Chapter Seventeen

Copyright

AS PROJECTAR.

OTTANAMATICAL

PRACTICE ENGAGING & PERSISTING...

DON'T FORGET
TO MENTOR
AND BE
MENTORED.

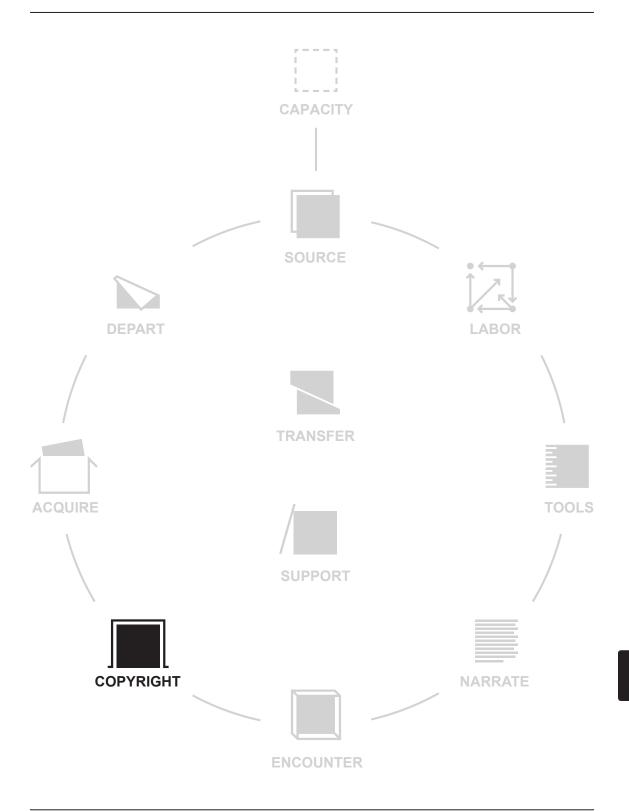
Copyright: your exclusive legal rights to your projects.

Ways to approach copyright include: creating a certificate of authenticity, licensing your artwork for a commercial video, or placing your artwork in the public domain forever.

We suggest that the following section be shared with the group as best suits your context, either read aloud—in whole or in part—or assigned to be discussed in your space of learning. Before you begin to read, we invite you to ground yourself in the space: notice the air on your skin and your feet on the ground. What are your feelings and sensations at this moment? What are you bringing to this text? Take a moment to become

aware of this. We invite you to notice what comes up for you, as you are reading this

chapter. We will ask you to reflect upon this at the end of this chapter.





Introduction

The phase of the lifecycle of any project that we refer to as "copyright" addresses how authors' exclusive legal rights over their projects are used. All original projects that you create are automatically copyrighted according to United States law and cannot be copied, distributed, built upon, or shared unless you allow it by license or assignment. As the Digital Media Law Project explains, "owning a copyright also gives you the exclusive right to prepare 'derivative works,' which are the original works in new forms—for example, a translation into another language, or a movie made from a novel, or a revised or expanded edition of an existing work. Someone who does these things without your permission is infringing on your copyright, and the law provides you recourse." An exception to this occurs under the "fair use" doctrine which we will summarize later in the text.

There are many ways to license and assign your copyright. When you license your project, you lend your copyright to someone, controlling how they use it and how long they can use it for. You might license a drawing to a band for their album and also to an author for their book cover. When you assign your work, you transfer your copyright to someone else for specific uses. You can assign some or all of your rights, but you are giving away those copyrights forever. You might assign use of a drawing to a designer for their website so that no other website will ever have that drawing on it. When you sign a work for hire agreement, you sell your copyright entirely. Anything you create under that agreement belongs to the person hiring you, as if they created it. For example, you might make a drawing for a toy company under a work for hire agreement and they do not need to credit you, because they own it.

Story

In 2015, Getty Images demanded that the documentary photographer Carol Highsmith pay a \$120 fine for copyright infringement because she posted one of her own photographs on her website. She subsequently learned that Getty Images had charged fees to many users of her images, an unlawful act since Highsmith had been donating thousands of her images to the Library of Congress since 1988 for use by the general public at no charge. The \$1 billion copyright infringement suit against Getty for "gross misuse" of 18,755 of her photographs was settled out of court.²

Discussion

We believe that you need to learn about copyright because, according to a survey by the College Art Association, "one-third of visual artists and visual arts professionals have avoided or abandoned work in their field because of copyright concerns." Whether you want to create a certificate of authenticity, license your artwork for a commercial video, or place your artwork in the public domain forever, you need to be aware of the basics of intellectual property law as they apply to your projects. In this section, we will introduce you to "fair use" doctrine, Creative Commons licenses, and will close with examples of artists' approaches to copyright. See Creative Commons License on p. 664.

