

## **Beyond simple textual plagiarism: some probable issues and possible answers.**

### **Introduction.**

Discussions of academic misconduct are often focused upon text and text based plagiarism. The complex issues that surround the origination, adoption, use or incorporation of creative materials are often implicitly, rather than explicitly, ignored. Myths concerning the acceptability and legality of the adoption of material from the web appear common. Circumstances that will not be helpful to students seeking conventional careers or prudent staff wishing to avoid accusations of academic misconduct.

In extreme cases research work has been misrepresented and data fabricated or falsified. This degree of fraud, an intentionally outrageous category of academic misconduct, is not discussed here. However, it should be noted that not only may reputations be abused or unjustifiably enhanced but the scientific record becomes corrupted and the implications, when the research is applied, virtually un-imaginable. (Corbyn, 2009 and Lock, 1996) The conventional peer review process alone cannot prevent misconduct but detection software is now supporting this task. The presentation of discredited but published papers has become formalised within the scientific record and is now, usually, directly linked to the refuting materials (Fox, 1994; Porter, 1998 and 2010)

This paper discusses some of the issues confronting virtually anybody creating presentations, publishing articles or teaching with materials containing images and other intellectual property. The paper seeks to provide a workable, systematic approach that respects pedagogical tradition and is adaptable to a wide range of scholarly contexts.

### **Technical context.**

Until the development of photography, 150 years ago, the copying of images and text could not be rapid. The techniques available required considerable input from an artisan, artist or scientist. More recently analogue copies could, more easily, be created and used as illustrations or aide-mémoire but the reproduction would be expensive<sup>1</sup> and of poor quality. The readily available technology ensured that there could be no serious attempt to deceive. While sophisticated seamless incorporation could occur, for example in the authoring of textbooks, the publishers would act as “gatekeepers”; a role that may not exist today for web display or even formal presentations.

Now, digital technology not only permits the *seamless* copying, manipulation and incorporation of material (including text and colour images) but a vast web-based *archive* is accessible. However, the associated constraints upon usage of these materials coupled with the ability to create and distribute universally are also promoting the potential for misconduct.

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<sup>1</sup> As a student, 40 years ago, the photocopies available to me required a smelly, slimy coated paper and the results rapidly faded in the sun. Each A4 *Black and White* copy cost a shilling (5p); about the cost of a half pint in the Students Union!

Microsoft's® PowerPoint® (and similar software) seductively invites the use of images and sounds/music to make a formal presentation more engaging and, perhaps, effective in the communication of the intended message. Contents and illustrations are widely available on the web but this contains material of great variability; both the highest quality and propriety to unapproved, un-referenced copies of doubtful veracity. The primary source should still be consulted but if it cannot; then the secondary source should be distrusted and, if used, its unverified status reported. In all cases but especially when images or music are to be downloaded the rights of the original must be verified and adhered to (Butterworth, 2009). These appropriate and rigorous practices appear to be in decline especially when web pages are consulted and images adopted.

Unfortunately, using images or music within a presentation may, even if the source is acknowledged, infringe Intellectual Property Rights (IPRs) and thus, while not necessarily plagiarism, such inappropriate actions may be regarded as academic misconduct. Furthermore, such infringements, if shown publicly, may be illegal and *actionable* in law. Acknowledgement may just focus the attention of the Rights holder(s). (*Silent Music dispute resolved*, 2002).

Thus current technology makes the infringement of Rights easier to commit than ever before and also, catalytically, increases the likelihood that such misdemeanours (or worse) become widely and openly distributed and readily detectable. What may be acceptable under the controlled conditions of a teaching programme and within the institution may not be outwith its boundaries.

### **A historical cultural orientation.**

Plagiarism and other forms of academic misconduct are now within our pedagogical culture and are usually considered to be unacceptable. This was not always so nor may it always be respected now (McCrum, 2010).

“Yet borrowing holds a special place in music written before 1600. Borrowed material is the foundation for much Western sacred music before that date” (p1, Meconi, 2004)

“The rise of the idea of intellectual property was a response both to the spread of printing and the emergence of consumer society. [...] Thus, the second part of *Don Quixote*, published in 1614, was not written by Miguel Cervantes (1547-1616) but by a certain ‘Avellaneda’. This was a slightly unusual form of plagiarism, since it involved stealing a character rather than a text, or stealing someone else’s name for one’s own work in order to cash in on his reputation. All the same, the original author resented it. In order to drive out the work of his competitor, Cervantes had to produce a second part of his own.” (p46, Briggs and Burke (2009))

Shakespeare often relies upon others for his plots and dramatis personae. *The Tragedy of Julius Caesar* (first performed 1599) uses, Plutarch’s (c46-120) *Lives*<sup>2</sup> as a source) and Dickens “recycles” (p60, Macfarlane, 2007). Derivative works are still common in Art and Music: “Musical borrowing is a pervasive aspect of musical creation in all genres and all periods” (Arewa, 2006).

