

Northumbria Research Link

Citation: Porter, Mic (2010) A consideration of academic misconduct in the creative disciplines: From inspiration to imitation and acceptable incorporation. EMERGE, 2. pp. 1-16.

Published by: UNSPECIFIED

URL:

This version was downloaded from Northumbria Research Link: <http://northumbria-test.eprints-hosting.org/id/eprint/47394/>

Northumbria University has developed Northumbria Research Link (NRL) to enable users to access the University's research output. Copyright © and moral rights for items on NRL are retained by the individual author(s) and/or other copyright owners. Single copies of full items can be reproduced, displayed or performed, and given to third parties in any format or medium for personal research or study, educational, or not-for-profit purposes without prior permission or charge, provided the authors, title and full bibliographic details are given, as well as a hyperlink and/or URL to the original metadata page. The content must not be changed in any way. Full items must not be sold commercially in any format or medium without formal permission of the copyright holder. The full policy is available online: <http://nrl.northumbria.ac.uk/policies.html>

This document may differ from the final, published version of the research and has been made available online in accordance with publisher policies. To read and/or cite from the published version of the research, please visit the publisher's website (a subscription may be required.)



Northumbria
University
NEWCASTLE



UniversityLibrary

Northumbria Research Link

Citation: Porter, Mic (2010) A consideration of academic misconduct in the creative disciplines: From inspiration to imitation and acceptable incorporation. EMERGE, 2. pp. 1-16.

Published by: Northumbria University

URL:

This version was downloaded from Northumbria Research Link:
<http://nrl.northumbria.ac.uk/12099/>

Northumbria University has developed Northumbria Research Link (NRL) to enable users to access the University's research output. Copyright © and moral rights for items on NRL are retained by the individual author(s) and/or other copyright owners. Single copies of full items can be reproduced, displayed or performed, and given to third parties in any format or medium for personal research or study, educational, or not-for-profit purposes without prior permission or charge, provided the authors, title and full bibliographic details are given, as well as a hyperlink and/or URL to the original metadata page. The content must not be changed in any way. Full items must not be sold commercially in any format or medium without formal permission of the copyright holder. The full policy is available online: <http://nrl.northumbria.ac.uk/policies.html>

This document may differ from the final, published version of the research and has been made available online in accordance with publisher policies. To read and/or cite from the published version of the research, please visit the publisher's website (a subscription may be required.)

www.northumbria.ac.uk/nrl



A consideration of academic misconduct in the creative disciplines: From inspiration to imitation and acceptable incorporation.

Mic Porter

School of Design

Northumbria University

Abstract

When the issue of students obtaining unfair academic advantage is discussed, the focus is, virtually always on text based material concerning inadequate attribution or more blatant, but possibly inadvertent, *passing off*. A 2008 conference concerning plagiarism held had only two, from over thirty, sessions, keynotes and workshops, focused specifically on issues of plagiarism from within the creative, visual, art and design disciplines. The purpose of this paper is to outline many of the issues of misrepresentation with particular reference to vocational education in creative disciplines and to propose a route that may be followed to clarify matters for specific subject grouping and institutions. It is asserted that this approach, if formalised, can, lead to the establishment of agreed verifiable standards and thus improve the quality of the student work created (Porter 2009).

This paper does not focus upon text based *misconduct* but upon issues of academic misconduct specifically associated with images, ideas and intellectual property within the creative disciplines of art and design.

Introduction

The creative sector is important to innovation and the design and marketing of artefacts usually considered necessary for the sustainable existence of humankind. Furthermore, other creative outputs (e.g. painting, sculptures, and performance (captured and live) are used to decorate and enliven our living spaces and the wider environment. The ability to sustain such ornamentation is often an element, identified by archaeologists, in the development of ancient cultures and civilisations. The Government's Cox (2005) report emphasises the importance and ubiquity of creativity for the future prosperity of the UK.

“Creativity, properly employed, carefully evaluated, skilfully managed and soundly implemented, is a key to future business success – and to national prosperity.” (p. 3)

Friedman (2005) emphasises how global design, manufacture and supply chains have been created that are now so richly interconnected that they have become a force for political stability and peace between nations. Friedman argues that creativity is the catalyst for this inter-connectivity. However, this creativity is constrained and subject to continual probing and deformation as competitive advantage is sought.

Consider, for example, those manufacturing generic drugs, often in defiance of the global pharmaceutical companies that hold the original patents. They are globally creative, albeit constrained by the legal framework of Intellectual Property Rights (IPR), Governmental reaction, moral and ethical considerations; the limits of visibility and discovery. The beliefs

and values of the originators and stakeholders will also be critical for both technological progress and product diffusion. Students are to be prepared for employment in the creative industries and thus the education and training offered must be an effective analogue for professional practice. It must encourage creativity and innovation but be bounded by reality and the ethical standards of academia. Creativity must be nurtured and developed; inventiveness and individual style must be encouraged but directed and constrained within the limits of the discipline concerned!

Traditionally, Art and Design has supported the development of individuals, at least in part, by the analysis of, and copying from, those that have gone before. Most Fine Art students have sat in galleries sketching the exhibited work that inspires them. Indeed, such examples of copying have been widely used to enhance reputations, demonstrate insights and to encourage others to make reference to the original work.

