Helping Artists and Art Students with Their Copyright Needs

Don Taylor – Simon Fraser University
René Martin – Alberta College of Art + Design
Devon Cooke – DocumentarySoundGuy.ca
Highlights

- Appropriation Art: what is it and why is it a problem?
- Don’t just take our word for it: highlights from the field
- Copyright Act exceptions that might help
- Compliance for proud rule breakers (aka risk)
One of the most common copyright controversies that arises in an artistic setting is around Appropriation Art.
Appropriation in art and art history refers to the practice of artists using pre-existing objects or images in their art with little transformation of the original.

- Tate
Not an uncommon practice – moves from re-situating “found” objects...
...to creating works that strive to create new meanings or sets of meanings, for a familiar image:

- WARHOL, ANDY. COLORED CAMPBELL'S SOUP CAN. 1966; 20TH CENTURY

Appropriation Art moves through a range that we might describe as the good, the bad and the ugly.

But, as in all critiques of art, the placement of works within these terms are subjective.

Here, we define them with respect to infringement.
Evans shoots depression-era photographs while on assignment.

Levine photographs reproductions of Evans’ photographs for “After Walker Evans”

Mandiberg scans Levine’s photographs for AfterWalkerEvans.com
The bad?

The ugly

John sees the painting.

“I could paint that,” says John.

“But you didn’t,” says Mummy.
The ugly

For grown-ups only. Ladybird. From Anderson, Victoria. 2015.
Appropriation
Art at ACAD

alyssahsadie. "House Fire." DeviantArt,
alyssahsadie.deviantart.com/art/House-Fire-52057772.
Appropriation

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@ComedyClub4Kids, “These are the 12 headshots we’ve identified (so far).” Twitter, 28 Nov. 2017, 5:22 a.m., https://twitter.com/ComedyClub4Kids/status/935499754964598784.
“When I received some torn out pages from a handout flyer with these faces, my impression was they were already out in the public domain. Therefore, I thought they could be collaged as backgrounds to be further interrupted with text elements for the 4th Street community art-site concept.”
So what do we do?

How do you navigate through the various issues that arise through artistic works?
Trying to help the artist

- Applying fair dealing to appropriation art and other re-uses of copyrighted works in a new art work.
- User Generated Content
- Risk
Trying to help the artist

- Appropriating film clips for a new video work.
- Digital collage.
- Appropriating photographs and documents into new works.
Fair Dealing?

- Not always reproducing work for a fair dealing purpose.
- Confusion between fair dealing and fair use (transformative use).
- Collage

Non-commercial User Generated Content?

- Individual applicability and non-commercial in nature.
- Works well for students – both in assignments and exhibitions.
- Not good for faculty due to commercial nature of their exhibitions.
Insubstantial?

- Use the five considerations listed in Federal Court’s Warman v. Fournier (2012 FC 803) decision.
  - quality and quantity of the material taken
  - does use adversely affect creator's copyright?
  - is the material protected by copyright?
  - is material used to save time and effort?
  - is material used in the same way as the original?

- Also utilize May 2015 Copyright Board ruling.
- Can be effective when an innocuous film still, or other similar type of work is to be reproduced in an art work.
Insubstantial?

True Grit

Trainspotting
Risk and industry norms (rule breakers)

- Appropriation has been going on since the 1960’s (Lichtenstein, Warhol) and continues today with many artists (Levine, Prince).
- Re-use of works in new art works goes back over 100 years (Picasso, Duchampe).
- Appropriation and remixing has become standard practice in contemporary western art.

Risk and industry norms

- Is appropriation a “custom” or “practice” as referred to in CCH?
- “It may be relevant to consider the custom or practice in a particular trade or industry to determine whether or not the character of the dealing is fair.” CCH. Para 55.
- Do we need to take contemporary art practices into account when providing copyright guidance on using copyrighted works in new works?
• Risk analysis.
• “What you wish to do is copyright infringement, but.....”
• What is the artist’s tolerance for risk?
• How would they feel about their work being appropriated?

Jay Senetchko. _The Best of Life_. Burrard Art Foundation exhibit, 2015. ( Appropriated images from LIFE Magazine.)
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Elia, Miriam. We Go to the Gallery. Dung Beetle, 2015.


