

## Copying as Creating

*From Art, Music & Literature to Code*  
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Those of us alive today have been lucky enough to witness the dawn of the digital culture. It is a vibrant new system that intertwines with all other areas of our culture and yet it is experiencing serious growing pains in the form of intellectual property restrictions which seek to curb copying. Yet copying has always been a part of human culture in all our endeavors. All our work is built on the foundations of those who came before us, those masters whose work we duplicate and improve. In our day and age it has become increasingly apparent that this part of our nature has lost favor as a tool. In the eyes of the current masters copying has become stealing, an infringement of their rights, for which they would demand compensation under the auspices of copyright legislation. This prevalent attitude begs the question; in what ways will our digital culture be affected? If we examine the long histories of the cultures of art, music and literature it will enable us to better envision the path we are taking and understand what it holds for the emerging digital culture.

The cultures of art, music and literature are most applicable because they are strongly intertwined with digital culture and face or have already faced many of the same issues. They are also all creative cultures similar to the new digital culture which is a creative culture built around the computer as a medium. We will discuss art, music and literature separately because each of these areas seems to handle the issues in different ways though they are all art in some sense. The focus on art primarily covers the areas of painting, drawing, sculpture and photography but many of the points are also applicable to the music and literary cultures.

Art being the oldest culture raises an interesting philosophical question; does originality in art still exist? Giff Constable attempts to show there is little merit in this question since it troubled artists two centuries past and the art since then shows original thought [1]. But it cannot be discounted entirely as in some fields such as painting we have “run the full range from purely representational to purely abstract” [1]. The digital culture has already supported new original thoughts in art but can originality occur indefinitely? For the sake of argument let us assume total originality will come to an abrupt end. In such a case Constable believes there is a valid form of derived originality that comes from artists interaction with others and that it leads to greater innovation [1]. Constable gives the example of two American painters who followed this path, Robert Henri and John Sloan, who had the following to say:

*Robert Henri:* “Know what the old masters did. Know how they composed their pictures, but do not fall into the conventions they established. These conventions were right for them, and they are wonderful. They made their language. You make yours. All the past can help you.” [1]

*John Sloan:* “Sometimes it is best to say something new with an old technique, because ninety-nine people out of a hundred see only technique. Glackens had the courage to use Renoir's version of the Rubens-Titian technique and he found something new to say with it. Cezanne may have tried to paint like El Greco, but he couldn't help making Cezannes. He never had to worry about whether he was being original. Don't be afraid to borrow. The great men, the most original, borrowed from everybody. Witness Shakespeare and Rembrandt. They borrowed from the technique of tradition and created new images by the power of their imagination and human understanding. Little men just borrow from one person. Assimilate all you can from

tradition and then say things in your own way.

There are as many ways of drawing as there are ways of thinking and thoughts to think.” [1]

Fundamentally Constable, Henri and Sloan are advocating copying as the solution to failing originality. But copying is not a new idea in the world of art as Sloan tells us how Glackens, Cezanne and Rembrandt used it as a tool for their own art. Searching a bit reveals even more examples of great artists copying including Van Gogh [2] and Raphael [3].

Such examples only begin to scratch the surface of how deeply ingrained copying is in the culture of art. All traditional artists are trained in part by copying the work of masters. Sloan and Henri, who worked as teachers, showed their appreciation for copying in the above quotes and Joshua Reynolds, the first President of the English Royal Academy of Arts, also understood the importance of this concept when he said the following:

“We cannot suppose that any one can really mean to exclude all imitation of others. A position so wild would scarce deserve a serious answer, for it is apparent, if we were forbid to make use of the advantages which our predecessors afford us, the art would be always to begin, and consequently remain always in its infant state; and it is a common observation that no art was ever invented and carried to perfection at the same time.

But to bring us entirely to reason and sobriety, let it be observed, that a painter must not only be of necessity an imitator of the works of nature, which alone is sufficient to dispel this phantom of inspiration, but he must be as necessarily an imitator of the works of other painters. This appears more humiliating, but it is equally true; and no man can be an artist, whatever he may suppose, upon any other terms.” [3]

Constable, Henri, Sloan and Reynolds all agree that copying is valid beyond initial training. Reynolds even goes so far as to say it is necessary for the advancement of art and no man can be called an artist otherwise. Reynolds further rebukes those who would dismiss copying as the sole domain of beginners and provides more justification of copying:

“However, those who appear more moderate and reasonable allow that study is to begin by imitation, but that we should no longer use the thoughts of our predecessors when we are become able to think for ourselves. They hold that imitation is as hurtful to the more advanced student as it was advantageous to the beginner.

For my own part, I confess I am not only very much disposed to lay down the absolute necessity of imitation in the first stages of the art, but am of opinion that the study of other masters, which I here call imitation, may be extended throughout our whole life without any danger of the inconveniences with which it is charged, of enfeebling the mind, or preventing us from giving that original air which every work undoubtedly ought always to have.

