

Reference, Appropriation or Plagiarism?



Left to Right: Risa Ryan, ANT Foundation (cancer awareness ad), Nick Walker, Ben Stockdale photography

The guidelines for academic honesty are clearly defined in the University policy. What are the rules for visual art, though, both in the field and for this studio art course? I explain both below. Please read and then take the “Reference, Appropriation or Plagiarism?” quiz. Here we go:

There are three types of art plagiarism that are illegal, against University policy, bad professional practice AND violations of the rules for this class:

1. You literally take someone else’s art (art that you didn’t make) and claim it as your own.
2. You steal art from another source (i.e. a photograph on Instagram) without the artist’s permission and without citing it. You copy a significant portion of the artwork without significantly altering its purpose or form and you claim it as your own.
3. You “collaborate” on a work of art but claim it is 100% your own.

That said, there are circumstances when it is entirely acceptable to refer to, be inspired by and/or learn from another artist’s work.

Legally, this is called “Fair Use”. In the court system, judges determine “Fair Use” by taking the following categories into consideration:

1. The purpose and character of the use. Is it, for example, is it being copied and sold for profit or is it being used for nonprofit educational purposes? Reproduction for purposes of satire or education are typically deemed acceptable as “Fair Use”.
2. The nature of the copyrighted work. Reproducing elements from an informational source such as a news broadcast, for example, is often seen as more acceptable than reproducing segments that exist for creative entertainment such as a movie or novel.
3. The amount and substantiality of the portion used in relation to the copyrighted work as a whole. It is NOT considered fair use to copy a painting and just change the color of the shoes the person is wearing. This is plagiarism.
4. The effect of the use upon the potential market for or value of the copyrighted work.

If you are interested, this article provides more details:

<https://www.nolo.com/legal-encyclopedia/fair-use-the-four-factors.html>

Here is the policy for our course this semester:

Use of imagery for the following purposes is acceptable:

- (1) Practice**
- (2) Inspiration**
- (3) Education**
- (4) Reference**
- (5) Informed Appropriation.**

PRACTICE:

It is perfectly acceptable to intentionally “copy” art by master artists with the intention of learning techniques. Here, for example, is an example of a student taking an art class called “Traditional Oil Painting Techniques: Lessons from Museum Masterpieces” at the Smithsonian Museum. <https://smithsonianassociates.org/ticketing/tickets/247666> While this is professionally acceptable and encouraged, it will not satisfy the requirements of our projects this semester. It would be plagiarism if you take your copied painting and circulate it into the world as if it is your own without noting your purpose and citing the original.

INSPIRATION:

Every single work of art ever made in the world has been influenced by images and ideas that came before it. Thumbs up to being inspired by other artists! This is perfectly acceptable and highly encouraged in class! Find artists that you *LOVE* and be influenced by them. You may try to work in their style or build from their ideas. Think of being *in conversation* with the existing art, not mimicking it. Is it okay if your work resembles their aesthetic? YES! Your painting, however, cannot wholly or significantly copy the other artwork (unless you are intentionally appropriating imagery~ see below for explanation on that). One rule of thumb: Imagine that you are the person who made the original painting. Would you show it to them without hesitation? If you’re doing it right, they might be flattered. If you’re doing it wrong, they might be angry.

REFERENCE:

It is absolutely acceptable to look for images of elephants online if you are making a painting that includes an elephant and you do not happen to have a real elephant in the front yard to study. You are encouraged to come up with your project design and then search for reference imagery that will be helpful in making the painting. For example, a student wants to create an abstract painting based upon microscopic biological forms. It is perfectly acceptable to look for biological images to use as *reference* for the painting. The concept and/or form of the final painting is significantly different from the reference imagery alone.

Another example from a project I worked on this summer: I decided to create a series of paintings that captured influential women before their careers started. I searched for images of the woman to use as reference because it would make no sense at all to invent a fictional character that had no resemblance of the actual person. Below, you will find the reference imagery along with the finished painting. Notice how similar the second reference image is to the woman in the finished painting. Notice, however, how different the painting is. The concept is different; the background is different, the composition is different, the purpose is different.



I also used reference imagery for the moths AND for the flashlight. I painted the flashlight almost exactly as I found it in the reference imagery. This is one example of “Fair Use”. *Side note: The woman is Nellie Bly. She was a prominent investigative photojournalist known for being purposely admitted into an insane asylum so that she could reveal the horrors that were happening inside. Here, I painted her as a teenager who preferred hunting for moths at night than butterflies during the day.*

APPROPRIATION:

Appropriation is when you use another artist’s work and add, subtract, or substitute something so that it has a new meaning. When you appropriate imagery, you must significantly transform the meaning of the art with your alterations. You do not claim that the original image is yours; you make your art under the fair assumption that the viewer knows that you are copying from a pre-existing source. For example, it can be assumed that the public knows that Andy Warhol did not invent the Campbell Tomato Soup can. He was not claiming to have designed the can with the hope that we will never catch him in a lie. His work is about American media and consumerist culture. He chose the Tomato Soup can as an example of that. As another example, all alterations of the Mona Lisa are considered Fair Use appropriation. If a student is making a painting about the fast food industry, it is completely appropriate to use the McDonald’s logo in the painting. This is considered Fair Use.

