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As told to Nic Annette Miller, 1921 words.

Tags: Art, Adversity, Business, Creative anxiety.



On copyright law, plagiarism, and the imagination

Visual artist Nic Annette Miller offers advice on dealing with plagiarism's effect on creativity and the imagination.

A subjective guide to copyright, plagiarism, and the imagination

Prelude

I am not a lawyer. I am an artist who carves images of wildlife creatures onto wood and builds environments around them. Mostly I keep to myself in a small studio in Brooklyn where I study different species and habitats while pondering my own. Recently, after coming across an exact duplicate of one of my pieces online, I momentarily lost interest in humanity. All the hard work put into obtaining an education, numerous hourly and financial investments, facing the obstacles of circumstances and monitoring self-doubt—it all didn't seem to matter anymore.

After seeking advice from friends and colleagues from a variety of creative fields, my curiosity for humankind returned. There were a range of opinions offered to me, some based on personal experiences of having work stolen as well, or from those admitting to copying others and defending the already paved path. I collected stories of all the money and time lost in legal battles, and discussed the concept of open-source imagery and the practice of "letting go." Plagiarism became a dynamic conversation starter that enabled me to learn more about fellow creators and their creative processes—including that of my copycat.

In conversing with others about the matter, I was repeatedly asked to think about my ideal outcome for this particular situation. I felt the right thing was for the copied piece to be removed from the copycat's online portfolio, and also an apology would be nice. If those things were to happen, then maybe we could go get a coffee to talk about it. I became genuinely interested in our respective experience using the copied work. What did the process make you think about? What did you learn and how did it make you feel? What type of dialogue did it bring? These types of questions could only really be answered by an ally, not an enemy. It was important to remember this was not a competition I signed up to be in, therefore, I didn't have to play it that way.

This guide promotes the importance of a peaceful approach to confrontation as well as the legal and moral complexities of this sensitive and ongoing topic: stealing from artists.

Copyright in black and white

Artistic theft has been a longstanding debate that will always be personal, principally challenging, and a hinder to the creative progress for all parties involved. Feelings aside, selling existing work and using it without authorization from its original owner is absolutely illegal no matter what the intent. In the United States Constitution, Article I and Section 8, it ensures:

*To promote the progress of science and useful arts, by securing for limited times to authors and inventors the exclusive right to their respective writings and discoveries."

Our forefathers' words developed into what we now call copyright law, which not only protects the expression of ideas but also encourages their discovery. As with all legal matters, for a copyright dispute to be settled, there needs to be proof. Documenting said ideas, in their different formulations and mediums, with the date of creation and publication is essential for establishing copyright. The more an idea is developed and executed with evidence to back it up, the better. As you create, it comes in handy to stay on top of your own archives in case there is ever the unfortunate case of someone or some company making substantially similar designs to the ones that came from your self-made hard work. Document the suspicious duplications before taking any action.

To really stay on top of it, have the government recognize your copyright by filing it in the system. Note that it takes a couple of months for the application to be reviewed and registered, but it's recommended you do this before sending a cease and desist letter to your plagiarist. It's not at all necessary to legally copyright your work, but it is suggested if you're concerned about protecting your livelihood. There are a lot of friendly lawyers out there who will offer advice pro bono up until there's a case.

The grey area of plagiarism

This Oscar Wilde phrase never gets old: "Imitation is the sincerest form of flattery." We are all stealing from each other, whether we're conscious of it or not. Taking what others have is a human survival trait. From recipes to outfits to full-on lifestyles, inspiration can be found everywhere. But when does this admiration go too far? Or rather, not far enough? Part of evolution is changing what already exists.

All artists pay close attention to what other artists are making and how they are doing it. There is little navigation in building a creative career other than artists sharing their experience through statements, apprenticeships, memoirs, etc. Thank goodness for art teachers and their collective guidance in this unpaved field. They teach us that it's widely beneficial to pay respect to, cite, or reference those who have developed and shared what you now know. Not only does properly attributing an idea's origin help the lineage of art history—the history of ideas—but it also opens the door to receive the same high regard in return.

We all have to start somewhere and it makes sense to trace those influences while studying a craft or technique from established work. It's important to get to know a medium not as a material, but as a tool for expression. There is a reason why a lot of art is abstract. Connecting to a craft opens something expressive that often has no words. Translating what only exists within you into shared physical space can be an enriching practice. Those who journal know this well. Ultimately, it's an experience that can never be taken away. Those who directly copy others completely miss out on this level of play that is focused and (most of all) imaginative.

