

**Creative Restraint and Responsibility
Artists, Documentarians and Copyright**

By Christopher Reiger, Hungry Hyaena blogspot, Wednesday, January 17, 2007



The kernel, the soul - let us go further and say the substance, the bulk, the actual and valuable material of all human utterances - is plagiarism. For substantially all ideas are secondhand, consciously and unconsciously drawn from a million outside sources, and daily used by the garnerer with a pride and satisfaction born of the superstition that he originated them.

-Mark Twain (via Jonathan Lethem's essay, "The Ecstasy of Influence")

For a third time I've allowed my art magazine subscriptions to lapse. I'm forever waffling: one year, I feel I should receive ARTFORUM, Art in America and others(1) to stay informed of Art World goings-on; the next, I elect to save money by dropping the magazines and relying instead on Internet art resources, galleries and museums. These venues allow me to focus on the artwork without the burden of confounding commentary. I enjoy reading reviews or thoughtful essays on art; in fact, as an artist, writer and compulsive reader, I would think myself the ideal subscriber, but I can't rationalize forking over income for writing that Richard Dawkins describes as the "vacuous rhetoric of mountebanks and charlatans."(2) Dawkins was attacking the language of postmodern philosophy - the likes of Deleuze, Guttari and Lacan - but his critique of their obscurantism is applicable to contemporary art writing. Most of it is esoteric nonsense.(3)

So, once again, I'm left with subscriptions to just two magazines: The New Yorker and Harper's. The articles published in The New Yorker are first-class - clear, intelligent and well crafted - and, even though the magazine is published weekly, it rarely disappoints. Harper's is less consistent and more biased, but when the magazine is on, it's incomparable. The most recent issue (February 2007) is exemplary and two related articles are of particular interest to contemporary artists. "The Ecstasy of Influence: A Plagiarism," by the novelist Jonathan Lethem(4), follows a perspective piece, "On the Rights of Molotov Man," written by the artist (and fellow art blogger), Joy Garnett, and the acclaimed photographer, Susan Meiselas.

Most artists are brought to their vocation when their own nascent gifts are awakened by the work of a master. That is to say, most artists are converted to art by art itself...Invention, it must be humbly admitted, does not consist in creating out of void but out of chaos.

-Jonathan Lethem, cutting-and-pasting from the pages of Lewis Hyde's "The Gift" and Mary Shelley's "Frankenstein"

Two quotations spring to mind whenever I consider copyright, originality or the avant garde. The first is so familiar as to seem trite while the second, I assume, is indebted to sources uncredited by Bono, the lead singer and songwriter for the popular rock band, U2.

There is nothing new under the sun.

-Ecclesiastes 1:9

Every artist is a cannibal, every poet is a thief.

All kill their inspiration and sing about the grief.

- lyrics from "The Fly," written by U2

Indeed, we are all borrowers and collagists. The honest among us could read the Mark Twain passage that prefaces this post, nod in agreement and leave it there but for the law. Technology drives the evolution of copyright legislation. The Fifteenth century invention of the printing press necessitated consideration of an author's right to reproduction and the ideas contained within any text. Whereas reproduction rights are principally attached to capital - how does the author get paid for the dissemination of his or her ideas? - intellectual rights are attached to ego. Enlightenment thinking has it that ego drives invention as much as (if not more than) necessity. By granting innovative thinkers and craftsmen control of their respective inventions - be it a painting, a novel or a microscope - through patents and copyrights, lawmakers believed they were encouraging progress. And so they were, but today, living in the era of memes, emergence and the Internet, it comes as no surprise that there is renewed debate regarding intellectual property rights.

Undeniably, all "career artists" are ego driven beasts. As Emily Nussbaum writes in The New York Times Book Review, "For so many artists, the act of creativity is intended as a Napoleonic imposition of one's uniqueness upon the universe." As a result, many artists are loath to own up to influence and are fiercely protective of their product. Before I even turned ten, my father, a freelance writer and author, stressed to me the importance of copyright law. As Lethem writes in "The Ecstasy of Influence,"

...copyright is revered by most established writers and artists as a birthright and bulwark, the source of nurture for their infinitely fragile practices in a rapacious world. Plagiarism and piracy, after all, are the monsters we working artists are taught to dread, as they roam the woods surrounding our tiny preserves of regard and remuneration.

