

## Rethinking Copyrights: The Effect of Imitation on Cultural Creativity and Diversity

Jimmyn Parc

Seoul National University & Sciences Po Paris

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The *Gran Madre di Dio* or Great Mother of God in Turin, Italy is a neoclassic-style church that was inaugurated in 1834 to commemorate the return of the King Victor Emmanuel I of Sardinia to the throne after the defeat of Napoleon. This church features a dome as can be seen in Figure 1. On the inner part of the dome, many rosettes were engraved in stone which can be easily viewed from inside the church. Each rosette is different from one another (see the right image in Figure 1). Most tour guides as well as local Turinians will explain that each of them has been crafted differently on purpose for ornamental reasons. Knowing that carving the same object on stone was much harder in the past, it would be more rational to assume that the dissimilarity of each rosette was due to a lack of technology, rather than a process of ornamentalization.



Notes: Gran Madre di Dio (left top); cross section diagram (left down); dome (right).

Sources: Tripadvisor (left top); Museo Torino (left bottom); Vanupied, Photo by Gianni Caeddu (right).

**Figure 1. Rosettes under Dome (*Gran Madre di Dio*, Turin, Italy)**

In fact, this way of ornament decoration where each item is unique and different can be found in other places across Europe as well as in Asia. For example, often thousands of small Buddha

statues carved in stone or wood are usually found in the small rooms of Buddhist temples in East and Southeast Asian countries. In order to emphasize the process of dissimilarity, people there also explain that the statues were carefully crafted to be different with ornamental reasons. However, this kind of explanation should be examined carefully. It is not that long ago that we were able to produce identical products *en mass*; a good example is the Model T produced by Ford Motor company in 1908. The mass-production of identical products was only possible due to advancement of measurement. It is noteworthy that the current metric system widely used around the world was only introduced in the eighteenth century and diffused widely in nineteenth century. In this context, it can be easily assumed that copying or producing replicas would have been more appreciated in the past.

The appreciation of copying in the present age is very much different from the precedent time. The case of when the Korean music group BTS or Bangtan Boys appeared on a show explicitly reveals the typical attitude of “artists” regarding even a copying-like practice.<sup>1</sup> The following is the transcript of the most interesting part of conversation that was shared between RM or Rap Monster, a rapper in BTS and a Korean hip-hop MC called B-free during a Korean show entitled “Bong-hyun Kim’s Hip-hop live show” in 2013.<sup>2</sup> The conversation clearly demonstrates how the practice of copying is considered nowadays; it is a bad practice and immoral. Furthermore, it is regarded as not respecting other artists.

*B-Free: You know the Kanye West song? It's called Black Skinhead. A friend of mine told me that someone made a song exactly like it. I looked it up. It was the same beat and you were rapping the same way. How did that happen? I was so mad at that time. So I swore.*

*[...]*

*RM: The video was supposed to be a concept trailer. So, we weren't really trying to show our rap. [...] So, with the purpose of using it for our concept. We just wanted to show our dance. If we cleared the copyrights, I know it would have been less problematic and you wouldn't need to tell us this. I know that, but we couldn't use it.*

*B-Free: Do you like Kanye West?*

*RM: Yes, I like him.*

*B-Free: If he's an artist you respect so much, then why use the same MR [music recorded], acting like it's your own song? Uploading it to YouTube, rapping in that music video thing, and making the same kind of stage that Kanye West did. If you copy exactly like that, that's disrespectful to the artist you like in my opinion.*

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<sup>1</sup> BTS debuted in June 2013 in Korea. This Korean boy band won the 2017 Billboard award for Top Social Artist beating Justin Bieber, Selena Gomez, and other well-known American pop artists (BBC News, 2017). They were invited to the American Music Award and other well-known American TV programs such as “Ellen DeGeneres shows,” “Jimmy Kimmel Live!,” and “The Late Late Show With James Corden”. In addition, BTS even performed on “Dick Clark’s New Year’s Rockin’ Eve,” which is a famous annual event in the United States;

<sup>2</sup> MC: Master of Ceremonies; this term is often used as a term of distinction, referring to a hip hop musician with good performance skills such as lyrical ability and rapping technique; the episode can be found from YouTube, see Abi Abroad (2013).

