

The Art of the Copy: A Look at Appropriation, Copyright and Labour

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A recent spate of high profile court cases (among them Patrick Cariou v. Richard Prince, and Art Rogers v. Jeff Koons), have brought the complexities of the relationship between art and intellectual property to public attention. In cases where artists are accused (or accuse others) of copyright or trademark infringement, arguments are often mobilized that art is anomalous, exceptional and in need of special protections.¹ Most debates over these cases focus on appropriation, and on whether or not the use of already existing visual material in new art works should be an allowable exception to copyright protection. The cases are high profile, and thus have been granted centrality; appropriation is increasingly understood as the *only* way that intellectual property rights interface with contemporary art production.²

This paper suggests that such cases are not indicative of the way that the majority of artists interact with intellectual property. The publicity and reporting on each case works to narrow the public interpretation of copyright in the art world, but in fact the way that artists themselves choose (or choose not to) engage suggests a very different set of interpretations. I thus leave the cases behind and look instead at the work of a number of artists who have taken copyright and intellectual property as the subject matter for their work. Here an interesting

¹ For brevity, I have removed all of the background research footnotes from this text. If anyone would like to see them, I would be happy to provide the sources on art, copying and intellectual property (of which there are many).

² See, for example, a 2012 article in *Der Spiegel* which argues that a number of artists (mostly writers and musicians) had withdrawn their support for the German Pirate Party, arguing that the party's calls to deregulate all digital content severely disadvantaged artists. The Pirate Party, the journalists write, is the "the first [German] left-wing party to have a considerable number of intellectuals not for, but against it." Sven Becker, Jan Fleischhauer and Rene Pfister, "Artists Turn Against Pirate Party," *Spiegel Online* (April 20, 2012): <http://www.spiegel.de/international/germany/authors-and-musicians-rebel-against-pirate-party-policies-in-germany-a-827877.html>. As an aside, this article is definitely not complementary to the Pirate Party and shows a number of misunderstandings of their horizontal organizational structure.

divide appears. Whereas the making and circulation of art has oft been cited as an important (or at the very least, interesting) exception to any one-size-fits-all application of intellectual property legislation, when copyright itself becomes the *subject matter* of art practice, the works are not about the specificities of law or even about rights. In fact, they are generally not even about appropriation. Instead, such works tend to employ copying for a variety of political purposes clustered around issues of ownership and labour. What these works do is to reframe questions around copying, so that the issues considered are not first and foremost profit and property, but rather making and labour.

The crux of my argument is this: despite a number of high profile intellectual property infringement cases and despite a multifaceted history of appropriation and copying in the art world, contemporary artists tend not to be interested in the specifics of copyright law, even as it might directly affect them. Rather, if their work comments on intellectual property, they tend to be interested in one of two interpretations. The first is to critique or question the outcomes of increasingly strict anti-piracy regulations and pro-IP economic agreements, particularly in the way that changing economics (in the macro- sense) have profound effects on the lives and labour of working artists. In other words, they are interested in IP as a part of capitalism rather than as a discreet set of rules and regulations. The second is to obfuscate copyright entirely, instead examining copying as part of an art historical legacy tied up in questions of authenticity and originality. These artists draw on complex understandings of the social role of art, also often in order to question capitalism – generally through trying to intervene in the global circulation of goods. Intellectual property protection is there, but often not named, existing instead as part of a wider critique of a system that would produce and maintain new forms of monetary gain through the translation of material property into immaterial labour.

