Act copyright is divested of such formalities, and federal protection

\textsuperscript{229} Robert Hughes, "A Caterer of Repetition and Glut, Andy Warhol: 1928-1987" \textit{Time Magazine} (March 9, 1987),
90.
\textsuperscript{230} Martha Buskirk, \textit{The Contingent Object of Contemporary Art} (Cambridge and London: The MIT Press, 2003),
12.
\textsuperscript{231} Ibid.
\textsuperscript{232} W. Ron Gard and Elizabeth Townsend Gard, "Marked by Modernism: Reconfiguring the 'Traditional Contours
arises automatically upon the creation of a work: section 102(a) grants copyright protection to “original works of authorship fixed in any tangible medium of expression, now known or later developed, from which they can be perceived, reproduced, or otherwise communicated, either directly or with the aid of machine or device (emphasis added).” Intellectual property scholars W. Ron Gard and Elizabeth Townsend Gard assert that, “[l]ike property law generally, copyright addresses the social relationships among people in regard to things,” and that “[t]he moment designated by copyright law as the start of protection, then, tells us at what point the law understands a work’s mediating role in social relations to begin.” As such, the 1909 Act maintained that “[a] work’s propertizable role in social relations [began] with its public dissemination in the marketplace,” while the 1976 Act made the “moment” of the work’s “inception” a protectable value in the nation’s social relations.

The legislative history of the 1976 Act illustrates the careful, and often convoluted, drafting of Section 102. While the subject matter of copyright under the 1909 Act included “[a]ll the writings of an author,” in an early draft of the statute (Report of Register of Copyright on the General Revision of the U.S. Copyright Law (Tentative draft), 1961), it was recommended that “[t]he statute should mention the general requirements that any work, in order to be copyrightable, must be fixed in some tangible form and must represent the product of original creative authorship.” The aforesaid text remained a legislative suggestion until it was incorporated into the language of the 1963 Preliminary Draft (Preliminary Draft for a Revised U.S. Copyright Law, Part 3): “Copyright protection under this

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233 Cornell University Law School, “§ 102. Subject matter of copyright: In general,” U.S. Code http://www.law.cornell.edu/uscode/17/102.html (accessed April 24, 2011). In addition, § 102(b) stipulates that an “idea” is not copyrightable, and only the expression of the idea qualifies for copyright protection: “in no case does copyright protection for an original work of authorship extend to any idea, procedure, process, system, method of operation, concept, principle, or discovery, regardless of the form in which it is described, explained, illustrated or embodied in such work.”


235 Ibid.

title shall be available for an original work of authorship fixed in any tangible medium of expression, now known or later developed, from which it can be visually or aurally perceived, reproduced, performed, or represented either directly or with the aid of a machine or device.”

Section 102 did not reach its current diction until the 1966 House Judiciary Committee Report on October 12, 1966.

As previously stated, according to copyright scholar and lawyer Peter Jaszi, “[t]he general notion that law is derivative of cultural attitudes is not revolutionary in itself,” however, he goes on to state that “[a]mong intellectual property scholars, there has been some resistance to claims of cultural influence in the copyright field—at least in the United States.” He attributes this resistance to a “[c]ollective, proudly, disillusioned position that copyright, unlike other bodies of law, is really all about the money,” and the belief that “[intellectual property] law is simply a machine to generate innovation through economic incentives[.]” This statement, written by a prominent member of the legal profession, illustrates the vast theoretical gap between the legal and art worlds, a gap famously noted by Justice Holmes in the early twentieth-century (see Chapter Two) and adapted by Jaszi in the twenty-first century, “[i]t would be a dangerous undertaking for one trained only in the law to venture a definition of a term as protean as postmodernism[.]”

Despite the aforementioned proclamations, the influence of culture upon copyright becomes manifest by relating the drafting process of the 1976 Act to the reactionary artworld of the 1960s and 70s. As previously noted in Chapters One and Two, nineteenth-century

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237 Ibid, 21-22. The relevant statute of the 1909 Act states: § 4. All Writings of Author Included.—The works for which copyright may be secured under this title shall include all the writings of the author. Ibid, 1.
239 Ibid, 415-16.
240 Ibid, 413. Justice Oliver Wendell Holmes, Jr. stated in the Supreme Court opinion for Bleistein v. Donaldson Lithographing Company, “[i]t would be a dangerous undertaking for persons trained only to the law to constitute themselves final judges of the worth of pictorial illustrations outside of the narrowest and most obvious limits.” Bleistein v. Donaldson Lithographing Co., 188 U.S. 239, 251-52 (1903).
copyright statute maintained the contemporary elitist notion of “fine art,” which gave way in
the early twentieth-century to the more egalitarian “works of art.” The development of
copyright terminology reflects—as evidenced by the perseverance of money painting and
the nation’s shifting centers of wealth—the intricate connection between economics and art,
and consequently, art and the law. Interestingly, the 1976 Act is devoid of the fungible term,
“art,” and instead pragmatically enumerates three separate aesthetic designations:
“pictorial, graphic, and sculptural works.” If, as W. Ron Gard and Elizabeth Townsend
Gard suppose, “[t]he moment designated by copyright law as the start of protection [tells] us
at what point the law understands a work’s mediating role in social relations to begin;” than
the Congressionally delineated “works of authorship” signifies how the law interprets both
the cultural and economic value of artistic production.