You might wonder about what constitutes plagiarism, as it applies to your projects. You might ask: Can I download an image from the internet and use it for a project that I intend to sell? Can I make a copy of another artist's project? In the United States, a doctrine called "fair use" supports freedom of expression by allowing you (or anyone else) to use copyright-protected works under certain conditions. The College Art Association commissioned scholar and public intellectual Patricia Aufderheide and professor and expert on copyright law, Peter Jaszi, along with a group of arts professionals, to create a report on best practices in "fair use" in the visual arts. ⁴ As they state, "courts have emphasized that fair use analysis is fact- and situation-specific." That said, the authors ask you, and all artists, to be aware of certain limitations to "fair use" doctrine:

- Artists should avoid uses of existing copyrighted material that do not generate new artistic meaning, being aware that a change of medium, without more, may not meet this standard.
- The use of a preexisting work, whether in part or in whole, should be justified by the artistic objective, and artists who deliberately repurpose copyrighted works should be prepared to explain their rationales both for doing so and for the extent of their uses.
- Artists should avoid suggesting that incorporated elements are original to them, unless that suggestion is integral to the meaning of the new work.
- When copying another's work, an artist should cite the source, whether in the new work or elsewhere (by means such as labeling or embedding), unless there is an articulable aesthetic basis for not doing so.⁶

All projects that you create are automatically copyrighted, according to United States law. Anyone *could* legally copy or adapt your project, if they follow the limitations specified in the "fair use" doctrine. However, you

might want to directly encourage people to share, adapt, and remix your work according to specific conditions. Creative Commons licenses were created to allow you to choose exactly how you wish to lend (license) your copyright so that others can copy, distribute, build upon, and share your work according to the license you choose.

The goal of Creative Commons is to "increase the amount of openly licensed creativity in 'the commons'—the body of work freely available for legal use, sharing, repurposing, and remixing." As the College Art Association describes, "Creative Commons licensing provides a way for authors to announce publicly that their work is available for certain broad types of uses without granting permission on a case-by-case basis, with certain conditions."8 Creative Commons licenses have roots in the 1980s free software movement, which was comprised of computer engineers, new media artists, and software users, some of whom continue to be committed to writing and sharing software with each other and with anyone else who agrees to "share alike." The Free Software foundation codified this ethic in a protocol for software documentation that was adapted by Creative Commons for cultural works that are not written in computer code. Creative Commons licenses are now used by Wikipedia, Flickr, and Google image search. As of May 2018, Flickr alone hosts over 415 million Creative Commons licensed photographs. Every Creative Commons license also ensures licensors get credit for their work.

Remember the question: Can you download an image from the internet and use it for a project that you intend to sell? If you search by the appropriate Creative Commons license (for example, CCo, CC BY, or CC BY-SA) in Google image search, you can find images that artists have already licensed for reuse, along with other criteria, like whether or not you need to attribute the work to them, or whether the adaptation you make can be sold for a profit. You can also follow the "fair use" doctrine with work that is copyrighted (regardless of the Creative Commons license) and hope for the best.

Using Creative Commons, if you do not want others to adapt your work, you would choose a CC BY license, which means that everyone must attribute the work to you (this is what "BY" means), and that they cannot adapt it. If you make a drawing, and want people to build upon your work and share it for non-commercial purposes, you would license it with a CC BY-NC-SA license (a Creative Commons Non-Commercial Sharealike license). "NC" stands for non-commercial. If you want people to be able to build upon your work and share it for commercial purposes, you would license it with a CC BY-SA license (a Creative Commons Sharealike license). We have chosen a CC BY-SA license because we want groups that are not registered as noncommercial, such as worker cooperatives and other small businesses, to be able to sell this book, and adaptations of it.

