

## Finding the Material: Collecting and Protecting Intellectual Property in Ephemeral Work

Megan Sallabedra, Fall 2017  
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Professor Maureen Whalen

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## Abstract

The 1976 Copyright Act outlines the criteria for protecting artists' original creative work. Contemporary, performative art practices often have no tangible enduring trace, and the definition of creative work protected under the Copyright Act has major implications for iterative works of art such as performance or similar ephemeral installations. From a legal standpoint, there are no clear guidelines to direct an institution's right to display and maintain performance or other conceptual, ephemeral works in its collection. Without a legal guide, institutions are faced with the task of creating a model for collecting work that has no clear guidelines for acquisition and display. Some work by artists whose practice is primarily ephemeral has been afforded a small amount of legal protection through photographs and videos, and materials that supplement performances and conceptual experiences. While few legal cases exist to set a precedent for protecting ephemeral works of art, we can look to examples in related media that point out shortcomings in the law. These contiguous precedents allow us to focus our attention when building protections for artists' intellectual property and an institution's right to display performance and ephemeral works in their collection. Ultimately, collecting institutions should collaborate with artists to define material properties of their ephemeral works of art and appropriate means of display and maintenance for posterity.

Originally constructed in 1970 on the Great Salt Lake in Utah, Robert Smithson's *Spiral Jetty* is an artwork composed of local, found materials from the environment. *Spiral Jetty* was intended by the artist to ebb and flow with the tides of the water on which it is built, and indeed, has at times disappeared completely under the Great Salt Lake. Without a single tangible and fixed form, the earthwork *Spiral Jetty* faces questions as to ownership, rights to access, document, publish and create secondary or supportive works from this land-based original. The institutions who today manage *Spiral Jetty* have crafted ways to ensure the work is protected as intellectual property. A discussion of the issues facing *Spiral Jetty* as a precedent for protecting ephemeral works of art follows later in this paper, but is introduced here as a means to establish the complicated and often confounding situations that arise when works of art lack a specific physical form. With the production of ephemeral works of art proliferating today, memory institutions must find ways to preserve and protect such works in their collection.

When it comes to traditional static media like painting and sculpture, museums have straightforward models for acquiring, cataloging and displaying works of art in their collections. The 1976 Copyright Act outlines the criteria for protecting artists' original creative work, and there are few questions about rights to the usability, display and constitution of artworks in an institutional collection based on guidelines provided under the regulations contained within the act. Several sections contained in the Copyright Act outline distinguishing characteristics of works that are protected by copyright, and the conditions under which they are subject to legal protection. Section 101 defines a work as

“created” when it is fixed in a copy...for the first time; where a work is prepared over a period of time, the portion of it that has been fixed at any particular time constitutes the work as of that time, and where the work has been prepared in different versions, each version constitutes a separate work.”<sup>1</sup>

This definition has major implications for iterative works of art such as performance or similar ephemeral installations.

Section 102 (a) of the Copyright Act outlines the criteria for protection, stating that

Copyright protection subsists, in accordance with this title, in original works of authorship fixed in any tangible medium of expression, now known or later developed, from which they can be perceived, reproduced, or otherwise communicated, either directly or with the aid of a machine or device.<sup>2</sup>

Section 102 (b) furthermore states that

In no case does copyright protection for an original work of authorship extend to any idea, procedure, process, system, method of operation, concept, principle, or discovery, regardless of the form in which it is described, explained, illustrated, or embodied in such work.<sup>3</sup>

Many of works of contemporary art being collected by institutions today derive from Conceptual practices wherein the idea is the heart of the work whose tangible, physical manifestation conveys the meaning. Contemporary works of performance, however, often have no tangible enduring trace. It is the idea that constitutes the work, conveyed through a performative process, which is clearly stated by law to be left unprotected.

One final aspect of the Copyright Act that is important for the purposes of this discussion is section 109 (c), which allows owners and authorized borrowers—in our case museums—to display the work to the public. However, new media present new challenges—audiovisual work, for example, is not provided for under section 109 (c)

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<sup>1</sup> “Copyright Act of 1976,” Title 17 § 101 (2016).

<sup>2</sup> “Copyright Act of 1976,” Title 17 § 102 (2016).

