

Copy Rights

As digital tools transform the way artists find and re-use

images, the concept of what is fair use—legally as well as artistically—is becoming more complicated

BY BARBARA POLLACK



'I think about so many things when I think about working with an image that I just can't name it," says Kelley Walker, when asked if he is an appropriation artist. Nonetheless, sitting next to a massive printer capable of turning out mural-size pictures in his studio in the Flatiron District of Manhattan, Walker seems fully equipped to make his huge, rambunctious screenprint paintings with imagery derived from sources as diverse as Andy Warhol, civil-rights protest photographs, '60s advertisements, and chocolate. Walker is the epitome of today's brand of appropriation artist, using a combination of scanning, photo manipulation, and conventional painting techniques to choose from various sources and transform this found imagery into his own unique works.

Walker, 42, also seems typical of the newer appropriation artists who seem slightly uncomfortable with a term that is burdened with art-historical associations. Appropriation covers a wide range of practices—reworking, sampling, quoting, borrowing, remixing, transforming, adapting—that focus on one person taking something that another has created and embracing it as his or her own. Recent exhibitions that have highlighted this controversial technique range from "Copycat: Reproducing Works of Art," at the Clark Institute in Williamstown, Massachusetts, which traces the practice back to 16th-century printmakers, to "Image Transfer: Pictures in a Remix Culture," at the Henry Art Gallery in Seattle, which

takes the subject into the digital age. "Postmodernism: Style and Subversion 1970–1990," at the Victoria and Albert Museum in London, features work by pioneers such as Richard Hamilton, Cindy Sherman, Elaine Sturtevant, and Richard Prince who were inspired by Marcel Duchamp. New York's Metropolitan Museum of Art also focused on this period with its landmark 2009 show "The Pictures Generation, 1974–1984." Today, in any gallery or museum you will

see artworks that incorporate or allude to press photographs, fine-art masterpieces, video games, Hollywood movies, anime, found objects, and just about anything that can be pulled off the Internet.

As common as it has become, appropriation does not sit comfortably with U.S. copyright law, which is intended to protect artistic material from being poached by copyists. According to James Pilgrim, cocurator of "Copycat," Dürer was one of the first artists to sue another for copying; he charged Marcantonio Raimondi with making prints of his paintings and using his monogram. Today, five centuries later, courts differentiate between that kind of forgery and appropriation art, permitting the latter if it falls under the "fair use" exception to the copyright law, that is, if it can be proved that the

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ABOVE Kelley Walker's offset print *Andy Warhol and Sonny Liston Fly on Braniff (When you got it-flaunt it)*, 2005–07 (above); *Black Star Press (rotated 90 degrees)*, 2006, digital print screen-printed with chocolate and based on a 1963 photograph of a civil-rights demonstrator in Birmingham, Alabama (below).

OPPOSITE Richard Prince appropriated Patrick Cariou's photograph of a Rastafarian for this work in his "Canal Zone" series. Cariou sued for copyright infringement.





ABOVE Sherrie Levine, *Gottscho-Schleisner Orchids:#2*, 1964–1997, C-print, from “Mayhem,” her recent retrospective at the Whitney Museum.

OPPOSITE Sean Dack makes C-prints from partially downloaded digital images, such as *Glitch Girl #3*, 2008, from the exhibition “Image Transfer” at the Henry Art Gallery.

©SHERRIE LEVINE/COURTESY PAULA COOPER GALLERY, NEW YORK/PRIVATE COLLECTION

appropriator transformed the original material as a way of commenting on, satirizing, or criticizing the source. Still, even Robert Rauschenberg and Andy Warhol have occasionally had to pay other artists licensing fees, and appropriation artists are not always able to win over judges, as was the case last year when Richard Prince was sued successfully for using another artist's photograph.

'Certainly, Pop artists are crucial figures in the genealogy of appropriation," says art critic and historian Hal Foster, who recently published *The First Pop Age: Painting and Subjectivity in the Art of Hamilton, Lichtenstein, Warhol, Richter, and Ruscha* (Princeton University Press). "For the most part . . . Pop had to do with the collision between high and low, painting and Disney characters and comic-book figures. With the 'Pictures Generation' people, the politics was different. They were very concerned with photography, and the original charge of their work was part of a general critique of originality."

Foster sees a new shift among current artists. "It is interesting that artists who follow this work shy away from the term 'appropriation.' It is too brutal a term for them. Sampling is now just so pervasive in the culture—it's everywhere in the production of music—the force of appropriation doesn't seem to be as strong."