To make your drawing available in the public domain, so that anyone can use it for anything, including commercial, noncommercial, or political usage without attribution, you must lend (license) your drawing with a Creative Commons CCo license and opt out of copyright protection. To learn how to license your projects using Creative Commons licenses, visit Creative Commons online.¹⁰

The new media artist Michael Mandiberg works with appropriation in digital and analog contexts, often using Creative Commons licenses to do so. Mandiberg created software that would allow them to print the entire English language version of the online encyclopedia *Wikipedia* as it existed on April 7, 2015. The printed version was bound into 106 of the 7,473 books that comprised the entire English Wikipedia set. When describing the project, *Print Wikipedia*, 11 Mandiberg told us:

I try to make my work available under a Creative Commons or open source license where possible. For example *Print Wikipedia* exists in several forms: the open source Java and Python code necessary to produce and upload a full set of books, which lives on Github; a website PrintWikipedia.com which has icons for and links to each of the 7,473 individual volumes that anyone can purchase on Lulu. com; 12 editioned works (edition of 5 with 2 Artist Proofs) including sets I have chosen based on the words on the spine (e.g. "ART" and "SEX")—I insert signed custom bookplates into each of these books; and 7473 pairs of PDFs for each book and its cover which are never to be displayed (for conceptual reasons—they aren't the work) but are stored under the principles of Variable Media archiving. Each of the books is itself published under a CC BY-SA license attributed to the "Wikipedia contributors," all 7.6 million of which are listed in a separate 36 page Contributor Appendix I created.¹²

According to CreativeCommons co-founder, lawyer, and writer Lawrence Lessig, "there has never been a time in history when more of our 'culture' was as 'owned' as it is now. And yet there has never been a time when the concentration of power to control the uses of culture has been as unquestioningly accepted as it is now."

From patents on seeds and DNA, to terms of service in Facebook and Instagram that allow those companies to license our imagery for any purpose, intellectual property law often protects private corporations rather than individual privacy or public benefit. In 2012, Facebook ran a test on its users without their knowledge or consent: "For one week in January 2012, [Facebook] altered the number of positive and negative posts in the news feeds of 689,003 randomly selected users to see what effect the changes had on the tone of the posts the recipients then wrote."

It worked. People who were shown sad or

depressing posts started to post sad and depressing things themselves. As *The New York Times* reported, "the researchers found that moods were contagious.... The company says users consent to this kind of manipulation when they agree to its terms of service." Many people opt out of social media because the terms of use are constantly changing and manipulation of this kind can occur. While you cannot alter the terms of use on social media, because you cannot negotiate directly with Facebook, you *can* alter the terms of use regarding your copyright when you negotiate with museums and galleries.

Most major art institutions ask artists to sign a contract that provides the exhibiting institution, and not the artist, rights to "derivative works" as well as royalties made in association with those derivative works, including images and reproductions of that artist's project. Here is an example of a museum exhibition contract that we signed as the collective BFAMFAPhD when we were invited to exhibit our project *Artists Report Back* in the Brooklyn Museum exhibition *Crossing Brooklyn: Art from Bushwick, Bed-Stuy, and Beyond*, in 2014:

- LICENSE TO ARTIST'S IMAGES. To the extent the Artist provides the Museum with images of the Work (the "Artist's Images"), the Artist hereby grants the Museum a perpetual, non-exclusive, worldwide license to reproduce and publish the Artist's Images in any medium whatsoever, whether now known or hereinafter developed, for non-commercial documentation, archival, educational, promotional and publicity purposes related to the Exhibition, including, without limitation, in catalogues, program materials, online display, press or other materials, and to authorize third parties to do the same. The Artist's Images shall bear the credit line: "[Photographs] © BFAMFAPhD" or otherwise as designated by the Artist.
- PHOTOGRAPHS AND OTHER IMAGES. The Artist hereby authorizes the Museum to photograph, record, film, take video footage of or otherwise reproduce and publish images of the Work (the "Photographs") in any medium whatsoever, whether now known or hereinafter developed, for non-commercial documentation, archival, educational, promotional and publicity purposes related to the Exhibition, including without limitation, in catalogues, program materials, online display, press or other materials, and to authorize third parties to do the same. The Photographs shall be the property of the Museum shall bear the following credit line: "[Photographs] [Video] [Film] © 2013 the Brooklyn Museum." The Artist further understands that the Museum shall allow non-commercial visitor photography of the Exhibition at the Museum.

• PUBLICITY. The Artist agrees to permit the Museum to photograph and record (whether by audio, film, video or any other medium) the Artist (collectively, the "Recordings"), and hereby consents to the Museum publishing, displaying and otherwise reproducing such Recordings in any medium whatsoever, whether now known or hereinafter developed, for non-commercial documentation, archival, educational, promotional and publicity purposes related to the Exhibition. For the avoidance of doubt, the Recordings shall be the property of the Museum, and the Museum may license the Recordings to third parties for purposes consistent with those stated in this Section 16.

