

# Who Owns The Artwork?

## Seminar report

The seminar, *Who Owns the Artwork?*, took place at the Van Abbemuseum on 14<sup>th</sup> May 2010. The seminar addressed issues arising out of SUPERFLEX's project, *FREE SOL LEWITT* which forms part of the current exhibition, *In-Between Minimalisms* curated by SUPERFLEX, Daniel McClean and Christiane Berndes at the Van Abbemuseum.

### FREE SOL LEWITT

In *FREE SOL LEWITT*, exact copies of an artwork by Sol LeWitt, *Untitled (Wall Structure)*(1972), owned by the Van Abbemuseum, are produced by metal workers inside the museum and given out to members of the public free via a random distribution system. The project questions notions of authorship, originality and the restrictions placed upon acts of artistic and cultural reproduction and distribution by copyright law, particularly when exercised by artists' estates.

### The seminar

The seminar's panelists comprised: (morning), SUPERFLEX, Sven Lutticken (art historian), Bernt Hugenholtz (intellectual property legal theorist), Martha Buskirk (art historian) and Pierre Leguillon (artist) and (afternoon), Charles Esche, Achim Borkhardt-Hume (curator), Florian Schneider (artist) Seth Siegelau (former curator/art dealer) and Maria Eichhorn (artist). The panelists each gave a presentation. The seminar was moderated by Christiane Berndes and Daniel McClean and included two sessions of panelist questions and answers which were open to the audience.

The central issue in the seminar concerned the ownership of artworks by public institutions and the notion that artworks consist of both physical and intangible aspects which creates complex issues relating to their ownership. When an artwork is sold or transferred to a museum, for instance, artists and their estates generally retain the copyright and moral rights over the artwork after its transfer. This means that a museum's ownership of an artwork is (generally) incomplete which can create potential difficulties for museums in making use of and providing public access to particular artworks.

For example, the misuse of copyright through the charging of exorbitant licence fees by artists' estates can prevent exhibition catalogues of an artist's work from being made and therefore effectively from exhibitions being mounted. Copyright laws can also prevent artists from copying the works of other artists and for museums being able to show these works, although the Sol LeWitt estate generously consented to the *FREE SOL LEWITT* project.

The problem of ownership is put into perspective when one considers that museums and public institutions acquire artworks out of public funds and have a duty to provide the public with as much access as possible to works that enter into their collections. Indeed, without this public access cultural memory, arguably, dies. At the same time, museums have a duty to preserve and exhibit artworks in accordance where possible with the artist's intentions. The problem for museums then is to balance these duties.

The context of the seminar was to consider these problems or sources of tension and to outline and discuss possible models of change. The morning session looked at the question of how artists approach practices of copying particularly through the sharing of artistic forms and ideas (SUPERFLEX/Sven Lutticken and Pierre Leguillon) and how this relates to copyright law (Bernt Hugenholtz). It also considered the question of what is the artwork, particularly when the artwork becomes dematerialized in Conceptual and Minimalist art in the form of ideas and instructions (Martha Buskirk). The afternoon session considered from the institution's perspective (Charles Esche, Achim Borkhardt-Hume) some of the issues curator's face when dealing with artists' estates and how these can be dealt with in practice. It also discussed the role of contracts between artists and collectors, including public institutions (Seth Siegelau and Maria Eichhorn) discussing the legacy of the pioneering *Artist's Contract* formulated by Seth Siegelau and Bob Projansky in 1971 and its

potential application to the present.

**Possibilities that emerged from the seminar**

Bjornstjerne Christiansen (SUPERFLEX) explained the genesis of the *FREE SOL LEWITT* project and highlighted the need for artists and museums to challenge copyright law by appealing to the unwritten conventions of the artistic community or 'artistic commonwealth'. This view was endorsed by Charles Esche, who explained the background of the *FREE SOL LEWITT* project and the consequences for the museum. Bernt Hugenholz advocated that copyright law change to incorporate an exemption or defense for freedom of artistic expression, though it was unclear how such an exemption might be established and whether it would be wide enough to cover acts of copying like the *FREE SOL LEWITT* project. On the other hand, Achim Borkhardt-Hume highlighted the importance of personal relationships between institutions and artists' estates drawing upon his own positive relationships when at Tate Modern with the estates of Mark Rothko and Moholy Nagy. Finally, the panelists discussed the possibility (particularly, Bjornstjerne Christiansen) that contracts might be developed between artists and museums which provide understandings as to how museums should treat particular artworks which enter into their collections, but also where artists provide generous licences to museums to use their copyright in the future.

There were perhaps, inevitably, no definite conclusions to be drawn from the seminar; only a general sense that the worlds of law and art speak two different and often incompatible languages (Sven Lutticken, Florian Schneider) and that copyright's relationship to art (whose economy is based upon the 'autonomous', unique object) is particularly, problematic.

*Daniel McClean, 17 May 2010*