

# BEYOND COLLECTING? THE CONSTRUCTION OF ARTISTIC LEGACIES

LOOP Barcelona

5 June 2015

Henry Lydiate

The Henry Lydiate Partnership LLP  
Art Business Consultancy  
Orleston House 14 Orleston Mews  
London N7 8LL United Kingdom  
T+44(0)20 7607 9373 M+44(0) 7976 942 038  
[www.thehenrylydiatepartnership.com](http://www.thehenrylydiatepartnership.com)  
[henry@thehenrylydiatepartnership.com](mailto:henry@thehenrylydiatepartnership.com)



### Marcel Duchamp (1887-1968)

« Etant donnés : 1) La chute d'eau 2) le gaz d'éclairage » (1946-66, vue d'ensemble, Velour, bois, cuir sur armature de métal, brindilles, verre, plexiglass, bec de gaz, 242,5 X 177,8 X 124,5 cm)

**“Let us consider two important factors, the two poles of the creation of art: the artist on the one hand, and on the other the spectator who later becomes the posterity.”**

**Marcel Duchamp**

# artistic intentions

- ▣ created as primary artwork or
- ▣ created as secondary record of a performance-related artwork
- ▣ intended to be seen by
  - a unique audience
  - limited defined audiences
  - unlimited undefined audiences
- ▣ intended for physical ownership by collectors of
  - the unique master
  - a limited edition of copies of masters
  - an unlimited edition of copies of masters
- ▣ intentions should be clarified before showing
- ▣ intentions should be clarified before transferring physical ownership
- ▣ plans should be made for viewing and/or transferring physical ownership:
  - legal considerations
  - business considerations
  - posterity considerations

# challenges

- ▣ difficult challenges arise on an increasingly international scale for:
  - artists seeking legal and business frameworks to support
    - ▣ creation of audiovisual works
    - ▣ dissemination of audiovisual works
    - ▣ communication and recognition of audiovisual works
  - public and private collectors/purchasers
  - curators and facilitators/producers
  - art lawyers advising and assisting
  
- ▣ two main areas of law for consideration by artists, agents/dealers, collectors/purchasers, commissioners, curators and other facilitators/producers:
  - intellectual property
  - contract

# intellectual property

- ▣ international and national IP laws recognise creative works through:
  - categories
  - techniques
- ▣ IP laws require creative works to be in a fixed form: film category
- ▣ copyright in film
- ▣ performers' rights in film

# film copyright

- ▣ film includes sounds and soundtrack
- ▣ laws automatically give authors of film exclusive rights to prevent or authorise:
  - copying
  - public communication
  - leasing
  - altering/amending/changing
  - omission of authorship credit
  - false authorship attribution
- ▣ author is the principal director
- ▣ authors' rights last for:
  - at least 50 years *pma* in most countries
  - 70 years *pma* in EEA & USA & Singapore
- ▣ rights may be used to grant licences to others to copy/show/lease/disseminated/distribute
- ▣ rights may be transferred via last will/testament or via contract
- ▣ copyright protects detailed audiovisual expressions manifest in a work
- ▣ not ideas behind or conveyed by its audiovisual expressions
- ▣ the 'idea/expression dichotomy'

# performers rights

- ▣ performers of works (who might not be, but usually are, also the creators/authors) automatically acquire exclusive 'performers rights' via international IP laws:
  - to authorise recording of their live performance (non-property rights) and
  - to make and distribute, rent and loan, copies of such recordings (property rights)
- ▣ performers rights generally last for 50 years from the date the recording of the performance was first released: first publication notice at end of film credits
- ▣ artist/authors using performers: contracts
- ▣ normal practice for professional performers in conventional art forms (music, dance, film, theatre) to give prior authorisation of live recordings of their performances through written contracts with would-be producers
- ▣ in this way, they negotiate and agree:
  - the nature and content of the recording itself
  - their performance fee
  - their share of economic rewards (royalties) that may be earned by future commercial showings or broadcasts or other commercial communication of authorised recordings
- ▣ extemporary/ephemeral live performances:
  - ▣ e.g. Tino Seghal
  - ▣ control of bootleg recordings by venues
  - ▣ contracts with venues for invigilation/prevention



