

Appropriation & Attribution Questions for classroom discussions

- 1) What is the relationship between attribution and appropriation? How are they similar? How are they different?
- 2) The video acknowledges that artistic progress may not be possible without incorporating important developments from the past. Do you agree? Why or why not?
- 3) How can artists use others' creative works in an ethical manner? When is appropriation unethical?
- 4) Case law suggests that someone cannot claim intellectual property rights after throwing away the original work. Do you agree with this position? Why or why not?
- 5) Have you ever pirated or copied works protected by copyright? What harms did you cause? Do you feel you were ethically justified to do so? Why or why not?
- 6) Think of an example of something you consider to be a "rip-off" and something you think is an innovative repurposing of another's work. What makes them different? Could your conclusions be shaped by your own interests?
- 7) Fair use is a doctrine that allows for limited use of copyrighted materials without acquiring permission, for purposes such as teaching, journalism, parody, or critique. Do you agree with these parameters? Are there other instances that should constitute fair use?
- 8) According to the terms and conditions of YouTube, the company says it may use any works uploaded as it chooses, but will not claim credit for creation of the piece. Do you think this is ethically permissible? Why or why not? Would you feel comfortable with YouTube using a video you created in an advertisement for the company?

Case Study: Christina Fallin: “Appropriate Culturation?”

In March 2014, twenty-seven year old Christina Fallin, daughter of Oklahoma Governor Mary Fallin, found herself at the center of controversy when she posted an image of herself wearing a red Plains headdress on Facebook and Instagram with the tag “Appropriate Culturation.” Fallin posed for this photo as a promotional piece for her band, Pink Pony. Public outcry criticized Fallin for appropriating Native American cultures, sparking uproar on social media and leading to protests at their shows.

In response, Fallin and Pink Pony removed the photo and released a statement on their Facebook page explaining their aesthetic appreciation for Native American culture. Fallin told the Indian Country Today Media Network that, “I think Native American culture is the most beautiful thing I’ve ever seen, so I was naturally drawn to it.” Musician Wayne Coyne of The Flaming Lips became involved in the issue when he fired bandmate Kliph Scurlock for criticizing Fallin online. To show his support for Fallin, Coyne posted Instagram photos of several friends and a dog wearing headdresses.

Some argue that Fallin’s photo could be an example of artistic appropriation. Throughout history, artists have borrowed objects and images from everyday life as well as other cultures in order to re-contextualize the object in a new manner. On the other hand, some argue that non-Native Americans do not have the right to adorn a headdress at all. Taking a sacred or meaningful object out of context is problematic even when touted as “art.” Summer Morgan, member of the Kiowa tribe in Oklahoma, believes that Fallin may have had good intentions, but there are better ways to express her appreciation of Native American cultures. Morgan believes that headdresses are not fashion accessories. Following Kiowa tradition, only men can own war bonnets and each feather represents a war deed. Female relatives may be given the right to wear a male relative’s war bonnet, but only after they understand what’s expected of them when they wear it, how to treat it properly, and when it is acceptable to wear.

Resources:

The Most Interesting Governor's Daughter in the Country

<http://www.washingtonpost.com/blogs/the-fix/wp/2014/05/04/meet-christina-fallin-not-what-the-public-would-expect-of-a-politicians-daughter/>

The Daughter of Oklahoma's Governor Caused an Uproar After She Posed in a Headdress for her Indie Band

<http://www.buzzfeed.com/ryanhatesthis/daughter-of-governor-of-oklahoma-causes-an-uproar-after-she>

Oklahoma Governor's Daughter Mocks Native American Protesters with 'War Dance'

<http://www.rawstory.com/rs/2014/04/29/oklahoma-governors-daughter-mocks-native-american-protesters-war-dance/>

Native Americans React to Christina Fallin's Fake War Dance Performance

<http://indiancountrytodaymedianetwork.com/2014/04/28/native-americans-react-christina-fallins-fake-war-dance-performance-154627>

Christina Fallin, in Her Own Words: 'I'm Tired of the Misinformation'

<http://indiancountrytodaymedianetwork.com/2014/05/02/christina-fallin-her-own-words-im-tired-misinformation-154690>

Oklahoma Gov's Daughter: A Woman in a Headdress is 'a Beautiful Thing'

<http://indiancountrytodaymedianetwork.com/2014/03/07/oklahoma-govs-daughter-woman-headdress-beautiful-thing-153915>