Indeed, but the times they are a'changin'.(5) Increasingly, artists working in all mediums and crafts - writers, musicians, filmmakers, painters - embrace influence and sampling with the same enthusiasm that jazz musicians and open source code advocates always have. Three factors contribute to the changing attitude: globalization, leaps in communications technology, and the expansion of corporate hegemony. The first two make the world seem smaller, allowing for accelerated cultural exchange. The Internet savvy among us have grown accustomed to speaking a language of pastiche - blog hyperlinks, Ctl-X/Ctl-V, YouTube - and we exposed to a cornucopia of outside influence. Unfortunately, and somewhat paradoxically, the shrinking world is no more comprehensible; in fact, each subsequent generation seems more anxious and confused than the last. The corporate fist, meanwhile, has engendered dissent, making reactionaries out of every file sharer (soon to be, if not already, the majority of young people). The

arguments from both sides - the prosecutors and the copyright violators - tend to be extreme. Again turning to Lethem:

If I were to tell you that pirating DVDs or downloading music is in no way different from loaning a friend a book, my own arguments would be as ethically bankrupt as [those of the litigious corporations]. The truth lies somewhere in the vast gray area between these two overstated positions. For a car or a handbag, once stolen, no longer is available to its owner, while the appropriation of an article of 'intellectual property' leaves the original untouched. As [Thomas] Jefferson wrote, 'He who receives an idea from me, receives instruction himself without lessening mine; as he who lights his taper at mine, receives light without darkening me.'

That passage is a brilliant summation of the issue at large, but things get complicated when considering specifics...and consider them we must.



Joy Garnett
"Molotov"
2003
Oil on canvas
70 x 60 inches
Collection of Nick Debs, NYC

The subtitle of "On the Rights of Molotov Man," the piece preceding Lethem's essay, is "Appropriation and the art of context." Indeed, the latter half of this subtitle is central to the dispute between Joy Garnett and Susan Meiselas. The details of the situation, in a nutshell, are as follows. Garnett trolled the web for

"images of figures in extreme emotional or physical states." One of the many .jpegs she saved showed a man hurling a Molotov cocktail. Garnett was interested in the act pictured, not the provenance. In fact, the .jpeg was a cropped section of a Meiselas photograph, originally published in the photographer's 1981 book, "Nicaragua." Garnett produced an oil painting based on the detail she had downloaded and, after the painting was displayed in a New York art gallery (and was featured on the exhibition's announcement), Garnett received a letter from Meiselas's lawyer informing the painter that she was "sailing under the flag of piracy." Taken aback and a little shaken up, Garnett turned to an online "new media" community, Rhizome.org, for advice. Aware of the legal cloud, however, she was careful not to "name names or post a link to Susan's photograph." Her situation drew a lot of attention, eventually leading to an international agitprop campaign dubbed Joywar. (The details are very interesting, but, in the interest of space, I'll simply recommend the following links: the full Harper's article; a relevant video lecture; an archive of all things JoyWar; a related photo set). Suffice it to say, although no lawsuit was brought, Garnett and Meiselas have different perspectives on the matter.

Reading Meiselas's half of "On the Rights of Molotov Man," however, one realizes that copyright is less important to her than context. In other words, Garnett's unsanctioned use of the image is less troublesome to the photographer than the generalization of the image's content. There is an important distinction to be made here. The artist - Garnett, in this case - speaks the language of the universal. Hers is "a project born of frustration and anger" and the .jpeg of the anonymous rebel was "emblematic of the series." This is true of all the works that comprise Garnett's "Riot" series. Her inspiration was specific - the United States invasion of Iraq in 2003 - but her paintings of "shouting demonstrators, angry skinheads, an Air Force pilot and his girl in an emotional embrace, frat boys jumping over bonfires, screaming punk rockers" are archetypes of the anxiety and anger we feel when powers outside our sphere of influence affect us adversely, especially when they steer the region (or world) toward further conflict. These misgivings are essentially equivalent, irrespective of culture, place or time.

