

Legitimately Incongruous: Exploring Artistic and Legal Interplays in *A Game of War* (2021)

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This essay examines the filmed mock trial *A Game of War* (2021) by TWIIID, a Flemish legal soundboard for the arts, and its contribution to the discourse on appropriation art and the parody exception in copyright law. By focusing on the case of the (mock) trial between Samson Kambalu and Gianfranco Sanguinetti, the article delves into the intricate legal and artistic aspects within this specific context. While not comprehensive of the entire contemporary discourse on copyright and appropriation art, this case serves as a microcosm for examining and understanding major themes and issues. The essay argues that *A Game of War* functions as both a re-enactment and pre-enactment, acknowledging the limitations of conventional jurisdiction while closely adhering to established legal precedents. In doing so, the film highlights the temporal fluidity of p(re) enactments and the dynamic nature of temporality in law and performance. The explicit intertwining of past, present, and future emerges as a shared characteristic of both (p)re-enactments like *A Game of War* and court trials, wherein the past is reconstructed and potential futures are envisioned

within the 'now' of the trial. Furthermore, by employing artistic methodologies such as p(re)enactments to enrich the imaginative capacities of the legal realm in the context of appropriation art and copyright issues, *A Game of War* compellingly expresses the potential for art and law to mutually inform and enhance one another. Consequently, the film opens new avenues for dialogue and fosters a deeper understanding of the intricate interplay between artistic expression and the complex web of legal frameworks.

Keywords: (p)re-enactment, mock trial, appropriation art, copyright law

The primary focus of this essay is the film *A Game of War: Sanguinetti v Kambalu Trial at Ostend* (2021), which is readily accessible on YouTube with a few simple clicks. The film's availability amidst the vast array of user-generated content aligns perfectly with its central themes of gift-giving, challenging established paradigms of authorship, and the dissemination of knowledge. Upon pressing play, the film opens with white text displayed against a black background, providing crucial contextual information about the positions of the defendant, Samson Kambalu, and the plaintiff, Gianfranco Sanguinetti. Approximately forty seconds into the film, a sentence appears, incorrectly stating that the case was re-examined in a Belgian court in Ostend on August 6, 2020, under the framework of continental law pertaining to authors' rights and parody. It is important to note that no actual legal proceedings took place in Belgium between Samson Kambalu and Gianfranco Sanguinetti. The trial depicted in the film is staged but based on a real trial that occurred between Kambalu and Sanguinetti in Venice in 2015 (Minio). Following this erroneous introduction, the screen transitions to a frontal view of

the courtroom's bench in Ostend, accompanied by the sound of a bell ringing and a clerk announcing the arrival of 'the chairman,' prompting everyone present to rise. Over the course of the next two hours, the fictional trial unfolds between the contemporary artist Samson Kambalu and writer Gianfranco Sanguinetti.

A Game of War was conceived by Twee-Eiige-Drieling (TWIID), a Flemish collective of legal professionals, who serve as a bridge between the legal and artistic domains, paradigms, and discourses.¹ They aim to provide accessible legal knowledge and support to practitioners in Flanders' creative sector and refer to themselves as a 'legal sounding board for the arts.' This concept of a 'sounding board' relates to a group that acts as a platform for testing and evaluating ideas or opinions. TWIID accomplishes this by actively engaging in ongoing conversations with the Flemish arts field through residencies, workshops, and various collaborative endeavours. *A Game of War* aptly aligns with the reflective aspect of TWIID's undertakings. Following this process, TWIID endeavours to delve deeper into the intricate interplay between the realms of art and law. This pursuit is achieved by engaging in debates, producing (scholarly) texts, providing informative resources, and, for the first time, venturing into the filmic medium with *A Game of War*.

The objective of this essay is to examine how *A Game of War* highlights the interplay and divergences between artistic and legal discourses regarding copyright, and how it relates to theories of p(re) enactments in courtroom dramas. By centring on a single case, this paper offers a detailed analysis of the legal and artistic intricacies of a specific context – the (mock) trial between Samson Kambalu and Gianfranco Sanguinetti. While it does not encompass the entirety of contemporary discourse on copyright and appropriation art, this case does serve as a microcosm through which major themes and issues can be examined and understood. The structure of this essay revolves around three key components: the 'past' of the mock trial (its historico-legal sources of inspiration), the filmed mock trial itself, and its subsequent aftermath. This structure allows for a comprehensive exploration of the interplay between past, present, and future within the context of both the film and the broader p(re) enactment practice.

Sanguinetti versus Kambalu and the © of commodification

Internationale Situationniste (1957-1972)

Gianfranco Sanguinetti was a prominent member of the art and ideological movement *Internationale Situationniste / Situationist International* (1957-1972). The *Situationist International* (SI) stood at the intersection between the field of far-left political groups and artistic avant-gardes (Trespeuch, “L’Internationale situationniste”). Guy Debord – one of the SI’s founders – is considered one of its most influential theorists. Debord helped shape the strand of Marxist social criticism that would become a significant part of the SI from the ‘60s onward (Briziarelli and Armano; Trespeuch-Berthelot, “Les vies successives de La Société du spectacle de Guy Debord”). In 1967, his now world-famous book *La Société du Spectacle* was published. Here, Debord, in 221 theses, expounds how contemporary society is characterized by alienation through spectacle. According to Debord, in societies “dominated by modern conditions of production, life is presented as an immense accumulation of *spectacles*” (21). With the now infamous phrase, “Everything that was directly lived has receded into a representation” (ibid.), he concludes his first thesis. According to Debord, the spectacle is not a “collection of images,” but “a social relation between people that is mediated by images” (22). Hence, it does not refer to a specific visual culture or particular aesthetics, rather to interpersonal relationships and how they are mediated by images (Debord and Knabb 7).