When Friends Disagree: Debate over Native American Mascot

<http://www.houstonpublicmedia.org/news/inside-the-classroom-when-friends-disagree>

Discussion Questions:

- 1) Did Christina Fallin do something ethically prohibited in posing in a war bonnet? Does it make a difference that she claims to love and respect Native American culture? Fallin wrote, "Please forgive us if we innocently adorn ourselves in your beautiful things." Do you view her act as innocent or not?
- 2) How should educators teach students about cultures other than their own? Do you think it is possible to avoid perpetuating stereotypes of other cultures?
- 3) What if Fallin's record label asked her to pose in the war bonnet to gain publicity for her music? Would it make a difference if this were simply a business decision to sell records?
- 4) Would it make a difference if the photographer of this image intended to hang it in a gallery as "art?" What if the goal of the artist was to make viewers mad or uncomfortable? What if the artist created this image as a way to engage viewers in critiquing both Native American and non-Native American cultures?
- 5) Is cultural appropriation always a bad thing? Why or why not?

Case Study: Artistic Appropriation and Shepard Fairey’s “Hope”

Artists commonly appropriate, or borrow, objects or images and include them in their artwork. Andy Warhol, for example, is well known for appropriating images of Campbell’s soup cans for his pop art. Typically, the original object or image remains recognizable, but the new work of art transforms or recontextualizes the borrowed image or object in order to generate new meaning. Many artists believe that without artistic appropriation, creating new art would not be possible. On the other hand, the line between copyright infringement and fair use is not always clear.

In 2008, Shepard Fairey appropriated an Associated Press (A.P.) photo of Barack Obama to create his well-known “Hope” image of the presidential candidate. In 2009, Fairey filed a preemptive lawsuit against The A.P., requesting that the court declare protection from any copyright infringement claims on the basis of fair use. Fair use is the copying of copyrighted material for limited “transformative” purposes, such as criticism, parody, or commentary. Fairey acknowledged that his image was based on a 2006 photograph taken by A.P. photographer Mannie Garcia. The A.P. claimed that any use of the photo required permission and asked for credit and compensation.

Anthony T. Falzone, executive director of the Fair Use Project and one of Fairey’s lawyers, said that Fairey only used the original image as a reference and transformed it into a “stunning, abstracted and idealized visual image that created powerful new meaning and conveys a radically different message.” Paul Colford, spokesman for The A.P., said, “[The A.P. was] disappointed by the surprise filing by Shepard Fairey and his company and by Mr. Fairey’s failure to recognize the rights of photographers in their works.” Mannie Garcia argued that he actually owned the copyright to the photo, not The A.P., according to his contract at the time. He stated, “I don’t condone people taking things, just because they can... But in this case I think it’s a very unique situation... If you put all the legal stuff away, I’m so proud of the photograph and that Fairey did what he did artistically with it, and the effect it’s had.”

After two years in court, Shepard Fairey and The A.P. settled the case with an undisclosed financial agreement. Fairey also gave up fair use rights to any other A.P. photos, and both sides agreed to share the rights to make posters and merchandise based on the “Hope” image.

Resources:

Artist Sues The A.P. Over Obama Image

http://www.nytimes.com/2009/02/10/arts/design/10fair.html?_r=0

A.P. Says It Owns Image Used in Obama Poster

http://www.nytimes.com/2009/02/06/arts/06arts-APSAYSITOWNS_BRF.html

AP And Shepard Fairey Settle Lawsuit Over Obama Image; Fairey Agrees To Give Up Fair Use Rights To AP Photos

<https://www.techdirt.com/articles/20110112/10170012637/ap-shepard-fairey-settle-lawsuit-over-obama-image-fairey-agrees-to-give-up-fair-use-rights-to-ap-photos.shtml>

What Is Fair Use?

<http://fairuse.stanford.edu/overview/fair-use/what-is-fair-use/>

Shepard Fairey interview with Marc Maron

http://www.wtfpod.com/podcast/episodes/episode_497_-_shepard_fairey

Discussion Questions:

- 1) In general, do you think artistic appropriation is a positive or negative practice? Why? Does it matter what medium the artist works in?
- 2) Is appropriation only ethically questionable when money or popularity are involved?
- 3) What differences do you see between Warhol's use of the Campbell's soup cans and Fairey's use of Garcia's photograph? Is one less problematic than the other? Why or why not?
- 4) Do you think Fairey's preemptive lawsuit against the Associated Press was a legitimate maneuver for protecting his fair use rights or an admission of copyright infringement? Defend your position.
- 5) Do you think moral intent matters in instances of artistic appropriation? Or, does it only matter whether the new work sufficiently recontextualizes the original piece?

