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## DOUBLE EMBODIMENTS

Felix Gonzalez-Torres's Certificates

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**T**AKING A SHEET OF PAPER OR A WRAPPED candy from a stack or pile by Felix Gonzalez-Torres ranks among the most iconic contemporary art experiences (fig. 81). Even when one is told that the artist wanted viewers to break the “no touch” rule defining museum and gallery spaces, participation feels transgressive. At least one viewer described feeling criminally complicit, nervously “scanning the exhibition space for surveillance cameras.”<sup>1</sup> Others take candies by the handful (teenage boys are particularly eager). Audiences familiar with the story behind “*Untitled*” (*Portrait of Ross in L.A.*) take candy reverently, as if paying their respects to a grave in reverse. When the paper stacks are low, viewers sometimes take a sheet only to return it later, as if unwilling to deny someone else the opportunity of engagement. Massed into neat stacks or herded into a corner, the paper stacks and candy spills recall the rigorous geometry of Minimalist sculpture. The rigor promises us, as critic Jennifer Doyle writes of museum and gallery experiences, freedom from “the burdens of an emotional life.”<sup>2</sup> But as the piles



FIGURE 81

Foreground: Felix Gonzalez-Torres, “*Untitled*,” 1989/90. Print on paper, endless copies. 26 inches (at ideal height) × 29 × 23 inches (original paper size). Background: Felix Gonzalez-Torres, “*Untitled*” (*For Jeff*), 1992. Billboard, dimensions variable. Installation view: “Felix Gonzalez-Torres: *This Place*,” Metropolitan Arts Centre, Belfast, 2015–2016. © Felix Gonzalez-Torres Foundation. Courtesy of Andrea Rosen Gallery, New York.

and stacks are depleted, feelings—particularly incomplete and inchoate ones—accrue in turn.

The production of feeling through direct physical and sensorial engagement with otherwise commonplace objects stems from the documentation that simultaneously accompanies and verifies the existence of many Gonzalez-Torres works, namely the certificates of authenticity and ownership transferred upon a work’s sale. Commonly issued by artists and dealers to buyers anxious to both affirm the present value of their purchases and maximize potential resale value, certificates of authenticity belong to a category of financial documentation that includes receipts, invoices, and agreements generated upon, or in anticipation of, a work’s sale. By the early 1990s, when Gonzalez-Torres’s works attracted increasing commercial and critical attention, the certificate also overlapped with a nascent turn toward contracts. Unlike other certificates of authenticity that unilaterally impose the intentions of the artist on buyers, those of Gonzalez-Torres shared with owners some of his authority and duties. Here the idea of property exceeds what legal scholar Margaret Davies criticized as “the limited sphere of title to goods, land, or intellectual creations.”<sup>3</sup> Titled “Certificates of Authenticity and Ownership” by the artist to indicate how they both verified a work’s

authenticity and explained its parameters, the certificates of Gonzalez-Torres proposed an alternative vision of possession as a fluid condition, with the owner having both unprecedented flexibility and responsibility from the moment of acquisition to when or if the work was sold. As both part of a well-established history of instruction-based artworks and a form of documentation increasingly recognized by the law, the certificates of Gonzalez-Torres read as an attempt to forge a sustainable working relationship between juridical privileging of ownership interests in visual-art cases and what might be called “art-world law,” or the rules, customs, and other behavioral norms governing relationships between artists, institutions, dealers, and collectors.

Issued against a contested social, legal, and political landscape, the certificates resonated against a juridical system that reaffirmed its allegiance to private property while undermining the privacy claims of some of its most disenfranchised subjects. In a devastating reflection of how state interference usurped the role privacy had formerly played in defining the unique space of the home, the U.S. Supreme Court upheld the criminalization of sodomy in *Bowers v. Hardwick* (1986). Gonzalez-Torres condemned the decision, describing it as permission for the state to “actually go into” the bedrooms of gay men and lesbians and “penalize the way they express love to each other.”<sup>4</sup> He added, “The body at this time in our history, at this time in culture, is defined not just by the flesh, but also by the law, by legislations, and by language first of all.”<sup>5</sup> Yet courts just as adamantly defended property interests. Straight out of the “Culture Wars” playbook, *Wojnarowicz v. American Family Association* pitted a radical queer artist (David Wojnarowicz) against a religious arch-conservative (Donald Wildmon) who saw the artist’s “depictions of sexuality” as “being nothing more than banal pornography.”<sup>6</sup> But it was Wojnarowicz himself who initiated legal proceedings, on the grounds that Wildmon’s organization, the American Family Association, had violated his property rights.<sup>7</sup> Rather than grapple with the legal morass that obscenity had come to represent, Wojnarowicz emphasized how the American Family Association had violated his copyright and potentially damaged his reputation by selectively reproducing parts of his works. Despite agreeing with Wildmon that audiences “would be offended” by Wojnarowicz’s works, presiding judge William Conner, a former patent lawyer who famously decided in 1981 that the First Amendment did not necessarily override the right of publicity, or an individual’s right to control the use of her identity, ruled in the artist’s favor.<sup>8</sup> For Wojnarowicz, who would die from AIDS in 1992 and for whom “the inevitability of death” was painfully concrete, property rights signified a pivotal opportunity to extend the life of his works beyond the time of his biological death by safeguarding their integrity in the most public and official manner possible.<sup>9</sup>

A year before Wojnarowicz filed suit, Gonzalez-Torres stated in 1989 that “you can’t really oppose power in the same way you did ten years ago. Things have certainly changed a lot, the power structure is much more complex.”<sup>10</sup> At this time, the artist began to issue certificates of authenticity for some of his works. Their flexible, and often ambiguous, language invited owners to create interactive, nondeterministic

audience experiences directly challenging the underlying spirit of decisions like *Bowers*. In the words of Justice Harry Blackmun, the midwestern Republican author of *Roe v. Wade* who objected strenuously to *Bowers*: “The Court claims that its decision today merely refuses to recognize a fundamental right to engage in homosexual sodomy; what the Court really has refused to recognize is the fundamental interest all individuals have in controlling the nature of their intimate associations with others.”<sup>11</sup>

“How can we talk about private events,” Gonzalez-Torres asked, “when our bodies have been legislated by the state? We can perhaps talk about private property.”<sup>12</sup> Among the most pervasive idioms for describing Americanness, private property held further implications for artists whose national and ethnic origin, racial background, and sexual orientation compromised their acceptance as Americans. As one of the few domains where cooperation occurred regardless of political preference or personal identity, the market held untapped potential as a political site. Deeply aware how precarious life was for an openly gay, nonwhite artist living with AIDS yet adamantly unwilling to capitalize upon his identity by wearing a metaphorical “grass skirt,” Gonzalez-Torres stated it was “more threatening” that “people like me are operating as part of the market.”<sup>13</sup> Through certificates that embodied rather than represented ownership by metabolizing elements of copyright and contract, he navigated market conditions and art-world protocol. Eventually shifting his works away from the metrics of supply, Gonzalez-Torres recast them as dynamic sources of doubt according to the legal frameworks to which he and they were unavoidably subject.

#### **TITLE MATCHES: ARTISTS, DEALERS, COLLECTORS**

Initially written by the artist, the certificates generally accompany six series of installations, although they have been issued to other works as well. One series involves stacks of paper from which viewers can take individual sheets. A second uses wrapped candies that can be variably installed (fig. 82). The third series pertains to billboards (fig. 83), while the fourth concerns strings of lightbulbs that may be configured according to the owner’s preference (fig. 84). The fifth series consists of beaded curtains (fig. 85), and the sixth of text portraits composed of words and events painted directly on walls in a particular typeface (fig. 86). Authored by Gonzalez-Torres during his lifetime, the certificates were issued by his estate via the Andrea Rosen Gallery and then later by a foundation entrusted to provide information regarding the artist’s works and motivations.<sup>14</sup>

When Gonzalez-Torres had his first solo exhibition in New York in 1988, artists, collectors, and dealers often differed on what having title to an artwork entailed. Case law throughout the 1970s and ’80s steadily favored the swelling ranks of collectors, as judges considered it their duty to protect the latter against an industry they saw as woefully bereft of regulation. By the late 1980s, some courts even attempted to apply the concept of strict liability to sellers, making them automatically responsible for ensuring the authenticity and transferability of a work. Likewise debated was a



FIGURE 82

Felix Gonzalez-Torres, "Untitled"  
(*Placebo-Landscape-for Roni*), 1993.

Candies individually wrapped in gold cellophane, endless supply, dimensions variable. Ideal weight: 1,200 pounds.

Installation view: "Felix Gonzalez-Torres: Traveling," Museum of Contemporary Art, Los Angeles, 1994. © Felix Gonzalez-Torres Foundation. Courtesy of Andrea Rosen Gallery, New York.



FIGURE 83

Felix Gonzalez-Torres, "Untitled," 1991.  
Billboard, dimensions variable.

Installation view: "Projects 34: Felix Gonzalez-Torres," Museum of Modern Art, New York, 1992. © Felix Gonzalez-Torres Foundation. Courtesy of Andrea Rosen Gallery, New York.



FIGURE 84

Felix Gonzalez-Torres, "Untitled"  
(*Summer*), 1993. Lightbulbs, porcelain light sockets, and extension cord, dimensions variable.

Installation view: "Felix Gonzalez-Torres: Traveling," Renaissance Society at the University of Chicago, 1994. © Felix Gonzalez-Torres Foundation. Courtesy of Andrea Rosen Gallery, New York.



FIGURE 85

Felix Gonzalez-Torres, *“Untitled” (Beginning)*, 1994. Strands of beads and hanging device, dimensions variable. Installation view: *“Untitled” (Beginning)*, Andrea Rosen Gallery, 1997. © Felix Gonzalez-Torres Foundation. Courtesy of Andrea Rosen Gallery, New York.