"The way people perceive appropriation in a larger cultural context has shifted over the years, so it is hard for people to see how radical it was," says Johanna Burton, curator of "Mayhem," the recent survey of Sherrie Levine's work at the Whitney Museum of American Art. "I think it is really a sign of how strong an artist Levine is that after 30 years she is still controversial." Even today, it is a little shocking to see Levine's 1981 series "After Walker Evans," in which she rephotographed the haunting images that accompanied *Let Us Now Praise Famous Men*, James Agee's classic work of Depression-era journalism. Without a side-by-side comparison, it is almost impossible to tell the difference between Evans's work and Levine's.

"Stealing may be a cooler, more street term for appropriation," speculates Walker, who shows at Paula Cooper Gallery in New York. "I think it takes time to consider something to be an appropriation. Naming something 'appropriation' isn't necessarily interesting, but in time it could show itself as being interesting." For his series "Black Star Press," Walker started with a 1963 photograph of a civil-rights demonstrator in Birmingham, Alabama, being attacked by a policeman with a dog. He then printed it at monumental scale, nearly obliterating the image by smearing it with three kinds of chocolate—dark, milk, and white. According to the artist, the works are not so much a comment on race as a presentation of the way certain images endure and are recirculated, much, for example, in

the way Andy Warhol used images in his famous "Race Riot" series.

"We live in a truly raucous visual culture. A constantly changing, overcrowded field of vision—animated by the Internet, social media, video games, television, movies, glossy magazines, and countless virtual and real experiences," writes curator Sara Krajewski in her essay accompanying the show "Image Transfer" held at the Henry Art Gallery in late 2010. Krajewski chose the term "image transfer" because she thinks it more accurately describes the intentions of artists who sample imagery more freely, without the critical edge present in the work of Levine or Prince. She also points out that in



the past artists had to engage in a physical act—either engrave a plate or paint a canvas or make a collage or pick up a camera—to appropriate, whereas today images can simply be downloaded or scanned.

"Technology has really opened up the techniques," says Krajewski, noting that most of the artists she was looking at

started working before the advent of the digital age and only later began using computers, scanners, and Google in their practices. Tension was arising between the analog culture and

New Photography 2009, at the Museum of Modern Art in New York, as was Sara VanDerBeek, 35, who also had a solo project at the Whitney Museum in 2010. VanDerBeek explores the intersection of photography and sculpture, incorporating pictures taken by her artist-filmmaker father, Stan VanDerBeek, Man Ray or Julia Margaret Cameron to evoke different eras in photography.

Miranda Lichtenstein, like many artists working today, considers appropriation just one of her tools for making her mysterious and engaging photographs and videos. For her 2010 solo exhibition at the Elizabeth Dee Gallery in New York, Lichtenstein, 42, created a video projected on a black velvet curtain, entitled *Danse Serpentine (Doubled and Refracted)*, using a short film made by the Lumière Brothers in 1897 capturing the American dancer Loie Fuller performing her *Serpentine Dance* at the Folies-Bergère in Paris. Lichtenstein's video was made by projecting the Lumière Brothers' work—a pioneering use of hand-painted film—onto a sheet of Mylar and shooting the reflection as well as the image it cast on the opposite wall of her studio.

The artist claims her appropriation is really a reappropriation because she found a copy of the original film on YouTube. But her work is also a commentary on the fact that even the Lumières' work is a form of appropriation because it is a copy of a performance, and Fuller's performance can also be considered an appropriation because it is based on popular skirt dances of the period.

"I think that appropriation artists like Sherrie Levine, Haim Steinbach, or Richard Prince were so focused on the notion of recontextualizing an original and on what the original means," says Lichtenstein. "Now, because everything is so up for grabs and circulated endlessly, it has a lot less to do with any kind of questioning of originality because that happens anyway. It is more about the disper-

sion of images and the dispersion of meaning. You can just take things as you need them—not to say you shouldn't be paying attention to what that use means—but it's a lot more open now."

Yet under the U.S. Copyright Act, there are still limits to how an artist can use another creator's work, as Prince found out last year when he lost a lawsuit brought by French photographer Patrick Cariou for copyright infringement. Prince had taken images of Rastafarians from Cariou's 2000 book *Yes Rasta* for his "Canal Zone" series, shown at Gagosian Gallery in New York in 2008. His defense was that his borrowing fell under the "fair use" exception to the Copyright Act, because he had transformed the original material sufficiently to make it his own unique product. In a



the nascent digital culture, says Krajewski, who thinks that such tension is the source of much of the creativity in the artworks.