<sup>3</sup> Copyright Act of 1976.

and terms of display must be negotiated upon sale or occasion between the artist and collecting institution.<sup>4</sup> Performance work is even more difficult to parse, given the grey area such works inhabit under copyright law. Where ephemeral, performative works are concerned, the Copyright Act provides no clear guide to direct an institution's right to display and maintain performance works in its collection. Many of the questions that drive artistic practice in ephemeral work—what are the boundaries of the work? who can perform? what materials constitute the work?—are the questions that prevent clear protection of this kind of creative labor. Precedents from the world of Dance provide some guidance, but while some works of performance art may resemble or draw from dance as a discipline, differences in the conceptual framework distinguish performance art as separate and requiring its own set of rules for documentation and protection. Without a specific legal guide, institutions are thus faced with the task of creating a model for collecting works of art that protects an artist's rights to their intellectual property while providing for the institution's right to display and maintain the work of art.

For conceptual works of art constituted of performance or other ephemeral media, institutions and artists can find some means of intellectual property protection in the material components that make up a performance or ephemeral installation. Conceptual artist Sol Lewitt gives us one of the earliest definitions of Conceptual Art, laying out a set of criteria for considering works in which “the idea... is the most important aspect of the work,”<sup>5</sup> noting that “all intervening steps... that show the thought

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<sup>4</sup> “Copyright Act of 1976,” Title 17 § 109 (2016).

<sup>5</sup> Lewitt's definition: “In conceptual art the idea or concept is the most important aspect of the work.... If the artist carries through his idea and makes it into visible form, then all the steps in the process are of importance. The idea itself, even if not made visual, is as much a work of art as any finished product. All intervening steps—scribbles, sketches,

process of the artist are sometimes more interesting than the final product.<sup>6</sup> Drawings, video, costumes, props—material that constitute intervening steps making up an ephemeral work of art—are all tangible media that can be protected under copyright and can help to make up a fixed work as defined under the Copyright Act. Determining the materials that constitute a tangible representation of an ephemeral work allow institutions to find appropriate ways of documenting and describing works of this kind. While it is unlikely Lewitt was attempting to provide a guide for understanding the intellectual property rights of Conceptual artists, his comments direct us to consider the ways in which concrete aspects of ephemeral works can be collected, cataloged and protected. Looking to how some noted ephemeral and performative works of art have been collected and maintained by a small cadre of institutions provides a practical framework for collecting this kind of art.

### **Robert Smithson's Spiral Jetty**

Robert Smithson's *Spiral Jetty* is the definitive work for what we now regard as a whole genre of artmaking known as Earthworks. Situated on a piece of land acquired by Smithson on the Great Salt Lake outside of Salt Lake City, Utah, the work is composed of local, found materials from the environment—rock, salt crystals, earth and water. Due to the work's location on the lake, and the corrosive nature of the work's materials, *Spiral Jetty* has changed substantially over time. Not long after it was built, *Spiral Jetty*

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drawings, failed works, models, studies, thoughts, conversations— are of interest. Those that show the thought process of the artist are sometimes more interesting than the final product.”

Lewitt, Sol, “Paragraphs on Conceptual Art,” *Artforum* 5, no. 10 (June 1967): 79–83.

<sup>6</sup> Lewitt, Sol, “Paragraphs on Conceptual Art.”

was entirely submerged by the waters of the rising lake. It only fully reappeared in 2002 after years of drought and the lake water's recession. In 1999 *Spiral Jetty* was donated to Dia, an art institution based in New York state, by Smithson's estate. The work is now managed by Dia in tandem with the Great Salt Lake Institute at Westminster College, and the Utah Museum of Fine Art (University of Utah).

Taking note of the specific, traditional components of a work of art that are used to identify *Spiral Jetty* in Dia's collection, the work is described as having a fixed, tangible form—solid material and dimensions, and classified as a sculpture.<sup>7</sup> However, while the work has a tangible form, the form is not fixed. The work was installed on the Great Salt Lake with the intention that the ebb and flow of the lake's water would affect the shape of the work. Materials used to create the work are the same materials found in the surrounding landscape, intentionally shaped as the work's sculptural component. This lack of fixed form problematizes the work's intellectual property protection. The heart of the work—the idea that it presents made manifest through an ephemeral environmental intervention—cannot be protected based on the guidelines provided under the Copyright Act.