FIGURE 86

Felix Gonzalez-Torres, *“Untitled” (Portrait of the Stillpasses)*, 1991. Paint on wall, dimensions variable. Photo: Cal Kowal. © Felix Gonzalez-Torres Foundation. Courtesy of Andrea Rosen Gallery, New York.

proposal to require sellers to act in the sole interests of the buyer.<sup>15</sup> Concurrently, dealers lobbied politicians to protect their interests, as they did when the Art Dealers Association of America lobbied Congress to reject the resale rights bill proposed by Senator Ted Kennedy in 1988.<sup>16</sup>

Artists retaliated against dealers they felt had wronged them by interfering directly with sales.<sup>17</sup> Disclaiming authorship, or what moral rights doctrine calls the “right of integrity,” was a possibility, although it was not until the early 1980s that the law supported an artist’s right to do that.<sup>18</sup> Another tactic was to threaten sellers and buyers with the possibility of a work’s duplication. Frustrated with his Belgian gallerist, who he believed was less than forthcoming in transferring his share of the purchase price, artist Douglas Huebler felt compelled to reissue all the works that the gallerist had sold, but for which he had yet to be paid. While acknowledging that the collector “has acted in good faith and should not be punished,” he was determined to teach the seller a lesson: “The dealer who takes the money and simply does not pass on the artists’ [sic] share should not be allowed to operate in that way. So I said the only thing that could get Fernand’s attention.”<sup>19</sup> Other conceptual artists also issued multiples in an attempt to beat the market.<sup>20</sup>

Tension between artists and dealers came to an explosive head by 1977 in the infamous *Matter of Rothko* case decided by the New York Court of Appeals. Known as the “Watergate of the art world,” the case involved the children of Rothko suing their father’s executors over the management of his estate.<sup>21</sup> New York assistant attorney general Gustave Harrow, who represented the Rothko siblings, saw their extraordinary struggle as a resounding call for artists to secure their own interests; it was clear that dealers could not always be trusted to do so.<sup>22</sup> The following decade saw more artists suing their dealers for various acts of malfeasance, including the highly publicized dispute between the painter Peter Halley and the Sonnabend Gallery following his exhibition at a rival gallery in 1992.<sup>23</sup> Eventually settled out of court, Sonnabend claimed to have paid Halley substantial advances on works it argued Halley was obligated to sell through it. But securing of legal assistance was reserved for those with abundant economic resources, time, and knowledge. Connie Samaras pointed out how some artists, intimidated by the process of litigation and its attendant costs, chose to censor themselves rather than wage a legal battle that was practically guaranteed to be psychologically and financially exhausting.<sup>24</sup> Statutes like the California resale laws and legal initiatives such as *The Artist’s Reserved Rights Transfer and Sale Agreement* failed to address the very real gaps of knowledge that reinforced a class hierarchy within the art world.

Even with the law on one’s side, the chances of prevailing were slim against an abundance of resources. At the peak of his career in 1987, the painter David Salle appropriated the work of the lesser-known Mike Cockrill, who became aware of the use after seeing an exhibition of Salle’s work at Leo Castelli Gallery. Cockrill protested, claiming that while appropriating a well-known image might be acceptable, to

use “an obscure artist’s drawing . . . to activate his painting” was not.<sup>25</sup> He filed a lawsuit, one of the few ways an individual has of holding a more powerful party to account, but ended up settling, in part because of prohibitive litigation costs.<sup>26</sup> The real cost, however, was the damage to Cockrill’s reputation by those accusing the artist of trying to “cash in on my notoriety as a plaintiff. . . . Like I would never have been given a show if I hadn’t sued David Salle.”<sup>27</sup>

Long interested in the idea of the law as well as the process of its creation, Gonzalez-Torres may have known of the Visual Artists Rights Act (VARA) and other forms of legal recourse.<sup>28</sup> But VARA in some ways signaled the death of rights-based discourse, better known for what it failed to deliver than for what it did. The new law granted artists an unprecedented number of rights, regardless of whether they physically owned their works or the copyright to them, including the right to claim authorship of a work and to disclaim authorship for works they did not make or that had been changed in ways “prejudicial to the artist’s honor or reputation.” It thus represented a major benchmark in what had been an ongoing struggle for artists to control what became of their works, even after they were sold.<sup>29</sup> But as legal commentators quickly observed, VARA’s scope was far more limited than comparable legislation in Europe, which tended to grant broad protection even without being certain of the final outcome. Conversely, U.S. legislatures were less forthcoming, passing laws that covered only specific problems and a subset of artworks so narrow as to highlight the widening gulf between law and contemporary art.<sup>30</sup>

The circumscription of VARA also illustrated the limits of solidarity. Despite the turnout of art-world luminaries testifying on behalf of the law before Congress, the limitations of VARA showed plainly the inability of even a fairly consolidated art world to mobilize enough power to persuade lawmaker opinion. It was nevertheless up to the individual artist to get what she wanted. Gonzalez-Torres had few illusions about what was needed to function adequately in an art world only partly regulated by a legal system whose first responsibility was to defend property rights. “Let’s not forget who wrote the Constitution that is ‘protecting’ our ‘rights’. . . . [It was] written by free white men with properties and titles—what I call the ‘Other,’” he stated.<sup>31</sup> In another discussion, he criticized the *Bowers* decision as an unjustified concentration of power in the hands of a limited number of people: “Nine people get together and decide who you can and can’t love.”<sup>32</sup> The critique might also extend to VARA, which continues to register as an attempt by Congress to define for all citizens the status of a “professional artist” under the conceit of “recognized stature.”

Seeking refuge outside the mainstream, however, was a non-option. “I’m not about to romanticize the margins. . . . There’s nothing out there,” he said to critic Nancy Princenthal.<sup>33</sup> In a conversation with Joseph Kosuth, he declared, “I do not want to be the opposition, the alternative. Alternative to what, to power? No, I want to have power. It’s effective in terms of change.”<sup>34</sup> But he implied that if artists wanted certain rights, they had to claim them by working within the system and, in particular, with the



laws created to uphold it. After all, Gonzalez-Torres had belonged to Group Material, the New York collective founded in 1979 that braided artistic activity with citizen participation, including discussions concerning personal responsibility. In one such discussion, artist and curator Gino Rodriguez asserted that

constantly referring to our ‘powerlessness’ and to ‘them’ and ‘us’ is a problem. One of the problem is that we keep saying ‘you’ . . . but we never point the finger at ourselves and say ‘me’ . . . . So long as we keep talking ‘them’ and ‘us’, we are saying we have no control or that we cannot assume control. . . . As long as there is somebody to blame you will never take responsibility for yourself.<sup>35</sup>

Gonzalez-Torres concurred in another discussion, stating that “we are all faced with a dilemma: do we do art or do we look at the society at large? Thinking about politics is one of the hardest things to put together. . . . Things are always interrelated. . . . Politics effects [*sic*] everyday life.”<sup>36</sup> The interrelation was most vividly evoked in his certificates of authenticity, which framed his works as social situations that could exist outside the gallery rather than as finite objects contained in a designated physical space. For Gonzalez-Torres, having power included having “properties and titles” so as to lay down laws of one’s own.

#### **BILLS OF RIGHTS, OR CERTIFICATES OF AUTHENTICITY**

Certificates, contracts, and other forms of documentation secure the legibility of so-called dematerialized artworks in a legal structure that recognizes visual art only as tangible, material forms. Kris Cohen describes *The Artist’s Reserved Rights and Transfer Agreement* (detailed in Chapter 1) as a “legal prosthesis” intended to secure the value of the “dematerialized art objects [that Seth Siegelaub] worked so hard to promote.”<sup>37</sup> Giuseppe Panza, the enthusiastic collector of Minimalist and instruction-based artworks, claimed that the works could not exist without the certificates.<sup>38</sup> In 1981, aware of how certificates of authenticity (sometimes called certificates of authenticity and ownership) helped guarantee the exchange value of artworks, the New York State Legislature passed the New York Art Multiples Disclosure Law requiring sellers to guarantee to buyers the authenticity of prints and photographs. Sellers who issued unreliable certificates could be liable for misrepresentation and product disparagement, and the usual claims could be brought against withdrawal of authorship. In addition to misrepresentation, sellers could be liable for not fully disclosing information that might affect perceptions of a work’s authenticity. Case law and litigation did little, however, to alleviate the anxiety of artists, collectors, and dealers, as seen in the example of Bruce Nauman’s dealers, who decided not to sell multiple versions of his work.

Attitudes regarding the use of certificates of authenticity and what they in fact entailed were thus unsettled. Art historian Martha Buskirk described them as being little more than “displaced signatures,” while galleries treated bills of sale as virtual

certificates of authenticity, with several containing various warranties.<sup>39</sup> Yet unlike most forms of commercial documentation from home deeds to checks, certificates of authenticity are sometimes irreplaceable, a fact that paradoxically reinforced the fetish for objects that conceptual art presumably challenged. Documenting authenticity and the role certificates played in this process received new attention in the early 1990s thanks to *Greenberg Gallery v. Bauman and Entwistle*. Among the most vivid instances of conflict between “the” law and the unwritten laws of the art world, this 1993 case involved a plaintiff accusing the defendant of selling it a forged work supposedly by Alexander Calder. Despite the testimony of the plaintiff’s expert witness, whom the art world widely recognized as the leading authority on Calder, the U.S. District Court in Washington, D.C., ruled in favor of the defendant. Yet the reputation of the plaintiff’s expert witness, who considered the work a fake, all but condemned the alleged Calder to a state of permanent market limbo.

