In 2015, I discovered that artist and art historian Hans Richter had created a film from 1970-1971 with his primary cinematographer, Arnold Eagle, that was not listed in his filmography. This footage was meant to realize a script entitled *Artistic and Scientific Film: Painting and Architecture Concerns-Approaching the New Plastic Architectural System*. The most outstanding aspect of this footage is that the script was written and illustrated in 1927 by Russian avant-garde artist Kazimir Malevich, primarily known for painting, with the goal to have it produced by Richter. The film would not enter production until 35 years after Malevich’s death. Ultimately, after over a year of storyboarding, months of shooting, an NEA grant proposal, and multiple consultations with notable art historians, the project was abandoned and left incomplete.

Upon finding that the unfinished footage resides in the Getty Research Center’s Special Collections, it became apparent to me that this material had a great deal of art historical significance and should be released from the captivity of the archive. But what does distributing this unfinished work entail? This paper does not question the logistics but instead explores the ethics behind distributing unfinished works, including static media, such as painting, sculpture, and literature. These selected examples and case studies may help to illuminate the question as to whether Richter and Malevich’s film should simply remain at the Getty or see the light of day.
Background

While visiting the Bauhaus in April of 1927 for a retrospective of his own works in Berlin, Kasimir Malevich finally saw a glimmer of hope in the future of the cinema, a medium he highly criticized. This turning point came when Walter Gropius introduced Malevich to Hans Richter’s experimental absolute film, *Rhythmus 25.* Malevich was also fortunate to have the opportunity to meet Richter during his short stay in Germany, expressing his admiration for the film, his only absolute work in color. At this time, Richter and Malevich were both well regarded in the art world and recognized each other’s merits. Malevich is considered one of the greatest artists of the 20th century but, beyond his scathing essays, has no recognition for filmic interests. Despite this, Malevich told Richter he was inspired by the film to such an extent that he wanted to collaborate. Malevich had no production experience, let alone the ability to speak German, so he would create a script which Richter would translate into moving image. Richter and Malevich agreed to hold off on moving forward with the actual production of their joint film because coloration techniques were not up to par with Malevich’s standards and wouldn’t be until the mid-1930s. Before Malevich left Germany in June of 1927, he asked his interpreter and friend Alex von Riesen to deliver the script to Richter but von Riesen never follows through. Richter began moving away from absolute film, creating surrealist shorts, such as *Ghosts Before
Breakfast, which broke with the exact aesthetics that interested Malevich to begin with. Unfortunately, Malevich died of cancer in 1935 and never saw his script come to fruition. Between Malevich’s death, the Second World War, and Richter’s subsequent move to New York, the project was all but forgotten.

In 1969, Richter received a phone call in the middle of the night from Vernor Hoffman of the National Gallery Berlin asking about the Malevich script, jumpstarting his memory of the project left behind. Hoffman was writing a Malevich book and had access to the von Riesen’s collection of Malevich papers. “For Hans Richter” was written directly on the script, prompting the call. Unbeknownst to Richter, Malevich’s script had already been published multiple times in Europe and the USSR, beginning in 1962. Richter felt it was his duty to finish a project that now spanned over thirty years. Richter shared this newly found information with his friend and cinematography Arnold Eagle. Arnold Eagle not only saw the historical significance in working on this prospected film but viewed it as an opportunity to partner with Richter for equal profit.

In truth, Arnold Eagle could be viewed as the primary author of this unfinished film. Eagle hired two of his students and worked on each shot, often without the presence of Richter. Eagle also involved a friend of Marcel Duchamp’s, Denise Hare, who proclaimed herself to be a Malevich scholar. With his degree of control, Eagle seemed more interested in authoring a film than displaying pure integrity to Malevich’s script. Although Richter was very clear about his desire to not veer from the script whatsoever, Eagle and Hare were much looser with their

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6 ibid
7 Ibid. September 27th, 1971. Contract claiming that Eagle is the Co-producer and Co-owner of the Malevich film, along with letters about Eagle being pushy regarding his desire to hold these titles. Box 1, Folder 9.
8 Ibid. April 21st, 1970 Box 1, Folder 9.
interpretation. Eagle was also adamant about adding a soundtrack, which is no longer in existence, a segment about Malevich’s career, and a filmed interview with Richter, explaining the history and motivations behind making this film.