The Register Report (Tentative Draft) of 1961 stipulates “[w]orks of ‘applied art’” are
to be copyrightable, and recommends that “[t]he copyright statute [make] clear that for
purposes of registration, the “works of art” category is confined to pictorial, graphic, and
sculptural works that are non-utilitarian in themselves, even though they may portray or be
intended for use in useful articles (emphasis added).” Two years later, in the Preliminary
Draft of 1963, the drafters of the copyright revision removed the “works of ‘applied arts’”
category and replaced it with “Pictorial, graphic, and sculptural works.” However, it also
stipulated that this grouping “includ[e] two-dimensional and three-dimension works of fine,
graphic, and applied art, photographs, prints and reproductions, maps globes, charts, plans,
diagrams, and models, and works used in advertising or in labels for merchandise

241 Ibid.
242 W. Ron Gard and Elizabeth Townsend Gard, “Marked by Modernism,” 161; Ibid.
243 Alan Latman and James F. Lightstone, The Kaminstein Legislative History Project, 5.
(emphasis added). The descriptive text was not deleted until the House Judiciary Committee Report of 1966, indicating both the legal and art worlds vacillating definitions of Art, and illustrating how the 1976 Act was not only informed by contemporary aesthetic issue, namely the debate between Abstract Expressionism and Pop, but also how its arguments instigated a subversive “business” aesthetic.

According to artist and art historian Eva Cockcroft, “[a]fter the Industrial Revolution, . . . with the development of the gallery system, and the rise of museums, the role of artists became less clearly defined, and the objects artists fashioned increasingly became part of a general flow of commodities in a market economy.” Primarily developed as private institution, stemming from wealthy individual’s personal collections, the American museum was (and continues to be) commonly founded and supported by corporate sponsorship and managed by a Board of Trustees with broad political and financial affluence. For example, at the behest of the Museum of Modern Art, mainly founded through the efforts of Mrs. John D. Rockefeller, Jr., Abstract Expressionism became intimately related to American politics. Cultural projects collaboratively implemented by the CIA and MOMA (which were similar in fact and mutually supportive) “provide[d] the well-funded and more persuasive arguments and exhibitions needed to sell the rest of the world on the benefits of life and art under [American] capitalism.”

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244 Ibid, 21-22. The relevant section of the 1909 Act states: § 4. Classification of Works for Registration.—The application for registration shall specify to which of the following classes the work in which copyright is claimed belongs: (g) Works of art; models or designs for works of art. (h) Reproductions of a work of art. (j) Photographs. (k) Prints and pictorial illustrations including prints or labels used for articles of merchandise. It is significant that “reproductions”, “photographs” and “prints and pictorial illustrations” are listed independently from “works of art,” denoting that such mediums were not included in the legal definition of the day. Ibid, 5.


246 Ibid. Cockcroft goes on to associate the political and financial influence of the Rockefeller family to the development of American cold war politics, and subsequently, connects MOMA in American foreign policy: “[a]bstract Expressionism constituted the ideal style for these propaganda activities. It was the perfect contrast to ‘the regimented, traditional, and narrow’ nature of ‘socialist realism’. It was new, fresh, and creative. Artistically avant-garde and original, Abstract Expressionism could show the United States as culturally up-to-
Interestingly, the drafting period of the 1976 Act correlates with the gradual decline of Abstract Expressionism and the radical development of Pop art. Yet, the text of the 1976 Act specifically utilizes the ideology of Abstract Expressionism to formulate a privatized—corporately minded—system of federal copyright protection. Porter A. McCray, director of MOMA’s international activities throughout the 1950s, served as one of the Rockefellers’ principle agents in the “export of American culture to areas considered vital to Rockefeller interests.” While Cray provided exhibitions primarily consisting of Abstract Expressionist works to accommodate the museum’s quasi-corporate function, the United States’ State Department sponsored various speaking tours by prominent critic, and Abstract Expressionist enthusiast, Clement Greenberg to Europe and Asia to promote American culture, thereby fulfilling an outright government function. Furthermore, Abstract Expressionism performed a beneficial economic function, as Greenberg’s emphatic promotion of the “‘triumph’ of a specifically American Art” stimulated the development of its art markets.

Abstract Expressionism thus is intimately connected to a mid-century Americanness, and along with the United States’ political, economic and corporate interests, it provided an ideal template for the revision of an outmoded copyright statute. Significantly, the 1976 Act’s legislative history reveals that most of the statutory language was not drafted by members of Congress (or their staffs), but instead “evolved through a process of negotiation among authors, publishers and other parties with economic interests in the property rights the
statute defines. According to Litman, “[t]o understand the language of the 1976 Act, one must look to the understanding of the people who agreed on the compromises reflected in the statute,” which is “[v]ital to deciphering the statute’s complexities.”

By 1962, roughly two years into the drafting of the 1976 Act, Pop art was thrust to the forefront of the art world and market “almost overnight.” According to Christin Mamiya, between the years 1958-1964, “the United States witnessed an explosion in the size and geographic diversity of American corporations,” which resulted in the development of a corporate mentality. Moreover, Mamiya proposes that as Pop artists manipulated the strategies and processes of corporate dominance—namely the creation of vast capital through the mechanical mass production of commodity goods—it “did more than reflect consumer culture,” and instead “brought about a realignment of the cultural community so that it was more consistent with corporate models.” Advertising is regarded an advocate of this corporate mentality; for example, corporate sponsorship of art exhibitions and cultural events tangibly correlates the creative act with increased profit margins.