Besides its critique of estrangement in the society of spectacle, additionally the SI strongly opposes widespread commodification while dismissing the concept of intellectual property.² This stance is clearly articulated in a prominent sentence from the second issue of their magazine, *Internationale Situationniste* (in December 1958): “tous les textes publiés dans INTERNATIONALE SITUATIONNISTE peuvent être librement reproduits, traduits ou adaptés, même sans indication d’origine.” With this sentence, the authors grant others permission to use the text without any concern for copyright. It constitutes an essential part of the discourse embraced by the members of the *Internationale Situationniste*. However, while it shapes an idiosyncratic artistic discourse on authorship, it does not fully align with legal discourse on authorship.³

The SI was explicitly anti-authoritarian, aiming to reject any form of power (Angaut 150). It refused to be seen as a doctrine and thus abhorred the designation ‘situationism’ (IS, June 1958). In contrast, it promoted the idea of a society in which pleasure, playfulness, and genuine ‘living together’ were paramount (Hemmens 161). One of the artistic strategies deployed by the SI to extricate art from the spectacle is the *détournement*, in which existing images are ‘formally’ duplicated while their content or connotation is altered. A *détournement* turns ‘the spectacle’ against itself because its critical power relies on its hypervisibility and ocularcentrism. In 1972, Debord and Sanguinetti, the two remaining members of the ‘organization’, dissolved the SI. Sanguinetti continued to publish anti-capitalist critiques, including the pamphlet *Rapporto Veridico sulle ultime possibilità di salvare il capitalismo in Italia* (1975, under the pseudonym ‘Censor’) and the book *Del Terrorismo E Dello Stato. La Teoria E La Pratica Del Terrorismo per La Prima Volta Divulgate* (1980).

Sanguinetti sells his archive to the Beinecke Library (2013-2015) and Kambalu visits the library (2014-2015)

In 2013, slightly over forty years after SI’s dissolution, Gianfranco Sanguinetti sold his archive to the Beinecke Rare Book and Manuscript Library, while retaining the intellectual property rights to it.⁴ This transaction prompted a strong reaction from Bill Brown, Sanguinetti’s English translator, who had been translating SI texts into English for years (“Samson Kambalu” 24; “Bill Brown Breaks off Relations With Gianfranco Sanguinetti”). On its homepage, the website of Bill Brown, *Not Bored!*, is described as “an autonomous, situationist-inspired, low-budget, irregularly published journal” (“Not Bored!”). Through this website, Brown posits preserving the spirit of the SI, which he believes is betrayed by Sanguinetti’s sale.

Both Brown and Samson Kambalu identified a notable incongruity between the considerable profitability of the archive sale and the subsequent restriction of access to it to a privileged group consisting solely of students and researchers. This incongruity was perceived as inconsistent with Sanguinetti’s (former) endorsement of open licensing. From a technical standpoint, the sale of the archive adhered to the requirements of legal validity, thereby legitimising Sanguinetti’s actions despite their deviation from his previous ideological stance. Nevertheless, the legitimacy conferred by legal compliance fails to

diminish the outrage expressed by Kambalu and Brown. Their critique diverges from an examination of the sale's conformity to legal parameters, instead scrutinising Sanguinetti's (former) ideological positioning and artistic practices. This observation underscores the inadequacy of law alone in fully legitimising or delegitimizing action. In the court of public debate, a legal transaction can be interpreted and characterized as illegitimate.

During a research stay at Yale, Kambalu stumbled upon the archive. He photographed every piece of Sanguinetti's archive in a way that his hands were in view most of the time. In the background of these *détourned* photographs, glimpses of architectural snippets of the library can often be seen. Around the same period, curator Okwui Enwezor invited Kambalu to exhibit at the 56th edition of the Venice Biennale (2015), as part of the exhibition *All the World's Futures*. Kambalu decided to integrate the *détourned* photographs into an installation he called *Sanguinetti Breakout Area*. The installation consists of the *détourned* photographs of Sanguinetti's archival documents at Yale University's Beinecke Library, a collection of furniture objects based on Debord's board game *Le Jeu de la Guerre* (1965), a display vitrine, and a wall plastered with an enlargement of Brown's letter to Sanguinetti.⁵

The installation spans multiple surfaces, occupying three walls in Venice. One of the walls is painted in red and black, reminiscent of the anarchist flag, while the other walls are covered with a large wallpaper displaying an angry letter written from Brown denouncing Sanguinetti for his alleged betrayal. The walls are adorned with around one hundred photographs framed in black of varying sizes, ranging from A5 to A3. These photographs depict Kambalu's hands manipulating letters, photographs, and papers from Sanguinetti's archive in the Beinecke Library ("Nyau Philosophy" 48). At the center of the installation, there is a large, red, bound volume titled *Sanguinetti Theses*. This massive book, approximately 3000 pages, contains all the photographs Kambalu took of the Sanguinetti archive in Beinecke. Visitors to the installation were encouraged to share photographs of it on social media using the hashtag #Sanguinetti-BreakoutArea.