*RM: If you feel that way, I believe you can feel that way. But I don't understand what you mean when you say the stage or performance is the same or alike. We only dance in that performance.*

*B-Free: Then who is the one that raps?*

*RM: That was me, as exactly how Kanye West did it.*

*Moderator: Let's end this talk right here.*

In fact, copying and its current notion are very much related to copyrights in modern society as RM hinted above. In order to understand better copyrights, it is important to consider the fundamental purpose of copyrights as reflected in the mandates of key international institutions. The World Intellectual Property Organization (WIPO) focuses on protecting (i) the economic rights which allow the owners to derive financial rewards from the use of his/her works by others and (ii) the moral rights which protect the non-economic interests of the author (WIPO 2017). At the same time, the United Nations Educational, Scientific and Cultural Organization (UNESCO) is more interested in enhancing cultural creativity and diversity for society (UNESCO 2017). In other words, copying is considered immoral because it hinders cultural creativity and diversity.

The current copyrights regime has evolved further toward a judicial direction. However, the principal purpose of copyrights is as mentioned above, mainly economic and moral issues. These two have very distinguishable characteristics. Hence, this chapter focuses on the moral issue of copyrights. More precisely, it explores whether copying hinders cultural diversity and/or creativity. For this kind of examination, it would be more credible and persuasive to argue with the factual account of events. In this regard, this chapter presents several historical cases to find answers to the question above. Surprisingly, the answer to this question is that copying does not limit cultural diversity and creativity.

### **1. Copying in Cult: The Ancient Christian Art**

In contrast to today, copying an object in the past was not an easy task. With limited technology, it was difficult to copy large-sized works on walls such as murals or frescos in massive cathedrals. Therefore, we need to have a different standard to identify copying and understand it in another way. With a refreshed view, we can find several interesting points from the following religious works, especially works that portray the crucifixion of Jesus Christ (see Figure 2). The works were done during the medieval period or before in Europe. The style of each work may be different from one another following the trends of the time. However, there is one similarity; the direction of Jesus' head pointing down to the right.



Source: Wallraf das Museum.

**Figure 2. The Head Direction of Jesus on Crucifixion**

Many modern works that depict the crucifixion vary in which direction Jesus's head faces; right, left, middle, and sometimes even up to the sky. However, most works done before and during the medieval period portrayed the same direction of Jesus's head, down to right. In contrast to the direction of the head, the background of each piece is different. Therefore, we can guess that most artists pursued or copied the direction of head because there was an important religious or other meaning (Boespflug 2008). Curiously enough, there is no single part in the bible that mentions about the direction of Jesus's head. Finding the reason is beyond the scope of this chapter. Nevertheless, there is a strong argument that right direction is considered to be "right" as the idea of right and left, and right and wrong, which can be easily found in other older civilizations (Roth 2009, McManus 2013).



This connotation of direction can also be found in the works that describe the way that Mary is holding Baby Jesus (see Figure 3). Like the direction of Jesus's head, the relatively modern works vary in the depiction of Mary and Jesus; Jesus can be in the middle or even on the left side. However, most works that appeared before and during the medieval period put Mary on the right side while Baby Jesus is on the left side. Of course, the bible does not mention anything about the direction. It can simply be human nature to hold a baby close to heart, but many scholars have argued that this was influenced from ancient Egypt such as the statues of Isis holding Horus (Werner 1972). Regardless of the origin, it can be easily assumed that the position has a ritual or religious meanings. Hence, artists copied the composition of the two figures.



Notes: Enthroned Madonna with the Christ Child (left); Mary with the Child (middle); Our Mother of Perpetual Help (right).

Sources: Wallraf das Museum (left and middle); Church of St. Alphonsus Liguori, Rome, Italy (right)

**Figure 3. The Positions of Mary and Baby Jesus**

Some would argue that the level of copying among the works examined above are not the same as in the modern age when Company S copies the design of a smartphone from Company A. The similarity among the works shown previously is only the position of a certain figure rather than the entire composition. This is true, but under the current copyright law, this type of copying can be considered as a violation of intellectual property rights, such as copyrights.

Regardless of the similarity – which can be interpreted as copying in some sense a long time ago, it did not hinder the cultural diversity and creativity of religious works before and during the medieval period. It is noteworthy to point out that these works were considered as cult objects and were not really conceived of as artworks. Later, the religious and spiritual values were replaced by artistic values in the modern sense associated with people and space in a lifelike way (Sonntag and Blühm 2016: 22-23).

