Readings for this course are located in a variety of sources. The majority of the readings are available on blackboard in the Course Documents section. If there is no notation following an assigned reading on the syllabus, that means that this material is available on blackboard in the Course Documents section. Readings marked “Blackboard—External Link” are available on blackboard, but will be found in the External Links rather than the Course Documents section. Readings from the Duboff, Burr and Murray casebook are marked (DBM). Occasionally, I have assigned website materials marked “available at” followed by a web link. Please click on the link in the syllabus to go directly to these materials. Susan Sontag’s “On Photography” which we will read for one class, will be on sale at the bookstore. I have sometimes included suggestions for further reading on the syllabus. These materials are not assigned reading.

Please note that I will make changes in this syllabus as the semester progresses.

I. ART AND THE FIRST AMENDMENT

INTRODUCTORY TEXTS
First Amendment, U.S. Constitution 1791
Exodus 20, Ten Commandments
Rene Girard, Things Hidden since the Foundation of the World (1987) (excerpt)
Nathaniel Hawthorne, The Prophetic Pictures (1882) (excerpt)
Jim Lewis, Amy Adler Interview

A. THE ARTIST’S RIGHT TO FREE EXPRESSION: CENSORSHIP LAW AND THEORY

1. OBSCENITY LAW
Robert Mapplethorpe, Self-Portrait
Andy Grundberg, Cincinnati Trial’s Unanswered Question, N.Y. Times
Regina v. Hicklin, L.R. 3 Q.B. 360 (1868) (DBM 575-7)
Roth v. United States (DBM 577-82)
Memoirs v. Massachusetts
Redrup v. New York
Miller v. California (DBM 582-7)
Paris Adult Theatre I v. Slaton
Jenkins v. Georgia
Pope v. Illinois [Blackboard-External Link]
Janet Kardon, Robert Mapplethorpe Interview
Cincinnati v. Contemporary Arts Center, 566 N.E.2d 214 (Ohio Mun. 1990) (DBM 605-9)

Adler, Postmodern Art and the Death of Obscenity Law [Blackboard-External Link]
Judge Refuses to Void Obscenity Charges, N.Y. Times 1994
Mike Diana obscenity prosecution, available at
http://www.cbldf.org/casefiles/diana.shtml
Nitke v. Gonzales, 01 Civ. 11476 (S.D.N.Y. 2005), available at
www.sethf.com/nitke/decision.pdf
“Department of Justice takes action on obscenity,” CitizenLink (5/11/05), available
at http://www.family.org/cforum/feature/a0036514.cfm
Yablonsky, How Far Can You Go, Artforum [Blackboard—External Link]

SUGGESTIONS FOR FURTHER READING
-Henkin, Morals and the Constitution, 63 Colum. L. Rev. 391 (1963)
-Richards, Free Speech and Obscenity Law, 123 U. Pa. L. Rev. 45 (1975)
-Schauer, Speech and “Speech”—Obscenity and “Obscenity,” 67 Geo. L.J. 899 (1979)
-EDWARD DEGRAZIA, GIRLS LEAN BACK EVERYWHERE: OBSCENITY LAW AND THE
ASSAULT ON GENIUS

2. CHILD PORNOGRAPHY LAW

Osborne v. Ohio, 496 U.S. 913 (1990) (DBM 610-4)
United States v. Knox, 32 F.3d 733 (3d. Cir. 1994) [Blackboard-External Link]
“Photographer’s Focus Is Abuse of Authority,” N.Y. Times
“Pornography Meets Paranoia,” N.Y. Times
“U.S. Grand Jury Refuses to Indict Photographer” [Blackboard-External Link]
“Jessie at Eighteen: Jessie Mann on Being Photographed,” Aperture, No 162
[Blackboard-External Link]
3. THE FEMINIST ANTI PORNOGRAPHY MOVEMENT
Catharine Mackinnon, Not a Moral Issue
Catharine MacKinnon, excerpt from Only Words (1993)
American Booksellers v. Hudnut [Blackboard- External Link]
Furor on Exhibit at Law School Splits Feminists, N.Y. Times
Show Closing Demanded at Washington Museum, N.Y. Times
Interview with Andrea Fraser, Untitled (2003)
Artforum Issue on Feminism and Art

SUGGESTIONS FOR FURTHER READING
Sunstein, Pornography and the First Amendment, 1986 Duke L.J. 589