By contrast, the photographs Susan Meiselas shot in Nicaragua are intended as documents of a particular place, during a particular conflict, in this case, the fighting between the Sandinistas and the ruling Somoza family. Although this conflict continues today in a different incarnation, the photograph in question represents the final hours before the Somoza family fled the country in July of 1979. Meiselas's interest is specific and historical; she is a documentarian. Not all photographers are documentarians, but Meiselas makes clear her goals in the Harper's article. "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." The Enlightenment thinker in me is inclined to agree with her, but most contemporary artists are not interested in reclaiming specificity. Rather, we are in the business of erasing it, sanding the hard edges of "fact" to reduce friction. Lethem, cribbing from David Foster Wallace's essay, "*E Unibus Pluram*":

Today, when we can eat Tex-Mex with chopsticks while listening to reggae and watching a YouTube rebroadcast of the Berlin Wall's fall - i.e., when damn near everything presents itself as familiar - it's not a surprise that some of today's most ambitious art is going about trying to make the familiar strange....[by] paradoxically trying to restore what's taken for 'real' to three whole dimensions, to reconstruct a univocally round world out of disparate streams of flat sights.

In other words, we're learning to cope with the constant stream of information by boiling it down to an essential skeleton, be it celebrity gossip, dispatches from Iraq, undergraduate lectures on aesthetics or what have you. This process is entropic, but is more easily described than done. We've recognized for centuries that the historical record is ever growing, but recently the number of pages in our encyclopedias (and wikis) grows exponentially. As a result, our circuitry is overloaded. Most of us turn away from the information glut or choose to concentrate on only a few areas - say sports, celebrities and the stock market

or literature and fashion. Worse yet, many of us withdraw into one specialty and trust that our boring ever downward in a given spot will prove more valuable to the whole than a wide, shallow excavation. Exceptional cases notwithstanding that trust is misguided and artists are rightly reluctant to relinquish an integrated worldview. As Lethem suggests above, artists are turning to the symbolic and the approximate in an effort to render experience comprehensible. Certainly this is an important, even vital process but it amounts to reductionism and, as such, there is some risk involved. What's lost in an abridged reality?

For a rather trivial example, consider Hollywood's botching of natural history. The vast majority of movies produced feature animals - or animal calls - that don't occur in the depicted region. For most folks, it's no big deal, but a movie is ruined for me when I see an elk (*Cervus canadensis*) in North Carolina or hear a common loon (*Gavia immer*) calling in the tropical rain forest of South America. Hey, it's a movie, you're thinking, and a bird is a bird is a bird. Perhaps, but such generalization is indicative of our having lost interest (and knowledge) of the world we inhabit, the world that supports us. If it seems as though I'm making a mountain out of a molehill, let's consider another example.

It seems that, as of late, word mavens fuss about "the bastardization" of English more than ever but the critique ain't new. Often the critics are referring to the adoption of slang, be it from "the streets" or the world of technology, and their complaints are fueled by xenophobia. Two hundred years ago, the English rolled and howled in reaction to the crude American dialect, going so far as to suggest that Noah Webster's proposed American Dictionary of the English Language was an absurdity, as American English was a mockery of the mother tongue. To this day, the yearly additions generate more scoffs than agreeable nods. The human brain evolved to be skeptical of change and foreign influence but, the fact remains, language is ever evolving, like culture at large.

The commons of a language: altered by every contributor, expanded by even the most passive user. That a language is a commons doesn't mean that the community owns it; rather it belongs between people, possessed by no one, not even by society as a whole.