We signed this contract. We did not negotiate with the Brooklyn Museum because *Artists Report Back* is an open access project with a Creative Commons CC BY-SA license, meaning that it can be downloaded, adapted, and reused with attribution. If you want to negotiate with an institution that presents a contract like this to you, you can work with Volunteer Lawyers for the Arts to alter it. Rather than allowing the institution to "photograph, record, film, take video footage of or otherwise reproduce and publish images of the Work," you can adapt the contract language to ensure the institution must use images that you provide, and that they will have to pay you to reproduce these images in the future. Being clear about the conditions of your contract is important as it impacts the future of your project. Artists who do not allow "derivative works" often post a sign that says "no photography" in their exhibitions so that the artist is the only person who can circulate images of their work.

Conceptual artworks often require certificates of authenticity to retain their market value. The artist might create a limited edition of a work that would otherwise be infinitely reproducible or they might be selling an idea, and not the physical incarnation of that idea. Owning a Felix Gonzalez-Torres might mean having the right to replenish a specific stack of paper or pile candies. 16 The artist said in a 1991 interview that, "a reading that has been overlooked is the radicality of certain forms of distribution. My stacks are made of paper, an endless stack of paper. This is not a unique piece. What is this thing? A two- or three-dimensional object? Is the work the certificate of authenticity or the piece itself?"¹⁷ While anyone could attempt to follow "fair use" doctrine and recreate Gonzalez-Torres's work for educational or satirical purposes—and the arts collective Temporary Services has created manuals that encourage people to do so¹⁷ collectors use certificates of authenticity to maintain the monetary value of projects. Collectors want to be sure that they are not buying a "fake" work of art which would not be valuable, and so rely upon these certificates.

Certificates of authenticity must include the following information¹⁸:

- The medium (painting, sculpture, digital print, etc);
- The name of the artist or publisher (or both);
- The exact title or subject matter;
- Dimensions:
- Details of the edition size if it is a limited edition (along with the specific number of the item in question);
- Names of previous owners (when relevant);
- If applicable, titles and entries of reference books or other resources that contain either specific or related information about either that work of art or the artist who produced it;
- · Images of the art in question; and
- The title and qualifications of the individual or entity who authored and signed the certificate should also be included, as well as their contact information, and both contact information and qualifications should be verifiable.

The certificate of authenticity for Felix Gonzalez-Torres's pile of candy, called "*Untitled*" (*Placebo*), describes the original candies used for the piece and instructs:

If the exact candy is not available, a similar candy may be used.... A part of the intention of the work is that third parties may take individual candies from the pieces. The individual candies, and all individual candies taken from the piece collectively, do not constitute a unique work nor can they be considered the piece. The owner has the right to replace, at any time the quantity of candies necessary to regenerate the piece back to its ideal weight.¹⁹

While Felix Gonzalez-Torres's project requires that the collector participate in its creation and recreation, he did not choose to allow other artists to remix, repurpose, or adapt his work. If he were to use a Creative Commons license, it would simply be a CC BY license, one that does not allow for sharing or remixing. How do you want your projects to circulate? Do you want them to circulate in a limited edition, with a certificate of authenticity, or anonymously, without attribution, as part of the public domain?

Quotations

"[My stacks of paper and other replenishing artworks] are indestructible because they can be endlessly duplicated. They will always exist because they don't really exist or because they don't have to exist all the time. They are usually fabricated for exhibition purposes and sometimes they are fabricated in different places at the same time. After all there is no original, only one original certificate of authenticity. If I am trying to alter the system of distribution of an idea through an art practice it seems imperative to me to go all the way with a piece and investigate new notions of placement, production, and originality."—Felix Gonzalez-Torres, 1993²⁰

"Copyshop is the name for a shop and an information forum investigating the phenomena of copying. Copyshop offers products that challenge intellectual property. It can be modified originals, improved copies, political anti-brands—or a Supercopy as the new original. Intellectual property in the form of copyright, licenses and patents has an increasing importance on society—and for what we say, where we say it, and to whom we say it to. The right over ideas maintains the status quo within the current economic order. Copyshop discuss the control of value in the same place where it is produced and distributed: the market. As an active player the function of Copyshop will be as that of an ordinary shop. Copyshop was first time installed in a storefront in Copenhagen from 2005–2007 and then moved to Knoxville, Tennessee. Copyshop work as a franchise and can be reopened again."—Superflex, 2007²¹