In this short paper, I will mention an example of the first interpretation, but will spend the majority of time with the second, looking at the peculiar case of the art village of Dafen China, and its draw for contemporary Western artists. Three caveats before I begin. The first is that this is part of a much longer paper and I've cut out much of the theorization and a number of examples in favour of presenting the most interesting narrative. However, I would be happy to discuss some of the many sources or artists who are not present here. The second is that the two works I outline here use Chinese examples to get at questions of labour, authenticity and IP. While this is common in such art works, it is not inevitable. In part China often is used because it's easy – China has become a kind of popular shorthand for piracy. But it is also the assumed hierarchies of labour in China, particularly the image of workers in a sweatshop building cheap products for the West that draws artists. They are as guilty of stereotyping as are other groups. And the third is that I'm presenting this paper as a historian of visual culture with little to no legal background. My goal is to work from the perspective of the artists, to unfold the ways in which intellectual property regimes are unsettled by artists outside of the high profile cases that tend to suggest there are only a few bounded ways of understanding or applying IP to the art world.

A thirty-year scholarly project attempted to question the normative frameworks through which certain objects are labeled as authentic and others as kitsch, copies or replicas.³ Nevertheless, the same concerns and categories still seem remarkably pertinent in the art world, only now filtered through a new model of who owns the intellectual property of the artefact, structure or

³ See, for example, Rosalind Krauss. *The Originality of the Avant Garde and Other Modernist Myths*. MIT Press, 1986; Kathleen Preciado, ed. *Retaining the Original: Multiple Originals, Copies, and Reproductions*. Washington: National Gallery of Art, 1989; Richard Shiff. "Representation, Copying and the Technique of Originality." *New Literary History* 15.2 (Winter 1984), pp. 333-63.

art work. Take, for example, Sam Durant's work *Nine Unique Porcelain Chairs Made in China*, 2008. The work consists of nine chairs, immediately recognizable as the kind of cheap mono-block resin chairs found on patios, in back yards and porches as deck chairs and pool chairs. There is no patent or copyright protection on the design or manufacturing technique of the Mono-block resin chairs, explaining their popularity. But cheap furniture is kept cheap through exploitative labour conditions. A closer look, however, reveals that these particularly chairs are not quite what they seem. In fact, they are painstaking replicas of the ubiquitous resin chairs, rendered in porcelain. Here, the mass-production of chairs is reversed – each chair was made completely by hand, with no molds or models, by skilled craft-workers at the Jiao Zhi studio in Xiamen, China.

Each of the chairs has a title, a colour, followed by a name. These are the names of the workers (here craftspeople).⁴ By naming the makers of the chairs so obviously, Durant points to the loss and erasure of named labour in the global circulation of goods. As Durant notes,

Foregrounding the fact that the chairs were made by Chinese fabricators introduces more comparisons for the viewer. Globalization and the liberalization of China's economic system have enabled the spread of mass-produced goods throughout the "West". The label "made in China" has become synonymous with cheap and low quality. Apparently standing in contradiction to this stereotype, the hand made porcelain chairs status as objects of aesthetic value rest on the fact that they are Chinese goods, conceptually and physically. Viewers with even a modest grasp of history know that China has been producing masterpieces of ceramic art for centuries, far longer than any comparable tradition in the "west".⁵

⁴ Ye Xing You and Du Wei Dong with Craftspeople Xu Liang Jian, Xu Zhi Hong, Xu Fu Fa and Chen Zhong Liang.

⁵ Sam Durant. "Nine Chairs." <http://www.samdurant.com/porcelain-chairs>

But Durant's role too comes into consideration. As the artist whose name is ultimately associated with the piece, the labour is outsourced, but the intellectual property is returned to Durant unencumbered by its travels through a global chain of manufacturing and craftsmanship. Ideas of authorship and concern for underpaid labour are increasingly pertinent questions in the contemporary art world, where hugely expensive works of art are often untouched by the artist (the "studios" of Damien Hirst and Takashi Murakami providing two key cases in point). Although studio production, apprenticing and outsourcing have long histories in the art world, such practices have recently been complicated by the vast amounts of money exchanging hands and the increased presence of intellectual property rights.

Durant also, as noted above, cites a much longer history through the production of porcelain, and industrial espionage that brought the process of making porcelain from China to Europe in the early eighteenth century. Paralleling a history of apprenticeship in the Renaissance studios that created paintings like the Mona Lisa, the work in porcelain studios in China was meticulous, closely guarded copy work, with skills passed from one generation to the next, in a chain unbroken in the studio employed by Durant for the work. Though intellectual property pervades the work, the questions asked are apparently far removed from those concerned over who, ultimately, should profit from the exchanges.