## **2. Copying in Emulation: The Genre Art of the Netherlands**

Art exists to satisfy its consumers. During the medieval period, the Catholic Church was the one who supported artists; the Church was in fact a consumer who provides investment for artist to produce cultural goods. Therefore, countless works produced have themes related to the bible or religious stories. This trend has significantly changed as royal families or aristocrats began to support artists. As the patrons, in other words consumers, of arts altered, the theme of art also changed; from biblical images to portraits of family members of royalty and aristocrats. This trend has further changed as the range of consumers had expanded even to the bourgeoisie and the middle class (Sonntag and Blühm 2016; Waibor 2017).

In order to meet this expansion of consumer markets, more works were needed thus more artists emerged. For example, in the seventeenth century the number of artists was more than that of bankers to the extent that some paid their bills with their art works (Sonntag and Blühm 2016: 172-173). One interesting point is that Dutch artists never considered themselves as “artists,” but rather as craftsmen during this period. Within this context, genre art emerged. The pictorial representation of genre art depicts interiors, parties, street scenes, and still life (Armenini 1977), which is more realistic than the religious works of the precedent period. Figure 4 shows several but typical genre art pieces. Two different series of works are shown; one is about a woman writing a letter and the other is about a couple.



Gerard Ter Borch (1655-1656)



Gabriel Metsu (1662-1664)



Johannes Vermeer (1665-1667)



Gerard Ter Borch (1658-1659)



Frans van Mieris (1661)



Jacob Ochtervelt (1664-1665)

Source: Somogy and Louvre (2017).

#### Figure 4. Selected Paintings of Genre Art

When the three works from each series are compared, a striking similarity can be found although they were painted by different artists from around the similar period. Regardless of the details of each piece, the posture of the figure(s) is very similar. Furthermore, some pieces were painted with similar colors, either yellowish or ruddy. Under the current copyright law, this case would be considered as a violation. In this respect, why then did they paint in a similar style? There are two main reasons; by doing so (1) they can highlight their identification with the same school and (2) artists in the same school are in competition which brings about learning and improvement (Sluijter 2017, Waibor 2017). Artists learned from their peers and tried to show that they can paint the same object better than their peers at the same time though “dissimilar similarity” (Sluijter 2017). As a result, genre art flourished during the seventeenth

and early eighteenth centuries and influenced future form such as realism and post-impressionism (Fuchs 1978). In short, copying in this case again did not hurt cultural diversity and creativity.

### 3. Copying for Learning and Inspiration: Vincent Van Gogh vs. Jean-François Millet

Some would argue that this copying practice only happened among a few schools or groups of artists who are not that well-known. In this section, one of the most well-known painters is presented and their works are compared, Vincent Van Gogh and Jean-Francois Millet. Van Gogh is regarded as one of the greatest artists and his paintings are some of the world's most expensive, although while he was alive he only sold one piece. Figure 5 presents ten works by Van Gogh and ten works by Millet. One can easily see how similar these ten pieces by Van Gogh are to Millet's work when compared together. Several pieces such as *The Gleaners*, located on the left of the last low, show a difference in terms of the number of people evident or the presentation or image with similar titles, *Starry Night over the Rhone* by Van Gogh and *Starry Night* by Millet which is located on the right of the last low.







Sources: various (please refer to references).

**Figure 5. Vincent Van Gogh vs. Jean-François Millet**

After his death, Vincent Van Gogh left behind around 870 pieces of work. Among them around 520 pieces are in fact copies of other painters such as Delacroix, Rembrant, Doré, and Millet, for which he copied from the most (Schwartz 1996: 248). Interestingly, Van Gogh and Millet were not in the same school nor did they ever meet during their lives. In the bundle of

exchanged letters with his brother Theo, Vincent confessed many times that by copying Millet's works he learned painting techniques, perception of light, usage of colors and other skills. For Vincent, copying Millet's works allowed him to enhance his artistry which indeed helped contribute to cultural creativity and diversity, as other artists do (Nagahiro and Singleton 2014).

