

LIFE AFTER DEATH

Triple Candie and Sergio Muñoz Sarmiento in conversation

Triple Candie (TC): Sergio, as we are neither lawyers nor artists—and you are both—we want to talk to you about this issue of cancelation. Many have cited James Lee Byars' tantalizing utterance, "I cancel all my works at death," but nobody has written about its possible implications. Let's leave aside, for the moment, matters of Byars' intent. Is it possible under the law for artists to render their entire oeuvre null and void, either in life or upon death?

Sergio Muñoz Sarmiento (SMS): This is a great question to which there is no clear answer. Under United States law, artists would have to have a legitimate legal reason for "disowning" any or all artworks they have created and authenticated as being theirs.

TC: Such as?

SMS: One manner would be for them to make a claim, during their lifetime, that the works have violated The Visual Artists Rights Act of 1990, particularly the right of attribution. During life, I can also see artists making a claim that the works still within their possession are maquettes or studies, not finished works. Or that they were not in fact created by them.

TC: Or that they have been damaged or altered.

SMS: Exactly. At some point these claims could be introduced in a legal context but keep in mind that as with authentication disputes and issues, many times there are other experts who are called upon to authenticate or deauthenticate works of art, so even if artists "disowned" artwork as having been created by them, experts may very well disagree. There are reasons for not allowing an artist to disown her/his works of art simply on a whim, especially if the work of art has been legally sold and title transferred to a bona fide purchaser. One can only imagine the disruption to art history and the so-called art market if an artist could "disown" an artwork at any moment.

TC: Are you saying property rights trump artists' rights.

SMS: That's funny. The assumption in your statement assumes artists don't have—or don't enforce and leverage—their own property rights. A good example of a successful "de-authoring" of an artwork under the Visual Artists Rights Act of 1990 is the lawsuit between collector Marc Jancou and Cady Noland. The artist Noland enforced her moral rights which—one could say—trumped Jancou's property rights, or at least one of the rights, one of the sticks in the bundle of rights as lawyers like to say. It's not that Jancou doesn't own an "artwork" or an object that he can hang over his couch, and which he paid for.

What Noland's successful "deauthoring" means is that Jancou no longer owns a Cady Noland. Chalk one up for artists. So, yes, property rights trump other property rights. That's better.

TC: Can artists who have retained the copyrights in their works restrict publication of them without reason? If so, this would be a form of partial cancelation.

SMS: No, not exactly. You bring up a good point that many lay persons misunderstand. The fair use doctrine under U.S. copyright law—Section 107 in legalese—allows for the use of copyrighted works for certain reasons and without consent of the copyright holder. Those reasons (and they are illustrative) are criticism, comment, news reporting, teaching, scholarship, or research. The fair use doctrine is actually quite flexible, but unfortunately certain fear-mongers in the art world and some celebrity-seeking art lawyers have done a good job of promoting the "culture is dead" banner. What I mean is that even if a copyright holder denies a secondary user permission to use the copyrighted work, the secondary user may have the right to use that same copyrighted work if her use falls within the fair use doctrine under U.S. Copyright law (what I indexed above as falling under Section 107).

However, some artists are up in arms because they can't just lift preexisting and copyrighted work without consent for whatever reason and regardless of the fact that there is no conceptual intent or framework. The irony is that most of these scared artists are not the same artists that the art lawyers would protect.] These artists are working-class with aspirations of one day rising to the level of Richard Prince or Jeff Koons. We all know how that narrative pans out.

TC: Performance artists, like Byars, can forbid people from reperforming their works, no?

SMS: Yes and no. It depends if the performance is protected by copyright. Keep in mind that if the performance is not fixed in a tangible medium of expression, then it most likely is not protected by copyright. The performance would have to be recorded via film or video, or via notation and/or instructions. This brings to mind Marina Abramovic's recreations of seminal '60s performance works. I believe—and correct me if I'm wrong—that she obtained permission and paid licensing fees to "reperform" some of these performances. I also believe she did not obtain permission from some of the original artists so in the end she did not end up re-creating those performances. The key issue for me in relation to your question is "why" would a current artist want to recreate a pre-existing performance and/or artwork. In your case, the case of Triple Candie, I see a critical analysis and intent in expanding the notion of what is the art object as well as analyzing the surrounding discourses that help—or in fact create—the art work and art history. However, and unfortunately, this is not always the case, especially with the so-called Millennial generation. Those people firmly believe

that just because they grew up with a mouse and keyboard that theft is fair game. They have no respect for anything. In fact, I doubt “respect” even figures in their vocabulary.