Dafen is a small city, a suburb outside of the 10 million strong Special Economic Zone of Shenzhen. It is known colloquially as the "Artist Village," and officially as the "Dafen Oil Painting Village." Workers and visitors are greeted at the village gates with a bronze statue of a massive

hand holding a paintbrush up to the sky.⁶ The village produces 60% of the world's supply of cheap replica (but hand crafted) oil paintings, exporting some 5 million paintings per year, most of them copies of European "masters."⁷ The streets in Dafen are lined with artworks and with artists working on new paintings. One can buy a Van Gogh, a copy of Mona Lisa or perhaps a painted Warhol (itself an odd comment on the idea of originality in Dafen as Warhol himself eliminated painting, preferring to make multiple prints in an attempt to blend art with commodity). As art critic Philip Tenari notes,

Dafen, perhaps not surprisingly, has proved itself highly susceptible to narration (in both the mainstream media and the art press) and to incorporation into bigger-picture discourses about both the state of art and the state of China.... The twin images of anonymous Chinese workers slaving away to make objects of every sort and of avaricious Chinese pirates copying the fruits of Western ingenuity loom large in the global collective unconscious at the moment, so such slippage seems almost inevitable.⁸

Dafen has been described alternately as a "sweatshop for artists," an inheritance of art tradition, an important training school, a "model of cultural development" and a piracy workshop.⁹ The village has existed since 1989, founded by Hong Kong businessman Huang Jiang, who arrived with 26 artists to what was then a rural outpost, looking for a place where he could fulfill an order of 10,000 oil paintings for US retailers including K-Mart and Wal-Mart.¹⁰ Since

⁶ There are a number of other artist villages in China. See, for example, Peter Hessler. "Chinese Barbizon: Letter from Lishhui" *New Yorker* 85.34 (October 26, 2009), p. 69.

⁷ Martin Paetsch. "China's Art Factories: Van Gogh from the Sweatshop." *Der Spiegel Online* (August 23, 2006): <http://www.spiegel.de/international/0,1518,433134,00.html>.

⁸ Philip Tinari. "Original Copies: The Dafen Oil Painting Village." *Artforum* (October 2007), np.

⁹ John Seed. "The Ghosts of Chairman Mao and Andy Warhol Haunt a New York Art Auction." *Huffington Post* (May 27, 2010): http://www.huffingtonpost.com/john-seed/the-ghosts-of-chairman-ma_b_590907.html; Rebecca Livermore. "China: Knockoff and Piracy Capital of the World." *Yahoo Voices* (January 17, 2008): <http://voices.yahoo.com/china-knock-off-piracy-capitol-819291.html>.

¹⁰ Le-Min Lim. "China's Factory for Fake Art Tried to Beat Slump." *Bloomberg* (September 24, 2008): <http://www.bloomberg.com/apps/news?pid=newsarchive&sid=a4.SEBCPOpw8>.

then, Dafen has expanded rapidly, as has the market for paintings, many of which end up in hotels, retirement homes, hospitals and private homes in the Global North. In 2004, Dafen Village was designated as a National Model Cultural Industry Site.

Though Dafen is generally treated as a kind of curiosity, reporters from the West tend to be very curious about the feelings of the painters who, in their view, are forced into copying works rather than pursuing the more “noble” creation of original works. The painters quoted are obviously used to answering these questions – they talk about how they would run out of ideas if they always had to paint their own works and how they are giving pleasure to people who would otherwise not be able to access original art.¹¹ But beneath this catering to Western reporters is a very different approach to copying. While Western reporters tend to use words like fake, knockoff and piracy, Chinese artists and gallerists use the word replica, and see the works as original – they are not mass-produced. As Winnie Wong notes in her forthcoming book on the topic, while Western journalists suggest that the village artists engage in brazen copyright violation, local officials argue that the skills of the imitators allow for high art to be democratized and shared with global consumers.¹²