Kambalu invokes Debord's artistic tactic of *détournement* to motivate the appropriative nature of *Sanguinetti Breakout Area* ("Why



Figure 1. Samson Kambalu, Sanguinetti Breakout Area – Installation View (2016). Courtesy of the artist and Kate MacGarry, London

Situationism” 1). “Detournement [*sic*]”, Kambalu writes in his doctoral dissertation, “is where the Situationists treated all culture as common property and played with canon transgressively” (“Nyau Philosophy” 44). He explicitly connects *détournement* with the idea of a copyright-free cultural repertoire and playfulness.⁶ According to Kambalu, *détournement* is one of the “playful creative devices” developed by IS members, “in which the gift could be given without incurring a debt” (“Why Situationism” 1). Kambalu contends that genuine giving should be devoid of any expectation of reciprocity or financial transaction, underscoring that a gift is defined by its detachment from (monetary) obligations.⁷

The Venetian trial (2015)

In reaction to Kambalu's installation *Sanguinetti Breakout Area* at *All the World's Futures*, Sanguinetti initiated legal proceedings for alleged copyright infringement. This propelled the work – and the discourse around the work – into a legal context. A Venetian court settled the charges and did not rule in Sanguinetti's favor. The trial revolved around the issue of whether the installation could be considered a parody, as parody is one of the possible exceptions to copyright under European law. Accordingly, if the work is qualified as parody, the creator can invoke an exception. In contrast to Belgian law, the parody exception is not incorporated as such in Italian intellectual property law (Minio; Spina Ali). Nonetheless, a clarification from the Grand Chamber of the European Court of Justice (C-201/13) concerning the exception of parody, confirms that “the concept of ‘parody’ [...] is an autonomous concept of EU law” (C-201/13). The clarification has additionally had a significant impact in defining ‘a parody’. It stated that “the essential characteristics of parody are, first, to evoke an existing work, while being noticeably different from it, and secondly, to constitute an expression of humour or mockery” (C-201/13).

This European homogenization of the interpretation of the parody exception establishes a wide scope of what parody is, thereby raising concerns about the legal certainty of appropriation artists. The lack of clarity regarding what is permissible and not in terms of creatively reusing existing images makes it challenging for artists to anticipate the legality of their actions. Furthermore, the subjective nature of the second criterion set forth by the European Court of Justice adds to the complexity. The legality of the artistic intervention is contingent upon the artist's intention. This conflicts with the artistic practice of some appropriation artists, who resist assigning a specific – discursively formulated – intentionality to their work.⁸ In this regard, Kambalu enjoys an advantage over artists who anchor their work and practice to a lesser extent or a lesser degree within a discursive framework.

The Venetian judge, Luca Boccuni, grounded the verdict on the aforementioned provisions, concluding that the work does constitute parody.⁹ *Sanguinetti Breakout Area* indeed fulfills the two conditions put forth by the European Court. In terms of form, the artwork exhibits noticeable differences from Sanguinetti's archive while

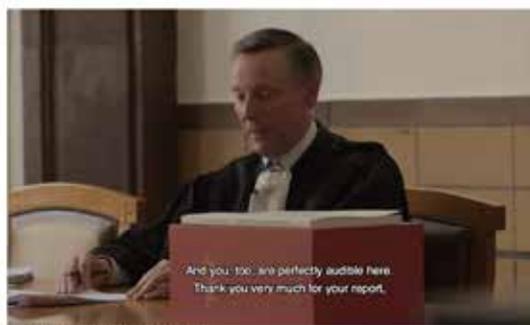
still evoking it. The verdict argues for this formal differentiation by referring to Kambalu's visible hands in the photographs of the individual pieces from Sanguinetti's archive (Boccuni). Additionally, the judge points to the wall on which an enlarged version of Brown's letter is displayed, alongside a few détourned photographs. In terms of content, the judge repeatedly argued that the satirical and critical tone was highly evident in the various components of the work. To support this claim, he also relies on the artwork's title, "considering its double meaning of an installation devoted to the critical 'counterattack' to Sanguinetti or also an installation committed to the 'escape' of Sanguinetti from his situationist ideal" (Bucconi, Order). However, the reference is used to contextualise rather than as legal substantiation. Nonetheless, Kambalu ventured in an interview that he was "[...] sued by Sanguinetti, but he lost because the archive is full of advocacy that there should be no copyright" ("Scholar and Slack-er" 6). With such statements, Kambalu perpetuates the perception that the case was conducted based on moral-aesthetic arguments, and not according to the legal rules of the game. Consequently, in the discourse Kambalu adopts concerning the court case, legal and artistic discourse are conflated.

