



Duchamp, the public and the expression of a work of conceptual art

International Summer Seminar : Coyright in motion
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CERDI

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Work ?



Work ?



- No definition
 - Work?
 - Expression? Idea?
 - Originality?
- Problem : focus on creative process
- © protection needed because publicity
 - Cf. independent creation

Work ?



- Work is not only the result of a creative process -> dedicated to be communicated and consumed
- The public and the definition of the work



Fountain, ready-made, 1917

J. Kosuth, *Art after philosophy*,
(1969) :

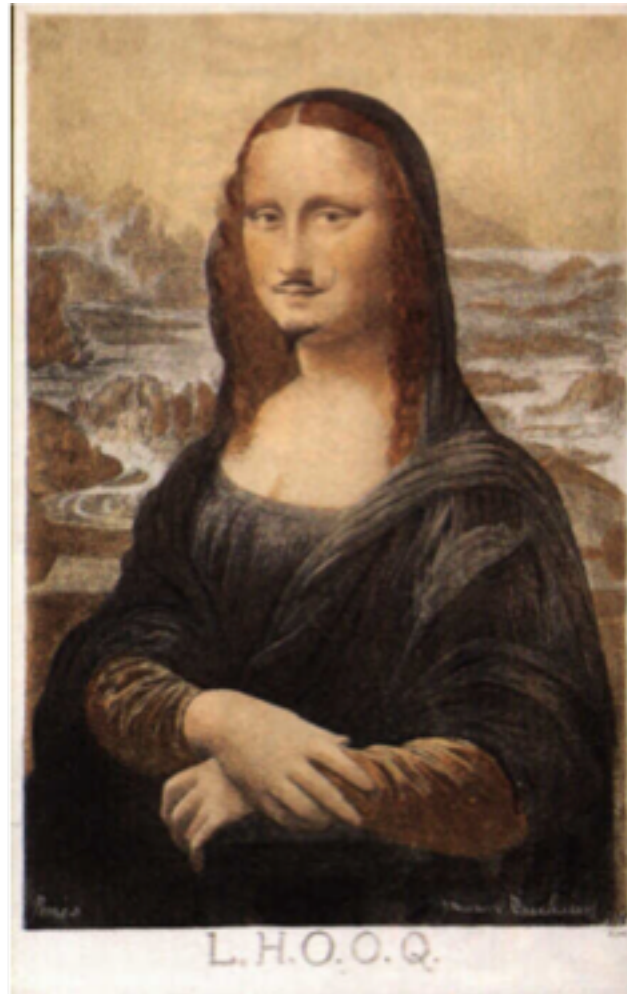
« *All art (after Duchamp) is
conceptual (in nature) because
art only exists conceptually* »



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- Reproduction of Leonardo da Vinci's *Mona Lisa* onto which Duchamp drew a moustache and a goatee and appended a title
- Only visual?
- Distinction
 - Internal/external form (J. Kohler, Germany)
 - Composition/expression (H. Desbois, France)
 - Literary work : idea->composition->expression
 - Visual art : composition merge with expression

- Work of art involving a conceptual aspect :
composition = expression ?
- Composition more important than expression
- I. Cherpillod, *L'objet du droit d'auteur* (1985) :
« by reducing a concrete work to a general
statement, the originality diminish. (...) the
result of this abstraction process is the work
becoming an unprotected idea »
 - From expression to idea -> apply to *LHOOQ*



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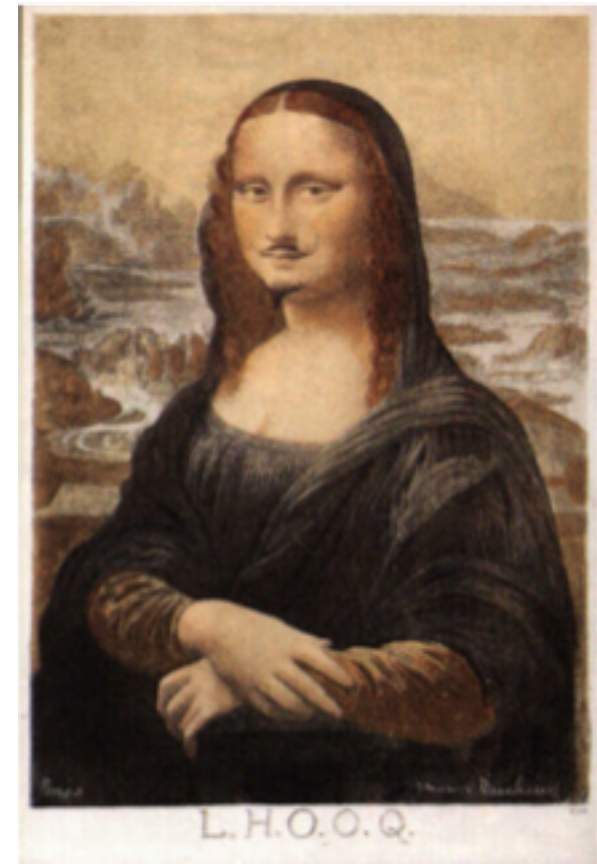
Doodle on a picture with a title
= idea