Kehinde Wiley is a contemporary painter who makes classic European paintings of powerful, historic characters but substitutes young black men from his neighborhood with the old white

male figures. By replacing the figures, the meaning of the painting dramatically changes. He is now empowering people who historically have been disempowered. Wiley's work could not be made without referring to the source he is critiquing—the source is the point! This is appropriation. If you are changing the meaning of an image by replacing something, you are likely in the realm of "Fair Use".



Left: Jacques-Louis David, *Bonaparte Crossing the Alps*, oil on canvas, 8'6" x 7'3", 1900-1.
Right: Kehinde Wiley, *Napoleon Leading the Army over the Alps*, oil on canvas, 108 x 108", 2005.

Similarly, Saudi Arabian artist Ghada Al Rabea recreates famous European paintings with candy wrappers. She literally goes into art history books, looks for famous paintings and reproduces them. She makes three decisions that place her paintings in the category of "Fair Use". First, she selects paintings that are easy to recognize in Western art history (the point is that people familiar with Western art history will recognize them). Second, she changes the medium to make a serious work of art playful. Third, she dresses each figure in clothing that is worn in her home country of Saudi Arabia. By making these artworks, she is asking, "Why don't the history books include representations of people who look like me?" This is "Fair Use".



Left: Ghada Al Rabea, *Sitti Sa'ada W Sidi Saeed*, candy wrappers on canvas, 2017.
Right: Ghada Al Rabea, *Bint Al Rual*, candy wrappers on canvas, 2016.

AN IMPORTANT NOTE ABOUT INFORMED APPROPRIATION:

There are VERY important things to consider when appropriating imagery from cultures other than your own. If done recklessly, it can be hurtful. When working with cultural appropriation, the identity of the artist is critical. Power structures must be considered. In Kehinde Wiley's paintings (above), for example, he is replacing the people in power with people who have less power in order to suggest the possibility for equivalency. In Ghada Al Rabea's art, she is inserting Muslim people into a predominately white, European, Christian narrative that has historically been taught as "art history".

Imagine how hurtful it could be for a person from a First Nation Native American tribe to see a white person paint Native American patterns because they look cool. While the maker might believe he is appreciating the cultural aesthetic, the act of "taking" it might remind someone from Native heritage of the genocide their people have experienced, tapping into generational trauma and the fact that white colonists have systematically stolen land, wealth, safety, children, language, customs and independence from Native populations. Now, imagine the insult if the non-Native maker/user is profiting off of the images! "Profit" can refer to monetary profit, but profit can also refer to advancing one's career or gaining attention for the artwork.



Team logos for the Cleveland Indians (left) and Washington Redskins (right)

This might not be the artist's intention; the result, however, risks being hurtful. This is where it gets complex and where artists need to navigate imagery mindfully and with cultural awareness: the same exact painting might be entirely appropriate for a Native American artist to make. In this case, it might be read as pride in one's culture and an attempt to keep their culture alive.

Imagine this: For the past 87+ years, the "Washington Redskins" NFL Football team has used a cartoon of a decapitated Native American man on their helmets. The organization has resisted any allegations of racism for decades. Finally, the organization decided that it is necessary to change the mascot as the cartoon version of a stereotypical Native American person for the enjoyment of football fans is harmful. The Cleveland Indians have since done the same.

One more poignant example here: At the Whitney Biennial (an exhibition that happens every two years at one of the most well-respected museums in the world), curators displayed a painting by Dana Schutz (a white artist) that sparked widespread protests and criticism. Her painting was based upon a photograph that was taken at the funeral of Emmett Till, a 14-year-old black man who was brutally murdered in 1955. Schutz's painting showed Emmett Till's mutilated face and chest as seen in the casket. In reaction, Hannah Black staged a campaign demanding that the

painting be taken down and destroyed so as not to circulate or be sold for large sums of money on the art market. Black released the following statement: “It’s not acceptable for a white person to transmute Black suffering into profit and for fun.” Here is an article that describes the events in more detail: <https://news.artnet.com/art-world/dana-schutz-painting-emmett-till-whitney-biennial-protest-897929>. Again, the identity of an artist matters when appropriating visual imagery. This would have been a very different painting had it been made by a black artist who has experienced the pain and the fear caused by racist violence. The same exact image would literally be something different due to its context.

Wait! An important note! *This is not to say that artists cannot make art as allies!* Art can be an incredible tool for standing up for social issues! It must be *thoughtfully* done, however, with power dynamics in mind and with consideration for those who are bearing the weight of the discrimination. In class, it will be very helpful to ask others for their thoughts in the planning process if you believe that you are entering a risky area. Perhaps there might be ways to rework imagery so that your true intention matches the outcome. ☺

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A NOTE on COLLABORATION:

While many of our projects are designed to be completed individually, it is often appropriate and even encouraged to collaborate with others. If you have an idea that might benefit from collaboration, shout it out! If you believe that the art will be larger in scope if you are working with another student, let’s try it! The process of negotiating plans, sharing authorship and working together in a collaborative team carries its own value, even before the art is made. d

Soooo, to summarize:

For our class this semester, you are allowed to use images created by another person for all of these purposes:

- (1) Practicing Techniques (make source and intention evident)**
- (2) Inspiration**
- (3) Educational Purposes**
- (4) Reference Imagery**
- (5) Informed Appropriation**
- (6) Part of a Collaborative Project (approved by instructor in advance with all artists’ names included as authors)**

Ta-da! Always feel free to ask me if you aren’t sure and/or you just want to bounce ideas around before going into production. I am ALWAYS here as a sounding board. ☺ ☺ ☺