Despite the rapidly growing accolade (both critical and popular) of Pop art, the drafters—and the lobbyists—of the 1976 Act advocated a federal copyright statute steeped in an Abstract Expressionist ideology. According to Jessica E. Cohen, Professor at Georgetown University Law Center, “talking about incentives for authors is more palatable

250 Litman, “1976 Copyright Act,” 860-61. Furthermore, in some cases affected parties agreed upon language, later adopted by Congress, while disagreeing about what the language meant. The Kaminstein Legislative History Project denotes representatives for the following interest groups at the 1963 Preliminary Drafting session: Music Publishers Protection Association, Inc.; American Bar Association; American Guild of Authors and Composers, American Patent Law Association; American Society of Composers, Authors and Publishers; Audio Fidelity, Inc.; Authors League of America, Inc.; Broadcast Music, Inc.; United States Copyright Society; London Records; Music Corp. of America; National Broadcasting Corporation; Motion Picture Association of America; and the Writers Guild of America. Latman and Lightstone, The Kaminstein Legislative History Project, 16-20.

251 Ibid.


254 Ibid.

255 Ibid, 16.
than asking for corporate welfare, so that’s why the copyright industries do it—often in laughably unsubtle ways.\footnote{Cohen goes on to dissect the hypocrisy of the 1976 Act, and argues that copyright law needs to stop advocating its incentive rationale, and instead the “[p]articipants in the copyright policy process [need] to accept that copyright is centrally about corporate welfare—or, to be more precise, that copyright is about the proper industrial policy for the so-called creative industries—and then proceed without hypocrisy.” Julie E. Cohen, “Copyright as Property in the Post-Industrial Economy: A Research Agenda,” Wisconsin Law Review (2011), 1-2 http://scholarship.law.georgetown.edu/facpub/610 (accessed February 10, 2011).} By adopting the tenets of an exclusively American art movement, one conveniently saturated in economic, political, and corporate motivations, copyright law maintained its constitutional integrity while still catering to entrepreneurial interests. While Pop artists critically employed industrial means of mass production, the gestural markings of Abstract Expressionism embodied the existentialist act of creation—a singular moment that could be semantically divested from the prevailing corporate mentality and vested with copyright ownership and originality.

Celebrated art critic Harold Rosenberg famously stated, “[a]t a certain moment the canvas began to appear to one American (Abstract Expressionist) painter after another as an arena in which to act—rather than as a space in which to reproduce, redesign, analyze or ‘express’ an object, actual or imagined.”\footnote{Harold Rosenberg, “The American Action Painters,” in American Painting Today, Nathaniel Pousette-Dart, ed. (New York: Hastings House, 1956), 25.} Section 102 of the 1976 Act manipulates this sentiment to vest federal copyright protection in “original work[s] of authorship fixed in any tangible medium of expression,” and by appropriating an Abstract Expressionist ethos—with an emphasis on originality and attributable authorship—the law covertly imbues copyright jurisprudence with the movement’s subtle political, economic and corporate associations.\footnote{Cornell University Law School, “§ 102. Subject matter of copyright: In general,” U.S. Code, http://www.law.cornell.edu/uscode/17/102.html.} Moreover, by shifting the moment of federal copyright protection from publication to creation the 1976 Act significantly altered the legal theory of copyright legislation, as it took the theories developed in the 1909 Act to fruition (as discussed in Chapter Two), and firmly vested intellectual property with a natural-law property right of ownership.
The 1909 Act, and all the preceding copyright acts, maintained a regulatory copyright function predicated upon the act of publication, however the 1976 Act vested intellectual property with the fastidious tenets of real property law. Justified as providing economic incentive for artistic production, ultimately, the Act granted individual copyright owners (personal and corporate) the absolute right to control the reproduction of cultural images. Therefore, the 1976 Act effectively reduced the American landscape from which artists can utilize and reference in their own work. As Rosenberg poetically suggested, “[t]he big moment [in Abstract Expressionism] came when it was decided to paint . . . just to PAINT. The gesture on the canvas [as the] gesture of liberation, from value—political, esthetic, moral[,]” The 1976 Act appropriated precisely this purely aesthetic moment, “the gesture,” to implement and validate its grant of natural-property rights.\(^\text{259}\) I argue that it is precisely this appropriation that Warhol critiques in his expressionistic late works, and as he was economically affected by the constraints of 1909 Act, in his late 1980s painting he blatantly reduced the gestural drip to its corporate essence: money.

