

Dialogues of Authenticity

Laura A. Heymann

Class of 2014 Professor of Law
College of William & Mary Marshall-Wythe School of Law
lahey@wm.edu | [Bio](#)

In 1961, Italian artist Piero Manzoni embarked on a project in which he provided various associates, including the art gallery owner Mario Diacono and the artist Marcel Broodthaer, certificates of authenticity. Each certificate — numbered, signed, and watermarked — attested that the holder of the certificate was “to be considered as an authentic work of art for all intents and purposes” as of the date of the certificate. Robert Rauschenberg did much the same thing in his 1961 work “This Is a Portrait of Iris Clert If I Say So,” which consisted of the top of a telegram, sent from Stockholm to Ms. Clert in Paris, with the message, “This is a portrait of Iris Clert if I say so. Robert Rauschenberg.” And Marcel Duchamp did this most famously with his 1917 work “Fountain,” which ultimately, as Thierry de Duve noted, “reduce[d] the artwork to the statement that names it as such.”

The practice of validating and authoring an existing work simply by claiming it as one’s own is commonplace. Artists operating under a studio model, such as Andy Warhol and Dale Chihuly, have frequently been described as reducing their work to statements of authorship, indicated by the signature finally affixed to the work. Celebrities affiliate themselves with designer clothing lines with which they have had little to do but attach their names. By contrast, luxury goods manufacturers decry as inauthentic and counterfeit the handbags produced during off-shift hours using the same materials and craftsmanship as the authorized goods produced hours earlier, and the Native American novel *The Education of Little Tree* was hailed as a thoughtful and culturally accurate memoir until it was revealed that its author was not the Cherokee writer Forrest Carter but rather the white segregationist Asa Carter. The distinction between authentic and inauthentic often turns on nothing more than a statement of authorship.

Intellectual property law purports to value such statements of authenticity — indeed, they are at the heart of our copyright and trademark systems. These statements tell us what interpretive and evaluative tools we should bring to the task — whether, for example, we are to treat a T-shirt design as ironic commentary or infringement or a photograph as duplicative or transformative. But no statement has value unless it is accepted as valid by its audience, a determination that depends on shared notions of what authenticity means as well as a common understanding of what authenticity designates. The importance of the audience or reader in participating in what is really a *dialogue* of authenticity lurks within our intellectual property system. This article attempts to bring this feature to the surface.