# contracts

- ▣ IP rights ownership can be
  - ▣ transferred to others to own
  - ▣ used to grant licences to others to use
  - ▣ with/out ownership of a physical/ digital object holding audiovisual data
  - ▣ restricted by specific terms and conditions: time & territory limits
  - ▣ a source of capital or income
- ▣ ownership of a physical/ digital object holding audiovisual data can be
  - ▣ transferred to others to own
  - ▣ copied and copies transferred to others to own
  - ▣ with/out IP rights ownership or licence to use
  - ▣ restricted by specific terms and conditions
  - ▣ a source of capital or income
- ▣ limits of contracts
  - ▣ only enforceable by and against the parties to it
  - ▣ 3<sup>rd</sup> parties who make unauthorised use of the work violate IP rights ownership law

# private collector: first/primary sale

- ▣ written contract essential to specify precisely
  - ▣ what audiovisual data has been physically/digitally acquired
  - ▣ artist's/sellers' IP rights: no copying
  - ▣ IP licence granted to use/show/communicate the work **only in private**
  - ▣ capital payment to artist/seller for acquisition and **private** showing
- ▣ authenticity certificate with restricted licence warning: for resale
- ▣ notices embedded within work:
  - viewer/user warning before content rolls
  - copyright notice as last credit

# public collector: first/primary sale

- ▣ written contract essential to specify precisely
  - ▣ what audiovisual data has been physically/digitally acquired
  - ▣ artist's/sellers' IP rights: no copying; but perhaps archival copying
  - ▣ IP licence granted to use/show/communicate the work **in public for non-commercial purposes**
  - ▣ IP licence granted to use/show/communicate the work **in public for commercial purposes with royalty payment to artist**
  - ▣ capital payment to artist/seller for acquisition and licence to show
- ▣ authenticity certificate with restricted licence warning: not for resale
- ▣ notices embedded within work:
  - viewer/user warning before content rolls
  - copyright notice as last credit

# WARNING

The copyright proprietor has licensed this DVD (including its soundtrack) for private home use only. All other rights are reserved.

The definition of home use excludes the use of this DVD at locations such as clubs, coaches, hospitals, hotels, oil rigs, prisons and schools. Any unauthorized copying, editing, exhibition, renting, exchanging, hiring, lending, public performance diffusion and/or broadcasting of this DVD, or any part thereof, is strictly prohibited and any such action establishes liability for a civil action and may give rise to criminal prosecution. This DVD is not to be exported, distributed and/or sold by way of trade without a proper license from Twentieth Century Fox Home Entertainment, Inc. Sales and/or rental rights for this DVD are specified on the original packaging of this DVD.

Copyright © 2013  
Twentieth Century Fox Film Corporation  
All Rights Reserved

Production: #4AJD07



Twentieth Century Fox Film Corporation is the author of this motion picture for purposes of copyright and other laws. The events and characters depicted in this motion picture are fictitious. Any similarity to actual persons, living or dead, or to actual events, is purely coincidental.

Ownership of this motion picture is protected by copyright and other applicable laws, and any unauthorized duplication, distribution or exhibition of this motion picture could result in criminal prosecution as well as civil liability.

# film & television industry

- ▣ legal and business film industry skills and techniques
  - ▣ screenplay ©
  - ▣ confidential investment discussions: NDAs
  - ▣ establish legal entity to produce and own the project: territories
- ▣ production contracts for
  - ▣ investors and returns on investment
  - ▣ directing
  - ▣ editorial control
  - ▣ executive production and crew
  - ▣ post-production
  - ▣ distribution
  - ▣ showing
  - ▣ income sharing
- ▣ economics
  - ▣ primary release: theatrical/broadcast/streaming
  - ▣ secondary market: streaming/download/physical format
  - ▣ related merchandising
- ▣ CONTRAST FINE ART ECOSYSTEM:
  - showing primarily at fine art venues; and/or
  - selling limited editions and licensed showings primarily to fine art collectors

