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THE TROUBLE WITH PICTURES

Suburban Interventions, A Question of Property, and Assigned Value (title)

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Suburban Interventions, A Question of Property, and Assigned Value (title)

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Abstract

Suburban Interventions, A Question of Property, and Assigned Value (title) originated in West Texas in 2000, and since then these projects have been installed or taken place in diverse locations throughout the United States: from Los Angeles, California to Pittsburgh, Pennsylvania, and from El Paso, Texas to Cambridge, Massachusetts. These three art projects incorporate and juxtapose the disciplines of sculpture and architecture with the Western legal discourses of property, First Amendment, and intellectual property law. In particular, these projects invoke, and thus critique, the assumed universality and normativity of Western jurisprudence.

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I. Overview

Suburban Interventions, A Question of Property, and Assigned Value (title) originated in West Texas in 2000, and since then these projects have been installed or taken place in diverse locations throughout the United States: from Los Angeles, California to Pittsburgh, Pennsylvania, and from El Paso, Texas to Cambridge, Massachusetts. These three art projects incorporate and juxtapose the disciplines of sculpture and architecture with the Western legal discourses of property, First Amendment, and intellectual property law. In particular, these projects invoke, and thus critique, the assumed universality and normativity of Western jurisprudence.

II. Law and the Visual

In effect, one disturbing aspect of these images is that these Western legal fictions now reside, spectrally, in unassuming and commonplace three-dimensional structures. Not only are the concepts of discovery, trespass, and title clearly apparent in the procedural aspect of these projects, but more importantly what is elucidated is the increasing shift

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from real property to intellectual property, particularly in respect of trademark and copyright laws.¹ Ironically, it is only through an understanding of property law that the concepts and force of intellectual property law can be understood.

Legal academia's current fascination with visual culture and visual forms of knowledge may indicate that perhaps it is the visual apparatus which lends itself as the only vehicle left to interpret, question, and expand (i.e. — visualise) the production, manifestation, and reception of law. In fact, I believe it is the architectural-sculptural structures which make visible the wide and complex plethora of legal discourses.

III. Legal protections of three-dimensional structures

Ironically, and within United States law, intellectual property protection of architectural works is a recent phenomenon. In 1990,² architectural works were granted copyright protection (previously copyright only attached to the architectural drawings (i.e., technical drawings) and to significant buildings that qualified for protection as works of art), and historically, under the concept of trade dress, trademark protection has been allowed for three-dimensional configurations³ which are used in a manner, or which could be perceived, as a mark, where a mark is used to reference a product's point of origin.⁴

In order for a three-dimensional configuration to attain trade dress protection, it must be more aesthetic than functional.⁵ This theory conforms with current US trademark law, which does not protect generic marks. If a configuration is considered to be a type of product design then it is inherently distinctive, thus allowing for full trademark protection. If the configuration is thought to be product packaging, then it must acquire what is called 'secondary meaning', where the packaging is now associated with the origin/producer of the mark and not a functional apparatus.

IV. Projects' intent

In effect, three architectural-sculptural projects, in particular *A Question of Property* and *Assigned Value (title)*, under the rubric of the aesthetic, intend to expand intellectual property protection to three-dimensional configurations which are not produced, fabricated, or constructed by the artist, but rather that are 'innocently' located and subsequently indexed by the artist as holding aesthetic value. More importantly, it is not the representations (photographic images) of these three-dimensional configurations which are deemed protectable by US intellectual property laws,⁶ but rather the three-dimensional structural configuration itself which the artist is claiming as the essence of this aesthetic effect (what I call an 'aesthetic property' right). Fundamentally, and assuming that only a human subject can entertain an aesthetic affect, the question becomes: can an entity (corporation or private entity) own an aesthetic experience: an aesthetic experience which is produced by and through the labour of (and owned by) another private entity?

V. Three projects, with examples

1.