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<sup>2</sup> For a modern translation see: Waterfield and Stadter (2008).

Not all works ascribed to Rembrandt (1606-1669) will be his alone; in catalogues some are annotated “attributed to” or identified as “school of”. Examples of the work described as “by Caravaggio” (1571-1610), may have been copied hundreds of years ago and today Art Historians may disagree as to provenance, authenticity and attribution.

Peter Blake (b.1932) and Jann Haworth (b.1942) selected over 50 images, for which they obtained the necessary rights, to create the iconic montage for the Beatles’ LP Album “Sgt. Pepper’s Lonely Hearts Club Band”. Subsequently others have created derivative works from this LP cover, including The Simpsons’ opening sequence *couch gag* for ‘Bart after dark’ (1996).

The UK’s first, mass circulation, £2 coin has “standing on the shoulders of giants” on its edge quoting from a letter, written (1676) by Isaac Newton to Robert Hooke. He may be “acknowledging the debt he owed to others” (Royal Mail, 2010) but the remark “if I have seen further it is by standing on the shoulders of giants” has been traced back to, at least, the twelfth century. Plagiarism, accidental misrepresentation or an independent crafting of the phrase? (Merton, 1965).

Historically copying was generally seen as homage and the lack of referencing could be viewed as a test for the educated person. The equivalent of today’s quiz question, “How many references to the works of others can you identify?” Today, pastiche, parody, montage, and other derivative works may still be respected. However, they are constrained in ways that vary between the context, the media employed, cultural and legal jurisdictions.

### **Creative material.**

*Creative* material may be distinguishable from pure, *non artistic*, intentionally informative text as it is innovative, originate and goes beyond simple communication. A poem, recipe, a song lyric are examples of distinctive, distinguishable origination. Such textual material also contains notions of wholeness; an attribute shared with, for example, paintings, drawings, illustrations, maps and those photographs with *artistic* intent. This creative material gains additional protection by virtue of the moral and intellectual property rights automatically established; beyond those which may be held by a simple, phrase, sentence or paragraph.

The use of non-textual elements, images and music for example, should be assumed to be subjected to copyright although this may be time limited; rights can expire. The score of a Beethoven (1770-1827) symphony may now be free of copyright but the rights held by the orchestra interpreting and performing the work, together with their publisher, may continue.

“Things take time” might be a remark that many of us have made to an impatient child. However, when fixed and abbreviated to “TTT” or quoted in the context of the last line of a *Grook* by Piet Hein (1905-1996) (Hein, 1966) it is, automatically, copyright. Further protection, as a tag or strap-line, for example, would require application, investigation and approval.

For the individual seeking to quote text then phrases or *small* sections may be used with complete, acknowledgement and for which style guidance is widely available (Eg Pears and Shields, 2008) and confirmation possible (via Turnitin® or similar validating

software). It should be widely known that the use of “substantial” segments or complete works generally requires more than just a reference. The rights holder may seek to limit the use, may specify the form of words to use as the acknowledgement and may levy a fee; indeed they may simply refuse permission altogether.

Images, unless fragmented, share the concept of *wholeness* with, for example, poems and thus automatically obtain copyright at “first fixation” in any medium. It is clear that an image imported should have the originator identified and the source referenced but while this might be acceptable within the institution it may still infringe IPR held by others and thus must not appear outside.

It is not sufficient to simply crop or to undertake other *non artistic* manipulation. In general adoptable images must be *old* with the originator dead for, typically 70 years (but this varies world-wide) or identified as available, without incapacitating restriction, for use.

Thus to add illustrations to a public presentation will require planning and should not be undertaken by simply *Googling* and incorporating the, perhaps cropped, images (or music) found. The addition of a reference to the URL will rarely be sufficient defence to a accusation of copyright infringement and thus academic misconduct. However, examples from four categories of images will, generally, be acceptable for use, others, usually, will not.

