Trademarks and Copyright for a Better Tomorrow

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Brands with a cause: The new normal for brands

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Outline

1. How are brands engaging with socio-political causes?
2. Drivers of this new brand normal?
3. Drawbacks?

3

How are brands engaging with socio-political causes?

4

Brands that just do it right

5

6

Brands that champion a cause

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Brands that sell a cause

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Brands that are the cause

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"If we don't protect the trademark, it could be co-opted and employed by people antithetical to our mission."

Bob Bland, Co-President Women's March, Inc.

"….[I]t's our uniform, and we want to secure it so that people can't profit from it who haven't shed blood for this movement."

Hawk Newsome, chairman of Black Lives Matter's Greater New York chapter,

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Drivers of this new brand normal?

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The [2018 Edelman Earned Brand](#) study shows that the market is being transformed by the rise of the Belief-Driven Buyer. Nearly two-thirds of consumers now choose, switch to or boycott a brand based on its stand on societal issues, up from 51 percent in 2017.

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BRANDS ARE CRITICAL TO WINNING THE FIGHT AGAINST THE PANDEMIC

Percent who agree

Our country will not make it through this crisis without **brands playing a critical role** in addressing the challenges we face

⊥

62%

Overall, I think **brands and companies are responding more quickly and effectively** to the pandemic than the government is

⊥

55%

2020 Edelman Trust Barometer Special Report: Brands and the Coronavirus. Q2. Please indicate how much you agree or disagree with the following statements about brands and how they are responding to the current coronavirus pandemic. 9-point scale; top 4 box, agree. Question shown to those who have heard of the virus (Q1/1). 12-mkt avg. Data collected between March 23 and March 26, 2020.

Edelman | 5

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Drawbacks?

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Inauthenticity

We at [Brand] are committed to fighting
injustice by posting images to Twitter that express our
commitment to fighting injustice.

To that end, we offer this solemn white-on-black .jpeg that
expresses vague solidarity with the Black community, but will
quietly elide the specifics of what is wrong, what needs to
change, or in what ways we will do anything about it. This is
doubly true if [Brand] is particularly guilty of exacerbating
these issues.

We hope this action encourages you to view [Brand]
positively without, you know, expecting anything from us.

[BRAND]®
You know the ones.™

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Copyright in the Age of Artificial Intelligence:

To Encourage Machines to Write Useful Books?

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Adam Basanta "Art Factory"
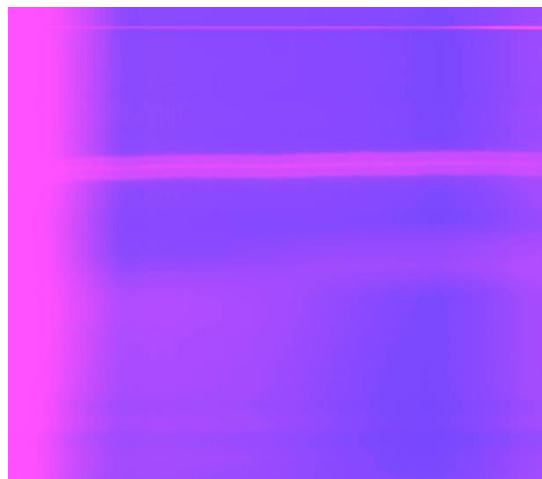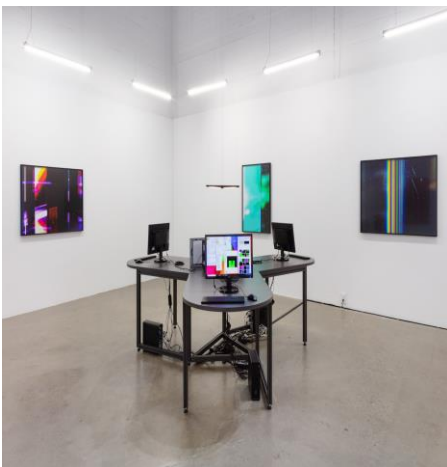
85.81%_match: Amel Chamandy "Your World Without Paper", 2009 created in the project All We'd Ever Need Is One Another by artist Adam Basanta.

