



- [Home](#)
- [Our Mission](#)
- [In Good Practice](#)
- [Podcasts](#)
- [Politics](#)
- [Supreme Court and Congress](#)
- [Technology Cases](#)

[Home](#) >> [In Good Practice](#) >> Questions of Artistic Originality Multiply In Copyright Disputes

Questions of Artistic Originality Multiply In Copyright Disputes

Posted by [LN Archive](#) in [In Good Practice](#), [SEO | Law Firm Legal News Center](#) | Comments Off on Questions of Artistic Originality Multiply In Copyright Disputes

By [Krystina Steffen](#), *staff writer* – October 20, 2011

Artists of every medium use some form of inspiration to create their works. From musicians, artists, dancers, writers, and the cast of characters that help them throughout a piece's evolution, an original piece of art finally emerges. But what happens when that art takes too much inspiration from another artist? Is it fair use, an homage, or outright copyright infringement?

Current disputes and lawsuits involve these questions about an artwork being truly transformative. Bob Dylan, Beyoncé, and a bevy of other art stars are under fire for creative works that could be found to be in violation of valid copyrights. Some people think that nothing can truly be original in our hyper-media society. It is as if, "Creativity has become synonymous with appropriation, while art has surprisingly bought into the academic belief in the death of originality," said Sergio Muñoz Sarmiento, an artist who also is an art lawyer. [1]

From this frame of reference, will the art world become one where it becomes as important to get licenses to use other people's work as it is to have paint and a few blank canvases? Many art fans, gallery owners and the artists themselves hardly look forward to this reality. Even further, will gallery owners and creative managers have to run pieces through Google Images before releasing a person's work to check authenticity? As Google Images allows anyone to drag and drop an image, the user could see if pieces of a creative work were used before. [2] Before spending even more money to promote a piece of art, music video, or other creative work, the user could determine if the piece is truly original or at least transformative enough.

Artists from all mediums and statures have a right to fiercely protect their works. Thus it comes as no surprise that the artists who are displeased by what has been done to them by more famous artists can make headlines and courtroom appearances. Bob Dylan has a current exhibition at Gagosian Gallery in New York City titled "The Asia Series". His paintings depict his travels throughout Asia. But it has surfaced that at least five depict scenes from photographs lifted from Flickr user Okinawa Soba's Asia photos. [3] Other paintings are direct

copies of classic images from Henri Cartier-Bresson, Leon Busy, Dmitri Kessel, Bruce Gilden, James Ricalton, Magnum Photos, and Life magazine archives. [4]

While some of these classic images and photos do have copyrights, others are in the public domain. So while some copyright laws may not be broken, others have been compromised. What is even more amazing is that neither the Gagosian Gallery nor Bob Dylan made patrons and art investors aware of this. The more apt description of the show involves Dylan's travels through online image archives and historical references of Asia, with a dash of actual inspiration from his time in Asia. Gagosian is already under scrutiny after it lost in the *Cariou v. Prince* copyright lawsuit. [5] In that case, the judge ruled that Richard Prince did not transform photos he used of Patrick Cariou's in Prince's Gagosian exhibit "Canal Zone". Some of the artwork in question sold for millions of dollars. In an ironic twist, Prince wrote the content for Dylan's "The Asia Series" catalogue. [6] Gagosian could learn a lot from Google Images beforehand along with good legal counsel before backing an artist's exhibit.

In copyright infringement lawsuits it all comes down to how the four factors of fair use are assessed. First, the character and purpose of the use of the creative work in question is examined. Then, the nature of the copyrighted piece and the amount used in the new piece in comparison to the copyrighted work in total is examined. And the last big factor is how the new work could affect the market for the copyrighted work. When new pieces sell for millions and generate even more success for the new work rather than what the copyrighted work deserves, it can make for a very interesting courtroom battle.

Photos, art, and literary works are not the only creative works that are disputed. Belgian choreographer Anne Teresa De Keersmaecker alleges that Beyoncé stole her dance moves to make the music video "Countdown" more interesting and, of course, sell her music. Choreography can be copyrighted when it appears in a fixed medium. De Keersmaecker says that Beyoncé took moves from two of her films "Rosas danst Rosas" and "Achterland". [7]

Beyoncé has said that she was inspired for this music video by, "...the '60s, the '70s, Brigitte Bardot, Andy Warhol, Twiggy and Diana Ross. I've always been fascinated by the way contemporary art uses different elements and references to produce something unique." [8] Even though she has also said that she was enamored of the Belgian choreographer's work and used it in "Countdown", many court watchers say Beyoncé and her managers will attest that she had transformed enough of De Keersmaecker's moves to make it a new work and has not hurt its market value. [9]

Artists from all backgrounds should take these matters to heart and look inward before committing to a piece that cannot stand on its own. Just because someone is an artist does not automatically make them original and allowed to be coddled by the art world. Nor does it make them immune from intellectual property laws and allow them to be lazy about their depiction of a subject. In a recent case that shot down a graffiti artist's claim of fair use, California federal judge Dean Pregerson said that, "To permit one artist the right to use without consequence the original creative and copyrighted work of another artist simply because that artist wished to create an alternative work would eviscerate any protection by the Copyright Act. Without such protection, artists would lack the ability to control the reproduction and public display of their work and, by extension, to justly benefit from their original creative work." [10]

To prevent artistic déjà vu and creative piracy from happening, the creative industries must take extra steps to be original or by all means transform a piece in new and dynamic ways. Attribution, collaboration, and even licensing can go a long way to avoiding litigation. And all these things can make for really interesting creative works that even the original auteur could appreciate as an homage. As Patrick Cariou said after he won the lawsuit against Richard Prince, "I don't think artists should be offered a different standard from anyone else. When you're 12 years old your parents tell you 'Don't steal the candy,' and we all try to apply that rule, and if you don't people sometimes end up in jail. I'm interested in Warhol's use of the Campbell soup can and Rauschenberg using readymade things — that I'm okay with. If it's to steal photographs or paintings to create something, you shouldn't be an artist in the first place." [11]

Sources

- [1] http://clancco.com/wp/2011/03/fair-use_appropriation/
- [2] <http://www.google.com/imghp?hl=en&tab=ii>
- [3] <http://www.artinfo.com/news/story/38716/did-bob-dylan-rip-off-classic-photos-for-his-gagosian-show-see-the-evidence-that-he-did/>
- [4] <http://www.artinfo.com/news/photos/3483/33924/>
- [5] <http://www.seolawfirm.com/2011/04/creativity-ownership-rights-and-greed-collide-in-art-law-cases/>
- [6] <http://www.artinfo.com/news/story/38716/did-bob-dylan-rip-off-classic-photos-for-his-gagosian-show-see-the-evidence/?page=2>
- [7] <http://www.hollywoodreporter.com/thr-esq/why-an-allegation-beyonc-plagiarized-248208>
- [8] Id.
- [9] <http://www.independent.co.uk/news/people/news/video-beyonce-admits-copying-dance-2369849.html>
- [10] <http://www.hollywoodreporter.com/thr-esq/artist-at-center-oscar-nominated-195544>
- [11] http://www.huffingtonpost.com/artinfo/french-photographer-patri_b_839619.html

The SEO | Law Firm™ News Center extends editorial freedom to their staff writers; thus the views expressed in this column may not reflect the views of SEO | Law Firm™, Adviatech Corp., or any of its holdings, affiliates, or advertisers.

Archives