- Images, however sourced, for which permission for the intended use has been obtained from the rights owner or authorised agent. For limited circulation, low resolution, academic use, it has been the experience of the author that this is often granted, without significant charge, but allowance must be made for the time it can take to get such clearance and alternatives must be adopted if approval is not received. Unsurprisingly, it is, in the author’s experience, less likely that approval will be given when the image is from a commercial source and will be placed upon an open access website in a downloadable format. Students who wish to showcase their work in public exhibitions or on websites and staff creating *show-reels* or teaching materials will need permission for these uses.
- Self creation (or creation specifically undertaken for you and for which you have obtained the necessary rights and approval for the (specified) use). With the ubiquity of digital cameras and image processing software this is now, technically, easy to accomplish. The moral rights of the photographer will remain and should be acknowledged. It should also be noted that directly photographing a created work or scanning an image from a book does not absolve you from the rights contained within the original.
- The Creative Commons<sup>®</sup> (CC) movement (Creative Commons, no date) has created a framework in which the creator can signify which rights they wish to retain and which they waive. Designation under the scheme signifies that a work that can be used but usually an acknowledgement is required and derivative or commercial use may be constrained. Wikipedia<sup>®</sup>, for example, provides many images under this form of licence and several Universities provide materials for educational use. However, these may be without the images originally present; an indication that the electronic reproduction rights were not, for whatever reason, obtained.

- Other items specifically clear of copyright, public domain images, clip art etc. may be used but the choice can be limited and the outcome perceived as trite. However, among this group are the notable exceptions and superb materials created by/for the US Government and its agencies. These are, usually, free for non commercial and educational use.

### **How does it feel to be copied?**

Discussions of academic misconduct, especially plagiarism usually focus upon the miscreant; only a partial perspective. How does unapproved adoption, perhaps with adaptation (even if not passing-off) feel to the person whose work is used? Would they be flattered by the “implied endorsement” within an acknowledgement or do they feel that some, more tangible, reward is appropriate?

Initially, an individual might consider that the discovery that their work has been plagiarised is flattering; a form of peer group approval. However, then follows the sadness that others might think the copy was the original and not recognise the innovative brilliance of your work. Worse may be the realisation that accusations of academic misconduct might be misdirected and unfairly, academic advantage has been obtained by the misrepresentation.

Revenue that should be yours (or your publishers) is lost to those who distribute your work and, by implication, pass it off as their own. Dr. Biggam, for example found his complete textbook placed on an Indian website downloadable for free (Fearn, 2009). When the fraud was discovered the explanation concerned “differences in academic culture” and that this action was “akin to flattery [...] although rules about citation and copyright law may be breached in the process.” Within the EU Greece has been identified as having a textual recycling culture; “Media and copyright law is regularly disregarded in Greece” (student, unnamed at their request). (Pritchard, 2008).

Perhaps homage was in the minds of those who infamously copied Princess Diana’s wedding dress designed by David and Elizabeth Emanuel. Presumably, few purchasers of the copy thought they were getting the same dress for 1/100 of the original price. They might think that they were buying *the look* but should the original designers share the benefit obtainable from their work?

Design Rights are now established and gained, like copyright, upon creation rather than requiring application and the payment of fees (eg Patents, Trademarks). Ireland’s Dunnes Stores<sup>®</sup>, for example, did not appear to have been aware of this change when they, it was alleged, purchased clothes designed by Karen Miller and arranging for copies to be made in China and Turkey. The judgement was that this action, infringed the unregistered design but automatic Design Right. (RTE, Irish Independent, 2007).

In one group of 38 design students (level 5) only one accurately referenced the sources of the images used and four others imprecisely acknowledged the websites that were sources of the images presented. None of the remaining students claimed that the images were all of their own work, were “free to use clip art” or that they had been obtained under the CC scheme. My generic feedback included:

“Plagiarism is possible with images just as it is with the unacknowledged copying of text but also adoption and reproduction may, if intellectual property

rights are infringed, also be illegal and actionable! How will you feel when your work is, even without acknowledgement, copied? [...] You may even wish to adopt it [Creative Commons<sup>®</sup>] for your own work.”

It was clear from the subsequent discussion that images sourced from the web were either thought to be free of restrictions or that it would not matter as the presentation was “only for course work” and unlikely to be distributed more widely. One student also mentioned that referencing was “too time consuming”. However, all students agreed that they wanted to retain control over their own creative and product design work. These students had all been introduced to the University’s Regulations surrounding academic misconduct early in their studies and had also received a detailed introduction to IPR as they were expected to use and create protected and protectable material as well as seeking to exhibit.

In Art the creation of derivative images may be frequently undertaken; montage, for example. The creation of derivative artistic works from readily recognised images may not demand acknowledgement if virtually all will recognise it and thus know that there is no intent to *pass-off*. Using the famous image (Leonardo da Vinci’s (1452 - 1519) Mona Lisa, his Vitruvian Man or Edward Hopper’s (1882-1967) “Nighthawk” (1942)<sup>3</sup>, etc.) as the *feedstock* for the new work is probably acceptable providing it is an “art work” and the original not commercially exploited. The Coca-Cola<sup>®</sup> Santa Claus is a more problematic example.