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Chamandy v. Basanta
Trademark and Copyright Infringement

Your World Without Paper Amel Chamandy (2009)
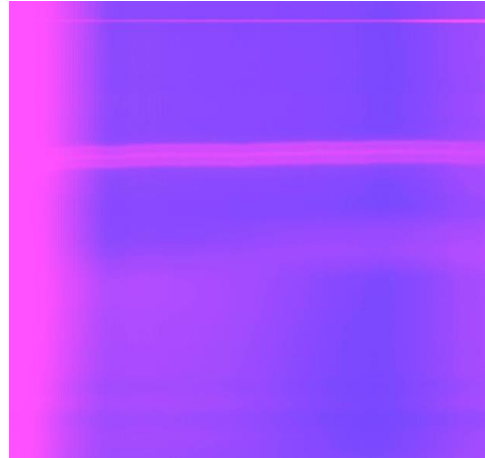
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Amel Chamandy
The Globe and Mail October 2018

- "The digital world has become a means for artists and art dealers to promote their works and for that reason, it is important for copyright to adapt to the digital era in order to keep protecting artists who worked hard to be able to live from their art"

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- "…the legal case involving *All We'd Ever Need Is One Another* is still ongoing, and hopefully we will have a chance to make a small impact by creating a precedent in the law that protects an artist's right to fair use in the context of massive online image databases and art made with algorithmic processes." Adam Basanta

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Blurred Lines
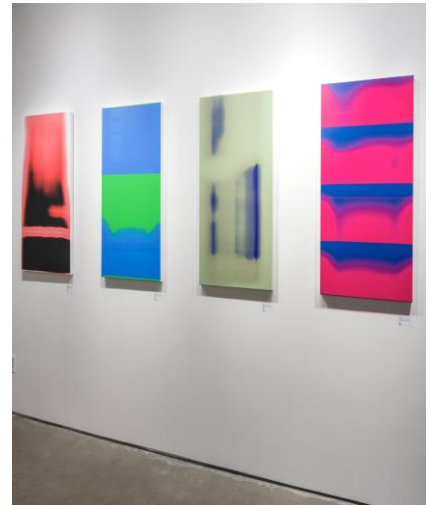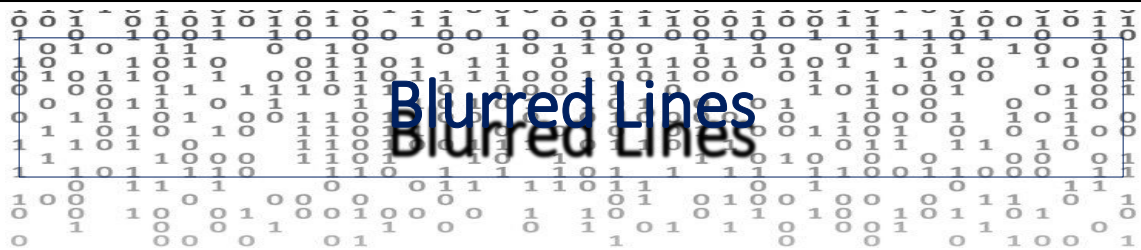
- Artist's identity (trademark) v. artistic expression (copyright)
- Substantially similarity – Does the algorithm decide?
- Algorithmic infringement? Data mining/scraping/informational analysis –fair dealing?
- Authorship and Originality? Who (What) is an Author?

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Adam Basanta's website:

- "All images presented in connection with the artistic work All We'd Ever Need Is One Another by the artist Adam Basanta (the "Artist") are *original works created* by self-generative computer software."
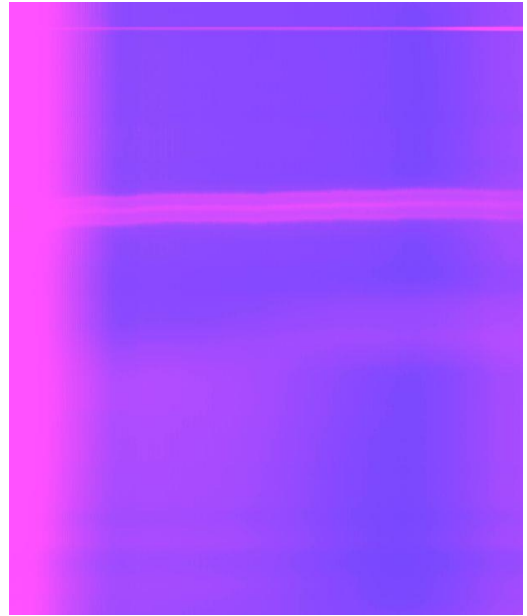
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Authorship and Originality

- "The word 'copyright' in the English version of the Act has obscured the fact that what the Act fundamentally seeks to protect is 'le droit d'auteur'" Décary, J.A *Tele-Direct v. American Business Information Inc* [1998] 2 FC 22

Locke (1632-1704)

Hegel (1770-1831)

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Who is an Author?