In the early 1960s the artist Roy Lichtenstein adopted and exaggerated the *Benday dot* artefact of colour reproduction and comic magazine style to create *original* and desirable works of art. However, adopting this style may now be seen as a quote, perhaps a homage, that then invokes connections but for others it is simply a tired, over used cliché which should be avoided.

The use of *found* material to create collages, montages and the *joiner* concept of David Hockney have all been technically simplified by digital image manipulation software but how should the quality be attributed between the technical and visual impact of the final piece? Can anything of merit ever be created from elements extracted from classic images? Mugs, ties and tiles based on Claude Monet's water lilies and Vincent van Gogh's Sunflowers appear to sell well, especially at locations with links to the artist, but are the designers concerned proud of their work beyond a conventional commercial justification?

In science, progress is only made by building upon the work of others; "*If I have seen further it is by standing on ye shoulders of Giants*" (Newton, 1675). This also applies to creative disciplines. Sampled sounds and published music is remixed to produce new, and perhaps commercially viable, music or musical movements, eg hip-hop. High fashion designs are transposed for sale on the high street; classic images become the basis of advertisements. Chefs re-create the *signature* dishes of others, which may become copyrighted by publication in cookery books and the descriptive elements of menus may be copyright and defended to constrain re-creation, reproduction and, perhaps, the creation of derivatives. (Wells, 2007) Technology evolves and is adopted competitors who create *generic* versions while other manufactures recreate pharmaceuticals for "less affluent" markets. When the commercial world is undertaking such activities where should the boundaries be placed by those within education working to establish the skilled and experienced students necessary for them to initiate careers of scientific discovery and in other creative, innovative and artistic fields of endeavour?

Context

The copying of perspective and content, albeit with rewording and revision, plagiarism, is not new; many theologians postulate a *lost* source "Q" from which the synoptic New Testament gospels (Mathew, Mark and Luke) are derived (e.g. Smith, 1997. Wikipedia, undated, also has a clear, and evolving, overview.)

An obituary of the writer Michael Crichton notes that nearly 60 years earlier he had “began his writing career producing school assignments for his classmates” (Carlson, 2008). I have personal experience of a similar case that occurred nearly 40 years ago. A Postgraduate student conducting Laboratory classes in a University’s School of Physics received, for marking, a Laboratory Report that he recognised; upon investigation it proved to be, substantially, his work. Further investigation was conducted and it was found that the Students Union’s second-hand bookshop was the vector. They dealt, under-the-counter, with assessed essays and reports. The Postgraduate had, some five years earlier, *donated* his work. Over the years the quality had improved as successive students dealt with the shortcomings identified in the feedback but the Postgraduate was still able to recognise that the assignment was, largely, his. The investigating academic was also in no doubt.

Clearly academic misconduct including, but not limited to, plagiarism, had occurred and occurred more often than it had been detected. Unfortunately, the experimental set-up has not been modified to eliminate any opportunity for this form of misconduct. However, what had occurred did imply that, at least during some iterations, the transposition had involved thought, reflection and possibly, understanding and learning. In this respect it was, perhaps, more pedagogically effective than this ubiquitous description of knowledge transfer by lecturing.

“Lecturing is the transfer of information from the notes of the lecturer to the notes of the student without passing through the minds of either”¹ (not known)

It is regrettable, from an educational perspective, that *cut and paste* probably makes fewer cognitive demands than the taking or copying of lecture notes. (Except, of course, to overcome those various technical formatting issues that *trip-up* the computer, the software or provide clear visual clues that elements have been transposed and incorporated into the final document.)

Plagiarism, specifically images, look and feel

In 1987 I joined the Design Department of Newcastle-upon-Tyne Polytechnic and became aware of the wide range responses then adopted to *copying* and *referencing* and how these, especially when they concerned visual material, were often tangential to the intention of the regulations and, for many, their moral code of practise. It was clear that there were inconsistencies within course teams, disciplines as well as between individual staff members. More recently regulations concerning academic misconduct have been clarified, implemented and agreed guidelines *policed* across the University. However, this strategy has often proved inapplicable and/or problematic for the creative disciplines; especially when visual matters, opinion and the actions of practitioners are concerned. Furthermore, while these issues may be founded in the creative disciplines, all students increasingly adorn their written work with illustrations or are required to give presentations. The issue of misconduct with creative formats requires wider, comprehensive, attention. It is the belief of the author that while general principles can be established it will, ultimately, be course teams who must set, disseminate and apply the boundaries applicable for each assignment undertaken.

¹ Attribution is un-resolved. I had recalled that this quote or a paraphrasing should be ascribed to BF Skinner (1904–1990) but a brief web search credits Adler, Anon, Rathbun, various graffiti writers and a wide range of un-acknowledging secondary sources. I have not, yet, found the primary source nor a clear attribution and would welcome any intelligence that can resolve this issue.

In China there is, at least one, village famous for “handcrafted” copies of paintings. The quality is clearly variable but the villagers of Dafen will produce “whatever the customer wants”. You may buy a single example direct or contract for 30,000 per month as Wal-Mart did. (Paetsch, 2006) They also offer a bespoke service to create works to your specification; perhaps to fill out the work presented in a final degree assessment!