Where the work is afforded some protection under copyright law is in the realm of photographic and video material. On its collection page for *Spiral Jetty*, Dia is explicit in stating "Photographic and video material of *Spiral Jetty* is copyright protected. For rights

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<sup>7</sup> Dia Art, "Dia | Art | Spiral Jetty," Collection: Robert Smithson, *Spiral Jetty*, 1970, accessed November 25, 2017, <https://www.diaart.org/collection/collection/smithson-robert-spiral-jetty-1970-1999-014/#>.

and reproduction requests, please contact [rights@diaart.org](mailto:rights@diaart.org).”<sup>8</sup> This candid statement, noting carefully the components of the work that *are* protected, is conspicuous in what it hides—a lack of protection for other media, that is, the sculptural work itself.

Dia has photo-documented the work twice a year—May and October, since 2012. In creating these original photographs, Dia is adding a layer of intellectual property protection to the work, one that is fully under the control of the organization. Furthermore, the copyright on these representations of *Spiral Jetty* extends an aspect of protection for the work almost in perpetuity. With no end to the photo-documentation project noted, the intellectual property term of these objects is essentially renewed with each instance of documentation.<sup>9</sup>

A contemporaneous video made by Robert Smithson in 1970 to document *Spiral Jetty* represents another material form of the work that is protected by copyright—as well as a work of art in its own right. While Dia along with its partners the Great Salt Lake Institute and Utah Museum of Fine Arts manage the sculptural component of this work, the video, as well as drawings of the work made by Smithson are separately owned. In the case of the video, the work even has multiple agencies that license and distribute the work. Considering the sculptural component as the heart of the work, along with photographs produced by the institution who holds the work in its collection

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<sup>8</sup> Dia Art, “Dia | Art | Spiral Jetty,” Collection: Robert Smithson, Spiral Jetty, 1970, accessed November 25, 2017, <https://www.diaart.org/collection/collection/smithson-robert-spiral-jetty-1970-1999-014/#>.

<sup>9</sup> Depending on the arrangement made with the photographer, life +70 years or 120 years from the date of creation. That means that photographs of *Spiral Jetty* created this year are protected presumably through 2137.

and the video work produced by the artist, we see that there are layers to this work of art by Robert Smithson, each collected in different ways.

### **Collecting Performance**

Best known for his participatory performances in which he cooks food that is then consumed by an audience, contemporary artist Rirkrit Tiravanija's work defies a simple collection method or any kind of definition as fixed or tangible. Among his performance works that have been collected, the San Francisco Museum of Modern Art (SFMOMA) holds *Untitled (Pad See-ew)* (1990/2002). The work's title takes its name from the dish, Pad See-ew, cooked as the main component of this performance.

SFMOMA's artwork information available via its online collection portal lists a copyright for the work, but no tangible or fixed nature of the work to be protected in such way. The work is classified by the museum as a "performance," media is listed as "performance," dimensions listed are "variable." Not even the date of the work is fixed: 1990/2002 indicate the instances in which the work has been performed.<sup>10</sup> Presumably the year field will continue to change as the work continues to be performed. Not only is the work ephemeral by nature of its performative character, the actual materials associated with the work are themselves ephemeral. While some components like pots, pans, burners, or utensils, may be necessary for cooking the Pad See-ew, the food itself is consumed on occasion of the work's performance—no trace of it remains after.

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<sup>10</sup> SFMOMA, "Rirkrit Tiravanija, *Untitled (Pad See-Ew)*, 1990/2002," SFMOMA, accessed November 25, 2017, <https://www.sfmoma.org/artwork/2000.642>.



The Museum of Modern Art in New York (MoMA) takes a different approach to collecting Tiravanija's performance work. Acquired by the Department of Painting and Sculpture, the artist's *untitled 1992/1995 (free/still)* (1992/1995/2007/2011-) is identified less by its performative nature as with the materials that make up the tangible components of the performance. Like *Untitled (Pad See-ew)*, *untitled 1992/1995 (free/still)* lists variable dimensions and the various dates in which the work has been performed. However, materials listed are fixed: "Refrigerator, table, chairs, wood, drywall, food and other materials."<sup>11</sup> While this simple list of everyday objects does not necessarily constitute a fixed form that can be protected by copyright, it begins to indicate a frame for considering the material nature of ephemeral work.