A Game of War (2020-2021)

A Game of War as an inquiry

Upon the discovery of the trial between Kambalu and Sanguinetti, TWIID was intrigued by the question of how the case would unfold within the Belgian legal context. Like numerous other European countries, Belgian copyright legislation suffers from a lack of clarity and certainty (Daem 264). *A Game of War* emerges within this context of inquiry, presenting the argument that an extensive dialogue between artistic discourse, artistic practice, and legal discourse is necessary when evaluating whether an artwork can be classified as a parody. Consequently, it recognizes that an understanding of artistic discourse should be integrated into the legal procedure.

TWIID initially planned to present a fictional but realistic trial as a live performance, drawing on the tradition of 'mock trials' or 'moot courts'. However, due to the Covid-lockdowns, it became impractical to proceed with a live performance, prompting the decision to film the



Screenshots of *A Game of War* taken between 00:04:17 and 00:06:15.
 From left to right: still 1, 2, 3, 4, 5, 6, 7, 8, 9, 10, 11, 12.

trial instead. This shift to the medium of film allowed for a seamless transition from the courtroom setting to Mu.ZEE, the museum of contemporary art in Ostend, where the *Sanguinetti Breakout Area* installation was being exhibited at the time. Such a location change would have been unfeasible in a live mock trial. Additionally, unlike a mock trial ‘in the flesh’, a film offers the advantages of portability and easy sharing, as highlighted by Van Lathem, which was beneficial for the film’s subsequent *afterlife* and educational purpose.

The film still retains visual elements reflecting its initial conception as a mock trial. For instance, the majority of the film was shot in a single location, maintaining a deliberate simplicity in camera work and editing, as Tobias Van Royen explained. Out of six hours of video footage, the creators edited a two hours and ten minutes film. The entire filming took place within a single day, with the intention of capturing scenes in one take whenever possible. A second take was utilized to incorporate different perspectives on screen, ensuring dynamic imagery and avoiding excessive static shots. While there were some outdoor shots, they were ultimately excluded from the final film as they overly fictionalised its content, as noted by Van Royen. The film was shot in colour using a digital camera, resulting in high-resolution material. *A Game of War* does not directly reference either Kambalu’s experimental cinematographic work or that of the SI, but rather alludes to the sober visual language found in human interest documentaries and similar forms.



A Game of War: Sanguinetti v Kamaleu Trial at Odeon
The Name of the Father



A Game of War: Sanguinetti v Kamaleu Trial at Odeon
The Name of the Father

At times, there is a frontal perspective from a distance (still 3), with slight zooming in and out. Additionally, there are frequent close-ups of the actors, focusing on their heads or specific details (as seen in still 4 and 10). Notably, when examining stills 5 and 11, one can observe the restrained camerawork, as these stills appear nearly identical despite not being captured simultaneously. The conversation with scholar Sven Lütticken, who provides historical context for SI, took place via video call, and the film does not conceal this mediated aspect in the editing process. The grainy, poor quality of the image during the conversation is maintained, contrasting the much sharper image of what unfolds in the courtroom (as seen in stills 6, 9, and 12). Additionally, photos are occasionally integrated into the film in a straightforward manner (as seen in stills 7 and 8). These photos are examples of *détourned photos* from *Sanguinetti Breakout Area*, displayed against a black background. While the sound from the courtroom remains audible, only the photo on the black background is shown.

Although it harnesses the specificities of the filmic medium, *A Game of War* leans closer to the adaptation of a live performance than an artistic film that fully explores the potential of the medium itself. While acknowledging that *A Game of War* is not a *live* mock trial (as it is primarily presented and utilized as a film), its clear association with the performative tradition of mock trials allows for an analysis that draws upon research on theater and law. Mock trials are not a theater genre, but a performative exercise for law students where they participate in a fictitious trial. They represent a concrete link between performing arts and the legal domain, where, like court-



A Game of War: Sanguineti's Kamato Trial at Oland
The Name of the Father



A Game of War: Sanguineti's Kamato Trial at Oland
The Name of the Father

room dramas, there is no coercive power at play. Instead, moot courts resemble a game of improvisation, often marked by intense competition (“Enacting law”).¹⁰

In his study of contemporary theatrical tribunals, Steff Nellis observes two categories of contemporary courtroom dramas, each with a distinct interweaving of temporalities and intentions. The first category is “re-enactments of preeminent lawsuits” and the second “performative pre-enactments of futuristic trials” (“Enacting law” Preface). By considering these categories, we can further examine and situate *A Game of War* within the broader context of performative legal practices.

A Game of War strongly connects to three temporalities: the past, present, and future, making it a site of “temporal entanglements” (Oberkrome and Straub 9). The film’s inherent connection to ‘the past’ is evident through its extensive preliminary research and grounding in a previously contested lawsuit.¹¹ On the other hand, it is also a futuristic proposition that addresses the limitations of jurisprudence concerning the exception of parody and appropriation art(ists). In this sense, it is a pre-enactment of what a lawsuit regarding similar issues could look like in future jurisdictions. It “responds to the shortcomings of regular jurisdiction” (“Enacting law” Pre-Enacting Justice), but does so by closely adhering to existing structures, legal precedents, and ‘legal dramaturgies’. Importantly, *A Game of War* does not challenge the validity of the law itself concerning matters of intellectual property, authorship, and appropriation art. While



A Game of War: Sargolotti's Kambala Trial at Oxford

The Names of the Father



A Game of War: Sargolotti's Kambala Trial at Oxford

The Names of the Father

Nellis's definition of pre-enactments emphasizes their futuristic nature, portraying them as courtroom dramas depicting trials that are either yet to occur or impossible due to systemic shortcomings, *A Game of War* highlights that a pre-enactment can also thoroughly build upon a 'precedent lawsuit' to shape an 'unprecedented lawsuit.'