Such “copying” is not restricted to paintings but may also applied to the most complex of designs. The Shuanghuan Automobile version of the Smart® “Fortwo” didn’t appear, as expected, at the Frankfurt Motor show, allegedly because it infringed the Intellectual Property Rights of others. (Madslien, 2007) Zetsche, the Chinese car manufacturer’s CEO, is quoted, by the BBC, as saying,

“In Asia in general, the culture does not define copying as something unethical”².

Elsewhere plagiarism may be understood to be unacceptable but getting caught is often brushed off in an apparently *flippant* manner. A few days after a document published on a Governmental website justifying/supporting the invasion of Iraq had been shown to have contain unacknowledged sections *cut-and-paste* from the work of the post-graduate Ibrahim al-Marashi PhD. The BBC reported a “Downing Street Spokesman” as saying that they had never claimed exclusive authorship. (BBC, 2003; White and Whitaker, 2003) An American Governmental example:

“... frankly, I'm not quite sure of the distinction between out-of-the-box thinking and research. Of course, it does bring to mind the definition that -- if you borrow [from] an author, it's plagiarism; if you borrow from a bunch, it's research. (Laughter, applause.) Only a university president would know that. (Laughter.)” (Robert M. Gates, US Secretary of Defense, 2008)

Or, ironically, Tom Lehrer’s³ song “The Great Lobachevsky” which includes the line:

“But plagiarize, plagiarize, plagiarize - Only be sure always to call it, please, 'research'.” (Lehrer, 1960)

However, is ironic humour always correctly interpreted by students? Parodies, pastiches and homages are common in the creative disciplines such as Art and Design but require a knowledge and appreciation of the original to be successful. Cultural references can be problematic for all but especially so for those studying away from home who may not have been exposed to rigorous regulation of academic misconduct during previous academic studies.

In Design a brief asking for an artefact that respects the look, feel of another, invariably *successful* product or service may be set. At its *simplest* this might be the *brand extension* or *brand stretch* of incorporating the logo of a car company onto a range of luggage; and, probably, designing and pricing the final items to position them, appropriately, within the

² In an RSA Lecture on bribery Prof Yu Gaoneng (an ex prosecutor for Shaanxi Province and now visiting Fellow to Grey College, Durham University) made an albeit tangential observation. The Chinese character for *bribery* splits into two elements – one translates as *shell/money/finance* and the other as *fair shares for all/distribution*. (Gaoneng, 2008) The cultural aspect to academic misconduct must be acknowledged and appropriately dealt with.

³ Tom Lehrer (1928 -) was, at the time the lyrics were written, a Harvard mathematician and “itinerant troubadour” – Ivanovich Lobachevsky (1793–1856) was a mathematician.

marketplace. A “cheap” “value for money” range might adopt the name, badge and design style of Proton® (Malaysian – “Spacious, Stylish & Safe”). A different perspective/context would be established with luggage displaying the Mercedes-Benz’s® (German - “A masterpiece – need we say more”) “star”⁴ logo upon it?

The creation of a fashion item or collection that is similar to the *look* of another is common. Once the catwalk show has occurred then the ideas of the prestigious fashion house have been copied and translated into clothing for sale on the high street. Historically this was common within the sector and was often, passively, tolerated, acknowledged and even encouraged. It may be well understood that for, perhaps, 1/100 of the price of the original the fabric, construction and detail of the *copy* will be very different however similar it may, from a distance, appear. Infamously, it was only a few days after the 1981 wedding that the dress designed for Princess Diana by David and Elizabeth Emanuel was copied and became widely available.

However, changes to EU Intellectual Property law resulted in a judgement that the unregistered design (*design right*) of the shirt/jersey designer Karen Millen had been infringed. It was alleged, in Court, that Dunnes Stores (Ireland) had specifically purchased, then passed the originals to manufactures in China and Turkey for use as patterns, reworking, revision, and then mass production. The defence that the items were not entitled to protection as the “designs were common” and lacked “individual character” was rejected. (RTE, 2007; Irish Independent, 2007). This remains, for some, a problematic area as may be inferred recent changes to EU IPR legislation and websites such as <http://www.counterfeitichic.com> (Accessed; 28 June 2010)

The use of *style look* and *logos* might be the outcome from a student or professional to a brief set by the company itself which, at least by implication, expects to see solutions that refer implicitly to their brand. Can this be regarded as common, expected, and equivalent to the correct referenced quote within an essay? Like the quote in a dissertation the use of style, look and logos relies on background knowledge before it can add anything significant to the new derivative work. Indeed, like the quote, adoption of the logo or look can be to used to support, the new work and place it within a context. Furthermore, like the quote within the essay it can also be used to imply a breadth of reading or *wide* contextual nous.

⁴ Originally created to represent land, air and sea and the ubiquity of Mercedes-Benz. Clearly, a message that is an excellent fit with the high quality luggage and travel goods competitive market.

Unfortunately, as with a poorly referenced quote within an essay the creative student can misuse and mislead by incorporating unapproved elements. A product design student might create a visual prototype of a new television displaying the logo and look of a major, prestigious manufacturer in the field. Should those viewing the item bring with them their knowledge of the “endorsing” brand or should the work be treated as, in part plagiarised, and the prescribed academic sanctions imposed? The adoption of styles, badges and logos may be common in student work and is often, erroneously, not regarded as worthy of note, grade influencing or even an element in the feedback given.

