

Ethical Premises in Taking Over and Using Visual Quotes

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Abstract

In the current media landscape in which intermediality is ubiquitous, there is an increasing ethical and moral dilemma regarding the authorship of a visual product. Far from being an attempt to provide a clear solution to this dilemma, the text is a review of how visual citation is used in the creative process, as well as how the authorship of the product thus obtained is negotiated. Starting from the mechanisms of visual perception and reaching the economic and ethical premises, representative examples of the takeovers and adaptations of content produced by other authors in environments that use the photographic reproduction of reality as a way of expression are analysed. Instead of a conclusion, the article proposes a reconsideration of the concept of author in which the audience can be seen as a modulator of the creative approach.

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Introduction

The ubiquity of the image in today's society has made it circulate continuously as a collective good, which can be manipulated, influenced and reinterpreted. The emergence and development of new visual communication channels like the Internet or social media coupled with the mobile devices, have given a new

dimension to the visual landmarks and to the ways of information dissemination and alteration, as well to the ways in which this is transmitted.

Since ancient times, art has been a mixed process between taking over existing techniques and discovering new ways of expression. Given the fact that art needs an audience to exist, the emergence and increase in the number of "consumers" has led to the creation of new artistic currents. These new trends, by taking over and quoting various motives or scenes from previous works, access a method by which they obtain a new way to connect with the audience.

Leaving the templates often meant, beside courage and audacity, the existence or inception of systemic changes in society. Thus, the great artistic currents were closely related to the appearance of various key moments in the development of human society. The appearance of photography, for example, led to the subsequent evolution of painting, freeing it from the traditional task of reproducing reality and bringing it rather into an area of interpretation that is much more abstract and conceptual. The emergence of moving images and cinema combined with the evolution of photographic technique, as well as the means of distribution (magazines, newspapers, albums) influenced photography, bringing it from the area of personal memory to that of collective memory and imagination.

Historically, there is an intrinsic link between the methods of distribution and consumption of various artistic acts and their degree of originality and authenticity. The almost unlimited access we experience nowadays brings us the possibility to easily notice works that are similar. This process is all the more accentuated as statistically we dedicate much more time to receiving the various ways of expression.

Human perception is very much based on the detection and recognition of patterns, textures, and rhythm. The repetition and use of recurring elements or even structures, is as necessary as the interruption of this rhythm and the replacement of known patterns with new ways and means of expression. This balance between new and old, between innovation and the resumption of existing structures, has existed and will always exist in any manifestation (event) that involves an audience of any kind.

One of the first attempts to define art as an aesthetic concept was formulated in antiquity by Plato and Aristotle. They advanced the theory that art is an imitation of reality (*mimesis*), a theory later taken as a fundamental principle of European aesthetics in defining artistic realism, which is seen as an artistic

transfiguration of what is significant in reality.

Many works of art are based on representations that are inspired by the artistic or creative act of other artists, an artistic act that is modified, reinterpreted, or simply copied and transferred to another context. This shift of creative content to the new position is seen as an artistic endeavor by itself. Appropriation art, pop art and ready-made art are just some of the artistic currents that are defined by this approach.

In this new context of use and reinterpretation of the artistic act, there were many disputes and moral dilemmas regarding the author and his approach, the way the subject is viewed, and the degree of authorship and authenticity of the work obtained by using elements created by other authors.

Use and reinterpretation in film and photography

In music or literature, the regulation and organization of the rules of use, quotation and paraphrasing is easier to do, starting from the intrinsic mode of expression in those medias, which is based on the use of pure primordial elements: sound, word. In film and photography, given that these are forms of expression that are primarily based on the recording and reinterpretation of intermediated content, the ways of introducing rules and regulations are more difficult to implement.

Film as a complex art form can include many of the other arts. In the DNA of cinema, this takeover of various elements that are not largely original (costume, location, props, music, text) coexists with original elements (script, editing, lighting).