Case Study: The “Blurred Lines” of Copyright

In 2013, Robin Thicke and Pharrell Williams co-produced the run-away hit single “Blurred Lines,” earning them over \$16 million in sales and streaming revenues. The music video has been viewed hundreds of millions of times on YouTube and Vevo and has been parodied numerous times as well. Despite its popularity, the similarity of “Blurred Lines” to Marvin Gaye’s 1977 hit song “Got to Give It Up” sparked controversy. The family of artist Marvin Gaye was outraged; they believed Gaye’s work was stolen. Thicke filed a preemptive lawsuit to prevent the Gaye family from claiming any share of royalties. However, Thicke also stated in public interviews that he was influenced by Marvin Gaye and, specifically, “Got to Give It Up” when he co-composed “Blurred Lines” with Williams.

In response, the Gaye family sued Williams and Thicke. Contradictions were apparent in Thicke’s account; in an interview with *GQ*, he stated that he co-wrote “Blurred Lines,” but in court he claimed that he was too high in the studio, that Williams had in fact composed the song, and he had lied earlier in order to get credit. Williams claimed that, although Gaye’s music had influenced him in his youth, he did not copy Gaye’s song in his composition.

In March 2015, the jury ruled in favor of the Gaye estate, stating that while Williams and Thicke did not directly copy “Got to Give It Up,” there was enough of a similar “feel” to warrant copyright infringement. Gaye’s heirs were awarded \$7.4 million in damages, the largest amount ever granted in a music copyright case.

While many commentators agreed with this verdict, others were concerned that it could negatively affect the writing of songs within an entire genre. Musicologist Robert Fink, for example, stated that this verdict had the potential to set a precedent for “fencing off our shared heritage of sounds, grooves, vibes, tunes, and feels.” Musicians, artists, and writers often note that previous works influence them in their creative process, and that there is very little that is completely original. Thicke and Williams did not see the musical influence of Gaye as copyright infringement, but rather as inspiration that spurred them to create a new, original single.

Resources:

Robin Thicke, Pharrell Williams and a Blurry Copyright Law?

<http://www.nytimes.com/roomfordebate/2015/03/17/robin-thicke-pharrell-williams-and-a-blurry-copyright-law>

'Blurred Lines' Verdict: How It Started, Why It Backfired on Robin Thicke and Why Songwriters Should Be Nervous

<http://www.billboard.com/articles/business/6502023/blurred-lines-verdict-how-it-started-why-it-backfired-on-robin-thicke-and>

Blurred Lines, Ur-Lines, and Color Lines

<http://musicologynow.ams-net.org/2015/03/blurred-lines-ur-lines-and-color-line.html>

The Blurred Lines of Copyright Infringement of Music Become Even Blurrier as the Robin Thicke v. Marvin Gaye's Estate Lawsuit Continues

<http://www.mbbh.com/pubs/xpqPublicationDetail.aspx?xpST=PubDetail&pub=271>

Discussion Questions:

- 1) Do you think the Gaye family should own the rights to the “feel” of “Got to Give It Up” in addition to specific lyrics, melodies, harmony, etc.? Why or why not?
- 2) What distinctions can you identify among sampling, appropriating, and stealing components of a song?
- 3) This court case is one among many over the past decade that have placed limits on song-writing and musical composition. Do you think it is important to provide these legal protections for artists even if it means hindering artistic creativity and the new works that might come from musical influence?
- 4) Should authors, musicians, and other artists acknowledge all of the influences on their work, regardless of the degree of influence? Why or why not?
- 5) If you purchase a song and then recognize that it is appropriating an earlier work, you are not legally obligated to stop listening, but are you obligated ethically? Why or why not?

Additional Resources

Cultural appropriation is the use of elements of one culture by another culture, such as music, dress, imagery, or behavior and ceremony. Consider how cultural appropriation relates to stereotypes and media representations of different groups of people; watch our video *Representation*, which explores potential harms caused by various forms of artistic representation.

Issues of artistic and intellectual attribution are often related to copyright laws and intellectual property policies. For a better understanding of the relationship between law and ethics, see our video *Legal Rights & Ethical Responsibilities*.

Appropriating or using others' work without proper attribution can cause reputational and financial harm, among others. Watch our video *Causing Harm* for a better understanding of the various types of harm that can result from our actions and how these harms may or may not be justified.