*Greenberg Gallery v. Bauman and Entwistle* was remarkable for the variety of testimony offered regarding certificates. In his deposition taken by the defendant’s attorney, the gallerist André Emmerich initially scoffed at the very idea of certificates, remarking that “I would consider it basically beneath my dignity. My letterhead should be enough. My good name rides with everything I sell.”<sup>40</sup> According to Emmerich, the reputation of the dealer should be adequate grounds for determining a work’s authenticity; in this case an invoice was “the best proof of authenticity [for a Calder that] I can think of.”<sup>41</sup> “Good name,” or reputation, was a category of value recognized throughout the art world. Presiding judge Louis Oberdorfer focused, conversely, on how close the signature on the work was to other Calder signatures, a decision consistent with commercial tendencies to value an artist’s signature as a means of verifying a buyer’s purchase.<sup>42</sup> The plaintiff’s failure to challenge the signature’s validity was “as important to a trier of fact as would be a prosecution’s failure to offer fingerprint evidence about an article handled by a party or to explain by testimony its omission.”<sup>43</sup>

For all their interest in verifying authorship and encouraging the disclosure of relevant information, courts and legislatures were curiously silent as to who, in fact, was entitled or qualified to issue certificates of authenticity. In 1995, the New York Supreme Court decided *Arnold Herstand v. Gertrude Stein, Inc.*, a case that involved the artist Balthus repudiating one of his own works.<sup>44</sup> The judge claimed that absent any sworn legal statement representing otherwise, the artist’s opinion would determine the attribution of a work allegedly identified as his or hers. That the court in *Herstand* so quickly accepted Balthus’s claims regarding the authorship of the contested work was due to the kind of documentation being offered, in this case a photograph of the work signed by the artist’s former girlfriend. If the *Herstand* court was able to outsource its decision-making labor to the artist, it was because of the lack of any standards for either the form or content of a certificate of authenticity, California and New York laws notwithstanding.<sup>45</sup>

Still, artists continued drafting certificates for works that had yet to be made. Buyers purchased the right to fabricate the work, which in turn enabled artists to evade

U.S. tax law that otherwise prevented them from deducting the cost of production until the work was sold. Certificates for unrealized works put tremendous pressure on artists in two main ways. First, they required artists to convey their intentions accurately and in such a manner that a reasonable buyer would fully understand those intentions. Second, they recognized that an artwork was in fact separable into two parts: its invention (or conception) and its execution. Artists were thus required to trust buyers above and beyond what might ordinarily be expected from buyers of other goods. Conceptual artist Robert Barry wrote to his dealer about the potential risks of making works that could easily be reproduced, “We will just have to trust each other.”<sup>46</sup> Barry’s statement indicated a form of blind trust departing from theories of risk management that endorse trust only when it is justified.

Yet the lack of definition as to the scope and duration of said trust had unexpected, and sometimes disastrous, consequences. The outstanding case in point involved the certificates Donald Judd issued in 1974 to the Italian collector Giuseppe Panza for the plans of fourteen untitled and unrealized works. Panza consequently fabricated several works according to what he thought were Judd’s instructions. The artist disowned the works, claiming that the fabrications did not satisfactorily meet his standards. In a 1990 letter, Judd angrily accused Panza of positivism: he “thinks my work has no existence beyond the paper in his files and that it can come and go as he pleases and as he designs it; now it can be multiplied as he pleases.”<sup>47</sup> Upsetting Judd most of all was the very suggestion that he was not the ultimate arbiter of his own works, even though his certificates required any completed work to comply with his instructions and required Panza to notify the artist, his representative, or his estate that the work was being made.

The controversy was a function of two different approaches to contractual relationships. Assuming that both parties saw the certificates as virtual contracts, Panza—himself a lawyer—adhered to an orthodox legal approach, whereby the certificate only required him to act in good faith. In the event that he and Judd could not agree about the work, they should appoint “an independent expert in order to see if the work is correctly made or not.”<sup>48</sup> Judd, on the other hand, seemed to regard the certificates as a guarantee that Panza would act in a fiduciary capacity. To him the certificates created a separate duty of reasonableness and fairness beyond what contract law generally holds as good-faith performance. The difference in viewpoint resonates with the move among courts to specify the limits of duties owed by parties to a contract, as in *Market Street Associates Ltd. Partnership v. Frey*, a heavily cited 1991 case in which Judge Richard Posner, ever the realist, famously commented that signing a contract does not obligate a signatory to become an “altruist” or “his brother’s keeper.”<sup>49</sup>

### **IN CONTRACTS WE TRUST?**

The complexity of the agreements between Panza and artists like Judd and Asher vividly demonstrated how the process of acquiring an artwork became as much a part of the work as its display and circulation. The expansion of public art programs as well as

occasional collaborations between artists and private industry, such as those between E.A.T. and Pepsi-Cola, made contracts an increasingly familiar part of the transactional everyday. Dealers became more receptive to using contracts in the early 1970s. Marilyn Fischbach, the founder of the eponymous New York gallery known for exhibiting Alex Katz and Eva Hesse, praised the contract as “something new” that could help her and other gallerists more efficiently manage their relationships with artists.<sup>50</sup> Even more enthusiastic was André Emmerich, who used the “Standard Form of Gallery-Artist Agreement” issued by the Art Dealers Association of America. He wanted to add a provision stipulating that the artist’s consent must be secured before granting credit terms to a buyer for a period of more than a year.<sup>51</sup> Most artwork sales, however, continued to occur without written contracts. Lawyers were themselves undecided as to their efficacy. Remembering the failure of *The Artist’s Reserved Rights Transfer and Sale Agreement*, Robert Projansky was particularly skeptical, while Jerald Ordovery’s apparent reluctance to assist his friend Seth Siegelau in drafting the *Agreement* may have been motivated by his belief that it was the orality of agreements that best reflected the camaraderie that often developed between artists and dealers over a long period of interaction.<sup>52</sup> Of similar mind was Clifford Schaffer, an attorney for the artist Michael Asher who admitted to his client that “sometimes a lawyer’s advice on how to handle business decisions wisely is misconstrued to appear as though one person does not trust the other.”<sup>53</sup> More pragmatic was Louis Lefkowitz, who wryly observed that “the very hallmark of ‘power’” for very successful artists is “their ability to resist being bound by any contract at all.”<sup>54</sup>

In an unusually frank discussion about market practices at the New Museum in New York in 1975, several important New York gallerists, including Leo Castelli, Holly Solomon, Arne Glimcher, and Betty Parsons, stressed that buyers wanted a “a feeling of ownership, not of caretaking.”<sup>55</sup> However, neither custom nor law could consistently guarantee all the rights an artist wanted. For every Walter Hopps willing to honor an agreement scrawled casually on a hot dog wrapper, there were at least a hundred Leo Castellis quick to dismiss contracts as not even “worth the paper they’re written on.”<sup>56</sup> And yet increasingly long and detailed contracts, such as the model co-drafted by Michael Asher and lawyer Arthur Alef, sought to reinforce the authority of the artist.<sup>57</sup>

The expanding scale and complexity of the U.S. artistic ecosystem made at least some knowledge of contracts desirable, if not necessary.<sup>58</sup> This was made dramatically evident in the *Tilted Arc* case, one of the most well-publicized conflicts between visual art and the law in postwar American history. The case, involving the U.S. government’s removal and destruction of Richard Serra’s sculpture *Tilted Arc*, has been extensively discussed as a matter of censorship and moral rights. Yet it also emphasizes just how much the law regarded contracts as the primary, and even sole, expression of artistic intention. Significant disagreement existed as to what the contract between Serra and the General Services Administration (GSA), the government agency that had initially commissioned Serra to create *Tilted Arc*, in fact meant. Serra’s lawyers argued that the

written contract—a standard form used by the GSA in commissioning artists to produce work—did not reflect the entirety of the agreement. For instance, the “work” mentioned in the standard contract did not refer to the actual sculpture, but only to the designs, sketches, and models prepared in anticipation of its execution, a specification not included in the contract but that GSA director Donald Thalacker stated was something “everybody seemed to understand and agree [to].”<sup>59</sup> In an undated memorandum assessing the case and possible legal remedies for Serra, attorney Anne Baker implied that the GSA contract was in practice recognized as a document that necessarily relied on agreements not explicitly included in the written text.<sup>60</sup> Likewise, Serra’s counsel Gustave Harrow, himself a leading advocate of artists’ rights, claimed that the government gave the artist “unequivocal” reassurances that his work would remain installed, and such reassurances “form a binding contract, which precludes removal without Serra’s consent.”<sup>61</sup>

The turn to contracts suggested what sociologist Frank Furedi has labeled a “blame culture,” in which interpersonal disagreements are increasingly resolved through formal complaints and litigation. Trust becomes a resource in short supply as energy is directed toward allocating present and future blame to others.<sup>62</sup> But although the neutral objective voice might be accepted as good conceptual art practice, in a contract it could be alienating, a situation Gonzalez-Torres addressed by having his certificates become part of the ownership experience. Drafted at the height of the Judd-Panza conflict, the format and language of the certificates produce a reading experience closely analogous to that compelled by legally binding contracts, yet the certificates could also be changed to accommodate buyer needs to ensure the work could exist.<sup>63</sup>

That Gonzalez-Torres spent considerable time revising and reediting his certificates reflects an attempt to control the means by which his works were created and transferred.<sup>64</sup> Although he never consulted an attorney, his certificates contained terms and conditions that strongly recalled the legal definition of an *offer*, or a proposal made to another party in such a way that he or she could reasonably assume that any assent binds him or her to the terms of the proposal.<sup>65</sup> Performance studies scholar Joshua Chambers-Letson suggests that “the certificates signify an appropriation and reformation of the purchase contract.”<sup>66</sup> Early versions issued before 1994 consist of several single-spaced paragraphs describing the parameters of the work and the intentions underlying its creation. The first two paragraphs include the title of the document and a physical description of the work, including title, media, dimensions, and control number. The third and fifth paragraphs describe the owner’s rights and responsibilities concerning the work. The fourth paragraph describes the process of transferring title from one owner to another in the event that the work is sold.

Later certificates included a space for the buyer’s signature and a legend informing buyers that “the signature below of [the buyer] indicates understanding, acknowledgment of, and agreement to these terms and completes the binding nature of this contract.”<sup>67</sup> Not accepting the certificate’s terms would mean compromising the status of

the artwork as a bona fide Gonzalez-Torres. The certificates align with what legal scholar Margaret Radin calls “purported contracts,” or paperwork “that contain[s] terms supposedly binding without your signature, and sometimes even without your knowing this is happening.”<sup>68</sup> Issued in lockstep with the meteoric rise of Gonzalez-Torres’s market after his death, particularly between 1998 and 2000, these certificates functioned as hybrid license-contracts that granted owners the right to manifest a work while also expecting them to honor certain terms regarding the work’s production and circulation.<sup>69</sup> But reading a certificate is much like spotting issues in a law school exam; ambiguity is central to the production of knowledge through divergent interpretations.