TC: And the “why” you speak of seems important here. Considerate is a question of intent. Byars’ cancellation statement may have been a rhetorical provocation. But let’s say he really meant it. If we interpret it as a speech act with anticipated consequences, and this statement was made before he began actively selling his work, can you imagine a scenario where a judge might find it binding, particular if every collector or purchaser was made aware of the statement in advance of purchase?

SMS: I’m going to go out on a limb here and say that yes, it is possible that a judge may take Byars’ utterance seriously, especially if witnesses are available. I mean, is there a difference between what Byars uttered, and the more common utterance, “that work over there, that I made, is a study and not an artwork”? Or, “that’s not an artwork, I’m just fucking around”? If there are reliable witnesses who heard an artist say this and I’m a smart collector then I would be wary of purchasing said work from an art dealer. But then again you know how art dealers are, those people will sell their mothers—and with a certificate of authenticity to boot.

TC: It is worth noting that the cancellation statement came at an inflection point in Byars’ career, when he transitioned from making ephemeral, at the time unsellable, performances to making durable goods—sculptures and installations made of stone in timeless forms. If taken seriously, the statement undermines the ontological, temporal, and economical certainty of these later sculptures. For us, it makes them more interesting.

SMS: Perhaps. Or maybe Byars knew what would happen after his death: that his “durable goods” would be perceived, written about, exhibited and sold as commodities rather than addressed as art works. Maybe he simply didn’t want his works sitting on an auction block waiting for some Russian oligarch to purchase it via an i-phone or through some gallerina-cum-art dealer.

Let me turn the table and ask you, what is the interest for you all in works that have been “disowned” and/or de-authored, whether theoretically or legally, and does it matter if under law the works are or are not deauthenticated?

TC: Well, works that are disowned by artists but that are considered by other experts to be authentic are what we might call “sick.” In time, there is the possibility of recovery but not until after the artist is gone. Works that have been de-authenticated by the court are dead, at least as work by the artists in question. You mentioned Marc Jancou’s Cady Noland and that is an excellent example. Of course, it is not uncommon for works to be brought back from the dead. The status of many an Old Master painting has changed over time. Both sick and dead works are interesting to us because either their so-called aura

fluctuates with attribution. Or, if dead, they have little-to-no aura. Their existence is more as artifacts (if they are portraits, for example) or decoration. In other words, they function quite differently.

SMS: How so?

TC: Well, works that have been “disowned” become useless in the sense that they can no longer serve the imperatives of a speculative market, which is the dominant paradigm for the way art functions and is experienced in our society. At the same time, they become more useful in that these objects—or performances—are returned to the world of use and not separated from it. They are no longer sacred. Having a gallery for a decade in Harlem, where the public is not trained in rituals of art museums or galleries was a constant reminder of the false separation that these rituals, and their attendant codes, impart on the experience of art. We learned that the use of de-authenticated or inauthentic works don’t preclude someone from having an authentic, meaningful experience.

SMS: You have a point. The recent past has brought us many authentication lawsuits and a mad rush to dissolve authentication boards; not to mention that many artist foundations are no longer authenticating works for fear of lawsuits. I bring this up because now the buzzword for “authenticating” works is to use the term, “opinion” and pepper it with language that the opinion is based at this time with the given information, and that this opinion may change at a future date and time should further information be assessed. This is called CYAL, or cover-your-ass-language. That aside, I think we are saying the same thing: a non-artwork can quickly become an artwork, and vice-versa. I also think your indexing of the art market as a player in this bait-and-switch whac-a-mole is right on point. Interestingly, on February 21, 2014 nine collectors sued the Keith Haring Foundation for failure to authenticate their art works, which the collectors allege are real Keith Harings. But, I sense there is something else that attracts you to Byars’ statement.

TC: Yes, and perhaps it is ironic. Byars was, above all else, a perfectionist. If he had been able to cancel his works at death, he would have been able to prevent imperfect representations of his work by curators, dealers, and historians.

SMS: Do you share his interest in perfection, or more to the point, in a perfect artwork and artist?

TC: Do you mean ethically and morally speaking?

SMS: Yes, but also artistic perfection, or, and I know you will disagree with this, the idea of a “true” and “auratic” artwork. The aura is back (or perhaps it has never left?).

TC: We have certain ideals but we are allergic to the language of perfection.

SMS: What do you mean?

TC: Well, for one, perfection is extremely boring. An interesting Donald Judd is a rusty Donald Judd. More importantly, perfection can also be a tool for separation in society. We are thinking of such things as “perfect manners” or “a car in perfect condition”— perfection as an artificial marker of moral virtue or self-worth. Byars knew this and we think that his pursuit of “the perfect” was, on one level, reflective of a desire to transcend his working-class roots.