It can be argued that a legal pre-enactment can *always* be viewed as a form of re-enactment, as it engages with and builds upon existing and previously repeated legal dramaturgies – the broader scripts and structures of lawsuits and legal procedures. As Rebecca Schneider's quote ("Opening Space in Time: Gestures of Pre- and Re-Enactment"), cited in Nellis ("Enacting Law", Re-Enacting Law), underlines: "In looking backward, reenactment looks forward. In looking forward, pre-enactment looks back" (124). As Straub and Oberkrome point out in their exploration of "the shifting temporal dimensions of the concept [(pre)enactment]" (10), just like re-enactments, p(re) enactment scenarios encompass both a retrospective dimension and a prospective dimension. TWIIID and Kambalu's perspective on the *future* is informed by the shortcomings they encountered in their examination of the *past*.

The project's position in the present is more complex than its connections to the fluid notions of the past and future, primarily due to the inherent ambiguity of the concept of presence within the field of performance studies. The issue of temporality, particularly the notion of 'presence', has been at the center of extensive discussions regarding the essence of performance. These discussions were further intensified



by the pandemic, which disrupted the shared physical co-presence that many consider essential to the performing arts.¹² This unforeseen parameter also influenced the development of *A Game of War*.

During the theater lockdowns, theater practitioners experimented with combinations of livestreaming and pre-recorded material, or made their repertoire available through online video recordings. Peggy Phelan famously defined ‘the ontology of performance’ in relation to its transience (146). However, the notion of ‘presence’ in cyberspace – through which the *theater of lockdown* (Fuchs) circulated – has a different relation to transience than in ‘material life’. In a live mock trial, a shared present of actors and viewers would have been more tangible. Yet, in the context of the filmed trial, the trial itself and the viewing experience are asynchronous, and the film serves as a trace of a past event. In this temporal framework, it is not the mock trial but rather the viewing experience that represents the ‘present’. As argued by Pietrzak-Franger et al., in this context “liveness is [...] to be regarded as a ‘condition of viewing’” (3). The viewing experience can take place individually in front of a screen, or collectively within the context of a classroom screening or TWIID event.

In *Performing Remains*, Schneider further highlights how the practice of re-enactment – and therefore, to some extent, p(re)enactment – disrupts the idea that “live performance disappears,” as these methodologies emphasize that “to the contrary, the live is a vehicle for recurrence – unruly or flawed or unfaithful to precedence as that recurrence may threaten to be” (29). The interwoven temporal



leaps in *A Game of War* highlight the non-linearity of time, how the present carries repetition, disruption, and anticipation. The film exemplifies how “the live is a vehicle for recurrence” (ibid.), not only through the methodology of p(re)enactment. For example, by including previous arguments from the Situationist International (SI) and new arguments from Kambalu’s and Sanguinetti’s lawyer. Kambalu defends himself by seeing Sanguinetti’s sale as a betrayal of his previously expressed principles, implying that ideological stances should remain historically steadfast. Conversely, Sanguinetti’s defence posits that opinions can be jagged and non-linear.

Moreover, the graininess of the video call alludes to the visual characteristics of footage made by early cameras and of PCs from the 2010s. The video call is a reminder of the exponential boost that video calling platforms received during the Covid-19 lockdowns. The détourned photos allude to the time shown in the photo, while Kambalu’s visible hands refer to a moment beyond the image, the people, and things in the photo. The embedding of these pictures in a video that can be viewed from behind a computer screen brings the photos into the ‘now’ of the viewing experience.

An explicit intertwining of temporality is shared by both p(re)enactments and court trials. In a court trial, the past (the crime) is reconstructed (“Enacting Law”), and potential futures are envisioned. In the ‘now’ of the trial, debates move from diverse versions of the past to different possible futures that the verdict should define. The complex interplay of past, present, and future within *A Game of*

War highlights the multifaceted understanding of temporality and its connection to (the) performance itself.

A Game of War as a dialogue

An important aspect of TWIID's work, as emphasized by Van Royen (2023), is to bridge the gap between the language of the arts and that of the law. However, no compromises were made to make the legal language in *A Game of War* more accessible to non-speakers. The film's 'actors' were not cast as *actors* but as experts in their respective fields, speaking in their own specialised jargon. There was no script for the process, mirroring the absence of fixed dialogue in a real trial. The 'actors' were prepared as they would be in a genuine trial, relying on written preparations and a thorough understanding of both the legal framework and the context of this fictional dispute, as well as the original litigation upon which the project was based. The lawyers, judge, and clerk thus used the language typically employed in similar contexts, as illustrated in the following paragraph from the mock trial (1:56:19-1:56:56):

