

Originality Multiplied

by Jessica Girard and Jeanne Calmes

Are all of Rodin's bronzes highly original works of art? What about copy number 2 of *The Kiss*? Does it have the same legal value as copy number 1 or rather, is it a reproduction or a fake? According to the 2006 law concerning the provisions, reproduction and intellectual property code, certain works may be original while at the same time existing in multiple copies, within certain limits and under certain conditions.

The principle of original work, unity vs. Multiple copies

In theory, any art work is original because it is unique. Obviously, this concerns "works essentially unique" (François Duret-Robert), that is to say, paintings, drawings, watercolors, gouaches, pastels, ceramics and engravings on copper, executed by the artist's hand. Conversely, any copy of these works not formally authorized by the author, would not meet the conditions for an exception to the artist's monopoly rights and would therefore be considered an infringement. It's hard to imagine, for example, there being two Mona Lisas!

However, other graphic creators intended to be copied multiple times can to a certain extent be duplicated while retaining their character as an original work. One speaks of multiples in this regard. However, the reproduction of an original work is not allowed. The law does in fact impose that the set number of prints plus proofs of artists' works should not be exceeded a number within which the edition of the work is permitted and above which the work is no longer an original but a simple reproduction.

Bronze Art: How to distinguish a good bronze?

First, it should be noted that the provisions of the Act of August 1st, 2006 (transposing the European Directive of September 27, 2001 on the resale right) relate only to works produced after 2006. However, the Act (codified in Article L. 122-8 of the Code of literary and artistic property) refers to the original "works created by the artist himself and the copies made within limited numbers by the artist himself or under his direction". Therefore, copied bronzes are no longer regarded as posthumous original forms that could not be (it makes sense ...) executed by the artist himself or under his direction.

Secondly, the aesthetic quality of bronzes legally depends on the medium from which they are copied. In original jurisprudence, it is a principle that bronze copies must be drawn or cast from an original model in plaster or terra cotta personally directed by the artist (see Cass., 1st civ., March 18, 1986, *Affaire des bronzes de Rodin*). As a result, one can no longer consider bronzes coming from a finished work and not an original plaster as authentic original.

Finally, the decree of March 3, 1981 (concerning the punishment of fraud involving transactions for artworks and collectibles) provides that "any forgery, molding, or other copy or reproduction of an original work of art [...] executed after the date of this decree must be visibly and indelibly marked **Reproduction**."

Rule 12: it is a threshold of originality

In law, the 2006 act cited above, coupled with the decree of June 10, 1987 relating to works eligible for a reduced rate of VAT (included in a 1987's case law concerning resale right) defines what is meant by "limited quantity": for bronzes, the number of copies is limited to eight plus four artist's proofs. Additional copies are not considered original.

Moreover, the same rule of 12 is also applicable to other conventional media (paper and wall textiles) as well as contemporary media (including audiovisual works). Imagine a 21st century Rodin, creator of *The Kiss* in digital format: any reproduction of such an analogue or digital work as well the property pertaining to the installation where it would be displayed (provided that the ensemble is unique and indivisible) is possible inasmuch as it is limited to 12 copies, which are signed and numbered, and each copy must be accompanied by a certificate of authenticity signed and numbered by the artist himself.

Under the rule for the 1987 decree supra, The French Council of Cassation (Supreme Court) had the opportunity to clarify that enlargements and reductions of original works "are only reproductions", free from originality. The fact remains that the practice was common in the nineteenth century, a time when the rise in the bronze art industry stems from a combination of two factors: the perfectioning of the enlargement process and mechanical reductions, and the development of sand casting (as opposed to the old lost wax method) which enabled the creation of a reusable model.

It should be noted that the small sizes of Rodin's *The Kiss* (for example) cast before 1987, does not make them renegeable of the original work because at the time of their casting, no law existed which forbade the reproduction of bronzes in other formats. Only those not meeting the criteria of this time period should not be considered as original.

The relevance of the number 12?

Why did the legislature choose the number 12 rather than another? Up until the second half of the twentieth century, reproductions were much more numerous, especially in bronze where the numbers could easily reach the hundreds.

Now however, that certain works can be produced more than others. Indeed, engravings, prints and original illustrations derived from one or several plates wholly executed by the artist can be reproduced within a limit of 200 to 300. Photos are considered original up to the 20th edition from the same negative.

In any case, the limit of twelve copies appears to be a result of arbitrariness. Certainly practical consideration, based on observation, led to its adoption: "It is all the while acceptable to question the originality of the artist's number 2 reproduction or 8th print..."

Throughout all this we must keep in mind the requirement of scarcity. In his book, *The strange life of objects* (Paris, 1992), Maurice Rheims highlighted the fact that the value of an object depends on the material from which it is made but also (and sometimes especially) the "subject", the "style", "the quality of the work" its "design" and the "magic" it emits". It should be added that the value of a work of art depends as well on the fact that it is unique and original.

The limitation of 12 copies primarily means the scarcity of bronze art. One can easily imagine the declining interest of collectors for a contemporary work with 300 copies. The limit is thus between copies and reproductions, original works and quasi-original works. But legally, it is necessary for a healthy market. Once not a custom, necessarily made a law.

* Read the article *The Clash of the Titans* by Jeanne Calmes under the heading "Pondering around the Auction Houses", in the February 2010 newsletter.

** Cassat (p. 246 et s.) quoted by Serrault in his article entitled *Nulité de la vente aux enchères d'un "tableau plâtre" pour erreur sur les qualités substantielles* which appeared in *La Semaine Juridique Edition Générale* No. 50, December 11, 2002.

*** see for example the agreements of November 28, 1957 and January 15, 1958 between representatives of auctioneers and the authors concerning prints and engravings.

<http://artyparade.com/en/news/23>