So on the surface Byars was indeed an aesthetic and intellectual alchemist, but below the unalloyed gold lay a sea of imperfections and impurities. This is a dialectic that he seems to have embraced and which remains unacknowledged. Take for example his black German flag, emblazoned with the proposition to send all the Jews back to Germany—provocative and ambiguous in equal measure. Or on a personal level, what about his sometimes aggressive and prurient behavior with women? A number of people we talked to when preparing the exhibition said they cut off their relationships with Byars because of such transgressions.

On a related topic, Byars trafficked in myths and half-truths. There is a lot to unpack here and this is something we tried to surface in the objects in the exhibition. Perhaps we can discuss this later.

SMS: I want to pursue this idea of myths and half-truths you just mentioned, as both are quite pertinent to the discourse and practice of law. I mention this because we can certainly imagine the moment that a myth gets treated as a rule or as a law; similar to urban myths and cultural customs.

TC: Byars, as you know, was quite interested in this idea of seeding belief. *Open America* was a performance in which individual audience members, expectant of seeing Byars in his gold lamé suit do something, were tricked into thinking that he had in fact briefly appeared and disappeared and that they had missed it. Byars hadn't. He had planted a half-dozen people in the audience to act as witnesses, and they convinced the others of this non-event.

SMS: I can imagine the possibility that Byars' work may not be held to be "deauthenticated" under law and yet held to be "inauthentic" due to a myth or half-truth created by Byars as to the inauthenticity of his work, in life or post-mortem. It seems to me that perhaps Triple Candie is interested more in the myth than in reality, assuming there even is a difference. [SMS laughs very hard]

TC: Yes [sharing an infectious laugh]., Most of the exhibitions we have organized since 2005 have been about artists whose lives or work are enigmatically situated in the fog of myth. These myths are often generated by the artists themselves. Sometimes, however, they are generated by a desiring public, and sometimes by the interplay between them. As should be clear by now, Byars

was a master myth-maker. He trafficked in half-truths and outright deceptions, and for that reason, among many others, he is a tantalizing subject. Myths have but a tenuous relationship to reality, and because they can't be verified, they invite imaginative engagement.

How do you see the issue of myth as relevant to Byars' statement of cancelation?

SMS: Myth is important because after an artist's death that is pretty much all we have. Some would call it facts, but if Byars did in fact utter some proclamation such as "I cancel all my works after death," experts would have to assess what that means, which would result in an opinion, not a fact.

TC: To cancel all his works means that they no longer exist as his works. That seems quite straightforward.

SMS: It isn't. It could mean simply that he was no longer the author of the work, as you say, or, that there were other authors and he was or is no longer one of them. It could also mean that he is canceling simply all the works in his possession. And what is cancelation? Is it a withdrawal of authorship or is it an edict that the works be destroyed? The point is we don't know what he meant. So, the bare bones is this: artistically speaking a "cancelation" like Byars' is conceptually and mythologically interesting. Legally, and without any factual evidence, it doesn't mean much. This goes back to whether there is other corroborating evidence for a judge to assess. Otherwise we're dealing with hearsay, "Byars said this, Byars said that..." We, the public, would be taking a huge risk either way, which is why I say that myth plays a major role here because, as you know, in the so-called art world myth is larger than reality.

TC: And to unravel this even further: We can't prove that Byars even wrote that statement. Or if he did, whether the author is his true self or an artistic persona.

SMS: Exactly. Maybe he's having the last laugh, knowing that all the stuff he made was a big joke on the art world, that collectors, curators, and dealers would be twisting themselves in knots trying to figure out how to make hay from his ghost, and that an art historian and an art-lawyer would one day try to analyze one utterance. Maybe some artists are smart.

TC: Well, we thank him for that. In fact, we are going to go so far as to claim that this utterance is his greatest performance, one that lasted from 1978 at least until his death in 1997. It may have lasted for a few years afterwards, when it finally became clear to those few people who had worried that the works would not disappear, and that they would remain of this world, to be shown and recreated in perpetuity, whether rightly or wrongly.

Still, we can't help but be intrigued by the following scenario: Byars dies. A will is found that stipulates that his work must be canceled and gives clear instructions on how this might be done. And the executor of his estate—his 2nd

wife—dutifully attempts to see this through.

SMS: I agree. I wish someone—his heirs, or whoever has been willed the rights to his works—would take your baton and enforce the utterance. Or at least try to get it enforced. I'd be up for that.