In Dafen, price is regulated by several conditions. First, there is the quality of the copy. A near identical copy of a Van Gogh painting will sell for more than one where the colours don’t match. Further, customers can request changes – perhaps an Ingres portrait, but done to look like one’s wife or lover.¹³ Like many other industries in China, competition has brought lower wages and lower prices. Between 8,000 and 10,000 artists work in Dafen, many artists producing 20-30 copies per day – the town is populated by artists who have graduated from

¹¹ Ibid.

¹² Winnie Wong. *After the Copy: Creativity, Originality and the Labor of Appropriation: Dafen Village, Shenzhen, China (1989-2010)*. Dissertation. Massachusetts Institute of Technology, September 2010. Forthcoming from University of Chicago Press, 2013, p. 20.

¹³ Paetsch, 2007.

Chinese art schools, but who haven't been able to make their mark in the contemporary art scene.

The word "original creation" is popular in Dafen – the highest priced works are those "in the style of" – a Van Gogh or a Da Vinci that does not actually exist anywhere but Dafen, and that is sold under the name of the Dafen artist.¹⁴ There is a distinction between content and labour, with Western commentators tending to position authenticity in the content and Chinese workers and commentators positioning it in the act of painting. As Wong outlines, different understandings of originality, authenticity and indeed the role of artists confuse traditional Western notions of intellectual property rights in this particular industry. The term *gao*, which translates as draft or manuscript copy, is used by artists in Dafen, particularly those working in workshops, to refer to the source of the image, which may or may not be linked to an actual "original." It could be a digital file, a postcard, or another painting in the workshop already made from a postcard or digital file.¹⁵ Once the image is complete, the *gao* is generally returned to the boss – the middleman who commissioned the image, or the person in charge of the workshop. The idea is not so much that the artistic originality of the image be protected as that the market share for the image be protected. Often companies have signed agreements stating that painter-workers will not produce the same images for other clients. The management of *gao* is lucrative – thus painters are often organized into workshops in order to protect *gao* not because of copyright but because then factory bosses are better able to control market access and market share. Knowing what is popular and what sells abroad is an integral part of the business.¹⁶

Dafen has, not surprisingly, come under the scrutiny of intellectual property rights

¹⁴ Tinari, 2007.

¹⁵ Wong, 131.

¹⁶ Wong, 132.

watchers. Though, as noted, Western reporters are quick to make assumptions about Dafen, “A tiny village is churning out millions of fakes, writes Mary-Anne Toy in Dafen, Shenzhen,”¹⁷ a fake, a copy and a pirated copy are not the same thing. Technically, Dafen galleries are only supposed to sell replicas of works made by artists who have been dead for at least 50 years. Of course, this isn’t always the case. The second best seller (after Van Gogh) is Yue Minjun, a contemporary Beijing artist known for his portraits of grinning businessmen.¹⁸ Andy Warhol and Georgia O’Keefe, both dead less than 50 years are also big sellers. Given the tense relationship between the US and China over intellectual property rights, there is a modicum of protection in Dafen, including an “anti-piracy squad” that patrols galleries at least once a month, inspecting stock for works by artists who are still alive or who have been deceased for less than 50 years.¹⁹ Works that violate the rules are confiscated. But just as often, they are repainted the same afternoon.

Since being named a National Model Cultural Industry Site the government has also begun to encourage artists in Dafen to produce “original” works. These works are then meant to be displayed in a government-funded museum in Dafen (the Dafen Louvre, ironically enough) where “fakes are not shown.”²⁰ Interestingly though, according to one news report, the gallery can never find enough work. The original works don’t sell and the artists prefer making money to participating in what appears to be a bizarre attempt to add a layer of “real art” to what is

¹⁷ Mary Anne Troy. “Van Gogh, Gauguin: Cheaper By the Dozen.” *Sydney Morning Herald*. July 1, 2006, np. Archived here: <http://www.shenzhen.com.au/shenzhen-news/2006/7/1/van-gogh-gauguin-cheaper-by-the-dozen/>.