In this example there is also the wider dimension that will rarely apply to the written essay. Outputs from Art and Design courses are often of wide, public interest, photogenic and thus much used by those marketing Universities, Departments and Courses.

Figure 1:
Student car design



Photograph: Mic Porter – June 2008

The student of Geography who writes an excellent essay that unwisely contains un-attributed quotes is unlikely to find their work displayed in a public exhibition or inside the evening newspaper. This is not so for the work of the developing artist or design student whose work may receive wide and, effectively, uncontrolled publication. As a result of such open display the work may come to the attention of people or organisations that may be unhappy with the adoption and exploitation of their intellectual property. They might raise the matter with the student alone but perhaps, also insist on dealing with the University concerned believing that the IPR law has been broken or breached in a non-trivial manner.

Furthermore, the business might allege that disrespect has been shown to their brand and that this has reduced its worth in the eyes of the public and the marketplace. The use of the logo from a “fair trade” business applied, by a student, to a range of specialist greenhouse lighting that some might feel could have illegal, as well as legal uses might be thought, by some, to be unacceptable as well as commercially damaging. In such circumstances the student, obviously, is going to find it very difficult to run either the “accidental infringement” or the “sloppy; sorry, forgot to reference” defence. Defences that are commonly adopted by those accused of plagiarism in written assignments.

Perhaps the copying is not as obvious as the simple relocation of a badge. For example, outside academia and in the *real world*, Apple Inc filed (16th January 2008) a claim that a logo developed for New York City’s “Green – Environmental Awareness Campaign” was sufficiently similar to their registered trademarks that the public might be confused. This would be an actionable infringement of intellectual property rights and has passed to the Intellectual Property Court for resolution.

EMERGE 2010: Paper

Issue 2, pp. 1 - 16

In 2007 Apple Inc, (iMacs, iPods, iPhones etc) obtained an acceptable judgement after 25 years in legal argument and dispute with Apple Corp (“Hard days Night”, “Yellow submarine” and Beatles fame.) (BBC, 2007) When the initial registrations were made few, if anybody foresaw that digital computers would commonly be used to distribute and play music yet when the case was finally resolved many could not understand why anybody would wish to distribute or play music in an analogue format!

Does “when you live outside the law, you have to eliminate dishonesty” sound familiar? It is, apparently, a line from the 1958 film “The Lineup” (director Don Siegel). (Lethem, 2007) Did the line get reworded to become the more memorable “But to live outside the law, you must be honest” in Dylan’s “Absolutely Sweet Marie” on his record “Blonde on Blonde (1966)? (Lethem, 2007)

There is also the case when the *take-off* is the prime intention of the creative work, a parody, pastiche or homage. Poets, good and others less so, have often written and, sometimes published such works.

“The Village Blacksmith

*“Under a spreading chestnut-tree
The village smithy stands;
The smith, a mighty man is he,
With large and sinewy hands;
And the muscles of his brawny arms
Are strong as iron bands.*

*“He goes on Sunday to the church,
And sits among his boys;
He hears the parson pray and preach,
He hears his daughter's voice,
Singing in the village choir,
And it makes his heart rejoice.”*

Henry Wadsworth Longfellow (1807–82)

“The Village Burglar

*“Under a spreading gooseberry bush
The village burglar lies,
The burglar is a hairy man
With whiskers round his eyes
And the muscles of his brawny arms
Keep off the little flies.*

*“He goes on Sunday to the church
To hear the Parson shout.
He puts a penny in the plate
And takes a pound note out
And drops a conscience-stricken tear
In case he is found out.”*

The Village Burglar (undated)

Piet Mondrian’s (1872–1944) distinctive style has been a source for many including Yves Saint Laurent (1936–2008) who acknowledged his work as source of inspiration for a “day dress” shown in the autumn of 1965. Examples of the original paintings the dress and other derivative works may be found in many renowned gallery and museum collections (Eg V&A, undated and MMA, undated). Edward Hopper’s (1882 – 1967) Nighthawks Café (1942) is the source of so many reproductions and derivative works that it has been widely identified among the most copied works of art. (e.g. Blythman *et al*, 2008). Leonardo da Vinci’s Mona Lisa is another obvious example of an image widely used in derivative works.

John Cage’s *silent composition, 4'33"* (1952) was recently the subject of a copyright dispute which was settle in favour of late John Cage (1912 – 1992). Mike Batt was quoted by the BBC (2002) *“I thought for my own amusement it would be funny to call it something so I called it A Minute's Silence and credited it as track 13 and put my name as Batt/Cage, as a*

tongue-in-cheek dig at the John Cage piece". Thus it was acknowledged to be an IPR infringement, damages agreed in an out-of-court settlement.

There are also occasions when the parody is adopted by the original's originator but, for whatever reason the author cannot be acknowledged. Tom Paxton (2005) has sung in concerts and included on recordings a parody that he describes as "art". The additional verse for Paxton's "The Last Thing on my Mind" may be found on the web (eg Valerie, undated).

An extension of this issue concerns not the design itself but the context in which it is placed. A student designing a bus shelter or pub/club interior might wish to include reproductions of existing advertisements and products to "complete" the presentation of their design. To what extent is this intended to go beyond simple adornment and enrichment to the imparting of a specific feel or emotional response? Does the student, for example, include a poster for a desirable rock band on the bus shelter they have created or a "weight-watchers" poster? Does the model of a bar interior clearly display common or exclusive bands of alcohol?