**Andy Warhol: A New Gestural Style for a Newly Individualized Copyright Legislation**

Thirteen years after Warhol’s dramatic retirement from painting in 1965, and immediately before he resumed his career as a “fine” artist, the Copyright Act of 1976 took effect (effective January 1, 1978).\(^\text{260}\) As discussed in Chapter Two, Warhol was sued during his tenure as a Pop artist, under the presiding 1909 Act, however, how these lawsuits influenced his later artistic production has been largely ignored. As Warhol famously proclaimed in the 1970s:

Business art is the step that comes after Art. I started as a commercial artist, and I want to finish as a business artist. After I did the thing called “art” or whatever it’s called, I went into business art. I wanted to be an Art Businessman or a Business Artist. Being in good business is the most fascinating kind of art. During the hippie era people put down the idea of business—they’d say, “Money is bad,” and “Working is bad,” but making money is art and working is art and good business is the best art. 261

Although it is difficult to access the sincerity or truthfulness of Warhol’s sardonic statements, the aforesaid quote denotes a differentiation between “art” and “business art,” a delineation made after his multiple legal bouts as a “fine” artist. An analysis of his late work will not only shed light on the aesthetic affects of the 1976 Act, but also clarify Warhol’s late “business” art, a facet of his expansive career that has wrongfully been neglected from Warhol scholarship.

In a 1966 interview with Gretchen Berg, Warhol glibly stated, “I don’t paint anymore . . . I could do two things at the same time but movies are more exciting. Painting was just a phrase I went through.” 262 However, according to art historian and curator Joseph D. Ketner II, by the end of the 1970s Warhol felt trapped by his public persona and “longed for the stimulation of new ideas and new art . . . from the moment [he] pissed on a painting in the seminal summer of 1977, he catalyzed a chemical reaction in his art practice (Fig. 24).” 263 He classifies this gesture (pissing on canvas) as an “act of defiance” that “freed Warhol’s hand from the pencil, the screenprint, the camera, and the recorder, and thus thrust his body physically back into the action of making art, the performance of painting.” 264 Notably, Keter’s description of Warhol’s return to painting is reminiscent of Rosenberg’s lyrical portrayal of mid-century American action painting, whereby “[t]he act of painting is of the same metaphysical substance as the artist’s existence. The new painting has broken down

261 Andy Warhol, The Philosophy of Andy Warhol, 92.
264 Ibid.
every distinction between art and life.” While multiple scholars have noted the quotation of Abstract Expressionism, especially the virile gestural markings of Jackson Pollock (fig. 8), in Warhol’s late work; I further this discussion by asserting that his return to hand-painted art making was motivated and influenced by his interactions with copyright law.

As Rosenberg’s “new painting” broke down the “distinction[s] between art and life,” in the 1980s, after the implementation of America’s individualized copyright statute, Warhol’s gestural paintings break down the distinction between art and law; furthermore the Dollar Signs (1982) series tangibly abstracts the historic distinction between art, law and money (Fig. 25). Immediately preceding this late period of creative productivity, according to Ketner, Warhol was plagued with “a brief but intense period of self doubt[,] reminiscent of the anxiety he felt when he quit painting in 1965, fearing that he ‘was running out of things to paint.’” He continues to argue that it was during this introspective period of “self-doubt” that Warhol rediscovered his desire to “paint,” “[a]nd because he “matured during the hegemony of Abstract Expressionism, ‘serious’ painting for Warhol meant abstraction.”

While Ketner asserts that Warhol’s late work “expresses his personal artistic voice behind the public business ventures of his print commissions, television productions, and fashion engagements,” I propose that this “personal voice” is his appropriation and critique of American copyright law, as the law effectively mitigated the “things” that Warhol could paint.

In The Philosophy of Andy Warhol (From A to B and Back Again), published in 1975, Warhol confessed:

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266 Ibid.
268 Ibid, 17-18. According to famed Pop art dealer Ivan Karp, “In 1965, Warhol said that he was using up images so fast that he was feeling exhausted of imagination. . . . He asked, “What shall I paint? What’s the subject?” I couldn’t think of anything. I said, “The only thing that no one deals with now these days is pastorals.” As cited in Charles E. Stuckey, “Warhol in Context,” in The Work of Andy Warhol,” 19.
269 Ibid, 17.
The hardest work I ever had to do mentally was go to court and get insulted by a lawyer. You’re really on when you’re up there on the witness stand and your friends can’t stand up for you and everything’s quiet except for you and the lawyer, and the lawyer’s insulting you and you have to let him.\textsuperscript{270}

This strikingly sincere portrayal of the artist’s experience with the legal system localizes the aesthetic “anxiety” Warhol felt after he quit painting.\textsuperscript{271} Situated within the same chapter as the previously quoted discussion of business art (chapter six entitled “Work”), I believe that this self-conscious reflection denotes the catalyst of Warhol’s transition into “business artist.”\textsuperscript{272} Business structures, such as the corporation or the limited liability company, limit, or in the case of corporations, nullify the financial liability accessible to the shareholder/owner, and as the owner of Warhol Enterprises, legally incorporated on January 1, 1957, Warhol would have been aware of the ameliorative affect of incorporation. Therefore, after being sued multiple times in the 1960s for copyright infringement, I propose that Warhol categorized his late work as “business art” as a means to protect his creative and financial assets.