These artistic endeavours have long been established as “worthy” and may not result in action being taken. However, obtaining the approval of the rights owner for the intended exploitation would be desirable, as otherwise the outcome might not be as intended.

If creating a pastiche, perhaps as a way of understanding the style of a particular artist, it should be ensured that no misattribution can occur. The derivative work should be clearly marked as a copy and, when the need for it has passed the artefact is destroyed. In the case of works of art there is also a experience of deliberate fraud. (Keating, 1977; Kelly, 2007 and *Real or Fake*) analogously Product Design suffers from the trade in counterfeit (“fake”) goods where Trademarks and Design Registrations are, commonly, infringed.

Design students often devise their own proposal and “badge it” without the knowledge of the right owner who, if they discover the work may view it as unflattering to their brand and thus, actionable. The student probably, explicitly or implicitly, sought to flatter their own work by association thus making the rights owner’s argument. Students rarely select brands that are not widely recognised and desirable examples of success! This behaviour, albeit not uncommon should be unacceptable.

As an alternative, students or staff may create fictitious “business persona” that are intended to be indicative of the culture and performance of a brand or organisation. However, care must be taken, as any hint of confusion perhaps perceived, as misrepresentation or the fear that brand devaluation can be the basis of legal action. Apple<sup>®</sup> computers has recently settled a Trademark action against *The Beatles* but may still have concerns over New York’s “big apple” logo (Gardiner, 2008). The

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<sup>3</sup> I am indebted to Margo Blythman for drawing this, much exploited example to my attention. (See, for example Tonermishap, 2005).

maker of Spam<sup>®</sup> the processed meat, however, lost their action against the Jim Henson's Muppet<sup>®</sup> "Spa'am" (Hormel Foods Corp, v Jim Henson).

To respect the rights held by others, clearly, inquiries must be made and the replies received acted upon. It also must be remembered that IPRs are neither homogenous nor universal. The rights obtained might be limited to specific cultural, geographical locations or jurisdiction.

### **A route to a pedagogically respecting solution**

Good teaching in Art and Design still requires a tutorial format in which students present their work for criticism and the Tutor (and peers) seek to make observations and comments to enhance the work as it progresses. This close monitoring the students' creative progress has the advantage that the ideas can be seen to evolve and grow into the final concepts. Confidence in the individual's cognitive processes is built gradually in a manner that cannot happen when only a single completed presentation is made and shown.

Small acknowledged elements, correctly referenced, may be acceptable but not if discovered to be without attribution. The use of authorities and prior work on which to build is an essential element of the academic methodology/pedagogy.

If the material is shown outside the Institution then the acceptability will be judged against wider criteria and the likelihood of detection of unacknowledged material increased. (For example, the actions of "an alert medicinal chemist" referred to in connection with a withdrawal of a paper in *Molecules* (McPee and Lin 2007) or the "self plagiarism" reported in the Times Higher Education (THE) by Attwood (2008)). It is an essential that the Institution and Course team establishes the boundaries and communicates the details to all concerned.

Digital images that are made available on the web can be detected and many professional originators ensure that their work has a "digital watermark" which can be used to establish ownership even after considerable manipulation has occurred. Image tracking software is increasingly sophisticated; *Google Images*<sup>®</sup> for example offers a "find similar images" option the results of which can be revealing.

### **A boundary setting process.**

It is the case that intellectual property can be created automatically (eg Copy and Design Rights) or by application and, if appropriate, registration and the subsequent payment of fees (Trademarks and Patents). The public use/display of substantial parts of such protected material, without any prior agreement with the rights holder/owner exposes all stakeholders to the possibility of legal action.

Traditional copying and deliberate/intentional plagiarism can be used during the learning process; the student may be asked, especially early in their studies, to produce a work in the style of another. If the artist or author copied is *sufficiently* dead and there is "no intent to deceive" then this may not be an IPR infringement. However, for certain special items<sup>4</sup> or if the rights are held by a business, Disney<sup>®</sup>, Hanna-Barbera Cartoons<sup>®</sup>, for example, then they may continue, apparently without time limitation.

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<sup>4</sup> Great Ormond Street Hospital, for example, holds royalty rights for UK productions of Peter Pan "in perpetuity". However, these rights were ceded to the public domain in Europe on the 1<sup>st</sup> January 2008 and, in 2023, will do so in the USA.

