

Creative Economy

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Creative Context

Creativity and Innovation in the Media
and Cultural Industries

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Chapter 9

Rethinking Copyrights: The Impact of Copying on Cultural Creativity and Diversity



Jimmyn Parc

Abstract There have been a number of voices calling for the implementation of a tighter copyrights regime in this era of digitization that will help deter the copying of established works. Such an approach though is counterproductive. Although imitation is often considered as a negative practice in our time, throughout history it has been perceived very differently. This chapter focuses on the true role of imitation and reveals the real nature of the relationship between copying, creativity, and diversity. It argues that contrary to prevailing beliefs, imitation and copying do not restrict cultural creativity or diversity but in fact support them further. The findings of this chapter suggest that imitation within the copyrights regime should be carefully reconsidered and that maybe the core issue is about earnings, rather than cultural creativity or diversity.

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 King Victor Emmanuel I of Sardinia to the throne after the defeat of Napoleon. One of the main features of this church is its dome, which on the inside has many rosettes engraved in the stone (see Fig. 9.1). Notable is the fact that the shape of each rosette is different from one another (see the right image in Fig. 9.1). In fact, most tour guides as well as local Turinians will claim that each one was crafted differently for ornamental reasons. This though raises an interesting but curious question on what would have been easier at the time: mass producing the same shape or crafting different shapes one by one? Given the challenges at the time in carving the same shape on stone, it would be more rational to assume that the dissimilarity of each rosette was more than likely due to a lack of technology for mass production, rather than a process of ornamentalization.

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 found in small rooms

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Fig. 9.1 Rosettes under the dome (*Gran Madre di Dio*, Turin, Italy). *Notes* Exterior of *Gran Madre di Dio* (left top); cross section diagram (left down); dome (right). *Sources* Tripadvisor (left top); Museo Torino (left down); Vanupied, Photo by Gianni Caeddu (right)

of Buddhist temples across Asia. In order to emphasize the process of dissimilarity, people there too explain that the statues were carefully crafted to be different for ornamental and/or religious reasons. However, such an explanation should be carefully considered. 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 the advancements of measurement and technology. 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. With this accurate measurement of objects, technology was able to advance further. In this context, it can be easily assumed that copying or producing replicas would have been more difficult and thus appreciated more in the past.

It has only been in recent times that we have begun to highlight the importance of innovation which is often advocated as a contrary concept to copying and imitation. A good example is the lawsuits between Apple Inc. (hereafter Apple) and Samsung Electronics Co., Ltd. (hereafter Samsung) in 2012 because Samsung allegedly copied the design of smartphones and tablet PCs from Apple. Addressing this dispute, Peter Bressler, a former president of the *Industrial Designers Society* and the founder and board chair of product design firm Bresslergroup, explained that “my opinion (is) that there are a number of Samsung phones and two Samsung tablets that are substantially the same as the design in those (Apple) patents.” In addition, he suggested that consumers could confuse one of Samsung’s devices with Apple’s (Lowensohn 2012). Following the legal proceedings, Apple was ranked as one of the World’s Most Innovative Companies by the Boston Consulting Group in 2018—in fact it regularly has been since 2005—while Samsung was labeled as a copycat.

Despite these perceptions, the appreciation of copying or imitation in the present age is very much different from the precedent time. According to Godin (2017), in

the fifteenth and sixteenth centuries, innovation was regarded as imitation of great (successful) men’s deeds and imitation of (return to) ancient institutions (p. 19). The meaning of innovation as imitation changed in the early seventeenth century and meant introducing ideas and practices that are opposite to the established order, whether political or religious. In this respect, later innovation as imitation changed to innovation as subversive of the established order. In the nineteenth century, when innovation was theorized, imitation was replaced by original, difference, and creativity which all signify the introduction of something new, to be the first to have an idea, or to do something in a new way (p. 21). Afterwards, this connotation of innovation as opposed to imitation or copying has been implicitly or explicitly anchored in our society and world.