# case study: iain forsyth & jane pollard

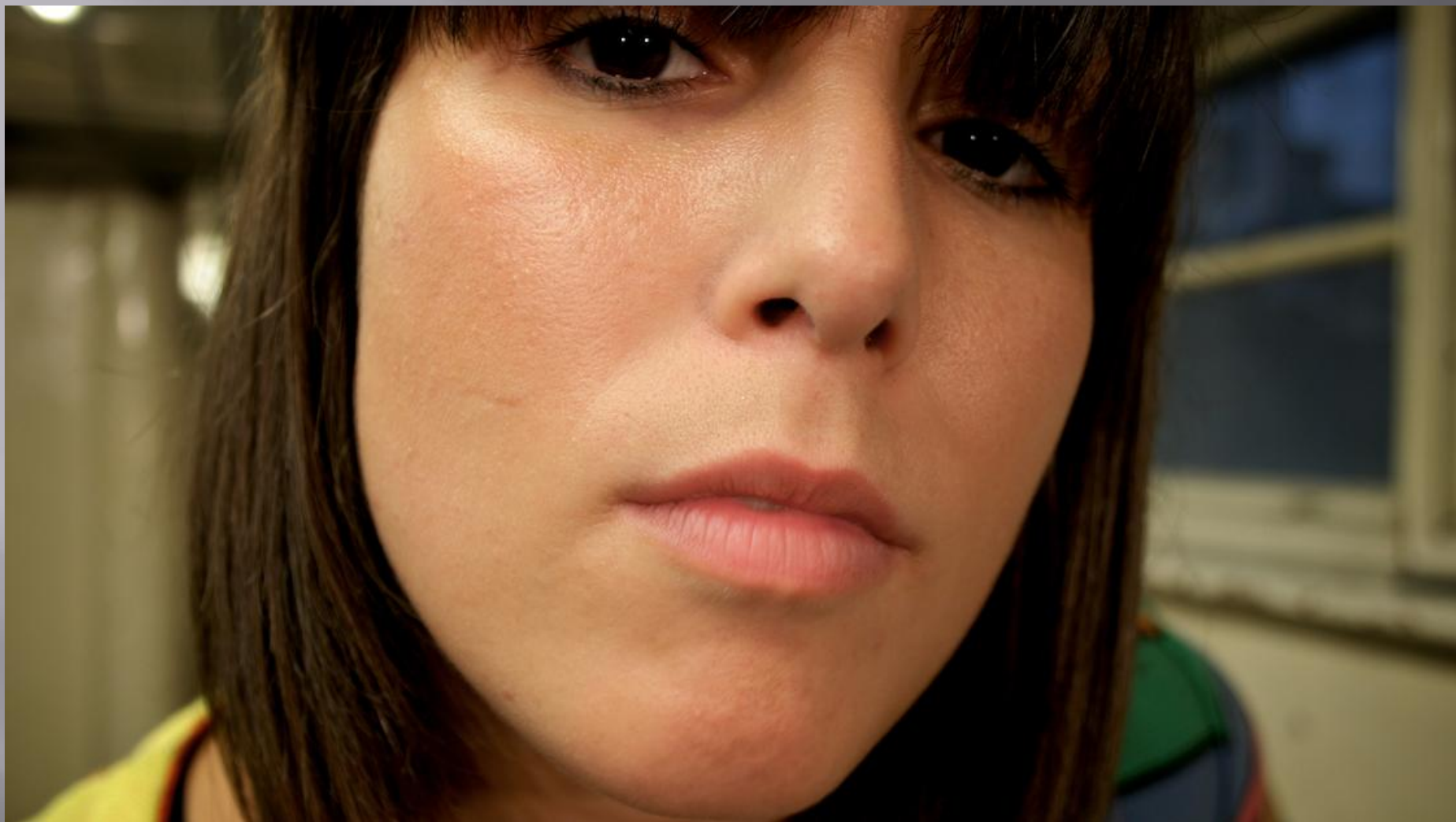
- ▣ UK-based artist partnership: 20 years
- ▣ <http://www.iainandjane.com>
- ▣ performance-related works:
  - live ephemeral events
  - no recording/documentation
- ▣ video artworks:
  - ▣ non-commercial public-facing gallery showings
  - ▣ commercial gallery private showings
  - ▣ sale and use of limited editions: private and public collectors
- ▣ feature film project