Askegaard, Søren, and Giana M. Eckhardt. 2012. "Glocal Yoga: Re-appropriation in the Indian Consumptionscape." *Marketing Theory* 12 (1): 45-60.

Berson, Josh. 2010. "Intellectual Property and Cultural Appropriation." *Reviews in Anthropology* 39 (3): 201-228.

Craig, David. 2006. "Description and Attribution." In *The Ethics of the Story: Using Narrative Techniques Responsibly in Journalism*. Lanham, MD: Rowman & Littlefield Publishing.

Lessig, Lawrence. 2008. *Remix: Making Art and Commerce Thrive in the Hybrid Economy*. New York: The Penguin Press.

Luke, Belinda, and Kate Kearins. 2012. "Attribution of Words versus Attribution of Responsibilities: Academic Plagiarism and University Practice." *Organization* 19 (6): 881-889.

Merryman, John Henry, Albert E. Elsen, and Stephen K. Urice. 2014. *Law, Ethics, and the Visual Arts*. Alphen aan den Rijn, The Netherlands: Kluwer Law International.

Ursin, Reanna A. 2014. "Cultural Appropriation for Mainstream Consumption: The Musical Adaptation of *Dessa Rose*." *Mosaic: A Journal for the Interdisciplinary Study of Literature* 47 (1): 91-109.

Young, James O., and Conrad G. Brunk (Editors). 2009. *The Ethics of Cultural Appropriation*. Malden, MA: Wiley-Blackwell.

Transcript of Narration

Written and Narrated by Deni Elliott

As young children, we learned that everyone has the right to control the use of their property. Keep it, share it, give it away—it seemed that simple. But as adults, we find ourselves trying to navigate through physical and virtual worlds where issues of intellectual property and ownership are much more complex. Much of what is ethical and unethical in the area of intellectual property has to do with following the law. While laws governing appropriation and attribution are struggling to keep up and add clarity in our rapidly evolving world, ethical analysis can help guide the way.

Attribution means giving credit where credit is due. In theory, the author of any published work has a right to control how his or her intellectual property is used. But in practice, most people click ‘agree’ when signing on to websites such as YouTube without ever being aware that they’re signing over their rights to their material to the corporation that owns the site.

Sometimes, all that’s legally and ethically required to use material is a citation explaining its origins. Other times, content is protected by copyright and has explicit limitations.

We all know that we’re not supposed to plagiarize our papers. But what about artists or musicians who learn their craft by copying famous predecessors? Are these ‘original’ works if they’re infused with the style of the masters? Would we call that stealing? Or influence?

Music professor and computer scientist David Cope created a computer program that produces ‘original’ compositions in the style of previous composers. The computer-generated music sounds like Mozart or Bach, for instance, but it’s not. Two CDs have been produced and sold with no legal action taken because the copyrights to the individual works expired long ago.

In another case, Composer John Oswald created sound collages, using samples of previously recorded works. He claimed that the sound collages were original compositions. He listed all his sources, but did not get permissions to use them. Record companies filed lawsuits, and ultimately, unsold copies of his albums were destroyed. So, in some cases, the courts have allowed unrestricted use where sampling led to the creation of new pop hits. In other cases of deconstruction and remixing, the courts have decided that these artists must get permission from the copyright owners of the original music.

Ethically speaking, using others' intellectual property for one's own gain without permission is stealing. The original creator is denied credit and is deprived of control over his or her creation. Passing off another's property as one's own is an act of deception.

But appropriation is more complex. Appropriation can mean borrowing ideas, images, symbols, sounds and identity from others. Many would argue that progress in art, music, and architecture wouldn't even be possible without incorporating important artistic developments of the past.

Sometimes appropriation is ethically permissible and other times not. For example, many of our government buildings and banks have appropriated ancient Greek architectural features, such as columns and capitals, to project images we associate with democracy, wealth, and freedom. On the other hand, controversial instances of cultural appropriation abound, such as the NFL's use of Native American symbols like the logo for the Washington Redskins.

Whenever possible, we should follow the rules we learned in childhood about respecting the property rights of others: If what you want to use doesn't belong to you, then use it only in ways that the owner permits. If it's impossible to ask for permission, then ask yourself how you would want the creation to be used or attributed if it were your own. And if ownership itself is the subject of debate, then the use should be subjected to a systematic moral analysis to determine what harms the appropriation might cause and whether they are justified. When it comes to appropriation and attribution, the laws may still be murky, but ethical behavior doesn't have to be.