This connotation has further influenced the conceptualization on what innovation and imitation (or copying) are today. Legally speaking, copying, imitation, or plagiarism are all broadly defined as taking the creative ideas of another and selling and/or publishing them as one’s own. However, this legal definition and even juridical approach are subject to considerable room for interpretation which is undoubtedly affected by the prevailing concepts of innovation and imitation. This sensitive issue affects even the attitude of artists concerning various activities which are not related much to selling or publishing someone else’s idea. The case of when the Korean music group BTS or Bangtan Boys appeared on a music show explicitly reveals this typical attitude among “artists” regarding even a copying-like practice.¹ The following is the transcript of the most interesting part of the conversation that took place between RM or Rap Monster, a member of BTS and a Korean hip-hop MC known as B-free during a Korean show entitled “Bong-hyun Kim’s Hip-hop live show” in 2013.²

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.*

¹BTS debuted in June 2013 in Korea. This Korean boy band won the 2017, 2018, and 2019 Billboard Awards for Top Social Artist beating Justin Bieber, Selena Gomez, and other well-known American pop artists. They were invited to the American Music Awards and other well-known American TV programs such as *Ellen DeGeneres Show*, *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 2018* and *2019*, which is a famous annual television event in the United States.

²MC: 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 \(2013\)](#).

- 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.*
- 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.*

This conversation clearly demonstrates how the practice of copying or seemingly similar activities are perceived by artists these days, that it is a bad practice and immoral. Furthermore, it is regarded as not respecting other artists. In fact, the current attitudes toward the notion of copying is very much related to copyrights in modern society as RM hinted above.

9.1 Current Perspectives on Copying

In order to understand better how copying is perceived in our time, 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 takes away the economic benefits from authors while hindering cultural creativity and diversity. This is in line with the prevalence of current concepts on innovation and copying.

In the real-world, since economic factors are more influential than cultural aspects, the current copyrights regime is more orientated toward economic interests and has evolved further toward a judicial approach which encompasses the current interpretations on innovation and copying. Meanwhile, alongside the economic interests, the overall goal of copyrights is to safeguard cultural diversity and creativity. These two have very distinguishable characteristics and need to be rigorously analyzed separately before understanding both of them in a comprehensive manner, theoretically and practically.

Despite the growing interest in cultural diversity and creativity, there are still a number of thinkers and scholars who often fail to distinguish between these two aspects. Furthermore, their work tends to be narrowly focused on a short period and/or limited examples instead of being based upon rigorous theories or practice. For example, Hatch (1998) highlights the fact that copyrighted work is like personal property and thus needs to be protected. From this, it is believed that the earnings

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Fig. 9.2 Depictions of the crucifixion and the direction of Jesus' head *Source* Wallraf das Museum

Although it is beyond the scope of this chapter, there is a strong argument that the choice of pointing the head to the right was chosen to reflect “right” as in the idea of right and wrong, which can be commonly 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 Fig. 9.3). Like the direction of Jesus' head, the relatively modern works vary in the depiction of Mary and Baby 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 Mary. Again, the Bible does not mention anything specifically about the positioning. It can simply be human nature to hold a baby close to the heart, but many scholars have argued that this was influenced by ancient Egypt and the statues of Isis holding Horus (Werner 1972). Regardless of the origin, it can be easily assumed that these two positions have a ritual or religious meaning. Hence, artists copied the composition of the two figures.

Some would argue that the level of copying among the works examined before are not the same as in the modern age such as when Samsung copies the design of a

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aristocrats. This trend has changed further as the range of consumers has expanded to the bourgeoisie and middle class (Sonntag and Blühm 2016; Waibor 2017).

In order to meet this expansion (and/or change) of consumer markets, more works were needed thus more artists emerged. For example, in the seventeenth century the number of artists in work was more than the number 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). And in order to meet the demands of the time, these depicted images were more realistic than the religious works of the precedent period. Figure 9.4 shows several typical works of genre art. Two different series of works are shown; one is about a woman writing a letter and the other is about a couple.

When the three works from each series are compared, a striking similarity can be found despite the fact that they were painted by different artists from around the same period. Regardless of the details of each piece, the posture of the figure(s)



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)

Fig. 9.4 Selected paintings of Genre Art. *Source* Somogy and Louvre (2017)

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 and would therefore face criticism from various parties and the public. 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 usually 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 through “dissimilar similarity” (Sluijter 2017). As a result, genre art flourished during the seventeenth and early eighteenth centuries and influenced future art forms such as realism and post-impressionism (Fuchs 1978). In short, copying in this case again did not hurt cultural diversity and creativity, but actually helped to promote it one step further.

