

THE ART OF NOTHING

Immateriality and Intangible Art

By Kristen Alvanson

The intangible became somewhat of an obsession for me a few years ago, when I began to make art in my dreams. While working on my current dESIRE Project, an exploration of what is desire, thoughts of what constitutes the intangible in relation to art surfaced again as I was creating the legal documents for selling my dESIRES. I was looking at the intangible in relation to modern law and the economy of immaterial art. In the process, I came across medieval law and the Christian theology of the Catholic Church and realized their relationship to my subject of inquiry. By examining the concept of intangible in law, economy and religion – both in modern era and the middle ages – we can understand how belief versus non-belief systems and radical difference in ownership and property laws effect perceptions of the immaterial.

'What is Intangible Art?' The question has continually defied being answered in part due to the elusiveness of the content itself. The Intangible is a state, a condition, a thing which can not be directly possessed in its own possibility (*possumus*), perceived (*prehenditur*) or traced (*tractabilis*). Intangible art, therefore, can not be held, seen or reproduced directly for an indefinite amount of time nor can it be bought and sold, bartered, traded or gifted. However, the indefiniteness of time is determined by the *status quo* and might be subjected to alterations and transition from possibility to actuality and possessability.

Conceptual artists in the past such as Yves Klein or the Vienna Actionists (Schwarz-kogler, et al.) created intangible (immaterial) art via experiences, actions, performances and conceptual ideas which were often materially documented in proposals, notes and the recordings of the performances. These documents created traces of the intangible art – 'evidences' of existence, but were not the art itself. Interestingly though, the docu-

ments became commodities themselves.

The idea of immaterial art is identical to the medieval history of the Catholic Church and Christian papal theology in regard to indulgences. It was only during this time that Johann Tetzel, the father of intangible art, could embed his outlandish artistic projects in the abstruse foundations of Christian theology and reading of scriptures. Pieces of lands from heaven and post-mortem years of purgatory were sold, documented with the names of buyers and systematically archived. As the saying goes, "As soon as the coin in the coffer rings, the soul from purgatory springs." Only as the highest state of intangible art could the celestial dominions be traded and become the object of actual investment. Since in Catholic theology the human is a reeking infinity of sins and heaven is a boundless piece of land, the potentiality of artistic creativities of such intangible trades is limitless.

In medieval economy the law of nature cannot be distinguished from the law of God, for God is the nature and nature is God. The law of the Divine rules over human law. In the realm of the Divine and nature, human ownership does not exist because God's dominion is impossible to be differentiated or separated from the act of God. Therefore, human ownership or possessing the Divine's realm is identical to either replacing God's act with the human's or the very blasphemous act of considering a partner for the Divine's affair. In medieval law, men were holders of property rather than owners. Anything in contradiction with the God's law should be considered void; in the same vein, believing can only have one object as its reason and cause which is Divine and consequently all that is of the Divine. For human, the outcome of the Divine's monopoly in ownership of everything even belief blurs the boundaries between belief and unbelief (which is not disbelief). When God is the only object and reason of belief, both believing in the possible (tangible) and impossible (intangible) are equal to indulging in the ownership of God over everything and thus believing in God's one-ness and infinity, of act and domination.

In medieval law, belief and unbelief overlap in smuggling the black market of sacrilege to God's efficient economy of belief. Medieval law was already privileged by the heretical outcomes of the Divine's exclusive ownership: the efficiency of the monopolistic domain to host beliefs in their unbound plurality over the flexibility of polytheism in accepting beliefs by their scale of possibility. For this reason, intangible art along with the unbelief necessary for accepting it flourished under the medieval theology and papal law where God had the exclusive ownership of heaven and earth on both planes of possibility and actuality. The purchaser believed in the possession of land in heaven through the legal certificate with wax seal which was issued. The seal was the mark of Belief – in the name of God – attached to an impossible (not able to be possessed or traced i.e. intangible) object, the artifact of unbelief. If the word of the Church is the word of God and the word of God is the belief itself, then in buying and selling indulgences belief was merely acting on behalf of the impossible, the intangible and that which cannot be traced, not the other way around. Under medieval law it was possible to possess the intangible as a possession for both the material and immaterial belong to God.