The imagination as a prism

Humans are a uniquely fascinating animal, as we have a significant and special function in our brain: the imagination. Each of us has the ability to think in new dimensions and even alternate realities. Anything is possible within this headspace-images are produced or recreated, perspectives play different roles, dots are connected, joy is induced. Exercising the imagination in conjunction with reason and logic can lead to the best brainstorm sessions and lightning-bolt moments.

Children use their imaginations to develop critical thinking skills, and to learn about a world which they haven't fully experienced yet. Real world responsibilities, rejection, and "growing up" tend to get in the way of accessing this valuable part of cognition. Environmental rejection can reflect internal rejection, prohibiting the mind to wander where it once so freely did, allowing fear to take over as an excuse.

Spiritual leader, poet, and peace activist Thich Nhat Hanh shares in his book *The Art of Power*, "What comes from mindfulness, concentration, and insight is right, and what goes against mindfulness, concentration, and insight is wrong." Suffering is a block to anyone's creativity, and a block to your very own creativity can be devastating. The imagination is responsible for so many of our greatest inventions and ideologies. It really is amazing what can happen when we actually put our minds to it.

Viewing and making art is one example of this level of playful focus; a field of subconscious discoveries. Imagine how much more emotional and thought-provoking art there could be if there was time and space for each individual imagination to tinker around. Though the process of creating is a rich journey, it is ultimately time-consuming. Establishing a career from a copy deprives one of the process of placing value and meaning on their own labor-intensive efforts. It would be wise for creators of all kinds and levels to occasionally check in and ask, "Is this what I really want to be doing with my time? Is this the kind of art I want to be making?"

Shed light on dark mistakes

A plagiarism claim needs to be evaluated on a case-by-case basis. Some are eye-rollingly obvious, others an outright corporate crime. The end result, however, heavily relies on the approach of accusation. In *Emergent Strategy*, a book about shaping change and changing worlds, author Adrienne Maree Brown points out, "Often we are well down a path of public shaming and punishment before we have any facts about what's happening. [...] We make it less likely to find room for mediation and transformation."

Really there is only one judge who can make an almighty ruling of one's actions, and the sentence of inner guilt is a huge punishment. Shame and regret can also be barriers to the imagination. There should be more resolutions to nudge those off course back on track, particularly with cases of inspiration simply gone too far.

A mistake can be a painful lesson to hold on to. It could result in a constant attachment to the past, draining precious time and energy away from daydreaming and living in the now. Allowing space to forgive mistakes, in yourself and those around you, can improve quality of progressive thinking, and thus creativity.

In summary...

The small world of Instagram is how I found the copy of my work. Through the feed I could tell the person behind the account was kind and clearly talented. The theft wasn't directly personal. However, it was ignorant to the impact on my reputation and income as a living artist. Accessing my own imagination to narrow in on how to start a conversation meant playing with a level of paranoia that somehow I was the copycat. In a way this offered me insight on how I would like to be approached if I was carelessly causing harm. What kind of opportunity would I want if the roles were reversed? The chance to make things right is so rare these days.

I sent the following email:

Subject: Request to talk "Hi. We have a lot in common-[medium] and [subject matter]. I'm hopeful we can meet up for an open discussion and get to know each other."

Not knowing what the response would be in the eyes of someone equally wanting to protect their business and practice was nerve-racking. It was challenging to trust what I believed to be the right action. Relief came two hours after the email icebreaker, when the copied piece was voluntarily removed from their website and social media postings. They responded with a profusely apologetic confession and showed a character that was honest and responsible—qualities which did not go unnoticed. The explanation wasn't an excuse, but the acknowledgement was a valuable exchange.

My numerous hypotheticals as to how this could happen and how it could resolve concluded in a peaceful outcome. Per my request, we met up to discuss the different purpose and reaction produced from the same image, opening a whole other multiverse of fascination. On top of that, I got to know another creator and the course of their development. The practice of human kindness on both sides was a reminder of the meaning of the word "humankind" itself. Now I can go back in my studio where I'm expanding my curiosity for bees, and how their hard work and sense of community produce sweet results.

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
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