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

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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

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

*Fountain*, ready-made, 1917
LHOOQ
LHOOQ

• 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*
LHOOQ

Doodle on a picture with a title = idea
Conceptual similarity: masterpieces
LHOOQ

Visual similarity: woman with moustache
LHOOQ
L.HOOQ

L.A.1.2.C.Q. = L.H.O.O.Q.
LHOOQ

- 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?
LHOOQ

- 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 and conceptual art

• 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
Public in copyright

• 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