In photography, the use of iconic imagery and sources of inspiration from other photographs and cinema is usually less controversial given the fact that photography as an art has moved from the concrete aspect towards a symbolic and much freer aesthetic. Another reason why photography is less controlled and not that much subjected to various filters and rigors, is due to the fact that its audience is much smaller and often less synchronized (having a lengthier exposure, exhibitions are usually unique manifestations with a much smaller audience than the film). Photojournalism, in turn, is subject to its own code of ethics in which the veracity and lack of subsequent manipulation is defining. This photographic genre has, largely due to its specificity and to a very well-organized community, a well-defined ethical system that has only a few small variations depending on the

geographical areas in which its members are published¹.

The mutual influence and inspiration of photography and cinema already goes beyond the sphere of control of almost any kind of norm or code. However, we can find a notorious example in television and the entertainment industry. In 2003, the copyright holder of the photos of the well-known fashion photographer Guy Bourdin (respectively his son Samuel Bourdin) sued Madonna under the accusation that she almost took over the visual and conceptual universe of some of his famous fashion photos, in her music video (Irish Examiner, 2004). Madonna claims that she wanted to pay an homage to Bourdin's original imagery but the court of appeal that dealt with this process ruled in favour of the photographer's representatives, justifying this decision by the blatant resemblance between the two creative visions, as well as the fact that the artist and his team took no steps to declare directly or indirectly their attempt to pay homage to Bourdin's vision, at least not until the trial began.

Photography is continuously inspired by cinema, using elements, characters or simply reproducing frames from various productions and placing them in new contexts. The moral dilemmas in this process of borrowing aesthetic structures from fiction films are minimized by the iconic status of cinema, a status supported by the much more efficient way of distributing and receiving, status that is making it the prevalent media from an audience standpoint.

As long as photographic references are transgressed in different environments (cinema in photography or photography in cinema) and if in the narrative approach these aesthetic transfers play only a secondary role in creating a new context for the creative process, dilemmas and moral conflicts regarding paternity the act of creation are absent.

Another much more concrete situation, which involves an ethical regulation is the case of "remakes". These are partial or total reproductions of the imagery, characters, and narrative structure of a film production. Most often they are made with the approval of the creators and owners of the related copyrights through a financial agreement. This method has been widely used lately but also has an interesting subgenre approached in countries with a traditional film industry, but which are located in geographical areas that are relatively outside the sphere of

¹ An example of a code of ethics can be found on the website of this association of photojournalists in the United States of America "<https://nppa.org/code-ethics>"

influence of copyright law or that resort to various creative subterfuges for to get rid of the legal consequences arising from the unauthorized use of the scripts and characters from the original creations. These takeovers of major blockbusters, remade and adapted to much smaller budgets, are usually made in countries with a film tradition and highly populated (India, China, Turkey). In the same countries an important aspect is the fact that the population that follows them is usually poorer and with a more difficult access to the distribution channels through which they could watch the originals. Another somewhat secondary aspect but important for their success is the fact that the authors adapt the original productions to the values and sensitivity of the local audience. One of the best-known examples of this genre is *Süpermen Dönüyor* (1979) (Welch, 2010) or the unofficial Turkish version of the famous superhero.

In an attempt to create moral and ethical benchmarks and norms for use and citation in film and photography, we can define two major directions derived from copyright law.

The first of these is dictated by economic factors. Thus, due to the fact that large film productions are major financial approaches with commercial implications far beyond revenues related to ticket sales, production companies have been forced to defend their interests the best they can and have resorted to extreme solutions, such as generating patents and trademarks for key characters, sets and special props and often even locations.

The trademark provides an increased protection compared to copyright, protection that extends to any product bearing the name of the character or the film title, as in the form of the trademark of the character as a logo it extends the protection and opportunity to receive part of the proceeds obtained by any trader using these brands.

Among the famous examples registered as trademarks we find Mickey Mouse, Star Wars, the whole series of superheroes Batman, Superman, Spiderman and so on. In the case of Mickey Mouse, Disney took all precautionary measures by choosing to register the name of the famous character, at the same time the character was registered as a graphic logo, which gave it increased protection.