Nevertheless, the early certificates are far more convincing as an extension of the work than as a species of legal documentation like a contract, license, or warranty. Were they binding contracts, the certificates would have entitled bearers to delegate the resolution of any interpretative conflict to the courts, whose capacity to administer justice amid the polarized ideological landscape of the late 1980s and early ’90s was severely questioned by numerous artists, Gonzalez-Torres included. Outsourcing the regulation of interpersonal relationships to a third party whose own integrity meant taking sides in the form of a verdict was incongruent with his certificates, which transformed compliance into an ongoing conversation about possibilities rather than prohibitions.

#### THE FINE ART OF COMPLIANCE

Describing himself as “an extension” of Minimalism and conceptual art, Gonzalez-Torres belonged to a genealogy that delegated artistic intention to written instruction.<sup>70</sup> His artistic DNA thus also included getting others to comply with those instructions, a challenge Douglas Huebler faced with *Variable Piece #44/Global* (fig. 87). Printed directly on the work was a set of instructions directing each owner to send a photograph of him or herself to both the person who owned the work that preceded his or hers in the numerical sequence of the edition and the person who owned the following piece. Instructions were in fact conditions that had to be met in order for *Variable Piece #44/Global* to exist as an artwork; they declare that the work “will become original” after the owner has completed the instructions (fig. 88). In this way Huebler resembled Dan Flavin, who was among the first to explicitly reject the binary logic underscoring most forms of authentication by incentivizing his powers of authentication. Rather than immediately declare a work his or not, Flavin would partly certify it (“intermediate certification”) when a buyer first purchased from him a set of instructions, and “completely” certify it upon their execution.<sup>71</sup> In a letter to Herman, Nicole, and Pierre Daled, who owned various editions of *Variable Piece #44/Global*, Huebler wrote that there was “no such thing as ‘ART’ in connection with this work *unless* each owner makes an exchange with two other owners at some point in time each year” (Huebler’s emphasis).<sup>72</sup> Those not following Huebler’s instructions would possess an “artwork,” but not necessarily one the artist might claim as his own—to him such a



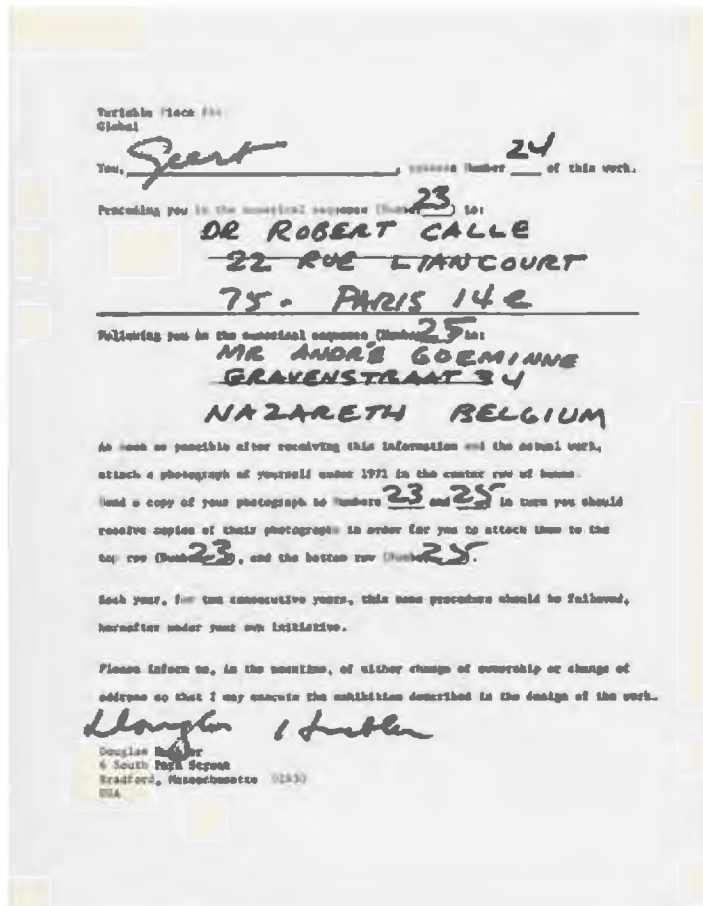
FIGURE 87

Douglas Huebler, *Variable Piece #44/Global*, 1971. Offset lithograph with collage additions, composition:  $9\frac{15}{16} \times 22\frac{1}{16}$  inches; sheet:  $18\frac{1}{2} \times 24$  inches. Digital image © 2018 Douglas Huebler. Courtesy of Darcy Huebler/Artists Rights Society (ARS), New York, and Museum of Modern Art/Licensed by SCALA/Art Resource, New York.

work would merely be a “simple ‘souvenir’ of something or other.”<sup>73</sup> To give his instructions additional rhetorical heft, Huebler reissued the instructions in the form of a typed statement resembling both a sworn legal document and a business letter. Although not specifically called certificates, these documents acted as certificates of ownership. New owners were requested to attach a photograph of themselves under the year that they bought the work “as soon as possible after receiving this information and the actual work.”

Huebler noted that the work would not be his unless the instructions were followed, a prescription that effectively created a situation where the value of one owner’s *Variable Piece #44/Global* depended on the actions of others. Some owners failed to heed the artist’s conditions, thus potentially diminishing the value of their own investment. Huebler stated that those who “have not met the responsibility of ‘ownership’” would be eliminated from a list of owners.<sup>74</sup> This was hardly satisfactory, as there was no way of making owners meet the artist’s conditions. Huebler even went so far as to ask Daled—himself a supporter of artists’ rights who helped fund the publication and distribution of *The Artist’s Reserved Rights Transfer and Sale Agreement*—to intervene on

FIGURE 88  
Douglas Huebler, *Variable Piece*  
#44/Global, 1971. Certificate,  
composition:  $8\frac{3}{8} \times 7\frac{1}{16}$  inches;  
sheet:  $11 \times 8\frac{1}{2}$  inches. Digital  
image © 2018 Douglas Huebler.  
Courtesy of Darcy Huebler/Artists  
Rights Society (ARS), New York,  
and Museum of Modern  
Art/Licensed by SCALA/Art  
Resource, New York.



his behalf with regard to a Belgian collector who failed to respond to Huebler for four years.<sup>75</sup> The most extreme case may have been Huebler's attempts to get Toselli, his Italian dealer, to pay for *Variable Piece* or to abide by its terms. The artist eventually threatened to place a giant advertisement in *Studio International* proclaiming that all of his works sold by Toselli three years earlier were “merely copies” and that anyone who owned such works would be illegitimate.<sup>76</sup>

Coercion, fear of punishment, and even moral responsibility were not enough, however, to ensure owner compliance. There was a sense of inherent failure in works requiring compliance, a failure accommodated, and perhaps even anticipated, by some artists whose certificates explicitly allowed for some noncompliance. The sculptor Fred Sandback, for instance, admitted in one certificate for a 1979 work that “new reconstruction will always be to some extent a further interpretation, and should be regarded as such without undue trepidation.”<sup>77</sup> He provided photographs of previous



installations as a guide but seems to have trusted at least some of his buyers to install his yarn-based work without a manual.

Art historian Miwon Kwon notes that a paradigm shift regarding artistic authorship took place in the 1960s and '70s. Rather than privilege the “artist’s authorship as producer of objects,” it was the artist’s “authority to authorize in the capacity of director or supervisor of (re)production” that mattered, a shift dramatically illustrated by works like Christo and Jeanne-Claude’s *Running Fence*.<sup>78</sup> The shift concurred with the 1976 Copyright Act, which gave copyright owners the right to authorize others to produce copies of their works. When Gonzalez-Torres first issued his certificates, considerable ambiguity existed over the scope and nature of authorization. For example, the executor or heir of an artist’s estate was legally permitted to authorize the posthumous recreation or reproduction of works. Less clear was whether and how they could create new works where none previously existed. *Reality Properties: Fake Estates* was assembled in 1992 by Jane Crawford, Matta-Clark’s widow, from documents the artist collected before his death, including deeds to residual land left over from surveying errors purchased by the artist at public auction in the early 1970s.<sup>79</sup> During his lifetime, Matta-Clark had expressed an intention to create from such land a standalone work using written and visual documentation of the property. Yet no record exists as to its final intended manifestation. While Crawford’s decisions are hardly equivalent to those of critic Clement Greenberg, who posthumously stripped paint from a David Smith sculpture, her assembly of documents into collages initially deterred risk-averse institutions from buying the work.<sup>80</sup> Together with the growing number of questions from owners regarding the installation of works, the likelihood of comparable doubt may explain why Gonzalez-Torres’s certificates grew longer and more detailed over time, particularly just before his death in 1996.

Yet the certificates moved beyond the questions of artwork commodification that so plagued some of his conceptualist predecessors, as well as the imperative of self-protection underwriting the contracts and certificates of Minimalism’s stalwarts. Anticipating the flexibility of language in Gonzalez-Torres’s certificates was the standard contract used by the Public Art Fund to commission artists for its “Messages to the Public” series. Founded by Doris Freedman, a former director of cultural affairs for New York City, the Public Art Fund enabled artists, including Gonzalez-Torres, to make and exhibit work hung in various publicly accessible venues in New York. Among its most significant projects was “Messages to the Public,” which from 1982 to 1990 saw artists presenting a thirty-second animated work on a Spectacolor light board in Times Square. Drafted by an attorney, the agreement given to artists proposing a work strongly anticipated the tone of Gonzalez-Torres’s certificates, particularly those involving lightbulb strings. “Bulbs are either on or off,” they could not be dimmed, and “complex images must be illuminated in white.”<sup>81</sup> The agreement also included recommendations (“The sign is most effectively used when bold images and broad gestures are employed”) and even warnings (“Any fine lines must be in white as color will reduce the detail”).<sup>82</sup>



FIGURE 89

Felix Gonzalez-Torres, *“Untitled,”* 1989. Billboard, dimensions variable. Installation view: *“Untitled”* (Billboard), Sheridan Square, New York, 1989. Photo: Stanley Greenberg. © Felix Gonzalez-Torres Foundation. Courtesy of Andrea Rosen Gallery, New York.