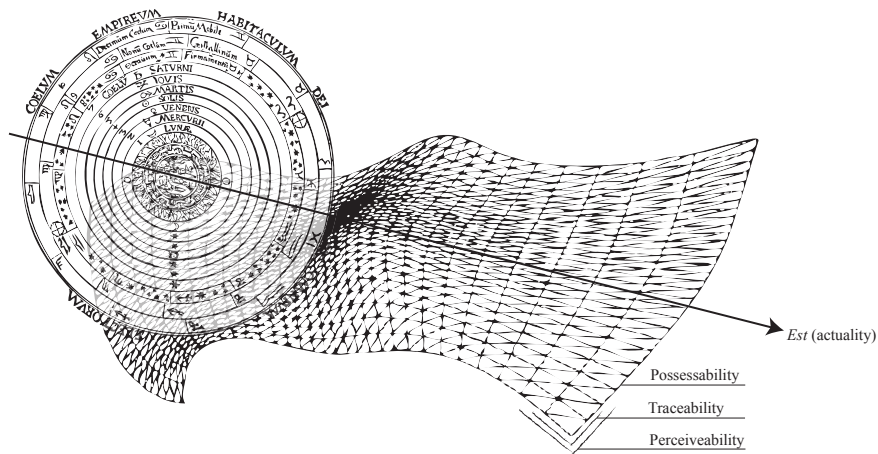


Fig. 1 The tangible is the area covered by a plane constituted of three layers – possessability, traceability and perceiveability – crossing cosmos and earth along the axis of actuality. The areas not covered by such a plane are considered the intangible.

The problem of purchasing land in Heaven brings about a number of open ended questions concerning the permanency of Heaven and its position in God's kingdom. Suppose you can in fact buy a piece of land in Heaven; is Heaven fixed and controlled by God, or can it be altered by man as the holder of the land?

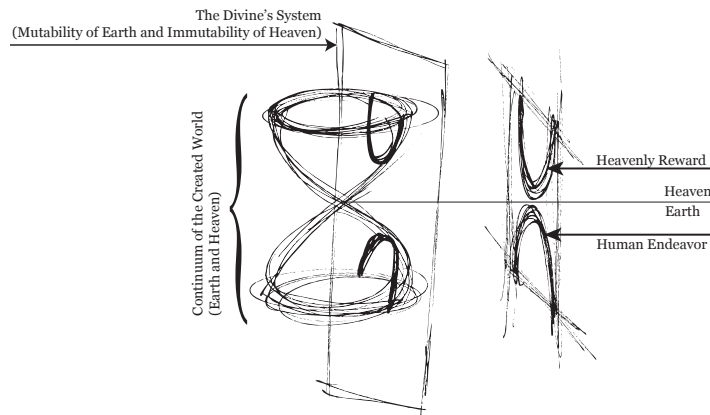


Fig. 2 Hyperbolic Judgment: The consequence of the Divine's system of judgment is that the heavenly reward exists outside of human endeavor – the immutability of heaven and redundancy of the human action.

laws. Correspondingly, the same disbelief has taken over the intangible. The intangible can no longer be traded in the name of God's ownership. Ideas or intangible artifacts in themselves are collective and shared and can not be propagated. Today when the intangible is discussed it is approached from a modern law point of view – one of disbelief and one of existing rules and regulations in connection with the actual ownership of man. Intangible art has no value, because it can not be possessed. It has no relevancy to ownership because it can not be directly perceived. Therefore, it lacks significance for it cannot be traced either through ownership or as an object in general. Intangible art is existentially ambiguous.

When I sought legal help to create documents to sell my intangible dESIRES, the lawyers advised me, "You can't sell your intangible desire. It does not exist and therefore, can not be sold. You can sell the representations of your desire [photographic representations], but not the intangible dESIRE as it does not qualify as intangible property by definition of the law. Nor can you copyright your desires." "Why?" I asked. "Because our legal system does not allow it."

