

Appropriating "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.



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?

Resources:

Artist Sues The A.P. Over Obama Image

<http://www.nytimes.com/2009/02/10/arts/design/10fair.html>

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

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