For the Public Art Fund, Gonzalez-Torres proposed *“Untitled,”* a billboard that became his first public artwork. Scheduled for display in Sheridan Square in New York City from March to August 1989, the initial installation of the work commemorated the twentieth anniversary of the Stonewall Rebellion that occurred across the street from the billboard’s location (fig. 89). It was a large rectangular billboard, a black expanse

relieved only by two lines of white type reading, “People With Aids Coalition 1985 Police Harassment 1969 Oscar Wilde 1895 Supreme Court 1986 Harvey Milk 1977 March on Washington 1987 Stonewall Rebellion 1969.” The agreement he consequently signed with the Public Art Fund was not particularly unusual. It acknowledged the artist’s title to the work while granting to the Public Art Fund an irrevocable license to make a limited print edition of the billboard (up to 250 copies), stipulating that the artist will sign and date these editions. The contract also allowed the Public Art Fund to make photographs and other two-dimensional reproductions of “*Untitled*” without the artist’s prior consent; these were to be used for advertising and “for other purposes,” an open provision that meant, in theory, that they could sell these, although the Public Art Fund explicitly disclaimed any expectation of a direct financial benefit.<sup>83</sup> It did, however, reserve the right to remove work from display without first notifying the artist.

Not long after the maturation of Gonzalez-Torres’s certificates in the mid-1990s, the artist Renée Green stated in a roundtable discussion that “the term ‘artist’ seem to, at times, limit people’s idea of what you’re capable of doing.” Her comment responded to questions asked of Judith Barry, another artist who used highly detailed contracts when producing artworks in an institutional setting.<sup>84</sup> In borrowing or nodding to contractual language in his certificates, Gonzalez-Torres may also have been trying to gain credibility in the legal and economic systems within which his works circulated.

### THE WORD OF LAW

The resemblance between a Gonzalez-Torres certificate and a contract begs from readers a specific kind of attention in which the meanings of individual words are subject to more intense levels of scrutiny than may be applied to other documents. Like Tehching Hsieh, Gonzalez-Torres insisted on clarifying his meaning in the most direct terms possible, in order to minimize the risk of having the buyer mistake his intentions. Yet the certificates lack either the clarity or the precision generally expected of contracts, partly because they were initially drafted without outside legal assistance, but also intentionally.<sup>85</sup> It was therefore unclear just how closely owners were expected to abide by the terms of Gonzalez-Torres’s certificates. The level of detail is inconsistent. For example, one certificate for an early billboard work from 1991 grants its owner the “exclusive right to reproduce the billboard in public as often as they like, at what ever scale they like, at however many locations they choose.”<sup>86</sup> The wording of the certificate avoids a common mistake in contract drafting whereby *exclusive* and *sole* are used interchangeably. Several sentences, on the other hand, are so pointedly imprecise as to seem almost intentionally so. A standard phrase—“the physical manifestation of this work in more than one place at a time does not impugn this work’s uniqueness”—is unclear due to the improper use of *impugn*. A verb meaning “to doubt” or “attack,” it is most often used in legal contexts to assess witness credibility or in cases involving defamation. *Undermine* or *negate* would be more appropriate.

Yet these presumptive shortcomings of language—its looseness—may explain why owners have been so faithful to the certificate terms. “There are times when precision may kill a deal that should not be killed,” cautioned legal scholar David Mellinkoff in his influential book *The Language of the Law*.<sup>87</sup> By using a word like *ideal* rather than the more standard *required* or *mandatory*, Gonzalez-Torres addressed what may be the most crucial aspect of any contract, the likelihood of its enforcement. He appeared to reject the punitive model of contracts, in which failing to fulfill a particular term could result in the punishment of the errant party. The model differs from that used to sell film and video works, a phenomenon that emerged in the 1990s, which specifically involved collectors signing purchase agreements that detailed very clearly how the works would be shown.<sup>88</sup> But while the obligations associated with the purchase of film and video works were largely to ensure the quality of the image, thereby casting film and video as themselves fixed objects, many Gonzalez-Torres works have elements that audiences can choose to physically take.

From a prospective buyer’s standpoint, the least restrictive (or most permissive) of Gonzalez-Torres’s certificates tend to be those accompanying his billboards and text portraits. Certificates for the former impose no restrictions on the size of the billboard or on how many can be shown at any given time. So great is this freedom that the artist seemed to retreat from the initial certificate by suggesting an “ideal” number of locations, which for most works is twenty-four.<sup>89</sup> The only condition is that the billboards be photographed, a term whose satisfactory fulfillment requires relatively minimal effort from the buyer. Gonzalez-Torres’s text portraits are similarly expansive: buyers may extend or contract the length of the portrait, and the color in which the words are painted are equally left to buyers’ discretion. Each accompanying certificate includes the text initially used for the portrait, which subsequent owners can decide to use in full, in part, or not at all; their choices too are recorded in the certificate. At the same time, he includes what he regards as “ideal” installation conditions—that, for example, the words be painted just below the point at which a wall meets the ceiling.

Next are certificates for the candies, paper stacks, and beaded curtains. In the first two groups, the owner is permitted to replenish the candies and paper stacks. For the beaded curtains, the owner must ensure that beads fill a given entrance completely from side to side as well as hang from the entrance top to the ground. That the works consisted of materials that were relatively inexpensive and easy to source may have reassured prospective buyers. The money and effort required to execute the certificate’s terms were minimal in relation to the work’s actual market value. Moreover, the potential cost of having to replenish the candies or paper is mitigated by the artist’s granting permission that the owner may choose not to do so.<sup>90</sup>

Least permissive, at least on a superficial reading of their text, are certificates for Gonzalez-Torres’s lightstrings. Accompanying each edition of “*Untitled*” (*March 5th*) #2, one of his first works to feature lightbulbs, is a certificate of authenticity that specifies the manner of installation (including the precise dimensions of the nail from



FIGURE 90

Felix Gonzalez-Torres, "Untitled" (*March 5th*) #2, 1991. Lightbulbs, porcelain light sockets, and extension cord, dimensions variable. Two parts, each approximately 113 inches in height. © Felix Gonzalez-Torres Foundation. Courtesy of Andrea Rosen Gallery, New York.

which the lightbulbs hang) in addition to listing the work's title, date, materials, and edition number (fig. 90). The owner decides only whether the lightbulbs should be on or off. On the same page as the description and instructions, a short legend reads, "This certificate is necessary to define ownership," followed by a space for the date and the artist's signature.<sup>91</sup> Yet unlike certificates of authenticity and ownership that



FIGURE 91

Felix Gonzalez-Torres, "Untitled" (*America*), 1994. Lightbulbs, waterproof rubber light sockets, and waterproof extension cords, twelve parts, dimensions variable. Installation view: "Felix Gonzalez-Torres (A Possible Landscape)," Centro Galego de Arte Contemporánea, Santiago de Compostela, Spain, 1995–96. Photo: Archivo Fotográfico CGAC. © Felix Gonzalez-Torres Foundation. Courtesy of Andrea Rosen Gallery, New York.

are reissued upon the sale of a work, this certificate remains unchanged.<sup>92</sup> Other light-string certificates permit the owner to configure the work freely (figs. 91 and 92). Yet they mandate replacement of the bulbs when burnt out and that there had to be forty-two 22-watt lightbulbs.<sup>93</sup> The indication of quantity and energy output was to ensure sufficient brightness, but the specific quantity and type leave no room for alternative readings that would jeopardize the authority of the certificate as a source of information. Still, by giving owners the freedom to choose how best to install and reinstall the lightstring works, without further direction as to when or where, Gonzalez-Torres effectively delegated to owners the physical and mental labor of realizing the work.



FIGURE 92

Felix Gonzalez-Torres, “*Untitled*” (*America*), 1994. Lightbulbs, waterproof rubber light sockets, and waterproof extension cords, twelve parts, dimensions variable. Installation view: “Felix Gonzalez-Torres: Specific Objects without Specific Form,” Wiels Contemporary Art Centre, Brussels, 2010. Photo: Sven Laurent. © Felix Gonzalez-Torres Foundation. Courtesy of Andrea Rosen Gallery, New York.

Unclear, however, was just how literally owners were expected to abide by the certificates’ terms. The certificate of authenticity accompanying Andrea Zittel’s 1993 work *Chamber Pot* bestowed upon owners “the right . . . to use the object in any way they choose” and “encouraged” them to do so. Yet the symmetry and elegance of the actual artwork practically dares the owner to exhibit it as anything other than an artwork, let alone put it to the use suggested by its title (fig. 93). It is as if Zittel is calling the buyer’s bluff, betting (probably correctly) that his or her interest in preserving the value of the work would preclude him or her from fully exercising the privileges the certificate grants. Gonzalez-Torres deliberately refused to define the work’s material parameters: “Is the piece the simple sheet of paper or is the piece the stack? Well it could be both, and I never define which one is which. I like that ‘in-betweenness’ that makes the work difficult to define.”<sup>94</sup>

From a liability perspective, the looseness of Gonzalez-Torres’s certificates’ wording accommodated the concern some institutional owners were likely to have about their own responsibilities. Museums, for example, represent a type of owner characterized by sharp aversion to all forms of legal liability as well as correspondingly high levels of vigilance in safeguarding the tangible property it owns. Strategically vague

FIGURE 93  
Andrea Zittel, *Chamber Pot*, 1993.  
Spun aluminum. Height: 5½  
inches. Diameter: 9½ inches.  
© Andrea Zittel. Courtesy of Regen  
Projects, Los Angeles, and Andrea  
Rosen Gallery, New York.



language might reassure parties concerned about whether deviations from certificate terms would be regarded as actionable violations. Through the certificates, Gonzalez-Torres intuited how contracts are as much defined by imminent violation as they are by their potential to guarantee particular outcomes.