MoMA is a leader in the field of collecting performance-based works, with a Department of Media and Performance Art dedicated to collecting and preserving time-based media. While the museum has collected Rirkrit Tiravanija's work as part of the Department of Painting and Sculpture there are many other works within MoMA's collection that have been collected under the umbrella of this innovative department. The Department of Media and Performance Art "collects, exhibits and preserves time-based art."<sup>12</sup> This simply stated departmental goal is in fact an incredibly complex endeavor when dealing with ephemeral works of art that require constant training, documentation and care.

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<sup>11</sup> "Rirkrit Tiravanija. *Untitled 1992/1995 (Free/Still)*. 1992/1995/2007/2011- | MoMA," The Museum of Modern Art, accessed November 25, 2017, [https://www.moma.org/collection/works/147206?classifications=any&date\\_begin=Pre-1850&date\\_end=2017&locale=en&q=rirkrit+tiravanija&with\\_images=1](https://www.moma.org/collection/works/147206?classifications=any&date_begin=Pre-1850&date_end=2017&locale=en&q=rirkrit+tiravanija&with_images=1).

<sup>12</sup> "The Department of Media and Performance Art | Museum of Modern Art | MoMA," The Museum of Modern Art, accessed November 25, 2017, <https://www.moma.org/explore/collection/departments/media>.

In 2008 MoMA produced a series of workshops for artists, conservators and curators on preserving and collecting performance. Since then, the department has continued to work with artists whose performances have been collected by the museum to develop ways of preserving and protecting their work. Because there is no standard material by which to measure what constitutes a performance, each performance work in MoMA's collection must be cataloged on a case-by-case basis.<sup>13</sup> The materials included and cataloged as part of a given work's record within MoMA's collection recall Lewitt's observation that, "All intervening steps—scribbles, sketches, drawings, failed works, models, studies, thoughts, conversations—are of interest. Those that show the thought process of the artist are sometimes more interesting than the final product."<sup>14</sup> Materials collected by MoMA as part of a performance work range from notebooks or drawings to video and photographs of the work being performed, and reflections written following a performance of the work itself by the artist or other performers involved. Some of these components are considered original works in their own right, as in the case of Smithson's *Spiral Jetty* video, while others are considered purely documentation.<sup>15</sup> In any case, these material components collected constitute original creative works, whether or not they are considered art by the museum, whose intellectual property is protected under law.

Over the last several years, MoMA has acquisitioned several works by artist Simone Forti. The artist refers to her work as "Dance Constructions," choreography "based around ordinary movement, chance, and simple objects like rope and plywood

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<sup>13</sup> Holbrook, Athena Christa, "Collecting Performance at MoMA," December 5, 2017.

<sup>14</sup> Lewitt, Sol, "Paragraphs on Conceptual Art."

<sup>15</sup> Holbrook, Athena Christa, "Collecting Performance at MoMA."

boards.”<sup>16</sup> The dance constructions are complicated—performers must learn not just a series of steps or moves as is the case with traditional choreography, but also how to convey the right kind of presence, attitude, and aesthetic. It sometimes takes a full day to prepare a group to learn one work that might be only minutes long.<sup>17</sup>

Forti’s dance constructions have been collected by MoMA in close collaboration with the artist to ensure that these ephemeral works can continue to be performed after the artist is no longer around to perform or instruct in performing the work herself. Working together, Forti and MoMA have come up with a kit that makes up the body of collected materials for each of her dance constructions. Each work’s kit contains: a package on how to teach each piece (including a video, written narrative, notes on what to look out for and how to introduce the work, as applicable); requires access to and oversight of individuals who have been trained to teach the work; and provision for one person in charge of making sure there is a teacher for each exhibition project.<sup>18</sup> In addition to this kit, a kind of living archive is built around each performance of one of the dance constructions—observations, responses, photos, and video continue to be produced as a way of documenting the work’s life and as an attempt to pin down some of the ephemeral qualities of each work.<sup>19</sup>

One approach that stands out in MoMA’s method for collecting performative works of art within the Department of Media and Performance Art is the institution’s

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<sup>16</sup> Lim, Nancy, “MoMA | MoMA Collects: Simone Forti’s Dance Constructions,” MoMA, January 27, 2016, [https://www.moma.org/explore/inside\\_out/2016/01/27/moma-collects-simone-fortis-dance-constructions/](https://www.moma.org/explore/inside_out/2016/01/27/moma-collects-simone-fortis-dance-constructions/).

<sup>17</sup> Lim, Nancy.

<sup>18</sup> Lim, Nancy.