I found that claiming my intangible dESIRES as intellectual property might be a viable option, however, my lawyers disagreed. Definitions of intangible property and intellectual property follow:

"Intangible property, also known as incorporeal property, describes something which a person or corporation can have ownership of and can transfer ownership of to another person or corporation, but has no physical substance. It generally refers to statutory creations such as copyright, trademarks, or patents. It excludes tangible property like real property (land, buildings and fixtures) and personal property (ships, automobiles, tools, etc.). In some jurisdictions intangible property are referred to as choses in action. Intangible property is used in distinction to tangible property.

Generally, ownership of intangible property gives the owner a set of legally enforceable rights over reproduction of personal property containing certain content. For example, a copyright owner can control the reproduction of the work forming the copyright. However, the intangible property forms a set of rights separate from the tangible property that carries the rights. For example, the owner of a copyright can control the printing of books containing the content, but the book itself is personal property which can be bought and sold without concern over the rights of the copyright holder.

In law, *intellectual property (IP)* is an umbrella term for various legal entitlements which attach to certain types of information, ideas, or other intangibles in their expressed form. The holder of this legal entitlement is generally entitled to exercise various exclusive rights in relation to the subject matter of the IP. The term *intellectual property* reflects the idea that this subject matter is the product of the mind or the intellect, and that IP rights may be protected at law in the same way

as any other form of property.

Intellectual property laws vary from jurisdiction to jurisdiction, such that the acquisition, registration or enforcement of IP rights must be pursued or obtained separately in each territory of interest. However, these laws are becoming increasingly harmonised through the effects of international treaties such as the 1994 World Trade Organization (WTO) Agreement on Trade-Related Aspects of Intellectual Property Rights (TRIPs), while other treaties may facilitate registration in more than one jurisdiction at a time. Certain forms of IP rights do not require registration in order to be enforced.”¹

To sell my dESIRES, the lawyers felt comfortable ‘licensing’ the photographic representations, so they created a ‘License Agreement’² for me to be signed by buyers at the time of sale. Under the ‘Proprietary Rights’ section of the agreement it notes the dESIRE Photographs are my intellectual property. However, nowhere in the agreement does it include my actual intangible dESIRES or state that my intangible dESIRES are my intangible property or intellectual property, even though it is my full intent to sell both my intangible dESIRE (what I have really desired) as well as its photographic representation.

Copyrighting intangible art is problematic because to obtain copyright protection the work must be in a ‘fixed form’. By definition, intangible art does not have a fixed form. The U.S. Copyright Office highlights what can and can not be copyrighted:

Copyright protects “original works of authorship” that are fixed in a tangible form of expression. The fixation need not be directly perceptible so long as it may be communicated with the aid of a machine or device [for recordings]. Copyrightable works include the following categories:

1. literary works;
2. musical works, including any accompanying words
3. dramatic works, including any accompanying music
4. pantomimes and choreographic works
5. pictorial, graphic, and sculptural works
6. motion pictures and other audiovisual works
7. sound recordings
8. architectural works

¹ Definitions of intangible property and intellectual property obtained from www.wiki.lawguru.com

² See a sample of the License Agreement in the dESIRE section of my website at www.kristen Alvanson.com

These categories should be viewed broadly. For example, computer programs and most "compilations" may be registered as "literary works"; maps and architectural plans may be registered as "pictorial, graphic, and sculptural works."³

Several categories of material are generally not eligible for federal copyright protection. These include among others:

- Works that have not been fixed in a tangible form of expression (for example, choreographic works that have not been notated or recorded, or improvisational speeches or performances that have not been written or recorded)
- Titles, names, short phrases, and slogans; familiar symbols or designs; mere variations of typographic ornamentation, lettering, or coloring; mere listings of ingredients or contents
- Ideas, procedures, methods, systems, processes, concepts, principles, discoveries, or devices, as distinguished from a description, explanation, or illustration
- Works consisting entirely of information that is common property and containing no original authorship (for example: standard calendars, height and weight charts, tape measures and rulers, and lists or tables taken from public documents or other common sources)³

However, in another section of the U.S. Copyright Office website, the definition is slightly different, incorporating the word "copy" into the text:

Copyright is secured automatically when the work is created, and a work is "created" when it is fixed in a copy or phonorecord for the first time. "Copies" are material objects from which a work can be read or visually perceived either directly or with the aid of a machine or device, such as books, manuscripts, sheet music, film, videotape, or microfilm. "Phonorecords" are material objects embodying fixations of sounds (excluding, by statutory definition, motion picture soundtracks), such as cassette tapes, CDs, or LPs. Thus, for example, a song (the "work") can be fixed in sheet music ("copies") or in phonograph disks ("phonorecords"), or both. If a work is prepared over a period of time, the part of the work that is fixed on a particular date constitutes the created work as of that date.⁴

If a copy of my intangible dESIRE such as its photographic representation is created does this secure copyright of my intangible dESIRE? It is certainly arguable; however, labeling a photographic representation a 'copy' is inaccurate as it does not include the actual desire in its entire form or content. Copies or evidences do not offer a direct link to the perception, possession or traceability of an intangible artifact.

³ The U.S. Copyright Office website can be found here www.copyright.gov

⁴ Ibid.

Even today artists working with immaterial concepts often use evidences. Take the current immaterial art gallery by *SPACE* (Juraj Carny, Diana Majdakova and Lydia Pribisova) and Cesare Pietroiusti known as *Evolution de l'Art*⁵, for example. The *Evolution de l'Art* gallery, physically located in Bratislava and maintaining a website online, represents artists whose artwork is, at least in the case of some specific projects, alien from any physical-material component. The gallery's intent is to sell artworks that are immaterial, with no physical residue, and it does not release certificates of authenticity, nor statements or receipts. However, I noticed that a number of the artists represented are using evidences in an attempt to document the immaterial aspect of the art even though the gallery's mission mentions that no certificates, statements or receipts are issued. For my contribution to *Evolution de l'Art* 'Days in Iran for Sale', I am selling my days in Iran. Buyers may choose a specific date or dates during my time in the country at \$100 US dollars per day. In the end, I decided to offer the buyer a summary of the day's events and notable experiences which occurred and then release my ownership of the day to the buyer. In the write up, I am deliberately vague on what the 'summary' is. If necessary, I will offer a verbal summary to eliminate any physical documentation of the day. However, a verbal summary still holds some evidence. While the documentation of intangible art is not the art itself, I am nevertheless curious about how these evidences too are art; how they have their own properties which are separate and operate autonomously, yet they are always associated with the intangible.

A few artists represented by *Evolution de l'Art* have proposed intangible art with potentially no residue. Artist Kamiel Verschuren of the Netherlands offers 'Giving you a thought for as long as you live'. He writes, "The most immaterial work is an idea that does not exist in any physical form besides the neural activity that occurs with thinking the thought itself. I give you 'yesterday and tomorrow'! as long as you live. The price: €1 per day (for as long as the purchaser lives)." It is unclear if he will relay the thoughts everyday to the purchaser or if he will keep them to himself. From an intangible perspective, I prefer the latter. For 'My celebrity interactions can be yours' British artist Joanna Callaghan is selling her celebrity interactions. She proposes, "A range of celebrity interactions to own as your own. I relinquish these moments in my past and sell them to you who can now claim them as your own. Useful as party anecdotes and claims to fame. Something for everyone from actors to sport stars, filmmakers and artists. These interactions range in intensity of interaction including conversations, interviews and some physical interaction. Prices vary according to level of interaction and celebrity status." Interesting idea, transferring ones experiences to another, I like the idea of trading a celebrity interaction of my own for one of hers. However, details about the interactions need to be documented either in writing or verbally in order to be successfully transferred. Maybe Otis Laubert, Slovakian artist, in his '32 exercises (with colours, air, fruit, snow, animals, and others)' proposes an intangible art without documentation. In the menu number three is listed simply as 'Colour fog' for 600 Skk. The lack of description or physical evidence makes it one of the most appealing and elusive items for sale at *Evolution de l'Art*. And possibly one of the least commercial, for buyers do not want to invest in something that lacks corporeality. Insofar, people who refuse

5 The Evolution de l'Art website can be found at <http://www.evolutiondelart.net>

to buy intangible art are mere disbelievers. For the artist, making intangible art with no physical evidence is a more difficult task – a challenging yet principally non-commercial venture – since the act of making the art becomes a non-possessable intellectual endeavor full of creative indulgences where there are no believers or buyers.