Suburban Intervention #8,⁷ takes the following procedural manner: a suburban location under construction is located, and new construction material from the site is taken from that same site, and architectural structures are built within that same suburban location (site) without any permission from the property owners. *Suburban Intervention #8* applies the legal fiction of discovery, title and trespass to private property law. Incidentally, because not all 'non-commissioned' structures are discovered or found by the 'true' property owner, the concepts of home and belonging — of the spectral and the parasitic — are also indexed.

In *Suburban Intervention (playground)*, an empty desert lot was located in West Texas in 2001. Three children's playground structures were then added to this site without any previous permission from the 'original' property owner: a half-moon aluminium structure; a steel

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swing-set; and an aluminium and plastic slide. Upon returning to the same location one year later, it was discovered (and documented) that the original elements first installed had not only been left in place, but curiously that this illegitimate site had now been given a sense of propriety and ownership: a surrounding makeshift 'wall' made of discarded car tires and cable wire, to be entered through a 'gate' made of wooden beams. What was once a violently discovered territory had now been appropriated and designated as 'private property'.

2.

A Question of Property #4,⁸ on the other hand, functions in a similar format but does not encompass any additions to any previously existing site or structure. The premise of this project is to find a three-dimensional structure and claim it as 'aesthetic property' of the artist. An exhibition announcement⁹ is then created with all the pertinent information regarding the location of this structure, as well as the approximate dates of exhibition and the opening reception date and time. These announcements are then sent out to the general public and an 'art opening' is held in front of the three-dimensional structure. More importantly, a certificate of authenticity¹⁰ is also created which will enable a sale of this structure, and which will allow the buyer of this structure to own all aesthetic property rights created by this structure. Paradoxically, the aesthetic aspect of this structure can be evident only while the structure itself is raw and uncovered, for at the time the structure becomes enveloped in finished construction materials (bricks, plywood, gypsum board), the armature, and thus the aesthetic effect, terminates. Obvious questions remain: does the obfuscation of the physical structure negate the aesthetic effects/affects of the remaining (spectral) structure, which is there and yet not there, *and* does this obfuscation negate the aesthetic property right now owned by the buyer/owner and granted by the certificate of authenticity, or does the buyer/owner still maintain a property interest in something that remains unseen?

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3.

Lastly, *Assigned Value (title)*,¹¹ is a project which takes *A Question of Property* one step further. In this project the procedural aspects of *A Question of Property* are maintained, with one added caveat: that the proceeds/earnings from the sale of the ‘aesthetic property’ rights (via a certificate of authenticity) be shared in equal proportion with the construction crew members. Additionally, if this project is exhibited or noted in any artistic, academic, or legal institution or journal, the construction crew members shall be given appropriate credit for their manual production (see note 11). However, a legal question arises: does the construction crew itself face legal repercussions when they are explicitly listed as unknowingly aiding and abetting an allegedly ‘illegal acquisition’ and indexing of foreign private property?¹²

VI. Temporal timeline

It should be noted that the certificates of authenticity can be sold *after* the raw three-dimensional structures are no longer visible. It is to function as such so as to make explicit and raise the question of exactly when and where the aesthetic effects/affects actually take place.

Notes

- 1 For a detailed US Supreme Court analysis regarding the legal fictions/ concept-metaphors of title, discovery and trespass as they apply to US law, see *Johnson v McIntosh* 21 U.S. 543 (1823), *Cherokee Nation v the State of Georgia* 30 U.S. 1 (1831) and *Worcester v Georgia* 31 U.S. 515 (1832).
- 2 *Architectural Works Copyright Protection Act*, section 102 of the U.S. *Copyright Act*, 17 U.S.C., as amended on 1 December 1990.
- 3 I will use the terms three-dimensional configurations, three-dimensional structures, armatures, and structures interchangeably.
- 4 For a wonderful explanation and analysis regarding the applicability of US copyright, trademark and trade dress law to architectural works, see