**A ROCK 'N' ROLL SUICIDE**  
live performance 2 hours (1998)





**WALKING OVER ACCONCI (MISDIRECTED REPROACHES)**  
production still

single channel 16:9 hd video with sound. 15 minutes (2008)



# NICK CAVE 20,000 DAYS ON EARTH

A FILM BY IAIN FORSYTH & JANE POLLARD

**A SPECIAL ADVANCE SCREENING  
WITH A RARE, INTIMATE SOLO PERFORMANCE BY NICK CAVE**



JULY 10, 2014 | 8PM

THE AMERICAN CINEMATHEQUE'S EGYPTIAN THEATRE

ON SALE FRIDAY 12PM AT [BROWNPAPERTICKETS.COM](http://BROWNPAPERTICKETS.COM)

**20,000 DAYS ON EARTH - IN THEATERS SEPTEMBER 2014**

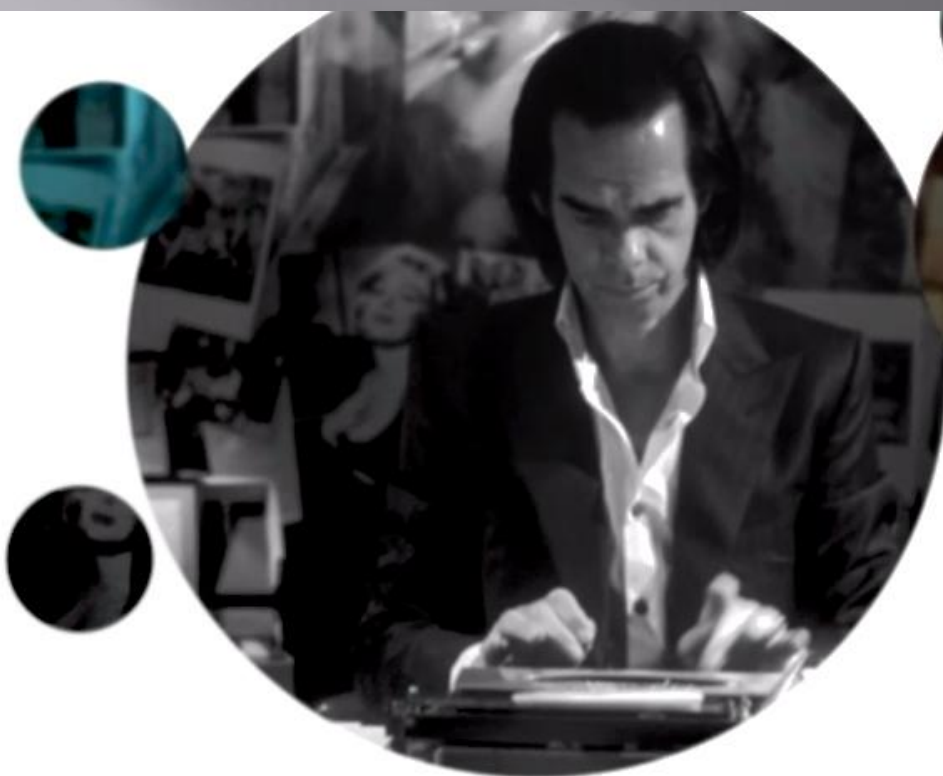
**DRAFTHOUSE**  
FILMS

**PULSE** BEYOND FEST

[NICKCAVE.COM](http://NICKCAVE.COM)  
[20000DAYSONEARTH.COM](http://20000DAYSONEARTH.COM)  
[DRAFTHOUSEFILMS.COM](http://DRAFTHOUSEFILMS.COM)

**GOLDENVOICE**  
[GOLDENVOICE.COM](http://GOLDENVOICE.COM)





World Cinema Directing Award: Documentary

# 20,000 Days On Earth

Directed by Iain Forsyth & Jane Pollard

2014  
SUNDANCE FILM FESTIVAL