Figure 2:
Student Bus Design



Photograph: Mic porter – June 2008

The *Badging* of a design may be common in student work where it is hoped that the reference to the brand may evoke a positive response from those that see it (*Badging for prestige*) or to establish a context or alignment with the work of others (*Badging for congruency*). Unless the project is to be undertaken with the explicit support of the brand owner then *Badging up* can only be misleading and thus unacceptable to the course team.

In the case of an essay or dissertation the extent of the infringement is often considered as important. Perhaps the assignment contains several paragraphs paraphrasing or copying from published sources. It may be that some sections are poorly referenced and the originals for others cannot be located but, stylistically, it is believed that they have not been created by the student concerned. In this case, however, detection software, web searches can be used to support the concerns of the academic and enhance their memory of the relevant literature.

In the case of creative design work, product, multimedia, transport, craft, etc, the first two options are limited. A sketch design for boardroom table cannot usefully be scrutinised by conventional plagiarism identification software (e.g. Turnitin) nor may a cutlery design be readily searched for on Google. However, if Google can be pointed in the right direction then it may find relevant images but indexing will, however, be a problem. For example, an image of Politicians walking on Brighton beach at conference time might become the source image for pebbles that is then reproduced, without acknowledgement, onto a plastic flooring.

How might this “misuse” be prevented or detected? How soon will it be before software can provide an effective answer?

Is it acceptable? If a student wishes to use wood grain, copied from an image found on the internet for a surface to a plastic object must they reference the source? Furthermore, should they create (or commission) their own original image of a particular plank in a wood store? To what extent do the expectations of a student designer differ from a practising artisan? In this case the image of *wood grain*, many be copyright; certainly Formica™ have won cases when competitor companies have reproduced *their* wood grain. The use of wood grain *out-of context* might even be protected, as a registered design, when used on a lipstick case. (Ryder, 1992)

Consider the student who creates a range of *flat pack* furniture where the unacknowledged design of the corner joint has been obtained from a patent that has not been renewed. It is thus in the public domain and may be freely adopted by all, including the student. The tutors may not recognise the corner design, which may not have been widely used. Without this small component the product fails but how is the use of this essential element more or less acceptable than a student of Physics using a well established formula? How and when do ideas get to “run-free” and adopt a feral existence that may curtailed by adoption? Should the designer acknowledge the supplier of a generic fastener (a *pop-rivet*, for example)? Can trademark terminology, for example, Post-it®, be kept pure and not used in colloquial speech for similar *non-sticky stickies*? Hoover® is in common use and Google®, has become a verb. To what extent should a student be penalised if this form of IPR sloppiness occurs in their sketches or finished work submitted for assessment?

Music (sheet or performed), maps, knitting patterns and recipes are generally copyrighted and frequently subject to legal action to defend ownership and reproduction rights. For example, chefs have fought but did settle *out-of-court*, over the make-up of Caesar salad and the extent to which the inclusion of *signature* “English muffin croutons” was an infringement. (Wells, 2007)

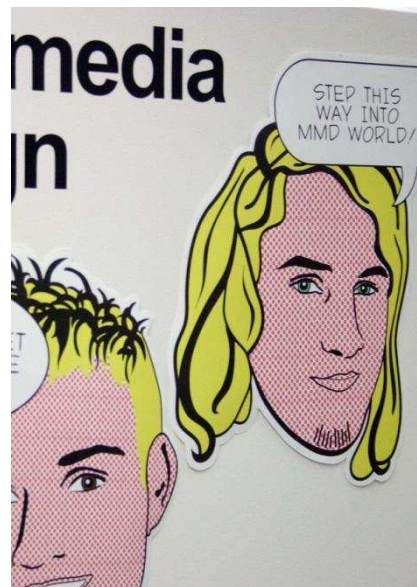
Finally consider the multi-media designer or student creating a PowerPoint® presentation. Should they be expected to create every image and musical element themselves or may they, with acknowledgement, *cut-and-paste* and download? How is the boundary set and, precisely, communicated to staff and students? When is an electronic form of montage or collage acceptable, as a solution to the brief and when it is not. Is sourcing, manipulation and arrangement sufficiently creative or must more be done? Where and how does a course team “draw the line” and how might that boundary compare with the views of the music copyright holder or publisher?

In architecture the look of a building might be predicated upon a vernacular, culturally specific, historically style or the work of others. Indeed, famous architects may find their work *quoted* by

others and often support this by openly publishing or exhibiting their work. A builder was asked to re- create the design of a house but when the “reinterpretation” was seen by, the original architect, took legal action for copyright infringement, and won. (Byles, 2007). The use of design trends or a particular style is common in architecture as it is elsewhere in the creative disciplines and the training courses that serve them. It maybe that the design solution proposed is expected to be *sympathetic* to the environment/site/context in which it would, if constructed, exist. Any context jarring impact-arousing shock must, usually, be avoided or moderated. However, how can it be made clear what is acceptable re-interpretation and what must be original work. How may such boundaries be established and communicated? Should a student proposal for a “Tudor Style” development or a “half timbered station wagon” ever be acceptable and the design work highly rewarded? These issues and questions cross all the creative disciplines and sub-disciplines.