¹⁸ Mark Callahan. “Faking it in Shenzhen: the Pleasures and Dangers of Mimesis.” *Art Times* (October 2009): http://www.arttimesjournal.com/speakout/Sept_Oct_09_Callaghan/Sept_Oct_09_Speak_Out_Fakes.html

¹⁹ Lim, 2008.

²⁰ Lim, 2008; ARTINFO. “Dafen Art Village, part II: Original Art Struggles in Shenzhen Copy Town.” *Artinfo* (March 5, 2012): <http://artradarjournal.com/2012/03/05/original-art-struggles-in-shenzens-dafen-copy-village-interview/>.

otherwise perceived to be fake.²¹ Further, as Wong notes, the gallery is part of a state attempt to legislate originality as part of creative industry policy.²² And the boundaries are not always secure – most of the reproduced works are bought by Westerners, the originals by Chinese purchasers. Secondly, the legal status of a hand-painted copy has never been tested in the post-WTO Chinese legal context. As Wong argues, “Postmodernist claims about the death of the author obscure broader continuities in the modernist project at the social and political level. Crucially, while globalization has brought far more non-Western art into the discourses, institutions, and markets of the West, the impact of this inclusion has been to broaden and strengthen the Western intellectual property regimes that emphasize the legal persona of creative authorship, rather than to erode it.”²³

Once Dafen has been slotted into a model of piracy and fakery, Dafen is then additionally dismissed as business rather than art. “Personally I still can’t understand why anyone would want a soulless fake but it’s clearly good business. Taste on the other hand cannot be brought,” writes one blogger who was obviously interested enough to spend the day wandering around and judging the work in Dafen. Dafen has the curious side-effect of turning tourists into connoisseurs able to name and judge the replication standards of the many paintings.²⁴ “Remember to bargain hard!” concludes this blogger.²⁵ The blogger’s comments echo a refrain about Dafen – it’s not *real* art, a sentiment that has paradoxically made Dafen a site of great interest for a number of contemporary artists. The combination of potential (though, generally speaking not actual) labour abuses, intellectual property infringement and reversal of claims of authenticity and originality has made Dafen an object of fascination for

²¹ Lim 2008; ARTINFO, 2012.

²² Wong, 31.

²³ Wong, 41.

²⁴ Randomwire (blogger). “Dafen Oil Painting Village.” *Randomwire: Exploring Asian Culture, Travel and Technology*. February 16, 2009: <http://www.randomwire.com/dafen-oil-painting-village>.

²⁵ Ibid.

artists. At least twenty contemporary artists have undertaken significant projects there. But their works often rely on the stereotypes with which Dafen is treated. I will just briefly mention two works here.

Recently, Iranian artist Leila Pazooki opened her exhibition *Fair Trade* at Galerie Christian Hosp in Berlin. 100 copies of Lucas Cranach the Elder's 1537 painting, "Allegory Of Justice," hung on a blue wall, accessible through a second room, this one a replica of the London National Gallery's room 17a. The second room included several "Old Master" paintings, each indistinguishable, on first glance, from the original in London. In a third room a series of paintings, apparently based on the Rogier van Weyden painting "The Magdalen Reading," hung in a row, each one slightly different and priced according to the level of exactitude in the copy. However, a knowledgeable viewer would know that the "The Magdalen Reading" does not exist – there is no van Weyden original. All paintings in the exhibition were done by paid artists in Dafen, each paid at market rate. Pazooki's work raises questions about authenticity, originality and, according to the exhibition website, "Striking a theoretical standpoint between the rarified world of museums and the shabby, industrious workshops of Dafen, the uniqueness of an artwork is contrasted with the world of cheap counterfeit merchandise, seen in luxury goods, clothes – and art."²⁶