Matt Keegan is one of the artists featured in "Image Transfer." Keegan, 35, contributed his 2010 series "Images are Words/Las Imágenes son Palabras," in which he pilfered an archive of stock photographs assembled by his mother in the 1960s to use in teaching English as a second language. He repositioned the photos as large-scale pictures without text to demonstrate the chameleon-like quality of photographs, which can change meaning depending on context.

In contrast, Carter Mull, 34, another artist in the "Image Transfer" exhibition, sorts through his own photographs, newspapers, and other ephemera, then rephotographs and collages the material digitally to create works that seem as layered as architectural excavations. Mull was featured in



ABOVE Miranda Lichtenstein's video installation *Danse Serpentine (Doubled and Refracted)*, 2010.

OPPOSITE Matt Keegan's *Images are Words/Las Imágenes son Palabras* (detail), 2010, from "Image Transfer," was an installation that used images from flashcards collected by the artist's mother to teach English.



ROBERT MCKEEVER/©RICHARD PRINCE/COURTESY GAGOSIAN GALLERY

far-reaching decision, the trial court ruled that transformation was not sufficient; the artist must also be commenting on the original material and must not be doing this strictly for a commercial purpose. In finding against Prince and Gagosian, the court noted that the gallery had sold more than \$10 million worth of Prince's paintings, damaging Cariou's ability to have a show of his own.

"It's one thing for Marcel Duchamp to have taken a urinal and appropriated it. A urinal is not copyrighted," says Dan Brooks, Cariou's attorney. "These images that were appropriated were copyrighted, and there has to be some reason that they were taken other than that Richard Prince liked them. You understand? Anyone could say, 'I am an appropriation artist,' and they could take anything. Where would you draw the line?"

Prince's attorney on appeal, Josh Schiller, of Boies, Schiller & Flexner, says that Judge Deborah Batts had not spent time examining the paintings themselves before taking it upon herself to order that the paintings be confiscated and destroyed and for that reason did not see that any reasonable person would find a difference between Prince's works of art and Cariou's photographs.

"Appropriation art is a well-recognized modern and postmodern art form that has challenged the way people think about art, challenged the way people think about objects, images, sounds, culture," says Schiller. "Art is always meant to be a reflection of culture or to move culture ahead, contribute to culture. I think what judges need to know is that appropriation art has its place on the shelf, in terms of adding and creating and inspiring people to make art, which is the purpose of the Copyright Act."

At press time the case was being appealed. The Andy Warhol Foundation, Google, and the Association of Art Museum Directors have all filed supporting briefs on behalf of Prince.

The art world was much less supportive when the "Asia Series," Bob Dylan's first New York show of his paintings, opened at Gagosian last September. Although the series was billed as a "visual journal" with "firsthand depictions of people, street scenes, architecture and landscape," media outlets promptly reported that many of the paintings were based on photographs taken decades earlier by well-known Magnum photographers, including Henri Cartier-Bresson, Léon Busy, Jacob Aue Sobol, and Dmitri Kessel. Even though it emerged that Dylan had paid licensing fees for many of the images, some chastised him for claiming that they were based on his own personal observations. In an interview with John Elderfield, emeritus curator of painting and sculpture at the Museum of Modern Art, in the accompanying catalogue, Dylan says, "I paint mostly from real life. It has to start with that." But he also acknowledges that one

of his paintings owes a debt to Gauguin, adding, "Quotation is something that happens a lot in the music world."

"It's not just the fact of appropriation. It is also the context and the manner of appropriation that counts," says Glenn Adamson, curator of the "Postmodernism" show at the Victoria and Albert Museum. As Adamson definitively illustrated in the art, fashion designs, posters, music videos, and architectural models on view in the show, appropriation is a key element in postmodern culture and also stretches across many different disciplines. "Philip Johnson was able to set



ABOVE Carter Mull, *Alice*, 2011, C-print and pasted print based on pages from the *Los Angeles Times*.

OPPOSITE Richard Prince, *Cowboys*, 1992. Prince's cowboys rephotographed from advertisements put him in the appropriation vanguard.

the world on fire simply by appropriating a classical pediment, about as innocuous a motif as you can have in architecture, but when he put it on top of a corporate skyscraper, the AT&T Building, he was able to poke every modernist architect in the eye," Adamson says. (The AT&T Building, on Madison Avenue, now the Sony Tower, was completed in 1984.)

"Appropriation art brings masterpieces to a whole new generation," says veteran appropriation artist Mike Bidlo, who has rendered exact replicas of works by Jackson Pollock, Henri Matisse, Duchamp, and Warhol, all based on postcards and reproductions of the originals. ■