European Courts have generally tried to balance the need to protect IPR while permitting the creation of new ideas⁵. This, however, can be a hard balance to make; over-regulation might stifle technologically development until periods of protection have expired (Boldrin and Levine, 2008). Generally the focus of the law is on the similarities between items and images to prove the case of infringement rather than the establishment of a number of differences being used to disprove it. Courts accept “accidental similarities” and “independent invention” can occur and this defence may be supported by the use of intellectually “clean rooms” for research and development. Here individuals are kept away from existing items – perhaps software code – both before and while they create. Not easy to do; as Kidder (1981) describes nor is it easy to establish the essential untainted purity and originality to the satisfaction of those that believe their rights and thus the law, violated. Newton may think his “standing on the shoulders” remark to be original but earlier uses of

Figure 3:
Student Exhibition poster,



Photograph: Mic Porter – June 2008

⁵ Secretary of State Thomas Jefferson sought to establish the principles of registration and free flows of information and permissions to exploit in the American patents acts of the 1790s but the reverse is now, virtually ubiquitous.

this phase have been discovered (Merton, 1965). It will always be harder to prove *intent* to the English criminal standard of “beyond reasonable doubt” than it will be to pass the civil law test of “on the balance of probabilities”.

Photographic images or graphic designs are now easily and seamlessly copied resulting in many legal actions. The degree to which the second or subsequent image shares elements with the original has been accepted by Courts as indicative and may prove the case. Similar treatments and locations have proved problematic while other examples have been tolerated and thus untested in the Courts. (e.g. Editorial Photographers: UK & Ireland, 2007; Cass, 2008a & 2008b) The latter includes examples of “self plagiarism”. Can, for example, Disney® plagiarise Disney® or are they just quoting? How original is, original? Student artists evolve and many established artists have created series of work and re-worked compositions over the years. These are usually accepted without question, however, some series can also give rise to problems of attribution; as with, for example, Andy Warhol (1928–87) (andywarholpaintings, 2007) and under other circumstances *self-plagiarism* is certainly unacceptable.

Indeed, given the ease of locating images and incorporating them into written material, issues of visual plagiarism now affect all academic disciplines. The use of presentational software, such as PowerPoint® encourages the adoption of images and, for some, the incorporation of music/sound into the work. How should such inclusions be acknowledged, to what extent do course teams find this adoption acceptable and how will they communicate those boundaries to the students undertaking the work? Furthermore, the distribution that the work might receive may influence the acceptability, or otherwise, of the adoption of work originally done by others.

A route forward and a way for Course teams to resolve issues

Primarily establish acceptable boundaries. These will vary for each discipline, subject and/or course team. The guidelines of the relevant professional bodies/learned societies and the employer panels should be used to inform this process as will *custom and practice*. These boundaries will include both the artefact itself and those materials used to support and present the design.

Recognise that the boundaries set will probably vary with the stage/year of the course and, by implication, the publicity that the work might receive. The boundaries will also vary over time and may need specific revision as the result of legal judgements and evolving professional *good practice* guidance. These Boundaries of acceptability need to be established and incorporated into each brief set.

The brief may specify that the design solution required should be produced, unaided, by the student concerned. It might, however, be acceptable for them to have models or prototypes produced to their specification or photographs taken, professionally, for use in the publicity associated with the design work or as *feedstock* for PhotoShop® manipulation. It is important that the expectations are clearly expressed.

Devise and promulgate the acceptable method of acknowledgement equivalent to textual quotation marks (in English, inverted commas) and the associated reference format (e.g. Pears and Shields, 2008). It might, for example, be acceptable to provide clear, reference

free presentations providing they are precisely linked to sketch developments books containing the necessary attributions and justifications alternatively detailed footnotes might be required on each *presentation board*.

Sketchbooks and other records of development can be used to document how ideas have evolved and thus provide support for tutorials and the tutorial record. The sketchbooks can give a timeline of concept development explicitly record and identify sources consulted, ideas modified, adopted and then incorporated into the final artefact. It is good professional practice to require each development page, sketch or drawing etc to be marked with the students name and the date of creation; not least for the establishment of copy and design rights. The formal assessment process should be designed to strengthen this process.

The degree of originality required should be defined in the brief set. This might suggest that the use of the work of others is acceptable providing that it is acknowledged and a clear statement is provided as to what would be required before this educational exercise could be published, shown publicly or put into production. In professional practice clearance might be required from copyright owners or licence fees payable to patentees, and holders other IPR before production but, not necessarily, before the *pitch* or presentation.

It may be necessary to severely limit publicity associated with designs for which IPR claims are to be made, especially if patent applications are intended. How this matter is dealt with may vary if the institution, the individual student or an associated commercial organisation is seeking the protection. The expectations and regulations applicable to such cases must be clearly established and applied immediately once the creation of the IPR is identified or becomes imminent.

In situations where, with the agreement of the Course team, material protected by intellectual property has been adopted, perhaps only to enhance a PowerPoint® presentation, then care must taken to ensure that such work does not receive, without editing, public distribution. This includes public exhibitions and students own *Show Reel* or in online CVs.

Make a clear ruling that no *Badging* should occur in designs not created with the explicit knowledge and approval of the brand owner. Furthermore, and in the context of international students, it should be noted that the rights to a particular brand may vary geographical and with the type of artefact created.