In many ways, *Fair Trade* is about the transaction rather than the labour. It also intervenes in some of those art historical bugbears of originality and authenticity. When a reviewer in the *New York Times* noted "The results subtly skewer old-fashioned notions of authorship and authenticity while highlighting the differences between inspiration and imitation; the "best" copies are those that veer off in bizarre aesthetic directions that bring to

²⁶ Leila Pazooki. "Fair Trade." *Galerie Christian Hosp*, April 30-June 18, 2011. Exhibition website: <http://www.kunstmatrix.com/en/exhibition/57915/fair-trade>.

mind the arts-and-crafts hour at a penitentiary for the criminally insane,”²⁷ he plays right into the way that the painters in Dafen are seen as making business rather than art. In this case, interestingly enough, it is the “bad copies” that become art for the reviewer – also a biting commentary on what is actually considered art.

But there is something else at work here as well. Because Pazooki really is not interested in the potential illegality of the action of copying the paintings, the work quite strangely becomes about the status of art. Nevertheless, as is noted in a couple of the more astute analyses, by hedging away from dealing with questions of copyright at the outset, Pazooki is herself able to claim full ownership of the intellectual property of this work. It is in this sense, a nice equation and similar to that of Durant. The end question is whether or not the Dafen artists benefitted. In this case, the answer is, likely not.

Pazooki’s work was not the first to use the Dafen painters. In 2005, Liu Ding hired a group of Dafen painters to attend the Second Guangzhou Triennial. While there, the artists painted through the Triennial opening, producing copies of a fluorescent landscape. Writer Philip Tenari writes that the work, where artists were organized in three tiers, was a commentary on biennale culture - the rapid movement and performative sequence of art events that define the heights of the art world. But as Tenari notes, what occurred was a kind of simplistic take on Chinese labour and an ironic undermining of the work so that it came to represent what it supposedly was reacting against.²⁸ Nevertheless, the installation did draw

²⁷ Tour d’Art, Berlin Gallery Week. *New York Times Magazine*, May 3, 2011: <http://tmagazine.blogs.nytimes.com/2011/05/03/tour-dart-berlin-gallery-week/>.

²⁸ Tinari, 2007.

attention to the sometimes bizarre valuations of art – where biennales crown lucrative art careers.²⁹ Though Liu paid the painters for their participation, Luo Zhijiand (the organizer and a painter), in an interview, noted that the price was a bargain for Liu, and that the conditions were difficult not because the painters were themselves on display but because this group had never worked together before and had not painted this particular image.³⁰

Like Pazooki (and to a lesser extent Durant), Liu also benefitted from the work of others. In a second showing, the painters were not paid. Once the act of painting was finished, the worker-painters were disaggregated from the act of painting. Copyright transferred permanently to Liu, and reproduction rights to the gallery in Germany that was now owner of the work. The actual artists and the original painter of the *gao* were left out of the final equation.

Conclusion

The works examined here, in particular Pazooki and Durant, are distinctly removed from the debates over appropriation that have characterized almost all coverage of the supposed “exceptionalism” of art in terms of debates over intellectual property rights. Both artists use historical models of art apprenticeship in order to apparently draw attention to the role of labour underlying IP regimes. However, while both works are ultimately successful in their aims, both artists are nevertheless confronted with the systems they might wish to critique when they apply their own names to the final products, thereby obscuring the work of the Chinese artists and artisans who actually made and created the works. The signature in each case, in cohort

²⁹ Spalding David. “About Samples from the Transition – Products.” *ArtLinkArt* June 29, 2006: http://www.artlinkart.com/en/artist/exh_yr/904atB/b47arBni.

³⁰ Wong, pp. 194-95.

with the different understanding of originality and copying of the other artist-workers involved, further complicates debates over copyright and art. In short, what each work does is to present an apparently pat answer or critique, that actually unfolds the seemingly unending complexity of any relationship between the ephemerality and subjectivity of art and attempts to code it.