

Copy: from Wrong to Right

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Recently, two scandals attracted much attention in the world of contemporary art. One of the scandals involved the visual artist Glenn Brown who was a short-listed candidate for the Turner Prize. He was accused of having appropriated another artist's image in the work submitted to the committee, and threats of legal action were being aired by the injured party. Brown's painting *Loves of Shepherds 2000* was, undeniably, a manipulation of the jacket illustration of the novel *Double Star* (Pan, 1973) by Robert A. Heinlein. The illustration had been made by the artist Anthony Roberts. Both pictures depicted a spaceship on the background of a sun and deep space. On the question of whether there was infringement, Anthony Roberts' solicitor told the press that

A speeding moron would identify the two works. In fact, the Brown copy appears to have been traced round a transparency projected onto his canvas.¹

The Tate Gallery, nevertheless, defended Brown's work and published an announcement explaining that Brown's 'images are never direct replicas, but have been cleverly manipulated' and that the technique he uses 'is comparable to Constable looking at a piece of Suffolk landscape.'² Glenn Brown himself acknowledged the dependency and admitted that his original title for the work had contained the designation 'after Tony Roberts.'³

The other scandal that captivated the art world in 2000 concerned the sculpture *Hymn* by Damien Hirst.⁴ *Hymn* was an exact copy of the toy 'Anatomy Man' designed by Norman Emms for *Humbrol's* toy series 'Young Scientist.'⁵ Hirst's sculpture was made in bronze and was five

¹ Cited from Henry Lydiate, "Art, Law and Originality," *Copyright world*, March (2001): 22-24, p. 24

² *Ibid.*, p. 22

³ An earlier work by Glenn Brown *Ornamental Despair* (painting for Ian Curtis) (1994), featured at the *Sensations* exhibition, had also been accused of being an unacknowledged reproduction of a book jacket illustration: the sci-fi writer Chris Foss' cover of *Diarisofa Space Person* (1991). See mention at www.artnewspaper.com.

⁴ *Hymn* is part of the Saatchi collection and was acquired for the sum of £1,000,000.

⁵ Hirst has also himself acted the part of the claimant in a copyright dispute. In the late 1990s he sued British Airways' lowcost airliner GO for using designs with dots for an advertisement campaign. The dots allegedly looked like dots that Hirst had become famous for mass-producing.

times the natural scale of a human, but it reproduced the original colours and all details. Humbrol and Norman Emms accused Damien Hirst of having infringed their copyright in the toy *Anatomy Man*. In the end, the matter was settled out of court and Hirst is known to have donated as ‘compensation’ an undisclosed sum to the charities Children Nationwide and Toy Trust. However, he never publicly admitted his artistic debt, or confessed any wrongdoing

Glenn Brown and Damien Hirst are not the first and surely will not be the last artists to stand accused of infringing a fellow artist’s copyright. Indeed some artists have become notorious for appropriating copyright material from others. Even a major figure such as Andy Warhol. Today, artists may well end up on the wrong side of the law of copyright. Rather than creating the subject matter of artistic copyright, artists find themselves to be the ones that copyright protects *against*. They become the producers not of original artworks but of unauthorized copies. This is a relatively new phenomenon. Until the end of the nineteenth century copyright infringement would involve both mechanical reproduction and multiplication of an artwork, as well as its distribution. The typical infringer, therefore, would not be an artist: a primary creator. Rather, he would be a manufacturer of some kind who would mass-produce reprints or reproductions of a primary work. Only in the late nineteenth century did this change. By then our modern concept of infringement had been developed. This meant that it had become a violation of copyright not only to copy an entire artwork, but to make ‘substantial use’ of it without the copyright holder’s permission. In other words the norm for copyright infringement had changed from a quantitative to a qualitative criterion.

This qualitative criterion for copyright infringement becomes a problem for contemporary visual artists, many of whom work with motifs and forms taken from either their surroundings or from the cultural tradition. For example, images from popular culture or effects from their home that carry some social significance. In an aesthetic sense it is legitimate enough to use pre-existent motifs and forms. If we look to the history of art we will find that imitation was made the guiding principle of art right from the beginning of our civilization. Plato in the *The Republic* simply defines art as the imitation of appearances. Thus in the tenth book we are given the example of a bed. First, there is the idea of the bed, as given by God. Second, there is an individual bed that the carpenter manufactures. Third, there is the bed that the painter makes. A painting, accordingly, is a sort of second-degree imitation of truth.