- "To encourage learned *men* to write useful books" *Statute of Anne 1710*

- *Copyright Act* Lower Canada (1832), Province of Canada (1841) and Canada (1868): "…if the author, being dead, has left a *widow*…"

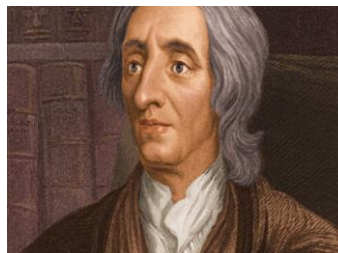|	Copyright Holder	Title of Work		Registration date
1	Copyright Holder	Title of Work		Registration date
2				
3	Mrs Fleming	Exercises on the English Language		16 June 1845
4	L. Eliza McNally	Book of "Skeleton Maps"		24 January 1850
5	L. Eliza McNally	Key to "Skeleton Maps"		29 May 1850
6	Mrs. C.P Traill	The Female Emigrant's Guide		27 April 1855
7	Mrs. JC Sheppard	Chants Canadiens…		18 October 1856
8	Mrs. Col. Savage	Watch the Prophecy of the Scripture		13 March 1857
9	Augusta Baldwyn	Poems		2 November 1859
10	Mrs Mayerhoffer	Autobiography of Revd VP Mayerhoffer		28th February 1861
11	Rev Ladies of Notre Dame de Montreal	Mois de Marie Desolee		13 May 1865
12	C. Hannah	Household Recipes or Domestic Cookery		29 December 1865
13	Mrs. J.B Livernois	Galerie des Contemporains		11 May 1866
14	Margaret Robertson	Shenac's Work at Home		25 February 1867
15	H. Louisa Whitcomb	First Canadian Arithmetic		13 April 1867
16	Madame J B Livernois and Louis Bienvenu	Photographie du Mosaique des Pretres du Diocese de Quebec		26 April 1867
17	Madame J B Livernois and Louis Bienvenue	Group of the Jesuits of Montreal		25 January 1868
18	Madame J B Livernois and Louis Bienvenue	Monseigneur l'Archeveque de Quebec		25 January 1868
19	Mrs E J Duggan	The New Dominion Waltzes		3 April 1868
20	Madame JB Livernois and Louis Bienvenue	Photographie du 4e Concile de Quebec		19 May 1868
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Who is an Author?

- "From this it would almost seem as though the individual who has been dead and buried for some 1900 odd years and the plaintiff ought to be regarded as the joint authors and owners of the copyright, but inasmuch as I do not feel myself competent to make any declaration in his favour, and recognizing as I do that I have no jurisdiction extending to the sphere in which he moves, I think I ought to confine myself when inquiring who is the author to individuals who were alive when the work first came into existence…"

- Cummins v. Bond [1927] 1 Ch 167

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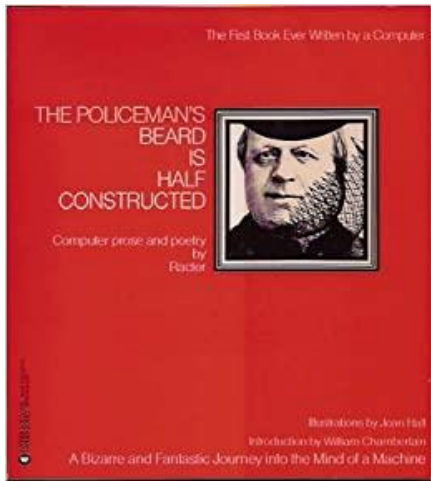
Who is an Author?

• "Night sky and fields of black
A flat cracked surface and a building
She reflects an image in a glass
She does not see, she does not watch."

The Policeman's Beard is Half
  Constructed (1984)

Who is an Author?

Michel Foucault
"What is an Author?" (1969)

"We can easily imagine a culture where discourse would circulate without any need for an author…"

ISED Statutory Review of *The Copyright Act* (2019)

"Our own legislation, perhaps informed by approaches taken in other jurisdictions, can be adapted to distinguish works made by humans with the help of AI-software from *works created by AI without human intervention*. The Committee therefore recommends:

Recommendation 14
That the Government of Canada consider amending the *Copyright Act* or introducing other legislation to provide clarity around the ownership of a computer-generated work."

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