-Lethem, borrowing from Michael Newton, The London Review of Books

No one possesses language or art, but everyone impacts them. Pessimists will draw attention to the "tragedy of the commons," the notion that anything shared by all tends to be exploited and debased, be it forests, rivers, oceans, or language. There is little doubt that the vocabulary comprehension of young Westerners is on the decline. Accusatory fingers can be pointed at computer instruction, instant messaging, struggling school systems and any number of phantom menaces but, whatever the "real" reason(s), language - communication, really - is becoming simpler. Some evolutionary biologists might argue that this is a good thing, that we are seeing a streamlining of an overdeveloped adaptation. (Is it really necessary to call Julia Roberts "loquacious" when we could go with "talkative"?) There is an argument to be made there, but, again, isn't something lost? Can't evolution, in some cases, be degradation? When high school students hand in essays written with IM shorthand, the essential skeleton is looking a little thin. Language isn't merely being sanded down; we're whittling away and risk being left only with splinters and dust.



Susan Meiselas
untitled (Sandinistas at the walls of the Esteli National Guard headquarters)
1979
Color photograph
Size variable
Magnum Photos

The same is true of history. We struggle to learn the lessons of the past because we suffer from historical amnesia. A generation ago, many college graduates could relate the events leading up to World War I or describe the Hellenistic period. Without access to the Internet, I can do neither. Some technophiles argue that the Internet is a communal database that alleviates the need for memorization and "old-fashioned" learning. All the information is at our fingertips, right? Sure, but we tend to use online resources on a "need to know" basis. What did the guy who plays "House" say at the Golden Globes last night? Who was Cleopatra involved with? Does the Clash lyric "rock the Casbah" have anything to do with Algiers? Those hyperlinks will help provide an answer, but will you remember what you read there a month from now, or a year? I doubt it. I recall only a small percentage of what I "learn" online and I grew up studying the old school way, in libraries with piles of books, card catalogs and reams of notes. What about students today, who research everything online? It's difficult to apply the lessons of history if we don't connect the dots, and no number of hyperlinks can replace the coded pathways in our skull PCs. The "new" knowledge is comparatively transitory, soft.

So what does all of this have to do with artists and documentarians? Garnett asks, "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?" Of course not. But we are all responsible, as citizens of the world, for the commons, be it that of language, ecosystems, or the historical canon. Lethem writes, "Honoring the commons is not a matter of moral exhortation. It is a practical necessity." We have to decipher the signs with care and the reading mustn't stop at approximation. As important as our attempts to frame events in comprehensible terms are, we must not plead ignorance to create a happy fiction of distressing reality.

"Who owns the rights to this man's struggle?," a blogger named nmazca asked, referring to the Sandinista rebel photographed by Meiselas and, in turn, painted by Garnett. We all do. I see no reason why he can not be both Pablo Arauz, a one time rebel photographed by Meiselas in 1979, who now has a family and "a pretty good job delivering lumber," and the anonymous, existential Molotov Man. It is, however, our responsibility to honor both incarnations. As it exists now, copyright law is a "gag order," as Garnett puts it, to global conversation, but as it erodes (and erode it will, like language and history), we will become responsible for the context. Are we ready to be vigilant in an open source world?

(1) Some publications with small circulations, like Art On Paper are consistently excellent, but I usually pick those up on the newsstand. I should start subscribing as a gesture of support.

(2) From the essay "Postmodernism Disrobed," included in the essay collection, A Devil's Chaplain.

(3) There are, of course, exceptions. I'm partial to the art writing published in the pages of The Village Voice, The New York Times and other papers. For broadsheet - which I'll loosely apply to The Voice - critics, apparently, clarity remains a virtue.

(4) It is works like Lethem's "The Ecstasy of Influence" that make Harper's so outstanding. The essay does a remarkable job of communicating the writer's attitude - and, indeed, that of the oft cited "founding fathers" - regarding copyright law, but it is a "collage text," an essay assembled from "extensive interlaced quotations" interspersed with Lethem's own material. Following the essay, Lethem includes a lengthy key that credits each source. I read through the key with glee, thrilled by the success of Lethem's little experiment. He stresses that the "collage text" is not an original notion; Lethem's approach here has predecessors, most notably "Walter Benjamin's incomplete Arcades Project."

(5) "Dylan's originality and his appropriation are as one." (Jonathan Lethem, "The Ecstasy of Influence")

Photo credit: Mickey copyright graphic ripped from Python.net (image by David Goodger); "Molotov" courtesy the artist; original Meiselas photograph ripped from The San Francisco Chronicle