<sup>19</sup> Holbrook, Athena Christa, “Collecting Performance at MoMA.”

clear distinction between the work itself and archival components related to the work. MoMA's online catalog provides no visual representation of *Hangers* (1961), or any of Forti's dance constructions for that matter. This conspicuous absence reinforces the categorization of the work as one that is essentially ephemeral—what constitutes the performance cannot be captured in a visual snapshot. MoMA recognizes some visual material related to performance works as works in themselves, for example, Forti's drawing for *Hangers* is an original drawing by the artist included separately in the museum's collection.<sup>20</sup> This tangible thing exists both as a component of the work *Hangers*, though not the heart of the work itself, and as a separate original creative work—one that is protected under copyright and is evidence of the artist's intellectual property.

### **Looking to Legal Precedents**

While there are few legal cases setting precedent for protecting performance or ephemeral works of art, we can look to examples in related media that point out shortcomings in the law and where to focus attention when building protections for artists' intellectual property and an institution's right to display performance and ephemeral works in their collections. Because copyright protects only work fixed in a tangible media of expression, artists whose work is less recognizably material sometimes also turn to protection under moral rights. Knowing there is little legal precedent for protecting ephemeral works of art, institutions should look to the practical lessons in the cases discussed below to inform collecting practices. Collaborating with

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<sup>20</sup> Holbrook, Athena Christa, "Collecting Performance at MoMA."

artists on the acquisition process will allow institutions to avoid some of the legal shortcomings related to protecting the ideas contained within ephemeral and performative works of art.

### **Land art: Kelley v. Chi. Park Dist. (2011)**

In 1984, artist Chapman Kelley created a wildflower garden for Daley Bicentennial Plaza in Grant Park, part of the Chicago Park District. In 2004 the Chicago Park District modified the park, reconfiguring Kelley's garden. Kelley sued the Chicago Park District for violation of his moral rights under the Visual Artists Rights Act of 1990 (VARA). In his defense, Kelley claimed that the garden he designed for the Chicago Park District was both a painting and a sculpture and therefore a "work of visual art" protected under VARA. The United States Court of Appeals for the Seventh Circuit ruled in 2011, finding that the garden was neither "authored" nor "fixed" in the senses required for basic copyright, and therefore did not qualify for moral rights protection under VARA.

Kelley's attempt to frame his garden as a work conceived in a tangible media raises questions about how institutions frame similarly intangible work within their collections. Recalling Tiravanija's collection record in MoMA's online catalog, situated within the Department of Painting and Sculpture, we might find a similar problematic in the event any claims were raised as to the use (or misuse) of Tiravanija's work.

### **Horgan v. Macmillan, Inc. (1986)**

Choreographer George Ballantine's work is well protected under copyright given the provisions allowed for choreographic materials. Section 405 of the 1976 Copyright Act

covers choreography in much the same way as musical works—notated movements are protected, though performance is not. George Ballantine choreographed the *Nutcracker Suite* for the New York City Ballet Company in 1954, and his estate continues to license performances of the work. In 1985, Macmillan, Inc. (a book publisher) released a book intended for children, representing a performance of *The Nutcracker* at the New York City Ballet through text and photographs. Macmillan sought approval to reproduce a representation of *The Nutcracker* via photographic works from Ballantine's estate. Photographs were licensed from the photographers. Though the estate did not grant permission, Macmillan proceeded with publication. Operating under the assumption that Ballantine's copyright covered only the choreographic material, Macmillan felt they had a right, after pursuing permission from the estate, to publish the book anyway.

The U.S. Court of Appeals for the Second Circuit found in 1986 that though the photographs capture only an instant in time and do not communicate the movement of steps as specifically noted in Ballantine's choreography, the images nonetheless convey Ballantine's choreographic material. This decision was sent to a lower court for final judgement, and the parties eventually settled out of court.