According to Gerard Malanga, an artist who worked closely with Warhol during the 1960s, after dealing with the multiple copyright suits, “Andy realized that he had to be careful about appropriating for the fear of being sued again[.].”\textsuperscript{273} After its enactment, the 1976 Act granted federal copyright protection to “original works of authorship fixed in any tangible medium of expression,” and after Warhol’s emphatic shift to business art in the 1970s, he tactfully employed a gestural style that embodied the Abstract Expressionist spirit of the law.\textsuperscript{274} Furthermore, Malanga noted the specific influence of copyright law on Warhol’s art making, and stated that “[his] entry into photography vis a vis his creation of silkscreen

\textsuperscript{270} Andy Warhol, \textit{The Philosophy of Andy Warhol}, 96.
\textsuperscript{271} Ketner, “Warhol’s Last Decade: Reinventing Painting,” 17.
\textsuperscript{272} Andy Warhol, \textit{The Philosophy of Andy Warhol}, 92.
\textsuperscript{273} Gerard Malanga, as cited in \textit{Andy Warhol Photography}, Christoph Heinrich, ed. (Thalwil and Zürich: Hamburg Kunsthalle, 1999), 116.
paintings was done out of necessity,” as “[h]e opted to start taking his own photographs” after the copyright litigation of the 1960s (figs. 26-27). It is plausible that this influence expanded to the rest of his oeuvre, and that due to his “fear of being sued again” Warhol manipulated his machine-like style to conform to personalized strictures of the 1976 Act.

Despite Warhol’s revival of a more conservative aesthetic technique, I maintain that his late work sustained their critical edge, and can ultimately be considered the most decisive facet of his profuse oeuvre. Instead of merely representing the redundancies of America’s commodity-driven culture, as an entrepreneur, Warhol’s late work critiqued legal exigencies from the inside. As he revisited his copyright infringing paintings of the 1960s and advertised technology that blatantly facilitating copyright infringement (TDK and Sony Betamax), Warhol visually revealed copyright law’s underlying (although carefully concealed) impetus: money.

Warhol revisited the subject of money in his 1981 Dollar Sign series. However, rather than depict measurable units of legal tender, he abstracted America’s capitalist system and reduced it to its most readily available form—the dollar sign (Fig. 25). Exhibited at the Leo Castelli Gallery in 1982 (the same gallery where he first exhibited the Flowers series), the series was critically deplored, and Thomas Lawson, in Artforum, proclaimed that Warhol “ha[d] hit the bottom.” In this review, Lawson presumed that Warhol created the works to sell to “those wonderful people who commission portraits, the wonderful people who think that supply-side economics and an increased military budget is wonderful too,” and Robert Hughes, the same critic who praised Pollock’s paintings for their inability to be forged, accused Warhol of “supply-side aesthetics.” Consequently, while the artworld

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275 Malanga, as cited in Andy Warhol Photography, 116.
276 Ibid.
anxiously tried to detach itself from American politics and economics (Hughes also accused 
Warhol, through *Interview* magazine, of supporting Regan politics), Warhol strategically 
plastered the walls of a prominent New York City gallery with his gestural abstractions of 
American capitalism (Fig. 28).278

The *Dollar Sign* silkscreens were based on Warhol’s drawings of the sign, and 
specifically emphasized the vestigial mark of the artist’s hand. These works have been 
characterized by multiple scholars, including art historian Allison Unruh, as a “kind of 
celebratory portrait of [a ubiquitous] symbol,” one “[m]arked by a distinct sensuality, amplified 
by their physical trace of the drawn. . . the quavering line that multiplies their contours 
reiterates a sense of movement and vitality.”279 Lyrically describing the indexical nature of 
the paintings, Unruh entrenches the works with an expressly Abstract Expressionist 
ideology; a style that, as previously described, had been intimately linked to America’s 
governmental, corporate, and economic interests.280 By manipulating the social implications 
of this individualistic style, Warhol’s work can also be viewed to prod at the conservative 
constrictions of America’s copyright law.

Philosopher Arthur Danto, in the article “Andy Warhol and the Love of $$$$$,” 
proposes that Warhol’s use of the Abstract Expressionist drip in the *Dollar Sign* series was a 
celebratory means to convey a symbol that “defined the symbolic content of the common

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278 Art historian Charles Stuckey, describes Warhol as a “[a] perennial Democrat who did not (for fear of being 
called for jury duty, [who], in his role as publisher of *Interview* magazine, considered politicians as topical 
celebrities on a par with other newsworthy figures from the worlds of fashion, culture, entertainment, and 
society.” He goes on to describe Warhol in his role of artist, and notes that he “refused a commission from *New 
York* magazine for a Ronald Regan cover in 1980 and, beginning in 1984, he would incorporate Reagan images 
somewhat sardonically into both solo and collaborative efforts.” Charles Stuckey, “Heaven and Hell Are Just One 
Breath Away!,” in *Andy Warhol: Heaven and Hell Are Just One Breath Away! Late Paintings and Related Works, 