I am, on the contrary, persuaded that by imitation only, variety, and even originality of invention is produced.” [3]

There also exist in art culture perfectly valid forms of art based solely on the idea of copying; collage, montage, found object sculpture. These art forms would not exist without copying. And as

Reynolds pointed out all art is based on copying the real world in one form or another.

So there exists a long standing general consensus from those inside and outside the art world that copying is a valuable tool. Reynolds recognized this in the 18<sup>th</sup> century, Sloan and Henri did so in the 20<sup>th</sup> century and the art reporter Elizabeth Blair has in the 21<sup>st</sup> century [2] along with the art professor Marvin Percy Bartel who enshrines this doctrine in his final principle of art and composition, “Never borrow other artist's ideas. Steal 'em!” [4]. Pablo Picasso probably stated it best when he said, “Good artists borrow; great artists steal.” [5].

Music culture shares most of the copying benefits as art culture but has its own unique issues. In general copying is not so accepted in music culture. Most music is actually controlled by big businesses which have a vast mechanism for protecting and licensing music through a handful of agencies in contrast to the more individualistic art world [6]. These agencies are more eager to go after copiers as they have a business case to justify their actions and the resources to do so whereas the individual artist would more often let it pass understanding that it is part of the culture and their cost benefit analysis does not usually pan out.

Also unique to music culture is the use of sampling. The Washington State University Copyright publication defines sampling as “the digital copying of, usually, a minute portion of another popular copyrighted song. Sampling can involve several seconds of a song, or only a small 'riff' or sequence of notes or sung words” [6]. The practice of sampling first became popular with rap and hip hop music but its use has also grown throughout the other genres most notably electronic music which is often formed entirely from samples.

More extreme forms of sampling have appeared with the advent of the digital culture. What the journalist Francis Preve identifies as “mash-ups, bootlegs, blends, or even 'bastard pop,' these tracks consist of perfectly balanced juxtapositions of vocals from one song (usually a pop standard) and the instrumental tracks from another familiar tune, often with a humorous or ironic edge” which are created using widely available digital mixing software [7]. The most notable work from this practice is DJ Danger Mouse's mixing of Jay-Z's Black Album with the Beatles' White Album to create The Grey Album [7].

The most interesting aspect of sampling is that it empowers the common man to create original music on the cheap without the need for expensive recording studios. This is reflected by the fact that the mash-up artists and bootleggers are part of a grassroots movement that is regrettably also an underground movement for legal reasons. Sampling has become an entry point for the next generation of musicians.

In the more traditional music scene we can just as easily find examples of copying as in the art world. Blair tells us of the Beatles copying Bobby Parker and Broadway composer Stephen Sondheim copying Bernard Herrmann [2]. Journalist Thomas Goetz tells us of Woody Guthrie copying from Leadbelly, the Sex Pistols from New York Dolls and ABBA and James Brown from Little Richard [8]. In addition the education of new musicians through copying music is likely more important in music culture than in art culture. For an artist it is foreseeable that they could be trained based on the world around them without the influence of previous artists; but it would be a rare musician indeed who could compose his own music based only on the sounds of nature. Igor Stravinsky probably stated it best when he said, “Lesser artists borrow, great artists steal” [7].

Literary culture stands somewhere in between that of art and music in terms of the acceptance of copying. This fact is most interesting in light of the beginnings of literary culture. Literature as we know it today began in ancient Greece and Rome but we would have lost all of the original literature if not for the diligent European monks and Muslim scribes who copied the classics throughout the Dark Ages [9]. In fact the Muslim culture was built upon the foundations of the Roman, Greek, Jewish, Iranian and Chinese cultures [9]. The Muslims copied parts of each culture in order to synthesize a new culture [9], just as Western culture was rebuilt based on the rediscovery of the classics during the

## Renaissance.

But with the advent of the printing press the monastic art of copying was transformed into a business. In the 18<sup>th</sup> century the publisher business attempted to monopolize the books they printed by asserting permanent copy rights which would only allow them to reproduce the books [10]. The courts saw value in releasing copy rights to all people and transformed copy rights into short term safeguards allowing literary culture to be free as copy rights expired and books passed into the public domain [10]. In modern times this same battle has been rehashed many times with the opposite outcome. Each time it has been to the detriment of free culture as copyright has been extended retroactively eleven times over the last forty years, from 14 years of protection to life plus 70 years of protection [10]. At this rate we have to wonder whether the creative output of the last century and the future will ever become free culture.

Ancient literary culture served as the seeds for modern Western and Muslim culture but today we are attempting to bind our literary culture in chains and restrict its use. Some loopholes in our protectionism do exist today allowing for parodies and “fair use” which supports limited copying under certain criteria. Just as sampling has become popular in music culture, the practice of fan fiction is growing in literary culture. Fan fiction is defined as “fiction about characters or settings by fans of the original work, rather than by the original creators” [11]. Like sampling fan fiction empowers people to create new works based on previous works. Fans copy the setting and characters from their favorite literature and create new stories based on them. Fan fiction serves as an entry point for new authors but just as sampling has legal problems so does fan fiction which can be viewed as situated “in a legal gray area between fair use and violation of copyright law” [12].

