

**Identifying Information**

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**Paper Information**

Title:	Permissive Certificates: Collectors of Art as Collectors of Permissions
Abstract:	<p>Artists have been dramatically reshaping the fine art certificate of authenticity since the 1960s. Created by conceptual artists both to meet and challenge the commercial pressures of art markets, this new form of “Permissive Certificate” has fascinated contemporary art historians ever since. Prior scholarship has shown how such documents, essentially instructions for art creation, force us to confront fundamental ontological questions on the nature of art, the relationship between artist, collector and viewer, and the influence of money and acquisitiveness on art generation. But rarely if ever have they been approached as legal instruments. This article accordingly fills that gap by construing Permissive Certificates through the complex but potent array of legal rights that they define. It argues that Permissive Certificates are not unitary instruments, but in fact an amalgamation of two distinct legal structures. They couple retrospective and traditional, if narrow, warranties on the one hand with prospective copyright licenses and rights of source association on the other. Critically, as with all copyright and source-based permissions, they are generally conditioned on the owner/licensee complying with use guidelines. Material variations from such terms place the owner/licensee outside the scope of the license, or otherwise in breach of its conditions, and at risk of claims of infringement by the artist. This approach to Permissive Certificates yields two important insights. First, they harbor an unappreciated power as a tool for artist control, particularly in jurisdictions such as the U.S. where moral rights remain relatively weak. Second, and more broadly, as art becomes increasingly more dematerialized, digitized, and recreateable, and ever more legalized in turn, Permissive Certificates will grow more and more into the locus of value for such works. Over the long run, museums and other collectors of fine art will become collectors not of objects but of permissions.</p>