There is a prevailing view among cultural industries today that a copied work would hurt the original, resulting in a negative effect on cultural diversity and creativity in the end. However, Millet's fame quickly declined because (1) as Napoleon III pushed industrialization, Millet's works were treated as old fashion by society and (2) he painted poor farmers and miserable rural life when people during that period preferred to see paintings with a more romantic vision (Sensier *et al.* 2007). As a result, most artists did not pay much attention to him. In other words, artists did not copy his works or did not mention Millet's works as references, except for Vincent Van Gogh. This may explain why Van Gogh had a hard time to be recognized as a good painter and sold only one piece during his time.<sup>3</sup>

Under the current copyright regime, works are protected for 70 years after the death of the author or copyright holder (*post mortem auctoris* or pma). In other words, copying a work that is over 70 years pma is not considered as a violation. Obviously, as shown in Figure 5, the difference in the production year is much less than 70 years. Therefore, most of Van Gogh's pieces would be a violation under the current copyright law. Still, some may argue that these pieces by Van Gogh were intended to be only studies. While that might be true of the time they were produced, today both of them are exhibited in museums and auctioned for large sums of money. Furthermore, this fact does not hurt Millet's work or his reputation. Interestingly, Van Gogh's imitated pieces are usually more valuable than the originals.

It is noteworthy to mention what Theo wrote to Vincent; "The copies after Millet are perhaps the best things you have done yet, and induce me to believe that on the day you turn to painting compositions of figures, we may look forward to great surprises" (Van Gogh 2000[1896] 569).

#### 4. Copying the Copied: Pablo Picasso and Others

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<sup>3</sup> While he was alive he only sold one piece, *The Red Vineyard near Arles*, for 400 Belgian francs in 1890 (roughly equivalent to six to eight month wages of a domestic servant) or about 1,200 U.S. dollars at the current exchange rate. Today it is valued at more than 722 million U.S. dollars (Parc 2015).

Copying practices in culture can be found among the works of even recent painters. Another famous painter Pablo Picasso is at the core of this practice. In this section, four pieces by Picasso is shown and the original pieces that Picasso copied are on the right side. Compared to what Van Gogh had done, Picasso's works can be viewed as a different interpretation of or inspired versions of existing works (see Figures 6 and 7). However, the originals that Picasso copied or benchmarked are in the public domain (see Figure 6).<sup>4</sup> Therefore, these two works presented in Figure 6 are free from the copyright violation.



Pablo Picasso (1957)



Diego Vélasquez (1656)



Pablo Picasso (1962)



Jacques-Louis David (1796-1799)

Sources: various (please refer to references).

### Figure 6. Pablo Picasso vs. Others

However, the next two pieces presented in Figure 7 stimulates an interesting debate on the issue. The first piece of Picasso seems to copy a work by Manet in terms of composition. When the

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<sup>4</sup> Public domain is the period beginning after the expiration of the copyright where any firm or individual can disseminate formerly copyrighted works without paying copyright-based earnings to the authors.



two pieces are compared, because Manet's work is less than 70 years pma; Édouard Manet passed away in 1883 and his work would only be in the public domain after 1953. Hence, according to the current copyright law, Picasso's 1951 work would have violated the law. However, Manet's works also seems to copy de Goya's work which was produced in 1814. When Manet's and de Goya's works are compared, Manet's work would not have been free from violation of the law. If these three artists are in a case together, Picasso would argue that he did not copy Manet's work, but de Goya's work. Hence, the court would reach a verdict that Picasso is not guilty because his work is produced 70 years pma after de Goya's work.



Pablo Picasso (1951)



Édouard Manet (1868-1869)



Francisco Jose de Goya (1814)



Pablo Picasso (1960a)



Claude Monet (1865-1866)



Édouard Manet (1862-1863)

Sources: various (please refer to references).