Although fan fiction is a new term, under the broadest definition of fan fiction it can cover many past authors and their works. The classic Roman poet Virgil and his epic poem Aeneid would be fan fiction based on the earlier Greek poet Homer's epic poem Illiad [11]. So to would Tom Stoppard's play *Rosencrantz & Guildenstern Are Dead* be considered fan fiction based on Shakespeare's *Hamlet* [11]. As a trend this shows fan fiction providing a powerful tool that can be used to adapt a piece from one culture into another. The most poignant example may be Disney's adaptation of the dark fairy tales of the Brother's Grimm into animated movies fit for children. Disney now owns the copyright to those representations for the foreseeable future such that other cultures who may wish to adapt the Disney works would not legally be able to.

Though current literary culture may be locked away the courts actions in the 18<sup>th</sup> century did establish a trove of public domain literature which serves as a foundation upon which future literary culture can build. That fact alone means there is not so much worry in literary culture that new authors lack a corpus of training materials. Authors need only visit their local library to reap the benefit of thousands of years of literary culture, such a commons musicians and artists could only dream of. T.S. Eliot probably stated it best when he said, “Immature poets borrow; mature poets steal” [7].

With the fledgling digital culture we face all the same issues as art, music and literary culture at the same time. The nature of digital culture encompasses all the other cultures as it acts more like a new medium through which other cultures can be experienced in new ways than as a distinct culture. Yet digital culture is dramatically different from its analog equivalents. It has evolved so fast that legislation has failed to catch up, which for the most part has allowed digital culture to flourish without regulations. But the situation is fast changing as different technology related businesses have begun lobbying in an attempt to legislate the playing field in their favor.

At the heart of digital culture is code, the set of languages which power digital culture. Code alone, seemingly analogous to the text of literature, has widely had the laws of copyright been applied to it. Such a characterization of code is unfair because it is more than just creative expression of an idea, it is the functional equivalent of the idea. Like literary culture, code started out in a very copy supportive culture. Before businesses got involved in digital culture, when it was just the pet project of

various research teams, the culture of code was one of share and share alike. Advances were made by building off each others code, the simple matter of not having to recode what had already been coded allowed digital culture to mature at an incredible pace. To some degree this philosophy is still alive and well in research circles but has not fared well in the business world.

At a more abstract level digital culture is also suffering. Artists, musicians and other content creators who have gone digital often use long and complex digital processes to arrive at their final composition but only the final result of their work is ever experienced. Their process is equally if not more important especially in regard to the education of future digital creators.

Given the free reign of digital culture it has produced a deluge of work based on copying. From video game mods, a digital equivalent of fan fiction, to the more recent mashups that utilize any number of web services to create an original surface with the functionality of other services. The problem with these sorts of works lies in their legality which can range from completely illegal to encouraged and supported by the original creators.

The more promising artifacts of digital culture are based on more sound legal standing. The forces behind the Linux operating system and the Firefox web browser understand the value of copying and make the copyright system work for them in this respect. They are part of the larger open source movement that uses a copyright license that allows others to copy their work with very few restrictions. Even more recently the Creative Commons licensing system has appeared. It provides an alternate pro-copying licensing system that is easier to understand and use for all types of content creators where the open source licensing concentrates on supporting source code.

The idea of a digital commons that Creative Commons espouses is exactly that solution which can maximize the benefits to original creators and creators who seek to utilize copying in any of its many forms. Commons work by providing rights to everyone; for a digital commons it protects the rights of the creator and ensures everyone else has the rights to use the creation. The traditional argument against the idea of commons, “the tragedy of the commons” [13], fails to work against a digital commons where an unlimited number of perfect copies can be made and the resource can never be diluted or exhausted. A digital commons could effectively become for music, art and other cultures what the library is for literary culture.

If we can now accept the idea of copying as creating and value it as a tool for education and the development of culture we must ask where the current trend in restricting copying will lead us. In the short term business may improve and profits may rise. But by looking farther into the future, perhaps 20, 50 or 100 years or more, the picture will have drastically changed. In a best case scenario the evolution of our culture will have slowed with future creators handicapped by so many restrictions on their work. The future creators themselves could very well be less well educated in their arts than those of today due to their inability to access and utilize the works of the past. Existing businesses and their works will be protected at the expense of new future businesses which will have to overcome much higher obstacles in order to enter the market. In the worst case scenario there would be a complete cultural stagnation due to these factors. The ethics of the situation are straightforward. From a Kantianism perspective those who stop copying do so as a means to advance themselves at the cost of others rights. Under act and rule utilitarianism respectively any restriction of copying by an individual or by everyone hurts all people because it restricts all peoples access to culture and the general advancement of culture which is a benefit to all people. Social contract theory decides on the same evidence as no rational group of people could accept the restriction of copying when its benefits are for everyone. Our best hope to avoid these possible futures lies in realizing the importance of copying to our culture and supporting new pro-copying copyright systems including open source and Creative Commons licensing and decreasing copyright terms to a sane period of time.

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