Comparing his own intentions with those of his conceptualist and Minimalist forebears, Gonzalez-Torres said, “I don’t have that phobia of two inches . . . you know: ‘if a work is two inches to the left, you have to destroy the work!’”<sup>95</sup> Miwon Kwon contends that Gonzalez-Torres’s certificates permitted him “to work against the security of his own version of the stacks or piles, strings of light or beaded curtains as unchanging, original, and finite ideals for eternity.”<sup>96</sup> Some deviation may also have been necessary to prevent the work from becoming what critic Robert Storr described as “just another fixed entity within a treasure house of things.”<sup>97</sup> Additionally, by permitting owners of certain works to substitute one type of candy for another, Gonzalez-Torres improved the chances that these works would be realized in perpetuity. Theoretically, nothing prevents a collector from reproducing a different candy spill; depending on the certificate terms, buying one candy spill means acquiring the option to display any of the other spills.

But as Rollins insisted, Gonzalez-Torres’s works were not “completely arbitrary or intuitive.”<sup>98</sup> Unlike Lawrence Weiner, who claimed “there’s no way to build a piece incorrectly,” Gonzalez-Torres did set parameters for his instruction-based works.<sup>99</sup> Rosen notes, for instance, that the artist determined the size of his works on the basis of “standards.”<sup>100</sup> There may have been no one “right size” of paper, for example, but certain factors, such as the proportions of the display venue, did affect how Gonzalez-Torres himself determined the formal appearance of the work. Storr observes that certificates concerning the candy spills direct the owner to routinely maintain the piles, a hint that the artist may have wanted buyers to adhere to a general standard of





FIGURE 94  
Felix Gonzalez-Torres, “Untitled”  
(*A Corner of Baci*), 1990. Baci chocolates,  
endless supply, dimensions variable.  
Ideal weight: 42 pounds. Installation  
view: “Reversibility: A Theatre of  
De-Creation-Chapter III,” Peep-Hole,  
Milan, 2012. © Felix Gonzalez-Torres  
Foundation. Courtesy of Andrea Rosen  
Gallery, New York.

execution. Gonzalez-Torres remarked, for example, that the height of his paper stacks should depend on how they appear in a given space.<sup>101</sup> In the case of the candy-based works that have *corner* in the title, such as “Untitled” (*A Corner of Baci*), owners have often, but not always, installed the work in a corner (fig. 94). Site-specificity is crucial. Certificates accompanying the beaded curtains state that the curtain must fill the entirety of the space left open by a particular entranceway.

The adherence to “standards” is reflected in the prominence and consistency with which the word *ideal* appears throughout Gonzalez-Torres’s certificates. Art historian John Paul Ricco suggests that the artist’s use of the word *ideal* is malleable: it is a reference that “should be considered when installing and maintaining the work” but is not intended as an “unattainable end.”<sup>102</sup> But *ideal* also resonates with the reasonableness standard often used to determine the lawfulness of a person’s behavior. A particular height or configuration need not be followed to the letter, but there is an intimation that certificate bearers should be reasonable in deciding how high paper stacks should be or where candies are placed. An ideal height for the paper stacks is prescribed (the actual height of the original installation), but the buyer is free to choose any height, a freedom that could hypothetically lead him or her to erect a stack so tall as to make it impossible for some viewers to take individual sheets. In that case, would the paper stack still be considered a Gonzalez-Torres, given the certificate declaration that “a part of the intention of the work is that third parties may take individual sheets of paper from the stack”?

Unlike the contracts and certificates of his conceptualist and Minimalist predecessors, which prioritized firm options over individual preference, Gonzalez-Torres folded preferences into options in apparent recognition of the subjective, rather than rational, owner. A few certificates permit the owner to execute certain parts of the work according to his or her (or its) “liking.”<sup>103</sup> Text portrait owners, for example,

FIGURE 95  
Felix Gonzalez-Torres, "Untitled"  
(*Revenge*), 1991. Blue candies  
individually wrapped in  
cellophane, endless supply. Ideal  
weight: 325 pounds. Installation  
view: "The Savage Garden," La  
Fundación Caja de Pensiones,  
Madrid, 1991. © Felix Gonzalez-  
Torres Foundation. Courtesy of  
Andrea Rosen Gallery, New York.



have “the right to extend or contract the length of the portrait, by adding or subtracting events and their dates, and/or change the location of the portrait at any time.”<sup>104</sup> Read against the repetition of *ideal* and *standards*, the promise of openness seems a challenge issued to collectors by Gonzalez-Torres. Consider the various manifestations of “Untitled” (*Revenge*) (fig. 95). In 1991, at the exhibition “The Savage Garden” at La Fundación Caja de Pensiones in Madrid, it consisted of a pile of small, cellophane-wrapped, greenish-blue, cube-shaped candies (“Blue Peppermint Ice Cubes”) manufactured by the Chicago-based Peerless Confection Company, the artist’s recommended supplier. After the company ceased operations in 2007, other institutions emphasized different aspects of the initial manifestation (fig. 96). Whether because of linguistic miscommunication, expense, or even a desire to test the flexibility of certificate terms, one institution seemed to have read “blue candies individually wrapped in cellophane” as candies individually wrapped in deep blue cellophane. It stands to reason that the certificates’ openness invites owners to disagree with the artist and his representatives on the level of interpretation, so as to reverse the indexing of viewing experience to artistic intention, which sometimes felt more authoritarian than authoritative.

#### “NOBODY OWNS ME”

In 1994, Gonzalez-Torres collaborated with the upscale French clothing manufacturer Agnès B. to create a limited-edition t-shirt for a black-tie auction benefiting the New Museum of Contemporary Art, the formerly scrappy upstart that had hosted his first solo exhibition in 1988. Intended to attract “new blood” rather than “bejeweled ladies,”

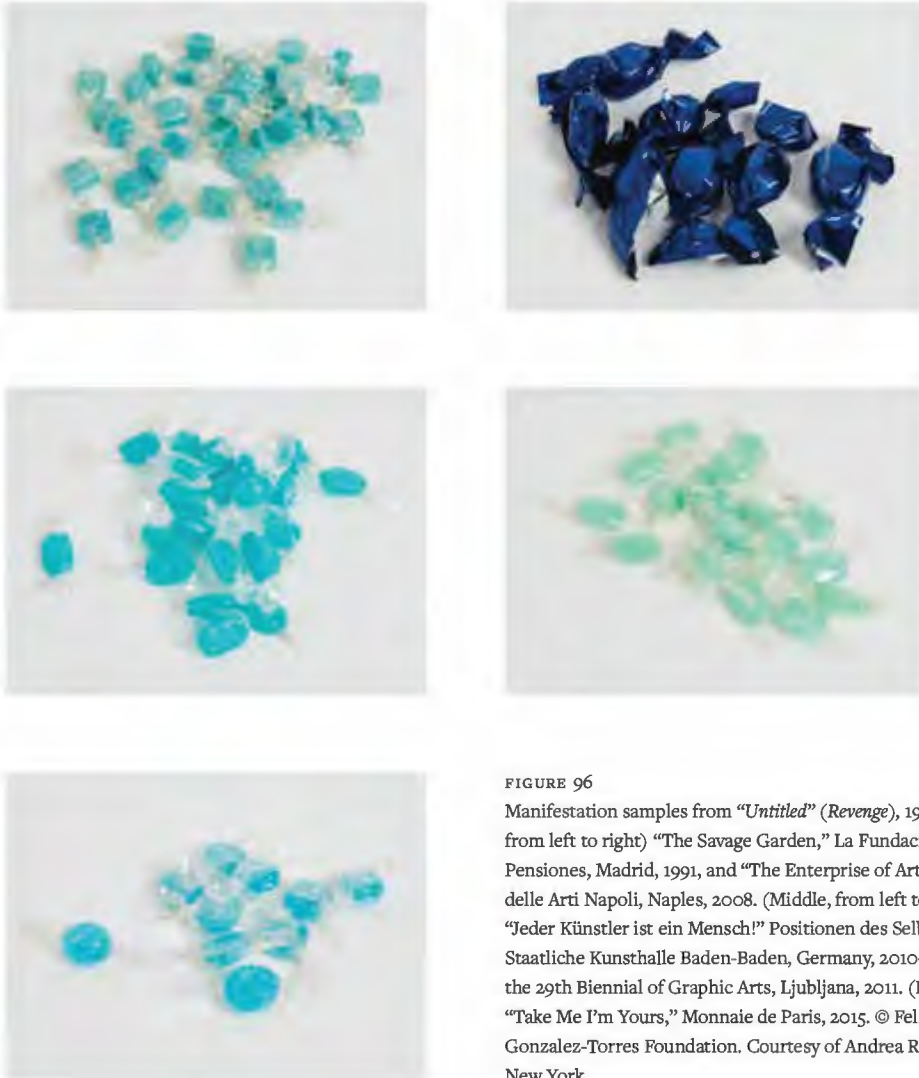


FIGURE 96  
 Manifestation samples from “*Untitled*” (*Revenge*), 1991. (Top, from left to right) “*The Savage Garden*,” La Fundación Caja de Pensiones, Madrid, 1991, and “*The Enterprise of Art*,” Palazzo delle Arti Napoli, Naples, 2008. (Middle, from left to right) “*Jeder Künstler ist ein Mensch!*” *Positionen des Selbstportraits*, Staatliche Kunsthalle Baden-Baden, Germany, 2010–2011 and the 29th Biennial of Graphic Arts, Ljubljana, 2011. (Bottom) “*Take Me I’m Yours*,” *Monnaie de Paris*, 2015. © Felix Gonzalez-Torres Foundation. Courtesy of Andrea Rosen Gallery, New York.

each t-shirt read “Nobody Owns Me” on the back, a fitting rejoinder to legal and politically motivated circumscriptions of private life and, perhaps, of institutional eagerness to canonize the increasingly lionized artist.<sup>105</sup> The slogan might have doubled as the subtitle of his certificates, which the artist renamed “Certificates of Authenticity and Ownership” in 1993. Owning his work meant accepting the risk of not knowing exactly what was owned or what being an owner might eventually require. David Deitcher notes that a certificate from 1990 forbids the buyer from duplicating or showing a particular stack work in more than one place at a time.<sup>106</sup> The stipulation aligns with