De verwerende partijen bij monde van hun gemeenschappelijke raadsman voeren als verweer dat de vordering onmogelijk gegrond kan worden verklaard, omdat, in hoofdorde, eiser "geen auteur van het archief" zou zijn, nu door verweerders beweerd wordt dat "het gros van het materiaal van derde partijen" afkomstig is; In ondergeschikte orde stellen verweerders dat de heer KAMBALU slechts gebruik gemaakt heeft van een zogenaamd "open licentie"; In verder ondergeschikte orde beroepen verweerders zich op de exceptie van parodie.¹³

Previous research has shown that lawyers (and other litigants) often fail to recognize the language used within a legal work context may not be intelligible to laypeople (Azuelos-Atias; Martínez et al.). Data from various studies suggest that linguistic interventions, such as avoiding complex syntax (e.g., center embedding and passive voice) and replacing low-frequency words with more common ones, could enhance intelligibility (Chovanec; Martinez et al.). In *A Game of War*, the statements by the judge, lawyers, and clerk are characterized by syntactic complexity and the use of low-frequency words. In this

case, “uitgesproken door” (*uttered by*) could replace the archaic “bij monde van” (*by the agency of*) without any substantive consequences. Furthermore, the first sentence (beginning with “De verwerende partijen” and ending with “afkomstig is”) is a complex passive construction that could have been re-written to become active and clearer.¹⁴ Additionally, this paragraph contains words or concepts that allude to specific legal notions. For example, the term “in hoofdorde” (*in main order*) is used to rank the claims. The subordinate order, therefore, includes the less prioritised claims of the defendants. Although commonplace in legal proceedings, “in hoofdorde” could be replaced with a more general term like ‘primary’. On the other hand, the notion of the ‘exception of parody’ directly references a legal article (WER, Art. XI. 190, 9°). Modifying this formulation would indeed have a substantive impact and jeopardise the precision of the implementation of a statutory provision.

Van Royen justifies this choice by stating that “having them speak a different ‘language’ would have compromised the spontaneity of the process.” Yet, allowing them to use their jargon may diminish the intelligibility of their arguments. In our interview, Van Lathem indicates that TWIIID has never received feedback from artists in the audience of *A Game of War* screening regarding the complexity of the legal language. However, he also notes that they have never directly asked about it. The unintelligible nature of some legal texts also poses a challenge to legal accessibility and, thus, legal protection. In a court, one cannot rely on the argument of being unaware of the law; that is the essence of ‘ignorantia juris non excusat’ (*ignorance of the law excuses not*) principle. Yet, how can the law be known if its intricacies are sometimes unintelligible to laypeople (including non-legally educated artists)? This gap in legal certainty is neither explicitly addressed nor named in the film. In fact, the film fully embodies the law’s extreme formality.¹⁵

The movie's afterlife: from court to auditorium to black box (2021 - ...)

The film’s afterlife takes place in spaces that balance between law and art. It has been included in three recent exhibitions featuring Kambalu’s work: *New Liberia* at Modern Art Oxford in 2021, *Fracture Empire* at Culturgest in 2021-22, and *Globalisto. A Philosophy in flux* at the Musée d’art moderne et contemporain de Saint-Étienne

Métropole (MAMC+) in 2022. However, when the film is displayed in an artistic context, some viewers may misunderstand its fictional nature. For example, a reviewer at *The Guardian* seems not to have realized that *A Game of War* does not capture a real court case. “Even though the case’s outcome was far from certain (the artist’s nervousness is evident in the recording) it is no spoiler to say that that [sic] Kambalu won the case in the Belgian court” (Searle). He is not the only one: the trial is seen as ‘real’ in several reviews of the exhibitions of Samson Kambalu’s work wherein the movie was screened (Bay; White Box Art Channel). Given the emphasis on play and playfulness that Kambalu places in his practice and discourse, it is not surprising that the film is mistaken for an actual trial.

Understanding the partially fictional nature of *A Game of War* can be challenging without proper context or legal knowledge. It requires viewers to have an a priori distrust of the film, which is not necessarily a common spectatorial attitude. The use of ostensibly lawful language in the film may contribute to its perceived legitimacy, as fictional courtroom dramas often simplify or dilute legal language (Schwitalla 41). This linguistic simplification is also observed in courtroom dramas. Regarding Milo Rau’s *The Congo Tribunals*, Nellis notes how “one sees a theatrical attempt at rapprochement with the legal system by means of the appropriation of court proceedings on stage, but also a removal of its rigorous, punitive, and defined legal procedures” (“All Rise” 168). Furthermore, the growing publicity of court cases (Mulcahy and Leiboff 6) – both in the press and media – normalises the presence of filmed court proceedings. Therefore, the mention of directors in the movie credits does not necessarily create a sense of fictionality, as courtroom reality TV shows and news coverage of trials also have directors.¹⁶

A Game of War’s duration differs significantly from the usual proceedings of Belgian courtrooms. In ‘real’ court settings, multiple cases are addressed within a single day, and legal professionals are expected to have informed themselves in advance about the context of the case. With a pinch of cynicism, it could be argued that the length of what is captured on film is the most ‘unrealistic’ element of *A Game of War*. However, this extended duration allows the film to comprehensively showcase the various legal provisions, doctrines, and tests regarding the parody exception. This aspect of the film holds significant pedagogical value.