A famous and relatively unique case in the history of cinema is George Lucas. He was already a well-known and respected young director after *American Graffiti* appeared in 1973. He used this auspicious moment in his career to promote his new project: *Star Wars*, a series of western science fiction films. Initially, 20th

Century Fox was quite skeptical about the future of the project, but thanks to one of the studio's executive directors, who was an avid fan of American *Graffiti*, Lucas got an \$8 million budget to produce the film. and a \$500,000 director's fee. At that moment, Lucas did what later proved to be the brightest counteroffer in the history of modern cinema: he gave up the \$350,000 of his director's fee in exchange for two things: the rights and creative decisions of any future Star Wars movies and the rights to all Star Wars merchandising (toys, books, video games, etc.). Between 1977 and 1978, Star Wars earned \$100 million from its own branded sales alone. Over the next 35 years, these products continued to generate \$3 billion in revenue. There is also a revenue of \$3.5 billion from video game licenses, \$2 billion from book sales and \$1.3 billion from licensing of various products. This without adding the rights for DVDs and other reproductions of the next movies in the Star Wars saga.

When Disney contacted him, Lucas media empire was worth \$3.3 billion. After the sale to Disney, Lucas was worth \$5.5 billion (he gave a large portion of the \$5 billion sale price to charity)

In a context where cultural values are increasingly interconnected and where citing, appropriation or takeover of concepts, imagery and even symbolism is a constant in the creative industries, it was necessary to find a way to classify and differentiate the process of copying knowingly and having a malicious motivation or for obtaining undue gains, from the one used for the purely creative, educational, or informative purpose. Thus, the concept of "fair use" (Stim, n.d.) was introduced which could be also seen as "proper use". This wording is found as part of the copyright law of the United States of America which defines the limits to which the content under the protection of copyright law can be used without the permission of the owner of these rights. Far from being a set of strict rules, this subchapter was created and developed through a continuous evolution, based largely on precedents and the freedom it offers to different courts in assessing what is and what is not in accordance. with its code.

Thus, we have several broad categories of permitted uses such as the freedom to parody content, the use of quotes and the use of creative products for educational or informational purposes, the use of parts of creative products in news, the use of quotes or portions of opera in critical and specialty articles or in research papers.

There is no predetermined percentage of an image, number of words, or number of musical notes that activates copyright law. Just as the recognition of the

copyright holder in the derivative work does not exempt you from the obligation to request the permission of the holder.

As this second direction of approach for the creation of moral and ethical landmarks and norms in the use of other authors' content is observed, it is more a derivative and a collection of derogations from the norms imposed by copyright law.

In a 1994 interview with *Empire* magazine, Tarantino said he "steals from every single movie ever made". The visual references in Tarantino's films have become a true signature of him. If in some of films the references are only vaguely implied, others are almost identical lines. For this reason, he has often been at the center of controversy over the retrieval and use of visual quotes. For example, in 1997, his debut film, *Reservoir Dogs* (1992), was thoroughly analyzed, after a critic accused Tarantino of plagiarizing the film *City on Fire* (1987) produced in Hong Kong ten years earlier. The last 20 minutes of *City on Fire* are essentially identical to the plot of *Reservoir Dogs* with frames and whole moments from the film that are similar. This is not an isolated episode, almost all of Tarantino's most famous films have a main source of inspiration. For *Jackie Brown* (1997), it was the 1974 film *Foxy Brown*. For *Kill Bill* (2003), the 1973 Japanese film *Lady Snowblood*. And *Inglourious Basterds* (2009) is, in many ways, similar to the 1967 war film *The Dirty Dozen*.

In addition to this main source of inspiration, each film has many visual references from at least dozens of other films. Many consider these quotes as a kind of homage to the productions that the director admires. However, Tarantino explicitly denies this. In the same interview, he goes on to say "Great artists steal. They don't do homages." It is a quote that closely resembles the words attributed to another famous artist: Pablo Picasso, who is often quoted as saying: "Good artists copy, Great artists steal."

Postmodernism in film describes an era in which filmmakers began to question the way mainstream films are made and told and began to make films that went directly against this classic model. One of the central elements of postmodernism is the idea that nothing is new in art—everything is recycled and reused. *Reservoir Dogs* may have been taken from the Mexican standoff *City on Fire*, but *City on Fire* was also inspired, copying from the movie *The Good, the Bad and the Ugly* produced in 1966. *Pulp Fiction* is no exception to this rule. It is full of references to classic films, especially films from the new French wave, one of the most

influential movements in the history of cinema, in which young filmmakers also tried to challenge traditional methods of making film. The famous dance sequence was inspired by a sequence from the movie *Band of Outsiders* (1964), the choreography used there being similar to that from a scene in Fellini's *8 1/2* (1963).