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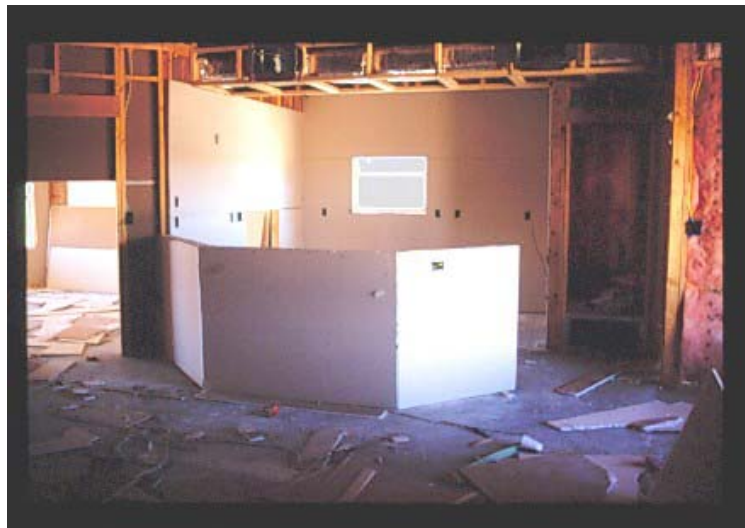
Rashida Y.V. MacMurray 2005 'Trademarks or Copyrights: Which Intellectual Property Right Affords Its Owner The Greatest Protection of Architectural Ingenuity?' *Northwestern Journal of Technology and Intellectual Property* 3/2: 111 at <www.law.northwestern.edu/journals/njtip/v3/n2/2/>.

- 5 Id at 12.
- 6 Trademark and copyright protection would of course apply to the photographic representations made by the artist.
- 7 In this sculptural project, a three-sided wood and gypsum board divider was installed (see detail image).
- 8 Located at the intersection of Cesar Chavez and Hill Street, Los Angeles, California (2002).
- 9 See *Exhibition Announcement* image.
- 10 See *Certificate of Authenticity* image. Clandestine Construction Company International (CLANCCO) is a construction company created by Sergio Muñoz-Sarmiento as an umbrella 'corporation' which allows and facilitates the materialisation of these projects. CLANCCO may be accessed at <www.clancco.com>.
- 11 Located in El Paso, Texas (2004). Construction crew: Alejandro Sanchez, Miguel Espinoza, Roberto Alcala.
- 12 For a recent and in-depth analysis of the relationship between 'law breaking' and property law, see Peñalver, Eduardo M and Katyal S 2006 *Property Outlaws* Fordham Law Legal Studies Research Paper No 90, available at SSRN: <<http://ssrn.com/abstract=745324>>.

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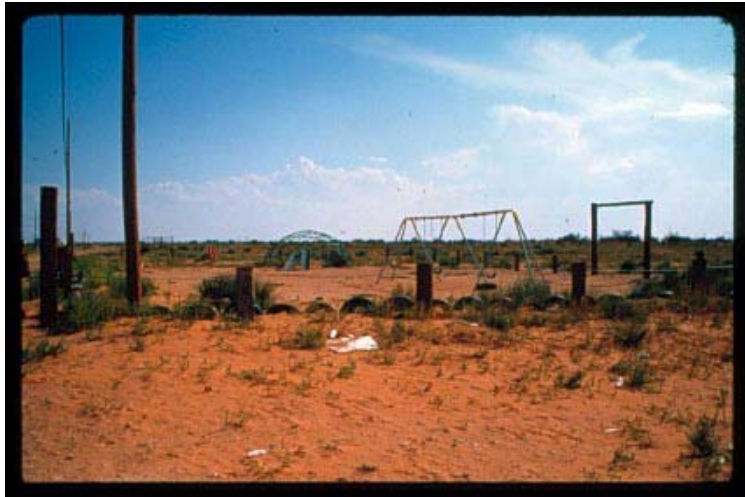


Suburban Intervention #8 (contextual shot)



Suburban Intervention #8 (detail shot)

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Suburban Intervention (playground)



Untitled (after Michael Asher, MoCA Chicago, 1979)

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A Question of Property #4



Assigned Value (title)