In 1971, Richter realizes, looking at Camilla Gray’s *The Russian Experiment in Art, 1863-1922*, which had, at the time, most recently published the Malevich script, that its almost identical to Rhythmus 25. Richter was devastated by this revelation. Was he recreating Rhythmus 25 or producing Malevich’s vision? Richter contacts Annette Michelson, asking her to be an art historical consultant on the film. “We need Michelson to make sure this is a bonafide Malevich film,” Richter writes to Eagle. In October of 1971, Richter asks for $7,500 from the NEA, listing Eagle as his partner and Michelson as a consultant. The twenty minute film was slated to be completed in February of 1973.

Michelson was ultimately shown forty minutes of material and concluded that only art historically correct materials should be included, which aligned with Richter’s views. After Richter has a chance to view the existing shots in person and the commentary from Michelson, he tells Eagle that most of the film needs to be reproduced and still worries that it’s too similar to *Rhythmus 25*. It would make sense that Malevich’s script resembles *Rhythmus 25* in almost an

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10 Ibid. December 3rd 1971 letter Box 1, Folder 9. There was $1000 in the NEA budget just for sound for both the interview and soundtrack. Richter did not love the soundtrack, to say the least, referring to it as the “boring sound beginning.”
11 Ibid. November 28th, 1971 letter Box 1, Folder 5
12 Ibid. NEA Grant.
13 Ibid. December 3rd 1971 Box 1, Folder 9
14 Ibid. November 11th, 1971 Box 1, Folder 5
identical matter, being that his own Supremacist squares were already similar in nature, although for different conceptual purpose, to Richter’s own geometrical forms, yet this never seems to be a major consideration and only a deterrent for Richter. In December of 1971, only two months after submitting an NEA grant proposal, Richter abandons the project, in part due to the similarity to Rhythmus 25 and disagreements with Eagle.

“As for the Malevich film, there is, in my opinion, about three minutes of useable material made by your students. It’s an error to say I was disappointed because of the student’s work. I was and am disappointed about the insecurity working with you at my age, before you half forced me into this co-producer contract business. I told you I already do not wish to continue the Malevich film. That is the reason and not because the material that was shot already is too bad...Arnold, I resign and this time definitely and for good. My health is bad and I am not able to stand the strain of fighting a man whom I have considered my friend for 25 years. I shall inform Miss Michelson of my decision. Sorry!”15 Richter lived only five years more and Eagle never chooses to finish the film, which put him in debt that was never repaid, as the grant proposal was withdrawn.

The Arnold Eagle papers were acquired by the Getty Museum in 1997, after his passing. Within these papers, Eagle left at least 20 reels of safety film, cardboard storyboards, notes, and vinyl cutouts for unfinished film. Shockingly, no publications mention that footage exists, often only alluding to Malevich’s script, with occasional images of Richter’s storyboards, which are

15 Ibid. December 17th, 1971 Box 1, Folder 5
sometimes ironically mistaken for surviving *Rhythmus 25* materials, just as Richter feared. To these scholars, it’s as if the history ended there. Why are Hans Richter and Malevich researchers not accessing these films? The footage has been accessible on VHS within the Special Collections since 2002. Upon discovering the materials myself, I personally found that their distribution is integral to further canonizing the history of experimental cinema in conjunction with art history. For art historians to recognize that Malevich was not only interested in writing about film but creating it would be a revelation. These materials already clearly have an archival value, as evidenced by the Getty, but what about the ethics of giving them a commercial value through distribution?

**How is Unfinished Work being defined?**

There are countless examples of unfinished creative work and ways of defining why they’re considered to be in an incomplete state. For example, some ways in which one may not consider a work to be unfinished: The work may have been completed but became fragmented over time or it’s purposefully left unfinished. The latter example was common in the Renaissance and lead to the term “Non Finito.” In reference to Non Finito, Pliny the Elder states that unfinished works are sometimes more valued than completed works because they allow the viewer to have a window into the artist process. This is an aspect of the public’s fascination with the unfinished whether it’s the artist’s intention or not but it is clear that there was a time where artists revealed their process for reasons of profit. Of course, the style of Non-Finito extends beyond the Renaissance, often alluding to purposely unfinished sculpture, such Rodin’s *Danaïd* (1889.)