FIGURE 97

Felix Gonzalez-Torres, “Untitled” (*Aparición*), 1991. Print on paper, endless copies. 8 inches (at ideal height) × 28½ × 43 inches (original paper size). Installation view: “Space of Time: Contemporary Art from the Americas,” Americas Society, New York, 1993–94. © Felix Gonzalez-Torres Foundation. Courtesy of Andrea Rosen Gallery, New York.

common buyer expectations regarding the purchase of a unique work, namely, the principle of scarcity on which the legal construction of an artwork’s economic value generally depends.<sup>107</sup> Gonzalez-Torres eased this restriction in other certificates, stating for example that the 1991 stack work “Untitled” (*Aparición*) may be reproduced—or, in the artist’s words, “simulated”—for exhibition purposes (fig. 97). Deitcher argues that the artist may have included this revision to more readily accommodate growing museum interest and, by extension, his expanding schedule of exhibitions.<sup>108</sup>

Gonzalez-Torres’s more flexible position recalls similar attitudes toward reconstructions. For a retrospective of Gordon Matta-Clark’s work at the Institut Valencià d’Art Modern, the Holly Solomon Gallery indicated that *Dumpster Piece*, a work created from an industrial waste container, could be reconstructed if it was “identical in size and look” to the original made in 1972. It would up to the owner to decide whether this or the initial work (now better known as *Open House*) would be “the authentic piece . . . if it’s the European dumpster, the California dumpster must be destroyed

immediately to avoid any misuse with the material.”<sup>109</sup> The logic mirrored how video artists like Bruce Nauman, Charles Ray, and Gary Hill permitted the use and circulation of exhibition copies in order to protect the master version. In like manner, Gonzalez-Torres provided that any “simulation” created for an exhibition would be destroyed after the show ended.<sup>110</sup> The flexibility he permitted may have also been a tactical maneuver to avoid the duplication of his works, even by museum professionals. The artist Andrea Fraser, for example, complained to her dealer that curators at the most reputable institutions seemed to think they could freely copy and distribute videos recording her performances.<sup>111</sup>

Owning a Gonzalez-Torres work meant thinking about ownership as a continuous process, subject to unexpected change. A precedent was Steve Kaltenbach’s attempt to eliminate traditional views of artwork ownership in the contract he circulated for his work *Stone Maple* (1971–72). Directed toward museums, the contract stated that “at no time shall [the work] be owned by anyone,” nor would money be exchanged for any reason. Absolved of maintenance responsibilities, museums could only have “custody” of the work, which ended with another museum’s request to display the work.<sup>112</sup> The candy spills and paper stacks of Gonzalez-Torres might be compared to legal notions of alluvion (the extension of a landowner’s property by deposits carried by wind and water) and its mirror opposite, diluvion (the diminishment of a landowner’s property by erosion or other forms of attrition caused by natural forces). Land bounded by water tends to change in size and aspect, a recognition that grounds what common law holds as the nature of long-term ownership of property, its inherent subjection to gradual change.<sup>113</sup> Likewise, if the idea of change is inherently part of artworks, it follows that they can only be truly owned when held for long periods of time, or at least long enough so that they can be executed and shown in different ways.

The terms of the certificates make it potentially more difficult to sell a Gonzalez-Torres than to sell other works. But by continuing to offer what appears to be an endless supply of paper, regardless of how it is consequently used or even whether there is sufficient demand, Gonzalez-Torres thwarted the usual interactions on which economics depends. He openly declared his interest in the subversive potential of having more than one original at a time, noting how his replenishable stacks made at “the height of the 80s boom” undermined the idea of having an original work: “You could show this piece in three places at the same time and . . . it would still be the same piece. And it was almost like a threat—not only a threat but a reinterpretation of that art market.”<sup>114</sup> Kwon describes this as “a struggle to establish new terms or systems of valuation that can respond adequately.”<sup>115</sup> Similarly, Deitcher saw the artist as “trying to alter the system of distribution,” which necessarily “depends upon the survival of the cultural economy that his gestures simultaneously undermine.”<sup>116</sup> Letting audiences freely take the constituent components they would have seen as the work struck Gonzalez-Torres as perhaps the only response to a context where buyers were intensely, even pathologically, anxious to affirm their ownership status.

The certificates potentially ascribe to Gonzalez-Torres and his estate the right to control the product, a notion discussed in work-for-hire cases.<sup>117</sup> When Gonzalez-Torres was drafting his first certificates, the U.S. Supreme Court was considering *Community for Creative Non-Violence, et al., v. James Earl Reid*. At issue was whether the artist who produces a commissioned work retains copyright ownership or whether that ownership instead belongs to the organizer commissioning the work. The commissioning organization claimed ownership on the basis that it had “directed enough of [the artist’s] effort to assure that, in the end, he had made what they, not he, wanted.”<sup>118</sup> The court decided in favor of the artist, both because it determined the artist was not an employee of the commissioning organization and because of the amount of labor and time he spent in creating the work.<sup>119</sup> The decision supported an earlier model of authorship based on artists directly engaging in the production of work.

The language of Gonzalez-Torres’s certificates resonates with the plaintiff’s argument in *Community for Creative Non-Violence*: it “directs” enough of the owner’s efforts to ensure that the work is what the artist wanted. It casts owners as subcontractors, and possibly even as virtual work-for-hire employees. Kwon states that “not only did Felix know that he would not be able to determine the work’s future form,” but he “was indebted to the owner’s involvement.”<sup>120</sup> Those buying Gonzalez-Torres’s works were not his employees, nor were they paid by him or his representatives. Owners decide when to execute the terms of the certificate. But by delegating many of the functions ordinarily expected of artists, including sourcing materials and putting them together to create a tangible work, Gonzalez-Torres shifted the role, and perhaps the burden, of the artist as service provider onto owners in the form of a unique, and thus desirable, experience.<sup>121</sup>

Even more significant was how the certificates’ openness augured the possibility of an authorship model more aligned with the free distribution of otherwise copyrightable work than with defensive and punitive models of copyright. In 2004, the artist Sturtevant made *Felix Gonzalez-Torres, Untitled (America)*, a near-facsimile of Gonzalez-Torres’s “*Untitled (America)*” (fig. 98). Known since the mid-1960s for works closely resembling other works by well-known artists in a host of media, including land art and performance, Sturtevant heralded a recursive model of creation centered on assessing and choosing from existing data rather than producing works that looked conspicuously different from either their precedents or contemporaries. Jettisoning conventional notions of originality from artistic production, Sturtevant echoed inadvertently the iron-clad distinction the U.S. Copyright Office draws between originality and art.<sup>122</sup> Her process was hardly by rote, especially vis-à-vis Gonzalez-Torres, whose “intentions,” Sturtevant remarked, one “really had to know.”<sup>123</sup> Although she did not seem to have read the younger artist’s certificates, the flexibility of Gonzalez-Torres’s giveaway works had long been known in art-world circles; Susan Tallman in 1991 described how an artist, on asking whether she should preserve a sheet from a stack,



FIGURE 98

Installation view, Sturtevant, *Felix Gonzalez-Torres, Untitled (America)*, 2004. “Sturtevant: Image Over Image,” Moderna Museet, Stockholm, 2012. © Sturtevant. Photo: Åsa Lundén/Moderna Museet.

was told “she should do with it whatever she liked.”<sup>124</sup> The sheet no longer belonged to Gonzalez-Torres, yet the freedom granted may have obligated some takers to embark upon their own creative activity. The very existence of *Felix Gonzalez-Torres, Untitled (America)* delivers this possibility, consequently implicating Gonzalez-Torres’s certificates to be retroactive grounds for a non-adversarial model of copyright based on producing and sharing knowledge for the many.

#### **WHEN IS A GONZALEZ-TORRES WORK NOT A GONZALEZ-TORRES?**

Sturtevant’s choice of Gonzalez-Torres was especially judicious given how some of his work, namely the spills, curtains, and lightstrings, might not, in fact, be copyrightable under U.S. law. As the U.S. Copyright Office informed the artist Cady Noland, “a simple expression of rote designs and representation” does not meet its originality threshold; the law protects “expression” but not the idea from which it stems.<sup>125</sup> According to this logic of the text portrait certificates, adding and subtracting of events could potentially change the work until it is no longer recognizable as a work by Gonzalez-Torres, as Kwon discusses.<sup>126</sup> Candies in a Gonzalez-Torres heap may not themselves be the work, yet to exhibit one piece only might be seen as an unlawful attempt to show the work in an “altered, mutilated or modified form.”<sup>127</sup> Not replenishing the spills or stacks might

amount to destruction as a kind of death, given that viewer interaction, a key part of the work, can occur only when the idea takes physical form.

Contrary to U.S. copyright law, which discounts an artist's "conceptual choices" when determining originality, and in alignment with critical and commercial practices of the art world, the certificates of Gonzalez-Torres fixed his works as a function of their conception rather than their execution.<sup>128</sup> Early certificates specified that "the physical manifestation of this work in more than one place at a time does not threaten the work's uniqueness since its uniqueness is defined by ownership."<sup>129</sup> Perhaps mirroring the expanding global circulation of contemporary art, the phrase effectively permits owners to freely loan their works to multiple institutions concurrently. In the case of paper stack works, owners have the right to replenish the stack or simply allow the pile to disappear completely. The work need not be realized as a "fixed, tangible" object.

Yet institutional owners and lenders often defended the manifestation before the idea. Museum guards, whom Gonzalez-Torres deemed significant to the viewing experience, have been especially vigilant. In her review of the 1995 Gonzalez-Torres retrospective at the Guggenheim, Clara Hemphill wrote of how a guard scolded her for allowing her son to throw Gonzalez-Torres's candies in the air. The guard said the work was "supposed to invite interaction—but not too much!"<sup>130</sup> She later quipped that "perhaps Gonzalez-Torres' piles of candies become art when the museum guards yell at you not to touch them too much."<sup>131</sup> To the Guggenheim guards and many viewers, however, the candies constituted the work, a view applied to sheets of paper in the stack works. Although several certificates state that individual sheets "do not constitute a unique piece nor can be considered the piece," many have been offered for sale.<sup>132</sup> Rosen has noted that museums, apprehensive that their stack works might disappear even before a show began, asked Gonzalez-Torres's permission to prevent viewers from taking sheets during an opening.<sup>133</sup> That he eventually complied with such a request was a gesture of compromise, suggesting an awareness of the very real concern of institutional owners about the perceived damage of works acquired in the name of serving the public good.