"I thought that my work had lost all its meaning. If I was to produce things that nobody understood, perhaps I should take up a new profession. Otherwise I could try to create something to help people to understand what I was trying to do.... An idea came to me. If someone actually tried to build something, they would probably learn." —Enzo Mari, 1973²²

"Free software' means software that respects users' freedom and community. Roughly, it means that the users have the freedom to run, copy, distribute, study, change and improve the software. Thus, 'free software' is a matter of liberty, not price. To understand the concept, you should think of 'free' as in 'free speech,' not as in 'free beer.' We sometimes call it 'libre software,' borrowing the French or Spanish word for 'free' as in freedom, to show we do not mean the software is gratis." —The Free Software Foundation, 1990²³

"If applied to art, a 'Free Art Foundation' would make these claims about art: Thus, 'free art' is a matter of liberty, not price. To understand the concept, you should think of 'free' as in 'free speech,' not as

in "free beer." Art is free art if the art's viewers have the four essential freedoms:

- The freedom to use the art, for any purpose (freedom o).
- The freedom to study how the art works, and change it so it does your work as you wish (freedom 1). Access to the materials, tools, and documentation of the production process is a precondition for this.
- The freedom to redistribute copies so you can help your neighbor (freedom 2).
- The freedom to distribute copies of your modified versions to others (freedom 3). By doing this you can give the whole community a chance to benefit from your changes. Access to the materials, tools, and documentation of the production process is a precondition for this.
- Art is free art if viewers have all of these freedoms. Thus, you should be free to redistribute copies, either with or without modifications, either gratis or charging a fee for distribution, to anyone anywhere. Being free to do these things means (among other things) that you do not have to ask or pay for permission to do so.
- You should also have the freedom to make modifications and use them privately in your own work or play, without even mentioning that they exist. If you do publish your changes, you should not be required to notify anyone in particular, or in any particular way."
 - -Caroline Woolard, 2013²⁴

Here are more artists, groups, and projects that come to mind when we think about copyright: The Art and Law Program / The Beehive Design Collective / Santiago Cirugeda / The Free Culture movement / Futurefarmers / Lauren van Haaften-Schick / Enzo Mari / Janelle Orsi / Public Movement / Sergio Muñoz Sarmiento / Superflex / Carey Young. What artists, groups, and projects come to mind for you?

Reflection

- 1. What aspect of this chapter on copyright stood out to you?
- 2. *What feelings and sensations came up for you while you were reading this chapter? For example, did you feel surprise, frustration, or excitement? How did you hold these in your body? For example, did you sense these emotions in your shoulders, neck,

- and back while reading this chapter? See the Social-Emotional Intelligence Project Reflection activity in Chapter 4: Teacher/Facilitator Guides.
- 3. What would it mean to understand artmaking as a site of interdependence, both locally and globally, rather than as a site of individual use and exchange? Remember, art is a system of relationships. We understand from the long history of economically oriented critical theory that behind any object exists a system of extraction, of production, and of circulation whose very histories are hidden at the moment in which the object appears as free-standing, as individual, as a thing, often a commodity. For us, in this book, that "thing" is the art object.



- 1. Digital Media Law Project, "Copyright," http://www.dmlp. org/legal-guide/copyright.
- 2. See Michael Hiltzik, "Photographer Sues Getty Images for \$1 Billion After She's Billed for Her Own Photo," LA Times, July 29, 2016, http://www.latimes. com/business/hiltzik/ la-fi-hiltzik-getty-copyright-20160729-snap-story.html; Cade, DL. "\$1 Billion Getty Images Lawsuit Ends Not with a Bang, but a Whimper," PetaPixel, November 22, 2016, https://petapixel. com/2016/11/22/1-billion-getty-images-lawsuit-ends-notbang-whimper/.
- 3. Patricia Aufderheide, Peter Jaszi, Bryan Bello, Tijana Milosevic, Copyright, Permissions, and Fair Use among Visual Artists and the Academic and Museum Visual Arts Communities: An Issues Report, report to the College Art Association, February 2014, http://www.collegeart. org/pdf/FairUselssuesReport. pdf, 5.
- 4. Patricia Aufderheide and Peter Jaszi (Principal Investigators), Code of Best Practices in Fair Use for the Visual Arts, report to the College Art Association, February 2015, http://www.collegeart.org/pdf/fair-use/best-practices-fair-use-visual-arts.pdf.
- 5. Ibid, 17.
- 6. Ibid, 11.
- 7. Creative Commons, "About," https://creativecommons.org/about/.
- 8. Patricia Aufderheide and Peter Jaszi (Principal Investigators), "Frequently Asked Questions," *Fair Use*, College Art Association, https://www.collegeart.org/ programs/caa-fair-use/faq.
- 9. Wikipedia, s.v. "Creative Commons," https:// en.wikipedia.org/wiki/ Creative_Commons; Flickr, "Flickr: Creative Commons," https://www.flickr.com/ creativecommons/.