Aristotle also defines art as imitation—or as he terms it ‘*mimēsis*’—in the *Poetics*.⁶ And in Aristotle’s view the imitative faculty is precisely what makes us human. From the time that we are born we have a natural instinct for imitation:

indeed we differ from the other animals in being most given to *mimēsis* and in making our first steps in learning through it – and pleasure in instances of *mimēsis* is equally general.⁷

And, as Aristotle says, we actually enjoy seeing represented, things we do not like to see in real life – dangerous animals, or corpses, for instance.

It is not merely in the history of aesthetics that imitation plays such a significant role. On a more general level it is a fundamental condition for our being. This has been well demonstrated by Hillel Schwartz in the book *The Culture of the Copy*. As Schwartz sums up:

On the one hand, copying makes us what we are. Our bodies take shape from the transcription of protein templates, our languages from the mimicry of privileged sounds, our crafts from the repetition of prototypes. Cultures cohere in the faithful transmission of rituals and rules of conduct. To copy cell for cell, word for word, image for image is to make the known world our own. On the other hand, we are not identical, nor do we wish to think of ourselves as clones. Copying is ultimately imperfect, our errors eventually our heirs. The more widespread the act of copying, the greater the likelihood of significant mistranscription. Genetic slip or evolution, scribal mistake or midrash, whatever we call it, miscopying raises hard questions about identity, security, and integrity. The same technical advances that render our skill at copying so impressive also intensify the dilemmas of forgery. We use copies to certify originals, originals to certify copies, then we stand bewildered.⁸

⁶ Aristotle, “Poetics,” in *Classical Literary Criticism*, ed. D.A. Russell and M. Winterbottom (Oxford: Oxford University Press, 1972), pp. 51-90.

⁷ *Ibid.*, p. 54.

⁸ Hillel Schwartz, *The Culture of the Copy. Striking Likenesses, Unreasonable Facsimiles* (New York: Zone Books, 1998), p. 212f.

As Schwartz says, we are all born copies. Indeed we are. Just try to ask a Rumanian. The Rumanian language preserves the meaning of 'copia' in medieval Latin where it meant 'plenty' and 'plentiful' as still in the English word 'copious.' In Rumanian 'copi' means 'child.'

To Brown, Hirst and Warhol, 'appropriation' is part of their artistic practice. A new generation of artists, however, goes one step further and makes wholesale copying a positive artistic agenda. One such is Superflex, a group of artists based in Copenhagen. Their reputation has for some time figured among the world elite of avant-garde art. In one of their recent ventures the three artists, moreover, managed to get their name out to the rest of the world. They got exposure on CNN, the BBC and numerous newspapers.

It was the project FREE BEER that so effectively caught the attention of the international press. And, undeniably, there is great news value in the FREE BEER project. As Superflex states on their website, FREE BEER is the world's first 'open source' beer.

The concept of 'open source' is best known from software development in the digital sphere or cyberspace. Superflex applies it to the physical world: more specifically to the production of beer. In 2005, Superflex in collaboration with a group of students from the IT-University in Copenhagen produced the first version of FREE BEER. Subsequently, the recipe along with the label designs and a website were published under a Creative Commons 'attribution and share alike' license. Now anyone is free to brew 'free beer', to sell it and to make derivative versions of the recipe.

Another of Superflex's recent projects carries the name SUPERCOPY. One of the 'supercopies' is a modified version of a Danish design classic, the PH5 lamp. The PH5 lamp was created in 1958 by Poul Henningsen, one of the most celebrated Danish furniture designers. The lamp with its soft homely light is still hugely popular and was recently declared the best Danish design object of the twentieth century.

In 2003, Superflex decided that it was time to give the global population better access to quality lighting. They wished to bring the best of Danish design to rural districts in Thailand which had no access to electricity. The result was a biogas version of the PH5 lamp, cost-consciously made out of scrap metal.

Superflex has created a number of other supercopies along similar lines: soft drinks and toothpaste for instance. And, recently, they opened up the COPYSHOP in central Copenhagen. COPYSHOP is the name of a shop and an information forum in which Superflex, as it says: ‘investigates and re-evaluates the concept of the copy’. As an information forum the COPYSHOP serves as a meeting point for ‘a diverse group of people who share a critical view of intellectual property rights.’ People are invited to come and exchange ideas and to make photocopies.

But the COPYSHOP is also an ‘ordinary’ shop. A selection of ‘pirate copy’ products are offered for sale. For example, t-shirts and trainers along with ‘Mecca Cola’ (the French-Tunisian charity cola) and ‘social pudding’: a sort of pirated pudding powder. Superflex designates the products in the shop as ‘modified originals, improved copies and political anti-brands.’ The various ‘supercopies’ that Superflex has created are also for sale in the shop; they are labelled: ‘new originals.’