The blurred distinction between idea and expression is further borne out by differences in insurance costs. Those borrowing the work bore the burden of insuring it for the cost of its production. For lenders, the candies indicated a right they purchased from the artist (in one owner's words, a loan meant giving someone else the temporary right to "reproduce a simulation").<sup>134</sup> In some cases, a relatively high value was assessed when identical replacements for a work's components could not be sourced, an indication of owners' attachment to objects.<sup>135</sup> For the candy spills and paper stacks, the cost amounted to less than a thousand dollars, a slim fraction of what the works they embodied might otherwise fetch on the market or at auction. Yet the Andrea Rosen Gallery has suggested that borrowers of "*Untitled*" (*Aparición*) should "make the printer aware that the material they are reproducing is actual artwork."<sup>136</sup> Gonzalez-Torres himself casually referred to the paper stacks as "sculptures," a



description that his printer took up in referring to reams of paper generally: “His idea about his own work has been changed.”<sup>137</sup>

Despite being a class of individuals with vested economic interests in preventing the mutilation or destruction of an artwork, owners of Gonzalez-Torres works differed considerably on what was a genuine risk. Some worried about the actual physical destruction of the constituent parts of a manifestation. Elaine Dannheisser, one of Gonzalez-Torres’s first collectors, reportedly warned museums that the candy-spill works could be subject to a rat infestation, as hers was in 1994. Most institutions took no special measures to guard against such an incident, yet one used sugarless candy as a precaution, thereby suggesting an attachment to the idea of the work as inherently defined by tangible objects.<sup>138</sup> Many owners were fairly nonchalant about damage when it did happen, largely because of Gonzalez-Torres’s insistence that the physical manifestation of his ideas was not the work itself, but an “exhibition copy,” or, perhaps to diminish the stigma of describing a work as a copy, a “simulation of the work.”<sup>139</sup> For museums, it lessened the burden of liability. “There’s nothing that can happen to this work,” wrote Amada Cruz, in reference to the billboard work “*Untitled*” (1991–93), while preparing for the artist’s 1994 retrospective at the Hirshhorn Museum: “It’s a refabrication—even if someone slashes the work—it’s a simulation.”<sup>140</sup>

Legal scholars Jack Balkin and Sanford Levenson have described authenticity in the law as a condition determined by a “community of consensus.”<sup>141</sup> Yet during the years between Gonzalez-Torres’s first solo show in 1987 and his death in 1996, community formation was still in process, as seen in the particular caution exercised by museums displaying works on loan, for whom having an authentic Gonzalez-Torres meant interpreting his intentions. Gonzalez-Torres may have found it “amusing” to receive endless faxes from museums asking “what they should do.”<sup>142</sup> But for museums with the responsibility of showing genuine work, the lack of consensus surrounding how an authentic work of his might function and what it would look like was a pressing concern. When a candy-spill work, “*Untitled (Lover Boys)*,” was shown at the 1991 Whitney Biennial, the museum interpreted Gonzalez-Torres’s instructions to allow the public to know that they could “take one candy if they want” to mean that audiences should not be actively prevented from taking candies but that they should not be encouraged or directed to do so.<sup>143</sup> Conversely, the Museum of Modern Art in New York (MoMA), which owned “*Untitled (Placebo)*,” granted the Hirshhorn the option to display a sign allowing the public to take the candy.<sup>144</sup>

Most owners erred on the side of extreme caution, perhaps because in signing the certificates they also contracted with the art world at large. Many behaved as if they knew the VARA provision allowing changes to a work caused by its constituent materials or the passage of time so long as those changes were not the result of “gross negligence,” or carelessness so serious as to exceed what a reasonable person might expect.<sup>145</sup> Yet institutional manifestation of work seemed governed by perceptions of civility and decorum, to the point that Gonzalez-Torres sometimes

had to intervene. Struck by how viewers of his work at MoMA ate the candies, then threw their wrappings back into the pile, he asked that the museum leave the wrappers where they were despite the museum stipulating that the wrappers be discarded.<sup>146</sup>

The surest proof of owner intention may be the loan agreements that owners use to lend their Gonzalez-Torres works to other institutions for an exhibition.<sup>147</sup> By 1994, several loan agreements instructed lessees on how to install works and went so far as to indicate that the work must “not be transformed in any way” from its original dimensions.<sup>148</sup> In response to owner questions arising in the process of installing works, the Felix Gonzalez-Torres Foundation developed templates for more elaborate loan agreements, including recommendations for producing and installing the works. For owners using the foundation’s template, the loan agreement becomes a *de facto* assertion of proprietary rights that reads as being more restrictive in the scope of rights granted than the actual certificate.

By granting owners considerable flexibility in determining how their purchases might appear, Gonzalez-Torres’s certificates treat collectors almost like collaborators. Not surprisingly, many private collectors demonstrate unusual vigilance in following certificate recommendations. The certificates might also be read as invitations for owners to prove themselves as something other than consumers or property collectors interested primarily in maximizing their economic interests. Such owners might very well define what art historian John Tain calls the “rogue” or “activist collector,” who, in lieu of collecting artworks as if they were any other asset type, dedicates herself primarily to prolonging the lives of the artworks she has.<sup>149</sup> Such collectors grew in number and prominence in the 1990s by establishing their own foundations, museums, and other institutions as a means of intervening in the ways artworks were discussed, produced, and circulated.

Gonzalez-Torres, or at least his estate, seemed to anticipate this breed of collector when the word *utmost* started to be paired with *discretion* in the certificates. A common filler in many legal agreements, *utmost* was added to replace an earlier term introduced in 1994 in which owners had to secure the express written permission of the artist if they wanted to lend his works elsewhere. “Utmost discretion” recalled similar phraseology in tort law, where *utmost* simply refers to a reasonable standard of care. Against a contractual context, *utmost* reads as mostly rhetorical window-dressing. More specific was *caretaker*, a term that appeared in a certificate for a text portrait sold jointly to the San Francisco Museum of Modern Art and the Art Institute of Chicago in 2002; the owner was “the caretaker [whom Gonzalez-Torres] entrusted with this work’s evolution.”<sup>150</sup> The “caretaker” designation suggests ownership as a temporary condition, one in keeping with the artist’s apparent efforts to write into a world measured by assessments of economic value noneconomic qualities like respect and trust. The operative relationships were no longer determined by categories of “author,” “buyer,” “seller,” and “owner.” Instead the certificates demanded from owners proof of their

integrity or, in this case, of their ability to fulfill another's will even if it meant having to act against their best economic interests.

Realizing a Gonzalez-Torres work remains a carefully regulated commitment, tempered by myriad contests between buyers and sellers, artists against both buyer and seller, and even the buyer against her own rights as an owner. The theoretical value of the certificate lies in the owner being able to freely show a particular collection of tangible objects as Gonzalez-Torres's work without the risk that he or she might be sued.<sup>151</sup> The risk was especially real for museums, whose aversion to liability and vigilance in safeguarding tangible property were noted above. For instance, the Hirshhorn had to make sure that the lightbulbs used in the Gonzalez-Torres retrospective were remade to adhere to national safety codes.<sup>152</sup> Ostensibly to assure owners of the artworks, the Hirshhorn promised to exercise "utmost care," a tort law concept mandating an extraordinary degree of caution for others' safety where even the slightest negligence is grounds for liability.<sup>153</sup> Applied mostly to companies that provide accommodations or the transport of goods and people, "utmost care" signals residual attachment to ingrained views of artworks as objects, even when the certificate clearly permits the work's reconfiguration or reconstruction.<sup>154</sup> Consider, for instance, the priority the Art Institute of Chicago places on visual balance by replenishing candies of specific colors in "*Untitled*" (*Portrait of Ross in L.A.*) when visitors take those colors.<sup>155</sup>

During his lifetime, the artist instructed anxious museums to do "whatever you want," a response that not only knitted together obligation and choice as a function of desire and freedom but also suggested a refusal of the dualistic thinking that was categorizing queers as criminals via decisions like *Bowers v. Hardwick*.<sup>156</sup> The point was not simply about giving owners freedom of choice, but about claiming that there was no one right choice, just as Blackmun argued in *Bowers* that there was no one right form or approach to intimacy.

Doing "whatever you want" had other consequences, not least for Gonzalez-Torres himself. Although he disallowed giving individual candies and paper sheets the status of artwork, he thought it "weird" to see audience members "come into the gallery and walk away with a piece of paper that is 'yours.'"<sup>157</sup> Recounting how another artist took about twenty sheets from one of his paper stacks, he was initially pleased to think that they might become the basis of another's work, only to find that she had thrown them away.<sup>158</sup> His dismay, repeated over time, may have triggered his proprietary instincts, along with a generous helping of pique. In a later interview, the artist spoke of making conventional photographs he could "just" hang on "the fucking wall. . . . I don't want the public to touch them."<sup>159</sup>

In "Civil Rights Now," one of the more important group exhibitions featuring Gonzalez-Torres's work before his death, an implicit message was that the demand for rights was not simply a vague call to right injustices, but about cultivating an environment of sympathy toward "common issues of justice" underlying civil rights.<sup>160</sup> The challenge lay in grappling with difficult, and often illegible, feelings. True to form, the

market has capitalized on feelings—since the mid-2010s, financial institutions have described art as “passion assets” in presumed reference to the emotional bonds between owners and their possessions. Yet even now, the elliptical language of Gonzalez-Torres’s certificates continues to kindle a host of feelings, mirroring the unevenness of a world marked by failure and redemption. From this it becomes possible to imagine action beyond the official and unofficial laws now governing the relationships created by the sale of an artwork—relationships formed in the names of commerce and love alike.