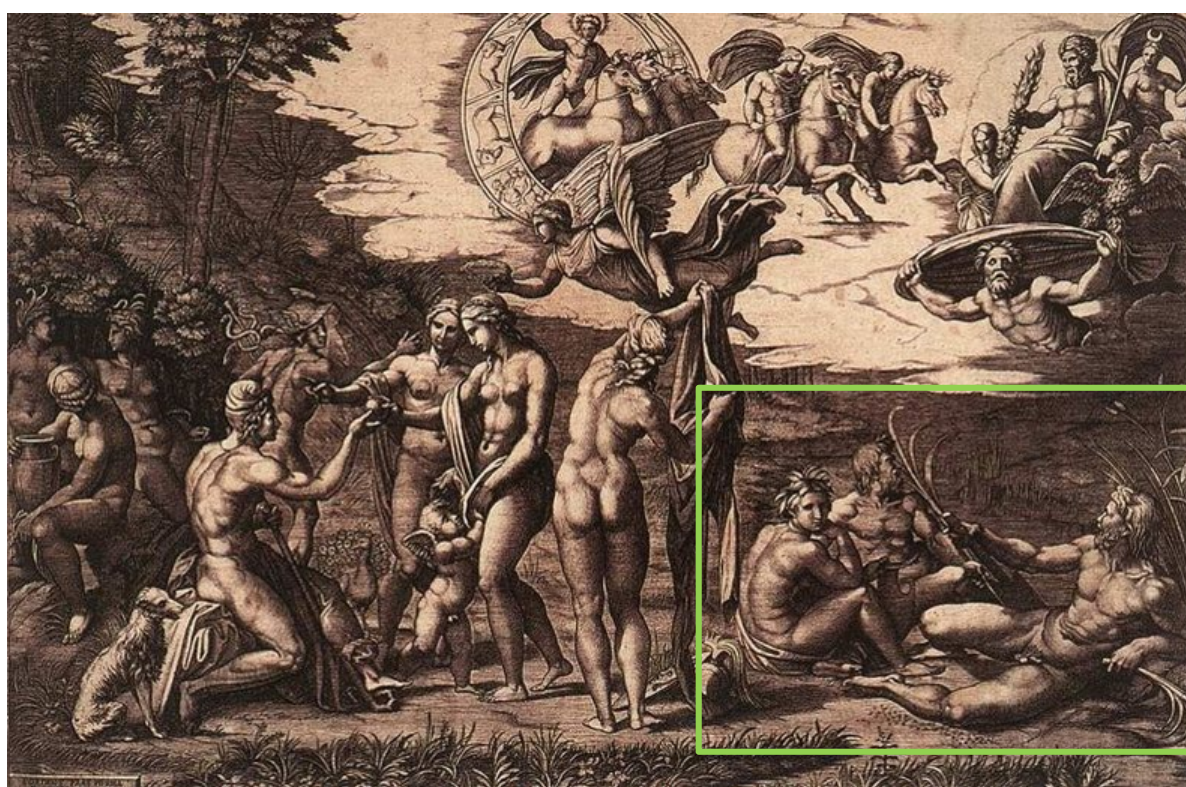
### Figure 7. Copying and Copied: Pablo Picasso and Others

This similar case can be shown with the other work of Picasso, *The Luncheon on the Grass* (last low in Figure 7). If Picasso argues that he copied Manet's work which is produced in 1863 not Monet's work of 1866, he would be free from copyright violation. In fact, the widely-known official title of Picasso's work is *The Luncheon on the Grass (after Manet)*. The more interesting point is that the production year of Monet and Manet's works differs by only two years, but Manet died in 1883 whereas Monet died in 1926. This means that if Manet had lived as long as Monet did, Picasso's work would be considered as a violation. So, in this case, the violation depends on the death day of the artist. If we recall the fact that copyrights insist artists



do not copy each other's work in order to respect cultural creativity and diversity, then this argument does not make any sense with the Picasso-Monet-Manet-de Goya case. How can it be argued that copying past works which are more than 70 years pma (due to the early production year or the author's early death) does not harm cultural diversity and creativity, but doing so with works that are less than 70 years pma does harm cultural diversity and creativity?

Another interesting point can be found in Figure 7. *Judgement of Paris* was produced in the early sixteenth century. Initially, this piece is very different from the works of Picasso, Monet, and Manet entitled *The Luncheon on the Grass*. However, if we pay more attention to each corner of this work, we can see that Manet's work copies a scene from the right bottom corner of the old piece. Thus, all three artists, Picasso, Monet and Manet can be considered to have copied from the same work and "interpreted" it in their own way. Based on all of these facts, it is hard to argue that copying hinders cultural diversity and creativity.



Marcantonio Raimondi (1510-1520)

Sources: Metro Politian Museum of Art.

**Figure 7. The Original: *Judgement of Paris***

## 5. Discussion

In this respect, why did so many artists in the past copy existing works? What is the purpose behind this? In fact, this kind of practice can be found often in the history of art; artists even collect images from existing works to make a “bank of images” which can be used for their own works (Sluijter 2017), although this tends to be viewed negatively in our time given the context of copyrights. There are several reasons why. First, people copied objects with admiration. Sometimes it has a meaning of veneration or religion, like cult objects in the Catholic Church. Therefore, the same style should be maintained, such as the direction of Jesus on crucifixion or the position of Mother Mary and the Child Jesus.

