

*Beyond the Readymade:
Michael Asher's Skulptur Projekte Münster Caravan
and the Challenges for Copyright Law*

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Conceptual artistic practices, while arguably amongst the most influential forms of artistic expression of recent decades, question traditional notions of originality, authorship and authenticity and in this regard appear prima facie incompatible with statutory and doctrinal aspects of both UK and US copyright law. Examples of such a schism are to be found in the UK, where a specific list of narrowly defined types of artistic works are given protection, and in both jurisdictions, which apply the idea-expression dichotomy doctrine, under which certain forms of expression rather than mere ideas are protected. This paper will focus on a work by the late Michael Asher which involves the temporary designation of an unremarkable hired trailer as a heavily context dependent work of art that neither fulfils the requirements to satisfy categorisation as an aesthetic object nor as a classic readymade. This piece has repeatedly featured since 1977 in the decennial Skulptur Projekte Münster exhibition in Germany. While it may be argued that current UK law may offer a relatively greater possibility of protection to this work when compared with US law, the nature of Asher's piece does in fact highlight the inconsistencies and the potential limitations of current judicial interpretive approaches in relation to the definition of art in both jurisdictions. Particularly problematic is the increasing tendency of courts to rely on the factors of intention, recognition and status within the artistic community as determinative. The privileging of such factors may result in the introduction of considerations of novelty and market power in the granting of copyright protection while potentially marginalising the discussion of originality and the idea-expression dichotomy doctrine.

Biography: My research focuses on the interaction between copyright and Conceptual Art.

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