



Authorship as a Collective Endeavor

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While copyright law still holds the whip hand, insisting on its right to lock up every last iota of creative expression, its philosophical justification is taking a serious beating these days. The idea that individual authors are the exclusive fount of originality – hence the need for copyright law – is losing its force.

Two major articles in the February issue of *Harper's* magazine explore the collective nature of creativity in rich detail. An essay by Jonathan Lethem, “The Ecstasy of Influence,” wanders through literary and artistic history to show how nearly every creator of note has shamelessly filched themes, motifs, characters, and other elements from the past. Heinz von Lichberg published the story of *Lolita* forty years before Vladimir Nabokov. Leonard Bernstein based *West Side Story* on Shakespeare’s *Romeo and Juliet*, which in turn borrowed from Ovid’s *Pyramus and Thisbe*. And so on.

Of course, individuals are creative as individuals. But we now see from the Internet and from a closer look at artistic history that creativity is inherently a community affair as well. It requires borrowing, sharing and re-mixing of prior works. Culture is fundamentally a creative mashup.

Lethem cleverly uses his essay as an object lesson in “plagiarism” by making a list at the end of “the source of every line I stole, warped, and cobbled together as I ‘wrote’ (except, alas, those sources I forgot along the way).” Full disclosure: Lethem references my book *Silent Theft* as an influence, along with books by Lewis Hyde, Lawrence Lessig, Siva Vaidhyanathan, and several dozen others. The theme of borrowing-as-the-

essence-of-creativity is not entirely new, of course (what is?), but it is surely an under-represented argument that deserves greater attention. It is exciting to see this topic showcased in a prominent national publication.

A related piece in the same issue of *Harper's* is "On the Rights of Molotov Man," which traces the cultural journey of a photograph. The image of "Molotov Man" is a rifle-toting Sandanista guerilla poised to throw a Molotov cocktail using a Pepsi bottle. The photo, originally shot by Susan Meiselas in 1979 the day before Somoza fled Nicaragua.

The cultural migration of the image began when Joy Garnett, a New York City painter, did a painting based on the Meiselas image – and soon thereafter received a letter from Meiselas' lawyer informing her that Garnett had infringed upon Meiselas' copyright. Although Garnett agreed to credit Meiselas' photo as the inspiration, she refused to pay a licensing fee or seek written approval before letting her painting be reproduced.

As the legal battle escalated, however, fellow artists spontaneously began making artistic knockoffs of the Meiselas photo, posting them on the Web. Soon "Molotov Man" was a ubiquitous, self-replicating cultural meme. It could be found on revolutionary posters, street murals, t-shirts, web art, newsletter logos, and more. The image "belonged" to everyone.

The core question for Garnett is "Who owns the rights to this man's struggle?" She writes:

Does the author of a documentary photograph – a document whose mission is, in part, to provide the public with a record of events of social and historical value – have the right to control the content of this document for all time. Should artists be allowed to decide who can comment on their work and how? Can copyright law, as it stands, function in any way except as a gag order?

Meiselas takes issue with Garnett, however, claiming that Garnett's "practice of decontextualizing an image as a painter is precisely the opposite of my own hope as a photographer to contextualize an image...." Meiselas:

There is no denying in this digital age that images are increasingly dislocated and far more easily decontextualized. Technology allows us to do many things, but that does not mean we must do them. Indeed, it seems to me that if history is working against context, then we must, as artists, work all the harder to reclaim that context. We owe this debt of specificity not just to one another but to our subjects, with whom we have an implicit contract.

It's a fair enough response, as far as it goes. But really – isn't a photograph, any photograph, itself a radical de-contextualization of its subject matter? Can a photographer really believe that the context of his or her work can be preserved? Doesn't the act of introducing something to the culture require a certain loss of control, and thus an acceptance of re-contextualizations?

It sounds to me as if Meiselas is belatedly trying to scramble to the moral high ground after her litigation gambit proved too incendiary. Her copyright claims were trumped by the spontaneous acts of artists and revolutionaries everywhere.