279 Ibid.

280 Unruh notes that the *Dollar Sign* series “confront[s] the viewer with the candid acknowledgement that art is 
used to signify wealth and power,” and proposes that Warhol was interested in exploring “artistic alchemy,” 
declared as the “humorous gesture of painting money as a way of literally making money.” She goes on to connect 
his *Dollar Sign* paintings to his *Oxidation* series, and asserts that Warhol “connected the notions of money and 
sexual identity[,]” Allison Unruh, “Signs of Desire: Warhol’s Depictions of Dollars,” in *Andy Warhol Enterprises, 
Sarah Urist Green and Allison Unruh*, eds. (Ostfildern, Germany: Hatje Cantz Verlag, 2011), 143.
mind of his time,” as the “metaphysical” drip referred “[as much to art] as to [the] economic and political myth of reality.” As copyright law inserted itself into Danto’s “myth of reality” by increasingly policing its expression, the silkscreened drips of Warhol’s Dollar Sign paintings subvert the myth of artistic creation and illustrate the economic and corporate interests of American copyright law. In a 2010 interview, when asked his “general take on Warhol’s relationship with money[,] Vincent Fremont, former vice president Warhol Enterprises Inc., succinctly responded, “[h]e was always afraid of losing it.” Therefore, as copyright law potentially posed a major threat to his fiscal worth, Warhol adapted his modus operandi to adhere to its limitations. He did not, however, simply conform to legislative mandate, but instead manipulated its text to produce a critical body of work that mischievously reduced himself, painting and copyright to one identifiable emblem: money. And, as Warhol financed his copyright suits in the 1960s by selling and gifting the legally suspect works, in the 1980s, he created a federally copyrightable “abstraction of value” to implicate the veiled, yet mutually dependent, relationships between art, money, and law.

CONCLUSION

Art is sexy! Art is money-sexy!
Art is money-sexy-social-climbing-fantastic.

On January 20, 2012, Congress fatefully shelved both the Stop Online Piracy Act (SOPA) and the Protect Intellectual Property Act (PIPA). Both bills were met with fierce outcry from Internet users, and were shelved largely because of the “largest online protest in [American] history.” If passed, SOPA (the broader of the two acts) would essentially be an “Internet death penalty.” Not only would it allow the U.S. attorney general to seek court orders against targeted “rogue” websites, it would also require Internet search engines, like Wikipedia and Google, to monitor customers’ traffic and block websites suspected of copyright infringement. The bill’s overly broad coverage sparked popular dissent and mass-protest, as SOPA was felt to stretch the ownership rights of copyright too far. Anti-SOPA trade group Net Coalition stated, “[t]he legislation systematically favors a copyright owner’s intellectual property rights and strips the owners of websites [accused of infringement] of their rights.

The public’s reaction to the potentially onerous effect of broad copyright ownership illustrates both the social significance of intellectual property, and the rebellion its restrictions
instigate. According to John Bliss, president of the International Anti-Counterfeiting Coalition, “[i]ntellectual property is to the twentieth [and twenty-first] centur[ies] what coal was to the nineteenth century,” and as “[intellectual property] has become like a natural resource[,] [i]t is every bit as valuable, if not more valuable, than personal property.” As such, Bliss considers counterfeiting to be the chief threat to the United States’ economy.

Commercial counterfeiting involves the “unauthorized and fraudulent reproduction” of intellectual property, and while it is a separate legal issue than the counterfeiting of money, the grant of federal protection illustrates the comparable social and economic value of the two designations. I argue that it is at this point—the intersection of art, law and money—that Andy Warhol manipulates and critiqued in his art.

While Pop art mitigates the boundaries of art and life, the trajectory of Warhol’s life and paintings can be seen to take this negotiation one step further in collapsing the boundaries of art and law. Similarly, late nineteenth-century money painters can be seen to develop this type of social and legal critique. These artists, working within the trompe l’oeil style, depicted hyper illusionistic renderings of nostalgic, time specific, commodity goods, including William Harnett who, in 1877, Harnett created the first image of paper money (Fig. 1). The subject of money, when read in terms of the social, political, and economic context of the late nineteenth century, especially the shift from industrial to consumer capitalism, illustrates the playful subversion of these artists. Appropriating a venerated symbol of consumerist iconology, these artists sarcastically questioned the materialistic values, social and aesthetic, of Americans culture. The law, however, did not passively observe the objectification of such a potent symbol. Standardized currency represented the authority of

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290 Ibid, 6.
291 Ibid, 1. Trademark counterfeiting refers to the unauthorized reproduction (or counterfeiting) of trademarks, and industrial piracy involves the theft of trade secrets. Ibid.
America’s freshly centralized federal government, and by labeling money paintings as counterfeit, the law seized jurisdiction to secure the abstracted fiscal and social value of both paper money and fine art.

Although Harnett stopped painting paper currency after his studio was raided by the Secret Service, artists such as John Haberle and Victor Dubreuil continued the tradition, and almost exclusively created money paintings despite their express illegality. Furthermore, many of these works directly criticized, or poked fun at, the law’s attempt to regulate art making, and in Haberle’s Reproduction, circa 1887, the artist humorously “dares the world to mistake his work for counterfeiting (Fig. 29).” Pointedly, however, Haberle qualifies this challenge by including a newspaper clipping of an art review stating, “[y]et . . . it is entirely done with a brush.” It is this distinction, the counterfeit versus the original, that Warhol critiques in his late artwork, and I assert that he employs the markings of “the brush” to critique the constraints imposed by American copyright legislation.