Tarantino's pastiches work so well for two reasons. One is the fact that he understands in depth the subject from which he borrows. Most of the time, the homages in the movies are a superficial and futile attempt to imitate an iconic moment and rarely serve a purpose. However, Tarantino's references are often imperceptible because they improve the scenes and the genre of the film he is experimenting with. If we take a closer look at Tarantino's career, we discover that each of his eight films is a tribute to a specific genre and direction in cinema. *Reservoir Dogs* is a tribute to Hong Kong action movies, *Pulp Fiction* is based on the unconventional French New Wave movement. *Jackie Brown* is inspired by the controversial blaxploitation movies² of the '70s, while *Kill Bill* is reminiscent of classic Japanese samurai movies and Chinese Kung Fu movies. *Death Proof* (2007) pays homage to low-budget action movies, while *Inglourious Basterds* refers to war movies about World War II. And two of the more recent films, *Django Unchained* (2012) and *The Hateful Eight* (2015), are modern reinterpretations of the Italian "spaghetti western" genre. Tarantino perfectly combines all these genres as sources of inspiration through his unique vision and writing. In all this cavalcade of takeovers and copies of famous sequences, the key element that gives the specificity and originality of Tarantino's productions is dialogue, a dialogue that is very well and acquires multiple connotations through the paradoxical context, that is often anachronistic, in which it is placed.

Richard Prince and his series of cowboy images generically titled *Untitled Cowboys* can be an eloquent case study for the reference system established by the concept of "fair use".

In the mid-1970s, artist Richard Prince worked as an archivist at Time Life Publications (now Time Inc.). Selecting daily articles from magazines archives, he began to see (seeing) artistic potential in Marlboro commercials. Fascinated by their simple and evocative representation of an American archetype, he even re-photographed the pages containing the ads, enlarging them, and excluding the

² A genre of films that appeared in the early 1970s, which had as main protagonists actors of African-American origin and whose subjects and dramatic universe were part of a clear approach to conquer as an audience, the urban part of this minority.

elements that could give any reference to the brand itself. Assuming the imagery of the advertising campaign as his own, in *Untitled (Cowboy)* series, Prince never credited the original photos (however, in his defense, the advertising company never made those public either). He eliminated the commercial aspect of those photographs and bringing them into the exhibition context, he added a new cultural value to those images, making them works of "art" in a way that Norm Clasen's³ photographs for Marlboro were never perceived as such. In 2014, one of the works reproduced by Prince (a work that was "borrowed" from another photographer commissioned by Marlboro) was traded for \$3.7 million at an auction at Christie's. The images photographed from Clasen's original photographs raised over \$1 million. The sums circulated in this way are a recognition of the iconic status of Prince's approach, but at the same time they can be seen as an injustice for the de facto authors and an insult to intellectual property. However, a closer analysis of the approach and the concept behind the realization of the series may contradict these hypotheses.

The images from the imaginary universe of "Marlboro Man" through their extremely frequent use were ubiquitous in public space and omnipresent in collective perception, reaching a subliminal level of a certain period and of a certain social context from the American culture and politics during the years when that campaign was in use. By taking over and using parts of these images and placing them in the new cultural space of art galleries and museums, the artist used copying and reproduction as an artistic process and gave new values to the content. In the public debate that followed the presentation of the works in this series, there were many controversies related to the hypothesis that the artist, using the images without mentioning the names of the real authors, respectively photographers, that produced them, would have violated their intellectual property rights. Legally, this hypothesis is refuted by the fact that the rights were transferred in full to Leo Burnett, which was in charge of the Marlboro Brand at the time, and that their use did not cause any material damage or any limitation of any kind to the original campaign. At the time of publication, the campaign was no longer used (active). Even more than that, for the "Marlboro Man" campaign, Leo Burnett used as a starting point and visual reference, an essay with photographs by Leonard