The boundaries, standards expected and guidelines for resolution of doubt must be communicated to the students and supported with the imperative that these are the standards adopted by the profession for which they are undergoing training. It would also be prudent to establish that this guidance and processes are in accord with the superior University regulations and that suitable processes exist for dealing with any appeals that might arise Porter (2009).

Conclusion

Academic misconduct in the creative fields may:

- be more difficult to define and detect than in purely written work;

- be recognised as a common, and perhaps necessary, stage in the learning and skill development process that the student must, traditionally, undertake;
- be poorly defined and understood by staff and students; the impact of recent changes to Intellectual Property law might not, for example, have been assimilated by academics, especially those that are not practitioners. Indeed, there may be a tradition of overlooking such behaviour within the field or trade for which the students are being trained;
- be more difficult to quantify and/or resolve - when detected;
- be much more likely to become known outside the University than if the infringement had been within an assignment for a text based subject/discipline;
- consist of infringements that are more likely to interest the rights holders than is the case with unauthorised or un-attributed text quotes and that these rights holders are more likely to seek legal redress than a textbook or journal publisher;
- be easier to detect as creative individuals appear to often have a strong iconic, visual memory, but it can be difficult to identify the original source which may not be so well remembered;
- be an image that is *watermarked* (“digimarked”) and thus ownership can easily be determined and, if presented on the web detected by standard “crawling software” designed to protect such rights;
- because of the difficulty in tracking visual misconduct, be likely to have received a wide circulation before the rights owner detects the infringement and seeks redress. However, “web-crawling” software, designed to identify and characterise images is becoming available and adopted by major image rights holders. (For example <http://www.tineye.com> (Accessed 28 June 2010));
- result in legal action against the University and/or the tutors concerned;
- be regarded as “acceptable” within some cultures and able to cross frontiers as it is not “fixed” in a particular cultural tradition or language;
- have a legal underpinning wider than copyright, including performance rights, patents, design registration trademarks, etc.
- contain images that acceptably cross commercial boundaries, eg the “Fisherman’s friend boat” originally appeared on a sweet but now can be found on mugs, tee-shirts etc. Under what circumstance is *second use* acceptable?

Actions to take include:

- establishing the bounds of acceptability within both staff teams and student groups noting that there will often be variation between assignments/briefs;
- agreeing the degree to which public presentation/exhibiting is possible given the brief set and the response submitted. This may, for example, include degree shows, Departmental show-reels and the student’s own CV;

- ensuring that the boundaries established are clearly communicated to all students especially those from different cultural traditions;
- ensuring that the established boundaries are communicated to all teaching on a Course and those responsible for monitoring quality – external examiners/moderators, for example;
- knowing your field, especially artefacts that may be found and adopted, without acknowledgement;
- seeing development and sketchbooks including a log showing when ideas and concepts formed and where the inspiration came from;

Acknowledgements

I wish to record my thanks to my thanks to all those colleagues and family that have contributed to, and commented on, drafts of this paper, and its antecedents. I would also like to thank the anonymous reviewers for their suggestion which have, undoubtedly, improved the readability of this paper.

References

The rights of intellectual property rights holders referred to in this paper is acknowledged.

Andywarholpaintings (2007) *andy warhol art authentication board*. Available at: <http://andywarholartauthentication.blogspot.com/> (Accessed: 28 June 2010).

BBC (2002) *Silent music dispute resolved* (23 September). Available at: <http://news.bbc.co.uk/1/hi/entertainment/music/2276621.stm> (Accessed: 28 June 2010).

BBC (2003) *The plagiarism plague* (7 February). Available at: <http://news.bbc.co.uk/1/hi/uk/2736575.stm> (Accessed: 28 June 2010).

BBC (2007) *Deal ends Beatles Apple battle* (5 February). Available at: <http://news.bbc.co.uk/1/hi/entertainment/6332319.stm> (Accessed: 28 June 2010).

Boldrin, M. and Levine, D. K. (2008) *Against Intellectual Monopoly*. Cambridge: Cambridge University Press.

Blythman, M., Orr, S. and Mullin, J. (2008) *Visual plagiarism*. Workshop session *Visual plagiarism: perspectives from two institutions* with Porter (2008). International Plagiarism Conference, Northumbria University, June 2008.

Byles, J. (2007) 'Careful with that Trace Paper'. The Architects Newspaper: New York (24 April). Available at: http://www.archpaper.com/e-board_rev.asp?News ID=529 (Accessed: 28 June 2010).

Carlson, M. (2008) 'Michael Crichton, Obituary' *Guardian* 7th November 2008. Available at: <http://www.guardian.co.uk/media/2008/nov/07/television-michaelcrichton> (Accessed: 28 June 2010).

Cass, J. (2008a) *Graphic Design Rips Offs or Inspiration?* Available at: <http://justcreativdesign.com/2008/02/20/graphic-design-plagiarism-rip-offs> (Accessed: 28 June 2010).