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16 Cleve Gray published a book that used the storyboard from the Malevich film and entitled it *Rhythmus 25*
As the Met exhibition on unfinished works highlighted last year, simply not having the ability to activate a finished work could be viewed as unfinished, such as Jasper John’s paint by numbers book, which sat beneath vitrine glass. Finally, there are plenty of creative works out there that the public is not even aware of as unfinished, yet they still had the potential to change and grow.

Michelangelo, who also created Non Finito drawings and sculpture, felt that none of his works were ever truly completed because he did not live in an age which was up to par with the technologies needed to fully realize his work. For example, Michelangelo was frustrated with the inability to represent motion in a way he viewed as accurate.\footnote{Ibid p.30} As a literary example, although Goethe published \textit{Faust}, he continued to write revisions until the day he died.\footnote{Baum, Kelly, Andrea Bayer, Sheena Wagstaff, Carmen Bambach, Thomas Beard, David Bomford, David Blayney Brown, et al. 2016. \textit{Unfinished: thoughts left visible}. p.143} This perspective can certainly be applied to scripts. Although the Malevich script was technically completed, it could be viewed merely as instructions for a film. A script in itself is not activated, as its purpose is not to remain solely as a script. If Richter decided to never rekindle the prospect of producing Malevich’s project, it would simply remain one of many inactive scripts. And furthermore, Malevich created his script quickly, in less time than even the few months he spent in Germany.

What changes would he have made if had the chance to consult with Richter before his death?

This work also falls into a special category as a continued work, especially with the creative presence of someone who was not an original member of the project, Arnold Eagle. The term “continuator” is common in literary practices but also certainly applies to all unfinished, and
even some decidedly finished creative works. Simply, a continuator is someone who adds to an existing work. One of the most famous examples in Charlotte Bronte’s *Emma*, which, like other less popular works left after her death, was deeply fragmented. It has become a pastime for literary buffs to “finish” *Emma.* One of the, arguably, most contemporary examples may be the idea of fanfiction, where enthusiasts of media add to existing storylines from television, books, and film. There are many professional examples of continuators. Salvador Dali’s collaboration with Disney is an interesting example, which, like Malevich’s script, was picked up after being shelved, almost 60 years later by the son of Walt Disney. 17 seconds of footage was turned into seven minutes of footage, thanks to over twenty five Disney animators, employing the script and many sketches Dali left with the Disney company. Whether the work can still be considered Dali’s is a question that will be explored later in this paper.

The exact reason a work is left unfinished is often unknown. Fortunately, the Malevich, Richter, Eagle case is very clear. Richter abandoned the project purposefully and, at the time, it can be assumed that he never wanted it to see the light of day. By the tone of his letters, he was ultimately frustrated and embarrassed by the way it turned out. And now, from a historical perspective, it’s a posthumous unfinished, even fragmented, work which may still offer a great deal to the history of art and film upon commercial distribution. Richter, Malevich, and Eagle have all passed, unable to have a say in the matter. It can never be known how they’d feel about their unfinished work if they were still alive. Several case studies have been selected which

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highlight the distribution of abandoned works of art, to assist in a better understanding of how to approach the possible distribution of Artistic and Scientific Film: Painting and Architecture Concerns-Approaching the New Plastic Architectural System.

Christopher Büchel

The 1990 Visual Artists Rights Act (VARA) is a provision of U.S. copyright law that seeks to protect the noneconomic rights of artists, called “moral rights.” From 2006-2007, Christopher Büchel, a contemporary Swiss installation artist, worked for over a year on football stadium sized installation at Mass MoCA, entitled Training Ground for Democracy. Suddenly, he decided to abandon the work, begging for the museum to dismantle it. Like Richter, Büchel consulted with the work, in majority, remotely. His absence left a sizeable amount of the installation to the museum’s staff and Büchel was unhappy with the work in progress. Büchel was very much alive when his unfinished, abandoned installation was scheduled to go public. Mass MoCA took the artist to federal court, asking for permission to display the unfinished and abandoned installation. The museum only agreed to tear down the installation if Büchel paid the institution for the financial losses gained from his abandonment. The ruling, in accordance with VARA, decided against Büchel. The court concluded that as long as the museum listed in their wall text that the work was not fully realized and that the artist did not authorize it’s display, there are no laws against displaying unfinished works. This ruling, in part, came from the

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conclusion that discussing the unfinished nature of display and integrity of the artist was more philosophical than legal in nature. The artist’s input on the matter is basically ineffectual from a legal standpoint.