4. HATE SPEECH

SUGGESTIONS FOR FURTHER READING

5. WHAT IS ART AND (WHY) IS ART PROTECTED BY THE FIRST AMENDMENT?
Duboff, Burr, Murray, Legal and Other Definitions of Art, (DBM 1-5)
17 USC § 101 (DBM 5-6)
Bery v. City of New York (I and II), 906 F. Supp. 163, and 97 F.3d. 689
Arthur Danto, “After the End of Art” and “Beyond the Brillo Box” (excerpts)
Surowiecki, “Cash for canvas,” The New Yorker (10/17/05), available at http://www.newyorker.com/talk/content/articles/051017ta_talk_surowiecki

Text v. Image
Kaplan v. California 413 U.S 115 (1973)
Texas v. Johnson 491 U.S. 397 (1989) [excerpts]
Richard Freedberg, Idolatry and Iconoclasm from The Power of Images

Photography
SUSAN SONTAG, ON PHOTOGRAPHY [on sale at bookstore]
Jim Lewis, Should Newspapers Show Us Images From Iraq?, http://slate.msn.com/id/2098283/ [Blackboard-External Link]
“Abu Ghraib Photos Return, This Time as Art,” N.Y. Times (10/10/04)
Jon Kessler, The Palace at 4 a.m. (art installation about media coverage of war at P.S. 1)

Dance
Miller v. South Bend , 904 F.2d 1081 (7th Cir. 1990) [[Blackboard- External Link]
Carolee Schneemann, More Than Meat Joy [excerpt]

B. MUSEUMS, GALLERIES, AND THE PUBLIC: THE POLITICS OF ART

1. GOVERNMENT FUNDING OF THE ARTS
National Endowment for the Arts, 101st Cong. 1st Sess.
Richard Grenier, “A Burning Issue Lights Artistic Ire”
Frohnmayr/Wyatt letters
David Wojnarowicz, “Post Cards From America: X-Rays From Hell”
“Meet the New Willie Horton,” N.Y. Times
“To Earn Subsidies, Must Art Be Useful? Must It Be Sweet?,” N.Y. Times
“Sensation on Trial”, ARTFORUM
Karen Finley, Shock Treatment (excerpts)
The Brooklyn Institute of Arts & Sciences v. City of New York, 64 F.Supp.2d 184
(E.D.N.Y. 1999) (DBM 531-6; 641-57)
Andrew Ross, Poll Stars, ARTFORUM
List of USA Survey Results (part of Komar and Melamid art project), available at
http://www.diacenter.org/km/usa/survey.html

SUGGESTIONS FOR BACKGROUND/FURTHER READING
Rosenberger v. Rectors of the University of Virginia, 515 U.S. 819 (1995)
-Heyman, State-Supported Speech, 1999 Wis. L. Rev. 1119
-Schauer, Principles, Institutions, and the First Amendment, 112 Harv. L.
Rev. 84 (1998)
-Redish & Kessler, Governmental Subsidies and Free Expression, 80 Minn.
L. Rev. 543 (1996)

2. MUSEUMS AND GALLERIES: SELF-CENSORSHIP

The Role of the Museum in Society (DBM 554-7)
Background reading on museums, [DBM 521-25]
Robert Hughes, Art, Morals and Politics, New York Review of Books
Goldberger, “Historical Shows on Trial: Who Judges?” N.Y. Times
“After Protests, Library of Congress Closes Exhibition on Slavery,” N.Y. Times
Woodward, “Color Blind: White Artist + Black Memorabilia = No Show” Village
Voice [Blackboard-External Link]
Fred Wilson, Collectibles (art review)
“Some Art Groups Silent on Museum Dispute,” N.Y. Times
“The Subtle Power of Peepholes,” N.Y. Times
“Show Closing Demanded at Washington Museum,” N.Y. Times
“The Museum Show Has An Ego Disorder,” N.Y. Times
“After Complaints, Rockefeller Center Drapes Sept. 11 Statue,” N.Y. Times
“Images of Blacks Refracted in a White Mirror,” N.Y. Times
News Articles on current censorship from NCAC available at http://ncac.org/
“Challenged by Creationists, Museums Answer Back,” N.Y. Times
Nelson v. Streeter, 16 F.3d 145 (7th Cir. 1994) (DBM 657-62)
Carole Becker, “Art Thrust into the Public Sphere”
Piarowski v. Prairie State College, 759 F.2d 625 (7th Cir. 1985)
Close v. Lederle, 424 F.2d 988 (1st Cir. 1970)
“Ban on anti-Bush artwork stirs up dispute,” Milwaukee Journal Sentinel
3. CONTROVERSIAL PUBLIC ART: GOVERNMENT COMMISSIONS AND MONUMENTS
Serra v. U.S. General Services Administration, 847 F.2d 1045 (2d. Cir. 1988) (DBM 590-6)
The Destruction of Tilted Arc: Documents
Hughes, “Man of Steel,” The Guardian (6/22/05), available at http://www.guardian.co.uk/arts/features/story/0,11710,1511714,00.html