- **10.**Creative Commons, "About the Licenses," https://creativecommons.org/licenses/.
- 11. Michael Mandiberg, Print Wikipedia, July 2015, Produced with support from Eyebeam, The Banff Centre, the City University of New York, and Lulu.com. Built with programming assistance from Denis Lunev, Jonathan Kiritharan, Kenny Lozowsky, and Colin Elliot; design assistance from Patrick Davison; and web development by Ben Lerchin. CC BY-SA 3.0 2015, http://printwikipedia.com/.
- 12. Michael Mandiberg, personal correspondence with Susan Jahoda and Caroline Woolard.
- 13. Lawrence Lessig, "Introduction," in *Free Culture* (New York, NY: Penguin; CC BY-NC 1.0, 2004), 22, http://www.free-culture.cc/freeculture.pdf.
- 14. Vindu Goel, "Facebook Tinkers With Users' Emotions in News Feed Experiment, Stirring Outcry," New York Times, June 29, 2014, https://www.nytimes. com/2014/06/30/technology/ facebook-tinkers-with-usersemotions-in-news-feed-experiment-stirring-outcry.html; See also Tara McLennan, "Memories in the Networked Assemblage: How algorithms shape personal photographs," fusion journal, Issue 14 (2018), http://www.fusion-journal. com/wp-content/uploads/ sites/28/2018/12/Issue-14 Intersections_McLennan.pdf
- 15. Ibid.
- 16. See Felix Gonzalez-Torres, "Untitled" (Aparición), 1957-1996, Sotheby's, http:// www.sothebys.com/en/ auctions/ecatalogue/2011/ contemporary-i-n08744/ lot.3.html.
- 17. Felix Gonzalez-Torres, "Temporary Services: Guide to Re-Creating 'Untitled' (Perfect Lovers) by Felix Gonzalez-Torres," interview by Tim Rollins, A.R.T Magazine, 1993, excerpt available, https://temporaryservices.org/served/wp-content/

- uploads/2014/05/Felix_GT_ booklet.pdf.
- 18. See Angie Kordic,
 "Everything You Need to
 Know About the Certificate
 of Authenticity," Widewalls,
 December 8, 2016, https://
 www.widewalls.ch/certificate-of-authenticity/;
 Alan Bamberger, "Is Your
 Certificate of Authenticity
 Worth the Paper It's Printed
 On," ArtBusiness.com, https://
 www.artbusiness.com/certaut.html.
- 19. Certificate of Authenticity for "Untitled" (*Placebo*), Williams College Museum of Art, quoted in MuseumMuseum Blogger (Nicole), "Felix Gonzales-Torres," *MuseumMuseum*, March 2, 2010, http://psumuseummuseum.blogspot.com/2010/03/felix-gonzalez-torres.html.
- 20. Felix Gonzalez-Torres, "Temporary Services: Guide to Re-Creating 'Untitled' (Perfect Lovers) by Felix Gonzalez-Torres."
- 21. Superflex Copyshop,
 "Tools," in collaboration
 with: Copenhagen Brains,
 2000-ongoing, http://www.
 superflex.net/tools/copyshop/
 image. Copyshop offers
 products that challenge intellectual property. They can be
 modified originals, improved
 copies, political anti-brands—
 or a Supercopy as the new
 original.
- 22. Enzo Mari, quoted in "Insights: Homage to Autoprogettazione," CBA, September 17, 2014, https://www.cba-design.it/en/insights/made-with-heart-homage-to-autoprogettazione.
- 23. GNU Operating System, "What is Free Software?" sponsored by the Free Software Foundation, https://www.gnu.org/philosophy/free-sw.en.html.
- 24. Caroline Woolard, *Queer Rocker*, plywood, text, open source file dimensions variable, 2012–2016, PDF available, http://caroline-woolard .com/static/uploads/texts

/DraftPrintQUEERROCKER publication.pdf, 8.