Interestingly, although MoCA was given a glaring green light through VARA to continue displaying the installation, they chose to dismantle the installation, which was mostly due to backlash from critics. This commissioned installation would cost the museum over $300,000, or 37.5% of their annual budget. Although this is an installation, this particular commission echoes the way law treats film as well, at least in the US, by considering the producer the author of the work. Either way, at least in America, the moral rights of the artist are being undermined.

And, in regards to the Hans Richter/Malevich film and VARA, considering this was to be an abstract, geometrical, experimental film by two artists, would this actually fall under VARA laws and not just the laws of commercial film if it were to be in a similar situation?

**Franz Kafka**

Kafka had been even more clear than Richter about his feelings towards his unfinished works. Before his death in 1924, the author made sure to burn an estimated 90% of his own writings. A letter, written to his friend and also apparently accomplished author Max Brod, explicitly stated that he wanted all remaining works after his death to also be destroyed. Well aware of this letter, Brod instantly began working on getting these works published, which included *The Trial* and

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25 Ibid p. 50
The Castle; some of Kafka’s most beloved works of all time. Before Kafka’s death, he discussed his desires with Brod. Brod used the excuse that he told Kafka he would not burn his literature, using this as the main justification for his actions, whether it was truly justified or not. Either way, it cannot be denied that the New York Times has called these works of literature some of the greatest monuments of 20th century. There is no doubt that Kafka’s writings had a large cultural impact on society. Without the release of the Trial, what other works by inspired creatives would have been lost? The same question comes to mind for Malevich’s film; If the work was created in a more timely manner, in what ways would it have affected and inspired other artists of the avant-garde? If released today in its unfinished state, how may this benefit future artists? There are economic implications to the release of Kafka’s works as well. The Trial manuscript, for example, was not only kept far from cinders but it fetched 2 million dollars when sold to the German Literature Archive.

**Sigmar Polke Estate**

Upon Sigmar Polke’s death in 2010, Thomas Elsaesser was called to the estate by the Polke family to examine never before seen film bases. The Polke’s, although imaginably grieving, saw the death of this artist as an opportunity to not only further canonize him in the history of modern and contemporary art but gain a profit from his remaining works. Elsasser was asked to access the film to see if it had any economic and scholarly value. Much of the film was reminiscent in style to the artists paintings, almost looking as if they were studies for his better known works on

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27 ibid
29 ibid
canvas and paper, such as the scratch animations of dots directly into the cellulose-triacetate emulsion layer. Elsaesser would go on to refer to much of the footage as sketchpads. Unlike previous examples, it is unclear as to whether these works can be considered abandoned or not. On the contrary, there is no evidence that many of these film bases were meant to see the light of day, at least outside the Polke estate, yet Elsaesser wrote and spoke about the discovery of these films, which would not only lead to their inclusion in Polke’s oeuvre, but they would also tour the world for his retrospective at institutions such as the Museum Ludwig, Cologne, The Tate Modern, and the Museum of Modern Art from 2014-2015.30

Archives

The key footage in question resides at the Getty’s Special Collections. An abandoned work may be thought of as something meant to be kept private, in respect to the creator. Yet, archives allow for the publishing of personal letters and even seemingly mundane papers, such as receipts, from mainly notable people all the time. One of the most prolific examples would be James Joyce’s sometimes highly embarrassing letters to Nora Barnacle or even Franz Kafka’s heartbreaking letters to his fiance, Felice. What is the archives approach to ethics? It is already known that there aren’t really clear, universally recognized and adhered to ethics in the archival world, especially in regards to what a federal court called “philosophical matters and not legal ones” but organizations like the International Federation of Film Archives (FIAF) have certainly tried to create their own. FIAF uses terms like “respecting integrity” and “safeguard from manipulation or falsification.”31 These are relatively loaded terms, especially considering that archives often do not hold the copyright for their collections, which is definitely the case for the Richter, Eagle,

