

Appropriation & Plagiarism in Visual Arts

Appropriation is the use of the elements of another artist's expression of an idea in the creation of a new work. In contrast to this plagiarism is the close imitation of another artist's ideas, or expressions and the representation of them as one's own work.

Students often incorporate copyrighted visual images in the form of photographs, photocopies, advertisements, etc. into their work. This can often be argued as "fair use" where it supports a particular genre or artist model, but students and teachers need to be clear on what constitutes copyright infringement in order that the integrity of the students and ultimately the teachers are not compromised.

The following is a summary from an article in Artslaw: <http://www.artslaw.com.au/articles/entry/appropriation-art-an-overview>

Appropriation by artists is not uncommon, and has a long history extending through the Dadaists, Andy Warhol and Jeff Koons. Indeed, it would be difficult to find an artist who does not freely admit to at least taking some inspiration from those who have gone before them, or their contemporaries, in creating new works.

Where the work being appropriated is within the term of copyright (currently life of the artist plus 70 years), there is a risk that the 'appropriation' of the work (or even a part of the work) will infringe copyright or moral rights.

Below are some of the issues artists should be aware of when deciding to 'appropriate' an artistic work for use in their own work. This outline is not intended as an exhaustive statement of the law or the factors you should consider, or as a substitute for legal advice.

Copyright Infringement

*The appropriation of existing artistic works creates a risk of copyright and moral rights infringement. We will call the work being appropriated the **source work** and the work being produced the **resulting work** or outcome.*

You will need permission to use a source work if:

- *the source work is protected by copyright*
- *what you are doing with the source work is protected by copyright*
- *you are using the whole or a substantial part of the source work*

If copyright in a source work is infringed, the copyright holder could bring proceedings for that infringement. An infringement of the moral rights of the originator of the source work can include damages, injunctions, declarations and orders for a public apology.

*Copyright protects the expression of an idea rather than the idea itself. In other words, it is **not** an infringement of copyright to appropriate an idea, although the appropriation of the manner in which another person has expressed that idea in*

material form (e.g. a painting, photograph, design or similar) may infringe copyright. If copyright has expired, the work is said to be 'in the public domain' and can be used without infringing copyright.

Is what you are planning to do with the source work protected by copyright?

The Copyright Act gives the copyright holder certain exclusive rights in their work. It is an infringement of copyright for another person to exercise those exclusive rights without permission.

For artistic works, exclusive rights include:

- *reproducing the work (this includes reproducing a photograph in a painting or the reproduction of a 2D work in 3D form or vice versa).*
 - *publishing the work.*
 - *communicating the work (this includes making the work available online).*

If you use a source work without permission in any of these ways, you may infringe copyright in the source work. This, however, is subject to some of the following points.

If you are using the whole of the source work in the resulting work, your use is likely to infringe copyright, but if you are using less it may not be an infringement.

*If you are using less than the whole of the source work, you first need to consider whether you are using an important or '**substantial**' part of that work. Infringement of copyright in an artistic work will occur when you reproduce the whole or a substantial part of someone else's work in material form without permission.*

*'**Substantial**' refers to the quality, not the quantity of what is reproduced (although the more of a work that is reproduced, the more likely it is to be 'substantial'). When considering whether a part is substantial or not.*

With the above information in mind, it would be wise for students to avoid plagiarism. Use of another artist's idea, but not the expression of the idea or the outcome is acceptable. They should avoid appropriating substantial aspects of the source work, and develop their own ideas. Creating a *new* work, inspired by another artist's work that builds and transforms it, is how the artist model can be used effectively. It does bring into question how teachers use the artist model, without hindering the creativity of their students.

Using the Artist Model Creatively

To show examples of artwork by artist models **before** students produce their own work is counterproductive because it cultivates a culture of dependence on the “expert”.

By showing exemplars **after** a student has created their own work, allows for student validation of their own inventions and inspiration to return again and again knowing that there are more ways to think, to question, and develop the same ideas. Students will respond by moving beyond the exemplars and as long as they have some understanding of the **thinking processes** that have been used, will be able to make their own work that isn't just copied. It is the **thinking processes** that will *strengthen and encourage original discoveries and experiences* more fully. Learning to use artist models creatively means learning to search for the *hidden creative strategies and motivations* under and behind the art works. As teachers we have to allow students the opportunity to learn to see the exemplars in ways that inspire and activate their minds. Copying the mere look of the work kills creativity because it does not include the thinking and speculation process. Because *copying replicates answers* as well as possibly infringing copyright, it is a shortcut that eliminates using thinking processes and questioning, originality, discovery, and teaches dependency not creativity.

The 2015 Assessment Report (Painting) makes the following point about the use of technology at NCEA Level 2:

The Internet, access to computers and photocopiers has also led to technology becoming an integral part of visual language in this standard. As candidates become accustomed to working with new media, its use becomes intuitive and subtle, firmly embedded in their practice with a corresponding improvement in their understanding. Photocopied and printed reproductions belong on this spectrum.

If students are using new media, it becomes the teachers' responsibility to make them aware of the ethical and legal issues surrounding its use. I hope some of the information I have provided is useful.

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