TWIIID has shared the film with lawyers (in training), which, as reported by Van Royen and Van Lathem, has generated diverse reactions. Despite recent clarifications and additions to copyright laws regarding potential exceptions, there remains room for judicial interpretation. This interpretative space accounts for the varying responses among these soon-to-be legal professionals. Within this realm of interpretation, judges bear the responsibility of maintaining a fair balance between the freedom of artistic expression and the intellectual property rights of the parodied author. *A Game of War* suggests that highlighting the importance of artistic practice and discourse *alongside* legal language may contribute to preserving this delicate equilibrium.¹⁷

Conclusion

Two visual interventions in *A Game of War* underscore the makers' attempt to foster a dialogue between legal and artistic research in appropriation art disputes. Firstly, three books are positioned in front of the judge, with the customary inclusion of a law code at his side and two books by Samson Kambalu on his left.¹⁸ This arrangement symbolises TWIIID's attempt to position the discourse regarding the intention behind the disputed artwork on par with legal principles. Secondly, the film depicts the 'judge' delivering the verdict both in the courtroom and in front of the artwork at MuZee. The verdicts in MuZee and the courtroom are edited to alternate with each other, visualising the interaction between court and art space. However: although both the law code and Sanguinetti's books visually appear to stand on equal footing, they are not equal before the law. Legally, only the verdict in the courtroom carries weight, and the verdict must be an interpretation of rules prescribed by law codes rather than 'by art books'. These asymmetrical power dynamics between the legal and artistic domains pose a significant obstacle in establishing a meaningful dialogue between their respective discourses.

Through the thought-provoking filmed mock trial *A Game of War*, TWIIID aims to initiate a stimulating discussion on appropriation art and the parody exception within copyright law. *A Game of War* serves as both a re-enactment and a pre-enactment, acknowledging the limitations of conventional jurisdiction while closely adhering to existing legal precedents. The interwoven temporal leaps in *A*

Game of War underscore the non-linear nature of time, encompassing themes of repetition, disruption, and anticipation. This explicit intertwining of temporality is a shared characteristic of both pre-enactments like *A Game of War* and court trials, where the past is reconstructed and potential futures are envisioned within the 'now' of the trial. By employing artistic methodologies such as p(re) enactments to enhance the imaginative capacities of the legal realm in the context of appropriation art and copyright issues, *A Game of War* demonstrates the potential for art and law to mutually inform and enhance one another. It opens up new avenues for dialogue and fosters a deeper understanding of the complex interplay between artistic expression and legal frameworks.

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Notes

- 1 Consisting of Jens Van Lathem and Tobias Van Royen at the time of the creation of *A Game of War*.
- 2 It is beyond the scope of this article to delve deeper into this topic, but an individualistic approach to authorship, as commonly embraced by European copyright law and intellectual property, remains linked to the market logic of (late) capitalism, a system that both the SI and Kambalu resist (Abbing 86-9).
- 3 Copyright arises automatically: it is produced “by the mere creation of a work” (own translation of the Dutch original; Van der Perre 197). One of the fundamental principles of the Berne Convention, which laid the foundation for the European copyright system, is the “principle of ‘automatic’ protection” (Summary Berne). In this regard, the convention explains that copyright protection should “not be conditional upon compliance with any formality” (art. 5 Berne Convention). Currently, according to the Belgian copyright system, you cannot fully waive your moral rights (Wetboek Economisch Recht / WER Art. XI. 165 § 2) – they have an inalienable nature – but you can waive or transfer your economic rights (thus fully relinquishing your economic rights regarding your copyright-protected creation) or licence them (either with a “normal” or an “exclusive” licence) (WER Art. XI. 167 § 1). With regard to the aforementioned statement, Kambalu’s lawyer argued that “By inviting third parties to appropriate their own works in order to overcome the concept of art commercialization and barriers to the diffusion of ideas, legally speaking they offer everyone a free and non-exclusive licence for the reproduction of the works themselves (according to the scheme of public [sic.] offering pursuant to art. 1336 of the Italian Civil Code)” (Boccuni). However, it is important to note that Sanguinetti never explicitly expressed the alleged call for a free licence in relation to his – sold – archive, as he retained both moral and economic rights upon its sale. Therefore, the statement of Kambalu’s lawyer should be read with a grain of salt.
- 4 The Beinecke Rare Book and Manuscript Library is part of the Yale University Library.
- 5 The rules of this ‘war game’ were later established by Alice Becker-Ho and Guy Debord in the book of the same title, *Le Jeu de la Guerre* (1987). While Debord is often regarded as a central figure of the Situationist International (SI), it is worth noting that both Becker-Ho and Michèle Bernstein also played significant roles within the movement.
- 6 The element of play is prominent in the works of both the SI and Kambalu. While an extensive exploration of this topic exceeds the scope of this article, it is worth quoting a brief excerpt from the first *Internationale Situationniste* of June 1958, in which Debord sketches a “Contribution à une définition situationniste du jeu” – a sketch that serves as a concise introduction to the Situationist’s vision of play as a politico-artistic practice: “Le jeu est ressenti comme fictif du fait de son existence marginale par rapport à l’accablante réalité du travail, mais le travail des situationnistes est précisément la préparation de possibilités ludiques à venir.” (*Play is felt as fictional due to its marginal existence in relation to the crushing reality of work, but the work of the situationists is precisely the preparation of future playful possibilities*). For discussions on Kambalu’s ‘playfulness,’ I refer to his doctoral dissertation, as cited in the list of references.