Malevich film. An archive will protect a work only within their own institution but, especially if the archive does not hold copyright, materials in the hands of others are manipulated all the time. There are countless videos on Youtube, for example, which add unwarranted soundtracks to silent films. And I question what constitutes manipulation or veering from integrity; as integrity, or upholding “strong moral principles,” is ultimately subjective in the way it may be interpreted by both an archivist and a distributor. FIAF’s code of ethics also mention that screenings should have a cultural or educational framework. This means that the archive does, at least somewhat, value the cultural or educational impact of these works, possibly over the posthumous artist. And, as a final quote, “Archives believe in the free sharing of knowledge and experience to aid the development and enlightenment of others.” There is no doubt in my mind that each example given has provided enlightenment and education to others.

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32 This example especially bothers me: https://www.youtube.com/watch?v=dXINTf8kXCc
34 ibid
It should be noted that The Getty Museum is not a member of FIAF; they’re not even considered a moving image archive by any means, but this highlights another important aspect of how the unfinished is viewed. Realia, usually referring to three dimensional objects acquired by archives, is a fairly contemporary concept for the archivist. Traditionally, archives acquired works on paper. More recently, archives are acquiring more complicated and less traditional objects from estates, including unfinished works of art. As previously stated, reels of film and vinyl cutouts were acquired by the Getty’s Special Collections, an environment that was better suited for paper items. Yet, these objects had a status of unfinished, allowing them to entirely the archive instead of being catalogued under the museum’s permanent collection. It is possible that the museum did not value the unfinished film as a work of art or that the Institute believed that visible process had a stronger relationship to artist letters than completed works of art. Distributing the work may have the, arguably, positive repercussions of re-framing this status.

**Transparency**

In the Mass MoCA vs Büchel court case, VARA allowed for an unfinished installation to be displayed so long as it adhered to certain criteria; the wall text would state that the artist did not authorize the work and that the work is currently in an unfinished state. This ruling highlights the notion of transparency between the audience and distributor about the state of a creative work. In the case of *Destino*, Salvador Dali is still given credit as author of the work yet he contributed less than 30% of the decidedly finished product. Although institutions, such as MoMA, clearly
stated on their website and within their wall text that the film was finished well after Dali’s death, with the help of sketches, it still gives precedence to Dali.

As a personal anecdote, although it seems clear that *The Trial* is an unfinished work, many of those I have mentioned this fact to were unaware. Similarly, art historians are not generally taught to look at a Michelangelo and contemplate his true, unrealized vision for the sculpture. If the Malevich, Richter, Eagle film were to be released, what would be most ethically compliant? Who gets the primary credit of authorship? How much information about the current state of the film should be revealed on program notes or the verso of a BRD case? Journalists use the term accountability in their code of ethics. Whichever choice one makes, in deciding to distribute a film that may contribute to the history of art or not, they should contemplate how they may be held accountable.

**An Epilogue**

While writing this paper, I discovered that the Centre Pompidou was indeed given permission to display the unfinished *Artistic and Scientific Film: Painting and Architecture Concerns-Approaching the New Plastic Architectural System* from September 2013-February 2014, although how they went about displaying it is currently unknown to me. This knowledge only surfaced after someone on Youtube, under the handle Kabelton, uploaded the display on October 1st, 2016.\(^{35}\) They are the only institution to ever display an excerpt of the film publicly or even allude to its existence. As previously mentioned, the Getty’s Special Collections has over 20 reels of footage, which comprise well over an hour of material. The Centre Pompidou edited

this footage down to approximately five minutes, possibly based on what they believed was closest to the Malevich script, and did not include the interview. The most disturbing aspect of this manipulation is the press release. The press release claims that Malevich did not have the chance to ask Richter to collaborate, which is blatantly false, as Richter even states this in his NEA grant proposal. It also claims that the film was fully realized by Eagle and Richter, which is painfully incorrect. Finally, they claim that the entire film is on display in the exhibition.36 Not only is this information outright false but it would have been educational to understand exactly how the Pompidou chose to edit the material down. One can merely speculate, and only if they have the privilege of knowing there are many more minutes of footage, which is unlikely, as an individual would have to deliberately be looking through a Finding Aid to even know of its existence.

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And many other articles and books which informed my essay although they were not directly used.