4. PUBLIC MONUMENTS & MEMORIALS
Maya Ling Lin, Statement on Her Winning Design
Sanford Levinson, “Silencing the Past: Public Monuments and the Tutelary State”
“In Trafalgar Square, Much Ado About Statuary,” N.Y. Times
Int’l Freedom Center Statement
Editorial opposing Int’l Freedom Center available at http://www.opinionjournal.com/extra/?id=110006791
Controversy Still Clouds Prospects at 9/11 Site (Blackboard)

INTELLECTUAL PROPERTY IN ART

A. “MORAL RIGHTS” OF ARTISTS
John Henry Merryman, The Refrigerator of Bernard Buffet [Blackboard-External Link]
Duboff, Murray and Burr, Chapter 6, pp. 299-356
State and Federal Moral Rights Statutes
Wojnarowicz v. American Family Association
Alan Riding, Conceptual Artist as Vandal
Henry Hansmann & Marina Santilli, Authors’ and Artists’ Moral Rights [Blackboard-External Link]

B. COPYRIGHT LAW AND THE PROBLEM OF POSTMODERNISM

Introductory Copyright Issues:
Duboff, Murray and Burr, pp. 167-180, 212-219
Duboff, Murray and Burr, pp. 189-212 (background reading only)
Kieselstein-Cord v. Accessories By Pearl, Inc. [Blackboard-External Link]
Walter Benjamin, The Work of Art in the Age of Mechanical Reproduction
Fair use:
Duboff, Murray and Burr, pp. 233-246 (note that you should also read pp. 219-227 for full opinion in Koons case)
Affidavits in Koons case [Halbreich, Caldwell Rosenblum]
Campbell v. Acuff-Rose Music, Inc. [Blackboard-External Link]
Pretty Woman lyrics by Orbison & Dees and Pretty Woman lyrics by 2 Live Crew Mattel Inc. v. Walking Mountain Productions 353 F.3d 792 [Blackboard-External Link]
Cowan, Liebowitz & Latman, P.C. letters to Vera & Adler Coincidence Sets off Storm over Erotic Work
http://www.illega1-art.org/ [Blackboard-External Link]
Beyond Authorship: Refiguring Rights in Traditional Culture and Bioknowledge [Blackboard-External Link]
Will Fair Use Survive? [Blackboard—External Link]
Copycat [Blackboard—External Link]

C. THE RIGHT OF PUBLICITY
Duboff, Murray and Burr, Chapter 6, pp. 376-400

III. THE ART MARKET

A. ART CRIME
Selected Federal Criminal Statutes

B. LOOTED ART
(handout)

C. AUTHENTICITY
Jendwine v. Slade
NY Arts & Cultural Affairs Law
Excerpt on Forgery from Balog v. Center Art Gallery-Hawaii Inc.
Boggs v. Rubin excerpt
Greenberg Gallery, Inc. v. Bauman
Arnold Herstand v. Gertrude Stein, Inc.
Struna v. Wolf
Kirby v. Wildenstein
Rembrandt/Not Rembrandt in the Metropolitan Museum of Art
IFAR-Authentication Service
William Honan, Into an Age of Fake Art: A Very Real Quandary
Paul Goldberger, Genuine Appreciation Fostered by Bogus Art
Michael Shnayerson, Judging Andy, Vanity Fair
Carol Vogel, The Case of the Servant With the Fur Collar
Randy Kennedy, Computer Analysis Suggests Paintings are not Pollocks
Michael Rips, Who Owns Seydou Keita, NY Times
Michael Kimmelman, Absolutely Real? Absolutely Fake?
Scholars Still Skeptical of Getty Kouros