The concept of pastiche, homage and the creation of derivative work are essential to creative progress and innovation. However this particular aspect will not be perused further in this paper except to note the importance of the clarity of expectations. The boundary of acceptability must be robust, clearly defined and communicated to all staff and students. Taught modules should also be devised to minimise the temptation to use un-authorized material and pass-off the work created.

Virtually all students will be required to create and give presentations that are assessed against the pedagogical demands of the module/course. The standards expected regarding the use of published materials might vary with the discipline, level, the stage of development and the audience. If the work will only be seen by a restricted, internal, audience then a more relaxed “ok if formally and correctly referenced” may be applicable providing that all appreciates the limitations that must now apply to any wider distribution of the work.

Students of the creative disciplines may go further and produce original, as well as derivative, work. In the case of Product or Engineering Design Students then patented or design registered devices/mechanisms may, if acknowledged, be acceptable, but only if the product is not, without revision, marketed. In supporting documentation the student would be expected to reference the Rights holder(s) and recognise that agreement will need to be reached before production can occur and that royalties, will generally, be payable.

Graphic Design and Multimedia students will find similar restrictions if, for example, they wish to use Trademarks, cartoon or fictional characters. However, in this case simple publication or display of their work may be sufficient to infringe the IPR. The music to be used, in public, by Multimedia or Fashion students must have the necessary approvals agreed before use.

Every Course team should take soundings from their stakeholders and devise a module-by-module boundary of what is acceptable and what is not. They must agree these boundaries with the institution and ensure that the regulations are, appropriately drawn. The students must be advised as to what is, and is not, acceptable and how this will vary with the module and the use to which their work is put. For example, virtually all students of Art and Design will create final shows to which the public are invited and may also place, their CV on a website thus offering examples of their work downloadable by potential employers. Contrast these requirements for the public display of sophisticated concepts with the output from an introductory level assignment that will only be viewed by other students and staff within the institution and, perhaps, kept within a, password protected, intranet.

It must also be remembered that, commercially, a range of rights, some automatic and some applied for may be constructed to protect the whole. Thus an artefact may be protected by Copy and Design Rights held on the drawings and 3D manifestation respectively. Patents may be used for specific elements within the item while the name (and perhaps the colour scheme) may be registered as Trademarks. The guidance devised, given and applied will need to recognise the probability of this inter-woven *matrix of rights* and that while some elements might have expired the protection held by other elements may continue. An image, for example, might be free of copyright but a Trademark visible within it may continue to be valid.

Figure 1 outlines the proposed formalised approach for Course teams to follow when establishing their expectations and formally promulgating them to all. This must be

an active process; understanding gained informally, via *osmosis*, cannot be relied upon.

[Figure 1 about here]

### **Conclusions.**

This presentation was guided by the experience of working within a range of creative disciplines but the issues discussed will, increasingly, affect the wider academic community; students, staff and corporate. Acknowledgement and precise referencing may not be sufficient to avoid legal action and an accusation of academic misconduct even if it avoids a charge of plagiarism.

The good practice requirement of always using authorised material from the primary source or, if not, clearly establishing that this has not been possible, is critical. It is vitally important that students and staff maintain a higher, ethical and morally sound perspective and avoid any accusation of academic misconduct that might occur from, perhaps unthinkingly, using a poorly referenced site as a source. The secondary source can also mislead, for example, by suggesting an image is free of copyright when it is not.

Possibly inadvertent, plagiarism of text is unlikely to attract wide attention but the use of images and music may. Yet, in any discipline such material is commonly, often thoughtlessly, used in presentations that, if publicly accessible, may; even with acknowledgement result in “non-trivial” consequences for stakeholders.

Exhibitions have been common place in the creative disciplines but, increasingly, students from other subjects and disciplines are asked to produce posters for public display, give presentations, perhaps to potential students and their parents. They may also wish to place their CVs, with attachments, on the web. Every teaching team must consider their intentions, devise the approach to be followed and then promulgate the guidance and ensure that it is rigorously adhered to. Figure 1 offers guidance as to how this may be accomplished.

Unfortunately, some individuals may be copying with a clear intention to mislead and thus to gain, unfairly, academic advantage. However, more likely the infringement of intellectual rights is inadvertent, unthinking and, due to the ignorance regrettable found to be increasingly common among entrants to further and higher education. Course teams must consider each element of their Course not only from the degree of “re-use” encouraged but the likelihood that the final work will be visible outwith the institution.

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**Figure 1. A proposed process for the setting standards and expectations for the control of academic misconduct in the creative disciplines.**