9.4 Copying for Learning and Inspiration: Vincent Van Gogh versus 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, two of the most famous painters are compared, Vincent Van Gogh and Jean-François Millet. Van Gogh is regarded as one of the greatest artists and his paintings are some of the world’s most expensive works of art. This is in contrast to when he was alive and was unknown artist who only sold one piece. Figure 9.5 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 works when compared together; although several pieces such as *The Gleaners*, located on the left of the last row, show a difference in terms of the number of people and the presentation. Some even portray different images but still use similar titles, such as *Starry Night over the Rhone* by Van Gogh and *Starry Night* by Millet which are located on the right side of the last row.

After his death, Vincent Van Gogh left behind around 870 pieces of work. Among them around 520 pieces, almost 60%, are in fact copies of other painters such as Delacroix, Rembrandt, 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 even meet during their lives. Obviously Van Gogh never asked for permission from Millet nor did Millet give his consent. In the bundle of letters exchanged with his brother Theo, Vincent confessed many times that by copying Millet’s works he was able to learn painting techniques, perception of light, usage of colors, and other artistic skills. For Vincent, copying Millet’s works allowed him to enhance his artistry which indeed helped contribute toward cultural creativity and diversity, as other artists have done (Nagahiro and Singleton 2014).

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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. However, Millet's fame quickly declined because (1) as Napoleon III pushed for industrialization, Millet's works were regarded 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, Millet's works devalued not because Van Gogh produced copies of them, but rather because other artists did not copy his works nor did they reference his works. The only exception was Vincent Van Gogh. This may also explain why Van Gogh had a hard time to be recognized as a good painter and sold only one piece during his lifetime.³

Under the current copyright regime, works are protected for 70 years after the death of the author or the 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 Fig. 9.5, 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 and he would have had a difficult time to avoid public criticism. Still, some may argue that these pieces by Van Gogh were intended to be only studies; in a way, it is very similar to the aforementioned case, BTS copying Kanye West. While that might be true of the time they were produced, today the works of both Van Gogh and Millet are exhibited in museums and auctioned for large sums of money. In the end, this is very similar to "taking the creative ideas of another and selling and/or publishing them as one's own." However, this fact does not hurt Millet's work nor his reputation.

Interestingly, Van Gogh's copied pieces are now usually more valuable than the originals. In order to understand this value gap, an in-depth analysis is needed. Why are Van Gogh's works more valuable in the market than that of Millet's? Who was the better painter, Van Gogh or Millet? Whose works are more original? Have Van Gogh's copied pieces devalued Millet's works? Furthermore, did Van Gogh's copying bring disgrace to him and hinder cultural diversity and creativity? All of these questions should be further studied carefully.

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).

³While 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 1200 U.S. dollars at the current exchange rate. Today it is valued at more than 722 million U.S. dollars (Parc 2015).

9.5 Copying the Copied: Pablo Picasso and Others

Copying practices in culture can be found among the works of even recent painters. Another famous painter Pablo Picasso is at the core of such practice. In this section, four pieces by Picasso are shown next to the originals that he copied from (Figs. 9.6 and 9.7, right side). Compared to what Van Gogh did, Picasso's works can be viewed as a different interpretation of or inspired versions of existing works. In any case, the originals that Picasso copied or benchmarked were in the public domain when he produced his works.⁴ Therefore, the two works by Picasso presented in Fig. 9.6 are free from the copyright violation.

However, the two pieces by Picasso presented in Fig. 9.7 leads to an interesting debate on the issue. The first piece by Picasso seems to copy a work by Manet in terms of composition. Interestingly though, according to the current copyright law, Picasso's 1951 work can be considered to have violated the law. This is because Manet's work is less than 70 years pma; Édouard Manet passed away in 1883 and



Pablo Picasso (1957)



Diego Vélasquez (1656)



Pablo Picasso (1962)



Jacques-Louis David (1796-1799)

Fig. 9.6 Pablo Picasso versus others. *Sources* Various (please refer to references)

⁴Public 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.