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Conceptual similarity : masterpieces



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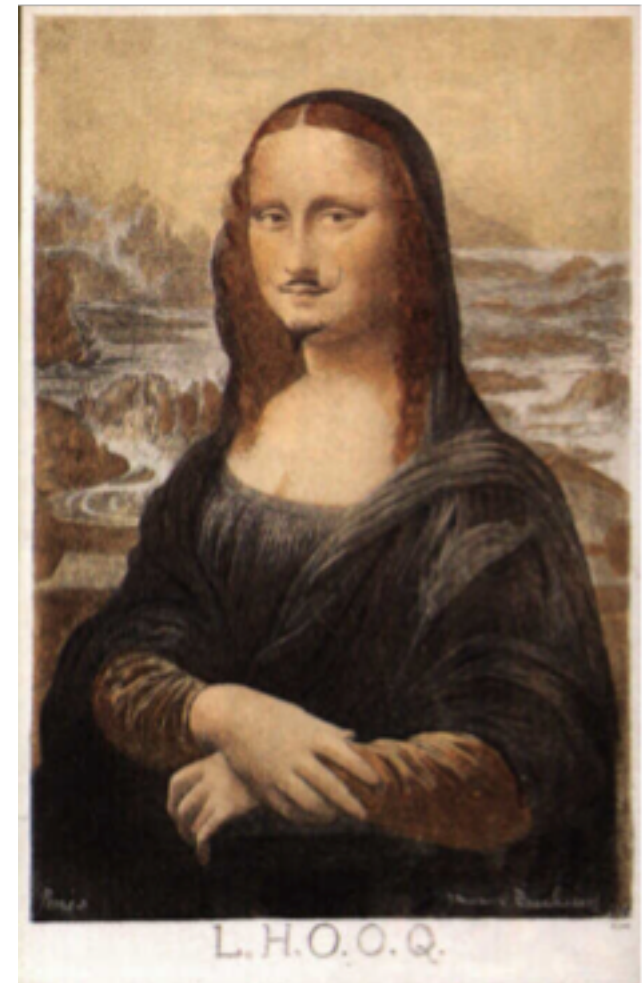
Visual similarity : woman with moustache



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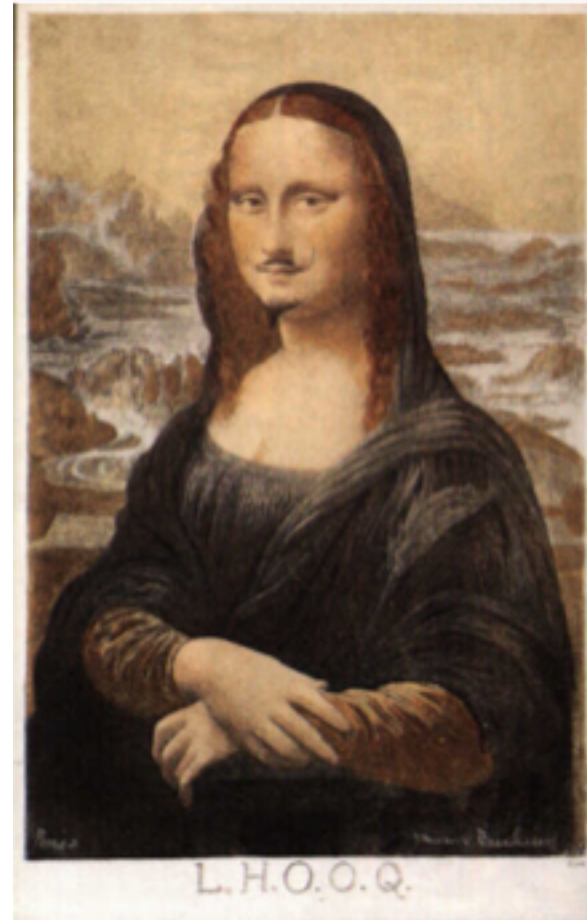
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L.A.1.2.C.Q.



L.H.O.O.Q.

=



- Same composition : 1) masterpiece in the history of art 2) representing a woman with 3) a male pilosity and 4) a title with a sexual meaning
- Why similarity *L.A.1.2.C.Q. / L.H.O.O.Q.* ?
- Why no similarity photo unknown woman ?



- Masterpieces : conventional value, cultural, depend on the public
- Sexual meaning : conventional (language), cultural, depend on the public
- M. Duchamp : « It is the spectators who make the pictures »

Subjectivity ?



- No subjectivity : relative accessibility
 - Ex. literary works





- Public necessary to define the composition (much more important than expression)
- The expression *sensu lato* of the work is depending on the public
- Expression : what can be perceived
 - > considering the one who's perceiving



- Legal Fictions (ex. : reasonable man in tort law)
- Non legal studies focusing on work of art and reception
 - Ex. : art theory, semiotic, art sociology
- Legal fictions in other fields of IP to define the subject matter of IPR
 - Patent law (man skilled in the art)
 - Trademark law (public)
 - Design law (informed user)
- Infringement assessed from the point of view of public
 - >< principle : borrowing original elements