

08 June 2019

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By email only to [e.noltenius@skwschwarz.de](mailto:e.noltenius@skwschwarz.de)

Dear Ms Noltenius,

**Your clients' infringement of my intellectual property rights in *This Much I'm Worth (A self-evaluating artwork)* (2014 - ongoing)**

Thank you for your letter dated 07 June 2019.

It is disappointing that your clients have chosen to instruct a lawyer to accuse me of defamation on their behalf, instead of providing full answers to my questions in a way that befits the urgency of this situation, five days before the VM is due to launch. I have taken advice on your letter.

#### **The legal position**

In your letter, you assert that: "*The use of an industrial ready-made product in the intended way for displaying a numeric value cannot be protected by any national or international law.*"

It is not clear what you mean by the use of Nixie Tubes "in the intended way" in this sentence. It was clearly not the general intention of the inventors of Nixie Tubes that they should be used as part of sculptural artworks.

Would you apply the same logic to, say, the sculpture of Dan Flavin?



Dan Flavin, "*monument*" 1 for V. Tatlin, 1964. © Stephen Flavin/Artists Rights Society (ARS), New York. Photo: Billy Jim, New York

This is a good example of "an industrial ready-made product" (namely, fluorescent tubes) being used "in the intended way" (namely, to emit light) that is protected by national and international copyright laws because of the specific configuration of that product within the context of an original artistic sculpture.

You have mentioned a number of features of TMIW that are not protectable "as such". My position is not that all of those features are themselves protectable individually or even cumulatively, but rather that the pile up of uncanny visual, technical and conceptual similarities requires urgent and thorough explanation if an inference of copying is not to be drawn, particularly in circumstances in which it is known that

the creators of the VM work pored over every detail of my website and process at least 11 months before the launch of that work.

You suggest that in my letter and publicly I have overstated the similarity between VM and TMIW and have expressed concern that the public "may have been misled". Ms Noltenius, I don't know if you are on Instagram, but I may I suggest that the great majority of its users are sophisticated enough to recognise an obviously cropped photo when they see one, especially when it comes in the context of other images showing the full picture. At any rate, the point is that in most copyright systems (and particularly in the UK where I assume VM will be for sale via its website) the infringement test is not "are the works similar?" but rather "does the second work reproduce a 'substantial part' of the first?".

Let's imagine for a second that your clients have coincidentally developed the VM work innocently "in parallel" with my TMIW - is it your clients' position that they have created a sculptural artwork that itself has no elements at all that are protectable by copyright and so anybody is entitled to reproduce it in full with impunity?

**A way forward**

You say that your clients "are not interested" in a legal dispute and would like an "amicable solution". You also say that it can be "easily proven" that your clients developed the elements of the VM I have referred to before they became aware of TMIW.

If your clients will provide, by no later than **12:00 CEST on Tuesday 11 June 2019**, a full account that proves that the VM is merely a "parallel creation" that did not copy elements of my TMIW work, supported by documentary evidence and a signed statement of truth, then I will take no further action in relation to the VM launch.

If this really can be done easily, then it is in everyone's interests that this is done as soon as possible.

Yours sincerely

**Rachel Ara**

P.S. If your claim that I have made an incendiary "call for action" against your clients relates to my Instagram post saying that people should feel free to chain themselves naked to the railings at the VM launch then... oh never mind.