Fig. 9.7 Copying and copied: Pablo Picasso and others. *Sources* Various (please refer to references)

his work would only be in the public domain after 1953. Yet, even Manet’s painting is a copy of Goya’s work which was produced in 1814. When Manet’s and Goya’s works are compared, Manet’s work would not have been a violation of the law. If these three artists faced a court case, Picasso could argue that he did not copy Manet’s work, but Goya’s work. Hence, the court would reach a verdict that Picasso is not guilty because his work is produced 70 years pma after Goya’s work.

A similar situation can be found with another work by Picasso, *The Luncheon on the Grass* (last row in Fig. 9.7). Here if Picasso were to argue that he copied Manet’s work which was 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 important in regards to copyright law is that 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 a violation. This example shows that, the violation depends on the date when the artist passed away. 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-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 Fig. 9.8. *Judgement of Paris* was produced in the early sixteenth century. Initially, this piece was 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

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to show that they are doing better than their peers by copying an original work or learning from one another through imitation as shown with artists in the seventeenth century. Through this process many artists learn new techniques and enhance them; sometimes using it as even inspiration for further development as Vincent Van Gogh confessed many times in his letters. In brief, it is only in recent years that this practice of copying has come to be viewed negatively. Furthermore, given that we are in the age of mass production since the twentieth century, people have come to associate reproductions as commercial items rather than work, therefore different or unique works are more favored.

One interesting point that we should not miss is the fact that Van Gogh's copied works are more accurate and precise than other copies by genre artists, particularly when compared with the originals. Intriguingly, this is more related to technological advancements, like the rosette in the *Gran Madre di Dio*. Van Gogh could do it better because he had Millet's works in his hand and was able to copy as much as he could. In contrast to Van Gogh, genre artists had to visit galleries during the day to view originals to copy or benchmark and then paint them at home during the night.

Before the Van Gogh period, paper was expensive and only a 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 the advancement of etching techniques, many existing paintings were copied and printed out on paper. In some of the letters he exchanged with Theo who was working for a gallery in Montmartre, Paris, Vincent Van Gogh asked him to send copies of specific works by Millet. Once he was in possession of the works, Van Gogh was able to freely copy Millet as much as he wanted to.

Furthermore, in the 1830s, Winsor & Newton, Ltd. began to produce paints, both industrialized oil and water color, and standardized brushes (Barnett et al. 2006). Compared to precedent times where each artist had to make their own color and colorant, the newly produced standardized paints and brushes helped artists to produce works that are more original-like than before in terms of color.

It is evident that as society entered the age of mass-production, people tended to appreciate items that are different and unique. 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 contrasting versions he begins to develop his own style which is different from his earlier version (see Fig. 9.9). The last one would be considered as more of an inspired work. The evolution of Picasso's work shows explicitly that copying does not hinder cultural diversity and creativity, but rather helps it.



1960a



1960b



1961



1962

Fig. 9.9 The evolution of *the luncheon on the grass* (by Picasso)

9.7 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 non-economic rights. Economic rights allow the rights-owner to derive financial rewards from the use of his or her works by others, while non-economic rights are related to cultural diversity and creativity. 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. It argues that contrary to current prevailing 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 which requires a different scope for further studies.

The findings of this chapter together with the historical evidence demonstrates that the current view on copying and copyright laws may be too limited, overwhelmed too much by the concept of innovation, and are narrowly focused on our time, rather than approaching cultural diversity and creativity as a whole from a historical perspective. When a cultural trend is prosperous, it can have a significant impact on culture and be recognized as part of history. Instead, the current concept of cultural diversity and creativity and its “supporting” copyrights law tend to view culture myopically rather than hypermetropically and protects only first-movers—but are they really the first?—while eliminating challenges from late-movers. This approach would promote various different styles for a short time, but cannot help a trend to become prosperous through copying and imitating over a longer period.

In order to foster the dynamics of cultural diversity and creativity, copying and its practice within the copyrights (or more likely intellectual property rights) regime should be carefully reconsidered. More importantly, the current copyrights regime may be more about earnings, rather than cultural creativity or diversity. One might argue that all of these clichés are invented to keep the economic hegemony derived from cultural goods which has been established through the wrong interpretation of neo-capitalism. This is a point that should be carefully assessed. If the world really wants to achieve cultural diversity and creativity, we should not miss what Isaac Newton once said, “if I can see further it is by standing on the shoulders of giants.” He was insightful enough to use “standing” not “trampling” and this aspect should be kept in the back of our mind.

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