³ Norm Clasen was one of the photographers commissioned between 1978-1990 by Leo Burnett to campaign for the promotion of the Marlboro brand
<https://www.normclasen.com/Gallery/Marlboro-Photos/thumbs>

McCombe about a Texan cowboy Clarence Hailey Long⁴, essay published in Life magazine in 1949. In this way taking over and modifying that relatively similar imagistic content received multiple new connotations. While Clasen photographed being commissioned and hired to portray the vision of an art director in an advertising agency, which in turn was hired by the Marlboro company, Prince photographed trying to provoke, using the campaign as a visual pretext in his attempt to define a historical period and to question the broader context of an image meant to maintain a promise of illusory freedom. When the audience sees a photograph, they generally believe what they see, they trust the photographic environment to portray reality, or so at least they used to. However, Prince simply re-photographed a directed fiction and by eliminating the product that was promoted through this visual discourse. In this way he manages to associate images with a paradoxical role of being a portal to the collective consciousness of the period, using these photographic "paintings" to access a plethora of questions and doubts about the concept of freedom in society. If Clasen illustrates a concept using his photographic skills, Prince takes over these images after they have been enriched by the attributes gained from long exposure in public space, while through this exposure, the famous Marlboro Man became a postmodern superhero with his own visual and conceptual identity.

This identity it is fed alongside the original message, popular perception and the dimension thus transferred through the collective subconscious imaginary. This creative approach through its exposure in the public space acquires new aesthetic and conceptual valences, being able to say that just as it influences the spectators, in turn the viewers themselves end up also influencing the way the message is perceived. In all this context of taking over images and concepts from one creator to another, the position and the idea of the author itself is increasingly questioned.

Michel Foucault in his lecture "What is an author" (1969)⁵ advances the idea that the author is just a principle of organization, a method of ordering and representation that allows us to group, gather and perceive together a certain number of cultural objects. The context thus becomes defining for the meaning of artistic representations of any kind. Images do not only have a history of their own,

⁴ Clarence Hailey Long was the cowboy whose image was the basis of the Marlboro Man concept promoted by Leo Burnett "<https://iconicphotos.wordpress.com/tag/clarence-hailey-long/>"

⁵ Michel Foucault, lecture *Qu'est-ce qu'un auteur?* First held at the College de France, 1969

they exist and transform over time, just as they exist and transform depending on the space in which they are perceived. A copy, no matter how perfect, is never the same as the original, its context constantly changing. Given that its audience lives in history and is also exposed to the passage of time, its perspective also changes.

Conclusions

Roland Barthes in his essay "The Death of the Author" (*La mort de l'auteur*, 1967) states that each writing contains several layers and meanings that can be unified only by the experiences lived by the reader due to the text:

Thus is revealed the total existence of writing: a text is made of multiple writings, drawn from many cultures and entering into mutual relations of dialogue, parody, contestation, but there is one place where this multiplicity is focused and that place is the reader, not, as was hitherto said, the author. The reader is the space on which all the quotations that make up a writing are inscribed without any of them being lost; a text's unity lies not in its origin but in its destination. Yet this destination cannot any longer be personal: the reader is without history, biography, psychology; he is simply that someone who holds together in a single field all the traces by which the written text is constituted. (Barthes, 1977, p. 148)

Generalizing what Barthes states for the process of writing, we can say that the essential meaning of a work lies in the reaction it creates to the public, rather than in the author's creative intentions.

While Pop art, Appropriation art, Ready-made art, Parody and Pastiche are artistic processes increasingly approached in cinema and photography, they are massively embraced in the visual conglomerate of social media.

The new ways of receiving static or moving images together with social media are marked by visual quotes and can be seen as a collective exercise in taking over visual messages and concepts and adapting them to new personal discourses. Thus, we are witnessing a democratization of the means of artistic expression by taking over, adapting and interpreting the pre-existing content. Democratization that is accompanied by the excesses and errors inherent in any way of mass expression that has the advantage and disadvantage of almost unlimited access to

resources.

The moral dilemma that arises in this new context involves less the belonging of an author's cultural message and more the veracity, authenticity and relevance of the message transmitted to the audience he accesses.

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