EMERGE 2010: Paper

Issue 2, pp. 1 - 16

- Cass, J. (2008b) *Blatant Design Rip Offs or Just Inspiration?* Available at: <http://justcreativedesign.com/2008/05/28/graphic-design-plagiarism-rip-offs-2> (Accessed: 28 June 2010).
- Cox, G. (2005) *Cox Review of Creativity in Business: building on the UK's strengths*. London: HM Treasury. Available at: http://webarchive.nationalarchives.gov.uk/+http://www.hm-treasury.gov.uk/independent_reviews/cox_review/coxreview_index.cfm (Accessed: 28 June 2010).
- Editorial Photographers: UK & Ireland (2007) *Getty Images wins 'plagiarism' appeal over look alike photograph*. Available at <http://www.epuk.org/news/233/getty-images-wins-plagiarism-appeal> (Accessed: 28 June 2010).
- Friedman, T. (2005) *The World is Flat*. London: Allen Lane.
- Gardiner, B. (2008) *Wired Apple to New York City: Bite Me*. [Online] http://www.wired.com/techbiz/it/news/2008/04/apple_vs_apple# Formal Court document available at: http://www.wired.com/images/pdf/apple_opposition.pdf (Accessed: 28 June 2010).
- Gaoneng, Y. (2008) Conversation with Mic Porter, 19 May.
- Gates, R. M. (2008) Remarks of the US Secretary of Defense at Maxwell-Gunter Air Force Base, Montgomery Alabama, April 21, 2008. Available at: <http://www.defenselink.mil/transcripts/transcript.aspx?transcriptid=4214> (Accessed: 28 June 2010).
- International Plagiarism Conference (2008) *3rd International Plagiarism Conference – Transforming practice for an authentic future*. 23 - 25 June 2008. City Campus East, Northumbria University, Newcastle-upon-Tyne.
- Irish Independent (2007) *Dunnes Stores copied rival's fashion designs, court hears* Available at: <http://www.independent.ie/national-news/dunnes-stores-copied-rivals-fashion-designs-court-hears-1114874.html> (Accessed: 28 June 2010).
- Kidder, J. T. (1981) *The Soul of the New Machine*. New York: Atlantic, Little-Brown.
- Lehrer, T. (1960) *An evening wasted with Tom Lehrer*. LP Record: Decca SKL4097.
- Lethem, J. (2007) The ecstasy of influence: A plagiarism. *Harpers Magazine*, February.
- Madslie, J. (2007) *Chinese copy row reaches car show*. Available at: <http://news.bbc.co.uk/1/hi/business/6989384.stm> (Accessed 28 June 2010).
- Merton, R. (1965) *On The Shoulders of Giants: A Shandean Postscript*. New York: Free Press.
- Newton, Sir Isaac (1675) In a letter to Robert Hooke, dated 5 February 1675.
- Ryder, K. F. (1992) *United States Patent D389279 - Wood grain lipstick case*. Available at: <http://www.freepatentsonline.com/D389279.html> (Accessed: 28 June 2010).
- RTE (2007) *Dunnes loses clothes design case*. Available at: <http://www.rte.ie/business/2007/1221/dunnes.html> (Accessed 28 June 2010).

EMERGE 2010: Paper

Issue 2, pp. 1 - 16

- Paetsch, M. (2006) *Van Gogh from the Sweatshop*. Available at: <http://www.spiegel.de/international/0,1518,433134,00.html> (Accessed: 28 June 2010).
- Paxton, T. (2005) *Live in the UK*. CD: #PAX008 (Recorded during the UK tour, October 2003).
- Pears, R. and Shields, G. (2008) *Cite them right*. Newcastle: Pear Tree Books.
- Porter, M. (2008) *Tackling Academic misconduct in Art and Design*. Workshop session *Visual plagiarism: perspectives from two institutions* with Blythman et al (2008). International Plagiarism Conference, Northumbria University, June 2008.
- Porter, M. (2009) *Beyond text based plagiarism: A paradigm for tackling academic misconduct in the creative disciplines*. Red Guide 54, Newcastle: Northumbria University.
- Smith, M. H. (1997) *A synoptic Gospel Primer*. Available at: <http://virtualreligion.net/primer/> (Accessed: 28 June 2010).
- The Village Burglar* (undated). Available at: <http://blogs.salon.com/0003174/categories/poems/2005/07/08.html> (Accessed: 28 June 2010).
- The Metropolitan Museum of Art (MMA) (undated) *"Mondrian" day dress, autumn 1965* Available at: <http://www.metmuseum.org/toah/works-of-art/C.1.69.23> (Accessed: 28 June 2010).
- Valerie (undated) *Crediting "Roger Peek" for the words of the parody*. Available at: <http://www.mydfz.com/Paxton/lyrics/ltomm.htm> (Accessed: 28 June 2010).
- Victoria and Albert (V&A) museum (undated) *"Mondrian" Dress, Yves Saint Laurent* Available at: <http://www.vam.ac.uk/images/image/18606-popup.html> (Accessed: 28 June 2010).
- Wells, P. (2007) *Chef Sues Over Intellectual Property (the Menu)*. New York Times, Available at: <http://www.nytimes.com/2007/06/27/nyregion/27pearl.html> (Accessed: 28 June 2010).
- White, M. and Whitaker, B. (2003) UK war dossier a sham, say experts. *Guardian*. Available at: <http://www.guardian.co.uk/politics/2003/feb/07/uk.internationaleducationnews> (Accessed: 28 June 2010).
- Wikipedia (undated) *The Synoptic problem*. Available at: http://en.wikipedia.org/wiki/Synoptic_problem (Accessed: 28 June 2010).