The history of America’s copyright statute reflects the social, economic and aesthetic concerns of the day, and as copyright regulates the right to copy, the perpetually expanding scope of federal copyright protection articulates society’s apprehension of unregulated, especially mechanical, reproduction. This fear was exasperated in the 1909 Act and Warhol’s “machine” aesthetic. As illustrated in chapter two, the 1909 Act, although arguably unbeknownst to Congress, vested in the copyright owner an absolute right to copy his “work of art” (so long as the statute’s formalities were met). Clearly separating the copyright from the material object copyrighted, Congress shifted its protection of the copy, as noun, to the act copying, as verb. This semantic change, as demonstrated in Mazer v. Stein, not only

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292 Chambers, Old Money, 26.
293 Ibid. According to Alfred Frankenstein, the originals of the newspaper clipping depicted in the paintings were maintained at the artist’s home. However, the illustrated clipping labeled “John Haberle the Counterfeiter,” was the artist’s creation. Frankenstein concludes, “this, of course, is at it should be. A newspaper story about painted counterfeiters ought itself to be a counterfeit.” Frankenstein, After the Hunt, 116.
294 Ibid.
expanded the ownership rights of the copyright holder, but also allowed the judiciary to include more objects under the “works of art” designation: for example, an Art Deco inspired lamp base (Fig. 11).

I argue that the 1909 Act, and its expanded scope of protection, provides the theoretical underpinnings of Pop art, which is expressly evidenced through the oeuvre of Andy Warhol. As federal copyright textually (the shift from “fine art” to “works of art”) and judicially expanded its protection to mundane consumer objects, circus posters (Bleistein) and lamp bases (Mazer), it legally mitigated the hierarchical distinction of art and life. As mid-century critics, such as Clement Greenberg and Harold Rosenberg, attempted to reclaim “fine” art by emphasizing “the brush” or the inimitable indexical markings of the artist, Pop artists rebelliously repudiated these ideals, and instead of looking inward for creative influence, they appropriated vital elements of America’s readily reproducible, and often trademarked or copyrighted, popular culture. As such, much like the preceding trompe l’oeil painters, in the post World War Two milieu of revived consumerist concern, Pop artists rebelled against cultural and legal authority by depicting the iconic elements of America’s expanding economy: commodity goods and paper money.

Warhol’s work and persona epitomizes this rebellion. Attending Carnegie Tech in the 1950s, Warhol’s education was steeped in the import of socially aware, hierarchy blurring, artwork. After graduating, he quickly became one of New York City’s premier commercial artists, and in order to fulfill the demand for his work he hired assistants to reproduce his original drawings through his emblematic blotted line technique. Significantly, during this time, what is generally coined his commercial period, Warhol created a vast amount of drawings and prints fancifully depicting American currency. As a successful commercial artist, art making equated money, and Warhol quickly developed scrupulous

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295 Ibid.
business (and aesthetic) tactics to increase his gross profit margins. Seymour Berlin, a printer who created many of Warhol’s promotional books in the 1950s stated, “[a]nything Andy had to do with anybody was to get more work, more illustrations, more jobs. Every friend he had, every contact he made, was for what he could get out of it . . . Andy was the most opportunist person I’ve ever known.”

This commercial ethos continued into Warhol’s career as a Pop artist, and I assert that the progression of his artistic production, including his often-segregated work in the 1980s, reflects his knowledge of, and reaction against, the mandates of federal copyright law. In an interview with curator Allison Unruh, Vincent Fremont, former vice president of Warhol and Interview enterprises, emphatically stated that “Andy was totally in control of his business, but he pretended not to be to the outside world . . . [he] was actually an incredibly astute and natural businessman himself [and he] always amazed lawyers and advisors with his questions because they were right to the point.” Accordingly, I assert that Warhol utilized his business and legal acumen to perpetuate a legally subversive body of work, and that he utilized his childish persona to nullify any professional ramifications.

Notably, the final appearance of Warhol’s 1962 money paintings was a legal compromise, as the printing press Warhol commissioned to make the screen would not duplicate real or photographed money, since it would run afoul of federal counterfeit law. As Warhol was required to draw the source material, it was the law that forced his hand back into his art making process. Immediately after his money paintings, Warhol began to silkscreen photographic images, and as these images were typically appropriated from popular publications, like Life Magazine, the application of Warhol’s hand became twice removed from his artistic production. Martha Buskirk argued that “[w]hen artists use

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techniques that are similar to the reproductive techniques employed in the mass media, then
the owners of copyrighted imagery are much more likely to feel their interests are threatened
by the artistic appropriation.\textsuperscript{298} In the mid-1960s, Warhol created artwork that quoted both
the subject matter and productive technique of the mass media, and as described in Chapter
Three, he was sued multiple times for copyright infringement.

I believe these infringement suits strongly influenced his art making and ultimately
defined his career as a business artist. To settle his lawsuits, Warhol paid his accusers in
both artwork and money, symbolically conflating the legal prescriptions of each entity, and
when he returned to painting in the 1970s, his new works exaggerated the gestural nature of
his brushwork. Warhol exasperated the painterly look in his commissioned portraits,
laconically stating, “Now I’m trying to put style back into them. I’m sort of hand painting.
When I do the portraits, I sort of half paint them to give it a style. It’s more fun—and it’s
faster to do (Fig. 30).”\textsuperscript{299} As Warhol supported himself on income derived from these
commissions, the gestural style he utilized can be reduced to a commodity good: money.
Moreover, in Chapter Four I argue that Warhol specially adopted the Abstract Expressionist
ideology of the 1976 Act to mischievously work within the constraints of copyright law and
solidify the economic value of his “original wor[k] of authorship fixed in [a] tangible medium
of expression,” an intent physically manifested in his critically deplored Dollar Sign series
(Figs. 25 and 28).\textsuperscript{300} Therefore, when considered through a legal lens, Warhol’s late oeuvre
can be viewed as divisively as his Pop art paintings: in the 1960s his Pop artwork blurred the
carefully delineated boundaries between commercial and “fine” art; in the 1980s, he