The ideological stance of the COPYSHOP project is not a secret. It is stated plainly that it exists with the purpose of challenging the new global order of intellectual property rights. (Superflex has already faced several threats of legal action, not surprisingly. A few weeks ago they had their offices ransacked. A group of six people, including the lawyers of a famous clothes brand and a judge, stepped in and told everyone to remove their hands from the keyboards. Outside a big truck was parked ready to remove the illegal goods. However, on finding the studio of three artists rather than a pirate factory they left in some confusion after 20 minutes, taking only two t-shirts with them. Superflex has not heard from them since.)

The motto of the COPYSHOP is ‘If value, then copy.’ This is an intentional misrepresentation of the logic of the current legal and economic order which dictates: ‘if value, then right.’ That is: if there is value then someone must be claiming the right to that value.

The sort of straightforward social critique we find in Superflex’s art is not uncommon in contemporary art. Art has become political again. However, Superflex’s SUPERCOPY project can also be interpreted at a different, non-political level. There is a forceful artistic effect in ‘supercopying’ and in creating what they call ‘new originals’. It renounces the norm of authenticity in the arts that the Romantics institutionalised. By the same token, Superflex rejects the binary opposition between original and copy. Such an opposition between an original artwork and its copy or reproduction—which is entirely familiar to us today—stems from

eighteenth and nineteenth century Romantic aesthetics. Edward Young famously expressed the difference in his *Conjectures on Original Composition* from 1759:

An *Imitator* shares his crown, if he has one, with the chosen Object of his Imitation; an *Original* enjoys an undivided applause. An *Original* may be said to be of *vegetable* nature; it rises spontaneously from the vital root of Genius; it grows, it is not *made*: *Imitations* are often a sort of *Manufacture* wrought up by those *Mechanics, Art, and Labour*, out of pre-existent materials not their own.⁹

It is in the Romantic self-representation that the sharp contrast between original and copy was invented. By now, however, it has been under attack in aesthetics for a while. Ever since 1917 when Marcel Duchamp presented his ‘ready-made’, the *Urinal*, the ‘original work’ has been rather a problematic category, as has the idea of an ontological difference between original and copy. Superflex’s projects merely represent the latest endeavours in this avant-garde tradition. Nonetheless, today, when Superflex want to exercise their artistic freedom to imitate they find themselves the target of a wave of ‘copyright fatwas’, as they call it. To the law there is no such thing as a ‘new original.’ This is because the conceptual framework of the law of copyright has adopted the dichotomy of the original and the copy, and regards it as an absolute distinction.

Original and copy, to be sure, have disparate denotations in aesthetics and in the law. Yet the structural construction of the dichotomy is the same. The binary logic of the dichotomy dictates that if something is not an original then it must be a copy, even if it happens to be a unique piece from an artist’s hand.

Modern copyright law could not exist without the polar opposition between the original and the copy. Yet it is essential to remember that this opposition originates from a particular Romantic ideology, and that the law of copyright was not born to serve or endorse this dichotomy. The fundamental dichotomy of copyright law until the end of the nineteenth century was that between authorized and unauthorized copies: everything was taken to be a copy; whether from nature or from art. No concept of the ‘original work’ existed in pre-modern copyright law; copyright merely subsisted in books, maps, engravings and so forth. And a copy was not the antithesis of an original; it was not the materialization of an immaterial work. A copy was a

sample of a book or a map or an engraving, which was either authorized or unauthorized. All the law of copyright stipulated was that it was illegal to make copies—in the sense of samples—without authorization. Infringement, accordingly, was strictly defined in terms of the various mechanical processes by which samples of a book or a map or an engraving were being made. It was accordingly illegal to, say, ‘reprint’ or ‘engrave’ without authorization. This is the quantitative criterion for copyright infringement which implies mechanical reproduction and multiplication of an entire work.

Current copyright law prescribes a qualitative criterion for copyright infringement. Copying is defined as ‘substantial taking’. Accordingly, infringement no longer requires either a mechanical method or the making of multiple copies – nor a motive of profit or commercial exploitation. In consequence, artists who make ‘new originals’ may be found to have breached copyright. And in the cases of Hirst, Warhol and Superflex, modern copyright law has brought us into a looking glass world. We have manufacturers of mass-produced articles suing serious artists: one-off originals are judged to have violated the copyright in plastic toys and pudding powder.

⁹ Edward Young, *Conjectures on Original Composition in a Letter to the Author of Sir Charles Grandison*. (Leeds: The Scholar Press Limited, 1966 (1759)), p. 11f.