### **Beuys Estate v. Tischer (2010 – Germany)<sup>21</sup>**

Conceptual artist Joseph Beuys staged the work *Marcel Duchamp's Silence is Overrated* on ZDF television in Germany on December 11, 1964. The performance was not recorded and was never intended to be performed again. Beuys granted permission

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<sup>21</sup> To date there have been no translations into English of the court proceedings in this case. I have therefore relied upon secondary sources to gain an understanding of this international ruling.

to photographer Manfred Tischer to take photographs of the event. The photographs taken by Tischer are the only known record of the performance.<sup>22</sup>

In 2009 the photographs were selected for inclusion in an exhibition on Joseph Beuys' work at the Museum Schloss Moyland in Germany. Eva Beuys, Joseph Beuys' wife and executor of his estate, sued for copyright infringement, claiming that the images constituted an unlawful reproduction of the performance. In a landmark decision made in 2010 by the Higher Regional Court in Dusseldorf, the court found that Tischer's photographs of the performance constituted an unlawful adaptation of the entire work of performance art.<sup>23</sup>

## Analysis

In the case of *Kelley v. Chicago Park District*, the law has set a precedent for works whose form may be tangible but is not necessarily fixed. Lacking these criteria for protection under copyright also, in this case, prohibits the work from VARA protections. The protections afforded through secondary media, therefore, become integral as components that should be collected as part of an acquisition of a work whose form is not fixed. The overt claims of copyright made by Dia over photography and video representing Smithson's *Spiral Jetty* make clear how vulnerable in fact the sculptural earthwork actually is. Dia's initiative to produce documentary photos of the work provide a buffer as evidence against misuse of the jetty itself.

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<sup>22</sup> REDCAT, "AGENCY," Text, <http://www.redcat.org>, January 5, 2015, <https://www.redcat.org/exhibition/agency>.

<sup>23</sup> Harris, Gareth, "Performance Art in the Marketplace," *Financial Times*, October 8, 2010, <https://www.ft.com/content/ef939b02-d19f-11df-b3e1-00144feabdc0>.

While the US has limited moral rights protections under VARA—recognizing only the right of attribution and right of integrity—these few rights are impeded when it comes to works of an ephemeral nature, as *Kelley v. Chicago Park District* demonstrates. However, the world of contemporary art is increasingly global and institutions should look to global precedents as models for creating guidelines for collection and use of works they acquire, borrow and loan. Copyright protects not just unlawful duplication, but also gives creators the right to oversee representation of their work in the way they intended. In the case of Joseph Beuys' estate we find a precedent for prohibiting representation of ephemeral works outside of the original creative work made by the artist him/herself. Looking to the ways in which Simone Forti's work is collected and represented by MoMA, we see a divide beginning to grow between understanding what materials constitute documentary components and what materials may stand in for or complement the heart of the work.

This differentiation is important as well in light of the court's findings in *Horgan v. Macmillan, Inc.* That photography can be understood as conveying the heart of material underscores the importance of defining how ephemeral work is situated within a collection, how it can be documented, and how that documentation may be used. Ultimately what we learn from these legal precedents is that works of art that lack traditionally fixed forms should be supplemented with materials that can be easily understood as fixed under law. Whether or not these materials make up the heart of the work or merely act as supporting evidence is up to negotiations between the artist and collecting institution. Having these supplementary materials cataloged and protected will



be important as performance and ephemeral works of art continue to be collected, displayed and reproduced over the years.

## **Conclusion**

When hoping to acquire of a work of art that is not clearly fixed in a tangible medium of expression, collecting institutions should work with artists to define material properties of their ephemeral works of art, and decide upon appropriate means of display and maintenance for posterity. These material properties can be used to protect the work from misuse or unwanted appropriation. Approved documentation should be defined and differentiated from approved representations of the work itself.

Considering the many conceptual and material layers that works of this kind take when we approach collecting in this multifaceted way, institutions should ask: are there different forms the work can take, and can different parties own different forms of the work? In the case of Simone Forti's work collected by MoMA, the various drawings, videos and documents relating to each particular dance construction, all make up the conceptual heart of an individual work, and must be collected together. In the case of Robert Smithson's *Spiral Jetty*, video documentation of the sculptural component is a work in its own right, and is not owned by Dia. Works of art made manifest through different instantiations such as the case with *Spiral Jetty* should be fully defined before acquisition, to avoid misconceptions of misuse or appropriation. Works meant to be performed or recreated over time should have a clear guide for future performance and maintenance of the work.

Supplementary materials collected with the work along with opportunities for training not only provide a material component to an ephemeral work, but help to communicate the artist's intention. In the case of performance and ephemeral works of art, the process of producing a final instantiation often creates a whole realm of materials that speak to the artists' intention. Instead of relying on the insufficient regulatory guidelines offered by copyright or other legal codification to protect an artist's intention or a museum's right to display, collecting institutions must look to create the ways in which the heart of ephemeral work may be preserved and presented as a legacy of art making in our time.

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