\textsuperscript{298} Buskirk, “Commodification as Censor,” 99.
\textsuperscript{299} Andy Warhol, as cited in Marco Livingstone, “Do it Yourself: Notes on Warhol’s Techniques,” in Andy Warhol
 a Retrospective, Kynaston McShine, ed. (Boston: Bullfinch Press, Little, Brown and Company), 75.
\textsuperscript{300} Cornell University Law School, “§ 102. Subject matter of copyright: In general,” \textit{U.S. Code}
strategically appropriated “fine” art, Abstract Expressionism, to critique the institutions that elevated its status—copyright law and artworld economics.
Figure 1


Figure 2

Figure 7


Figure 8

Figure 9

Jackson Pollock, *Number 1, 1950 (Lavender Mist)*, 1950, Oil, enamel and aluminum on canvas, 87 x 118 in. (221 x 299.7 cm), National Gallery of Art, Washington D.C.

Figure 10

“Jackson Pollock: Is he the greatest living painter in the United States?” *Life Magazine* 27, no. 6, August 8, 1949, 42-45.
Figure 11

Lamp Base Statuette, c. 1953
Robert Lepper, “The Elements of Visual Perception,”
*Art Instruction*, October 1938, 10.
“Crazy Golden Slippers: Famous people inspire fanciful footwear,”

Figure 14

Andy Warhol, *Money Tree*, about 1957, Ink and wash on Strathmore paper, 22 ½ x 16 ½ in. (57.2 x 41.9 cm), Private Collection.
Figure 15

Window Display, Bonwit Teller, New York, April 1961,
The Andy Warhol Museum, Pittsburg;
Founding Collection, Contribution
The Andy Warhol Foundation for the Visual Arts, Inc.
Andy Warhol, *Superman*, 1960, Synthetic polymer paint and crayon on canvas, 67 x 52 in. (170 x 133 cm.), Collection Gunter Sachs.
Andy Warhol, *One Hundred Cans*, 1962
Oil on canvas,
6 ft. x 52 in. (182.9 x 132.1 cm.),
Albright-Knox Art Gallery, Buffalo,
Gift of Seymour H. Knox.
Andy Warhol, *200 One Dollar Bills*, 1962
Silkscreen ink and pencil on canvas,
80 ¼ x 92 ¼ in. (203.8 x 234.3 cm),
Private Collection.
Figure 19

Dollar-bill woodblock from Warhol studio.

Figure 20

Andy Warhol, Two-Dollar Bill with Jefferson, 1962,
Pencil on paper,
18 x 24 in. (45.7 x 61 cm),
Collection Louise Ferrari, Houston.
Figure 21

Andy Warhol, *Flowers*, 1964,
Acrylic and silkscreen ink on linen,
48 x 48 in. (121.9 x 121.9 cm).
Andy Warhol Source Material, 1964
Tear-sheet from the June 1964 issue of *Modern Photography*,
16 ¼ x 11 ¼ in. (41.3 x 28.6 cm).
Andy Warhol, *Flowers*, 1967,
Synthetic polymer and silkscreen inks on canvas,
48 x 48 in. (121.9 x 121.9 cm).
Figure 24

Andy Warhol, *Oxidation Painting (in 12 parts)*, 1978
Acrylic and urine on linen,
48 x 49 in. (121.9 x 124.5 cm),
The Andy Warhol Museum, Pittsburgh;
Founding Collection,
Contribution The Warhol Foundation for the Visual Arts.
Figure 25

Andy Warhol, *Dollar Sign*, 1981
Acrylic and silkscreen on linen,
90 x 70 in (228.6 x 177.8 cm)
The Andy Warhol Museum, Pittsburgh;
Founding Collection, Contribution
The Andy Warhol Foundation for the Visual Arts, Inc.
Figure 26

Andy Warhol, *Uncle Sam*, 1981
Polacolor 2
4.24 x 3.375 in.
Savannah College of Art and Design Museum or Art,
Gift of the Andy Warhol Foundation of the Visual Arts.

Figure 27

Andy Warhol, *Witch (Margaret Hamilton)*, 1980
Polacolor 2.
3 ½ x 4 ½ in.
University of Nebraska—Lincoln,
Gift from Andy Warhol Foundation for the Visual Arts
Andy Warhol, *Dollar Signs*, 1981
Acrylic and silkscreen ink on linen,
90 x 70 in (288.6 x 177.8 cm)
The Andy Warhol Museum, Pittsburgh;
Founding Collection, Contribution,
The Andy Warhol Foundation for the Visual Arts, Inc.
John Haberle, Reproduction, 1886-87,
Oil on Canvas
10 x 14 in.
Portland Museum of Art, Maine.
Gift of Dr. Walter Goldfarb, M.D.
Andy Warhol, *Ileana Sonnabend*, 1973
Acrylic and silkscreen on canvas,
Each 101.9 x 101.5 cm,
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