- 7 In response to accusations, including those made by Bill Brown ("Clarifications Concerning Samson Kambalu"), of incoherency, Kambalu stated: "I believed that within the liminal spaces of the commercial world it was still possible to give a gift" ("Why Situationism" 3). In other words, he believed that the commercial structure – and thus the entrance fee – of the Biennale was not contradictory to the emphasis he placed on the notion of 'gift-giving' within his work, particularly regarding *Sanguinetti Breakout Area*. However, there is indeed an inconsistency in the emphasis placed on the 'non transactional' nature of 'gift-giving' when making this 'gift' available only after purchasing a ticket – thus, after a transaction. Nevertheless, in his discourse surrounding this specific work, Kambalu seems to focus more on the symbolism of 'gift-giving' rather than the mere act of giving something 'freely without expecting anything in return'. The gift he wanted to achieve with *Sanguinetti Breakout Area* was a "taking of the archive back to Italy" ("Why Situationism" 2-3) that would be his "gift to Sanguinetti". Following this line of reasoning, the mere fact that the installation was in Italy (during the Biennale) was sufficient for it to be labelled a gift. Still, spaces like biennials are inherently exclusive and do not cater to, metaphorically speaking, the entirety of Italy. Kambalu's gift, represented by *Sanguinetti Breakout Area*, was primarily accessible to a privileged group of individuals who possess a certain amount of cultural and/or economic capital.
- 8 In the interview with the author, Jens Van Lathem mentions that this was brought up by some artists during screenings. They indicated that the legislation, as well as TWIID's proposal, obliges them to formulate a discursive intention about their work, which should demonstrate that the work is intentionally "critical or humorous". However, they do not consider the aforementioned parameters as quintessential for their work – or for 'art' in general.
- 9 Boccuni: "The whole installation has its creative consistency and is a message of sarcastic criticism clearly coming from Kambalu, thus it cannot be considered a mere counterfeiting or a [*sic*] plagiarism of Sanguinetti's works or of part of them as the presence of the aforesaid creativity constitutes the parody exception, according to the principles stated in the decision of the European Court of Justice n. 201 of 3.9.2014 (C-201/2013), being parody clearly recognized as a constitutional right according to art. 21 and 33 of the Constitution".
- 10 Nellis ("All rise! Jurisdiction as Performance/Performative Language") discusses the "intricate role of language" (159) in court cases and their fictional counterparts, and foregrounds the importance of language within the paradox he distils from his analysis of courtroom dramas that strive to attain a reality effect while lacking the coercive power of real courtrooms.
- 11 As Nellis ("Enacting law") notes, re-enactments in this sense often draw inspiration from "twentieth-century documentary techniques for the dramaturgical approach artists use within current court case performances" (Re-Enacting Law) or the tradition of "document-based practice" (Arfara 112). This documentary tendency is also visually conveyed in the film by occasionally interspersing photographs from *Sanguinetti Breakout Area* within the diegetic storyline in the courtroom. Furthermore, photographs inherently reference something that is past, thereby highlighting a double temporality – now and then – through their presence in the film.

- 12 As expressed by Pietrzak-Franger et al. in their editorial “Presence and Precarity in (Post-)Pandemic Theatre and Performance” (2023, 2): “The pandemic struck at the heart of theatre and performance – their liveness [...] Its very presence had to be redefined.”
- 13 My own translation from the Dutch original: “The defendants through their joint counsel argue as a defence that the claim cannot possibly be upheld because, in the main order, the plaintiff would “not be an author of the archive”, as it is alleged by the defendants that “the bulk of the material is from third parties”;
- In subordinate order, the defendants argue that Mr KAMBALU had only used a so-called “open licence”;
- In further subordinate order, the defendants invoke the exception of parody.”
- 14 My own translation from the Dutch original: “The defendants through their joint counsel argue as a defence that the claim cannot possibly be upheld because, in the main order, the plaintiff would “not be an author of the archive”, as it is alleged by the defendants that “the bulk of the material is from third parties”.
- 15 It is important to note that not only the legal language but also Kambalu’s discourse in *A Game of War* may be inaccessible to those unfamiliar with the art (historical) references he makes. He refers to philosophers such as Nietzsche and Debord, mentions names, artistic concepts, and covers multiple angles. In contrast with the absence of efforts to make the legal language in the trial more intelligible, the intervention of the expert – Sven Lüticken – on the SI enhances the intelligibility of Kambalu’s artistic discourse.
- 16 The end credits of the film mention that it is “directed by” Tobias Van Royen, Samson Kambalu, and Jens Van Lathem (02:10:25).
- 17 While the analysis primarily emphasizes Kambalu’s perspective and the importance of freedom of expression protected by the parody exception, it is crucial to consider the need for a balance between this freedom and the economic and moral rights of copyright holders. Exploring Sanguinetti’s perspective could provide valuable insights to ensure a more comprehensive approach to copyright protection.
- 18 The white book that lies above *Sanguinetti Theses* is *Capsules, Mountains and Forts* (2016). That book, designed by graphic design company *Fraser Muggerridge Studio*, includes a selection of legal material concerning his trial with Sanguinetti.