As these works became more popularized, artists then try to produce the same object but with more ambition, reaching the same style or technique used in respected work. Or sometimes with their peers, they try to show that they are doing better than other peers as shown with artists in the seventeenth century. Through this process many artists learn new techniques and enhance them; sometimes even inspiration for further development as Vincent Van Gogh confessed many times in his exchanged letters. In brief, it is only in recent years that this practice of copying has come to be viewed as immoral. Furthermore, we appreciate different and unique things since we are in the era of mass production since the dawn of the twentieth century.

One interesting point that we should not miss is the fact that Van Gogh almost imitated Millet's work when his copies were compared with what genre artists did for their peers. Intriguingly, this is more related to technological advancements, like the rosette under Dome in *the Gran Madre di Dio*. Van Gogh could do it because he had Millet's works in his hand and was able to copy as much as he could. Before the Van Gogh period, paper was expensive and only limited number of people could afford it. It was only around the 1840s that Friedrich Gottlob Keller and Charles Fenerty invented the wood pull process for papermaking (Burger 2007). This reduced the price of paper significantly and after this technological advancement many people were able to use it more readily.

With the popularization of paper and etching techniques, many existing paintings were copied and printed out on paper. In some of his letters exchanged with Theo who was working for a gallery in Montmartre in Paris, Vincent Van Gough asked him to send copies of specific works



by Millet. Once he was in possession of the works, Vincent was able to freely copy Millet as much as he wants. Furthermore, in the 1830s, Winsor & Newton, Ltd. began to produce paints, both industrialized oil and water color, and standardized brushes (Barnett, Miller, and Pearce 2006). Compared to precedent times where each artist had to make their own color and colorant, the newly produced standardized paints and brushes facilitated artists to produce works that are more original-like.

It is evident that as society enters the mass-production oriented era, people tended to appreciate more different and unique items. This is why Picasso produced many “inspired” works that can be considered as different interpretations of existing works. In fact, Picasso produced many different versions of *The Luncheon on the Grass* after Manet's one. The initial version is relatively similar to Manet's original, but as he produces many different versions he begins to develop his own style which is different from his earlier version (see Figure 8). The last version would be considered as more of an inspired work. The evolution of Picasso's works shows explicitly that copying does not hinder cultural diversity and creativity, but rather helps it.



1960a



1960b



1961



1962

**Figure 8. The Evolution of *The Luncheon on the Grass* (by Picasso)**

**Conclusion**

In this era of digitization, the sharing of cultural contents through online intermediaries such as YouTube has increased steadily. In response, there have been a number of concerned voices pushing for copyrights to be tightened further in order to protect cultural creativity and diversity. In particular, international organizations such as the WIPO and UNESCO as well as some countries like the United States, have emphasized the need to respect copyright laws in relation to economic and moral rights. Economic rights allow the rights-owner to derive financial rewards from the use of his or her works by others, while moral rights protect the non-economic interests of the author. Broadly, these copyright laws seek to establish two objectives. Firstly, by imposing restrictions on copying, authors must differentiate their work from others which helps to secure greater diversity. Secondly, having done this, authors will achieve a more stable financial backing and thus work toward exercising more creativity.

In reality though, this has not always been the case. Although copying is often considered as a negative practice in our time, throughout history it has often been perceived more positively. This chapter focuses on the true role of copying to reveal the relationship between copying, and cultural creativity and diversity. Throughout history the perception of imitation has drastically changed from admiration, ambition, inspiration to immorality. By looking at the early Christian art work, genre art from the Netherlands in seventeenth century, and famous painters such as Vincent Van Gogh and Pablo Picasso, a new perspective on copying is presented in this chapter. This chapter argues that contrary to current beliefs, imitation does not restrict cultural creativity or diversity. Furthermore, by comparing the aforementioned artists and their works, it is argued that the notion of copyright duration is too arbitrary.

The findings of this chapter together with the historical evidence demonstrates that the current copyright laws may be too limited and are narrowly focused on our time, rather than approaching cultural diversity and creativity as a whole with a historical perspective. When a cultural trend is prosperity, it can have a significant impact on culture and be recognized as part of it in history. Instead, the current copyrights law sees culture myopically rather than hypermetropically and protects only first-movers – but are they really the first?, eliminating challenges from late-movers. In order to foster the dynamics of cultural diversity and creativity,



copying and its practice within the copyrights regime should be carefully reconsidered. More importantly, the current copyrights regime may be more about earnings, rather than cultural creativity or diversity and this point should be carefully assessed.

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