

Is she now mine?

A few years ago, I received an e-mail from a Swedish student preparing his final report towards his degree in law school. He sent me a questionnaire on what he called then the “balancing of interests in a typical sampling-situation”. He added: “ I understand you work a lot with sampling pieces of old photographs in your work, and I’d like to get a feel for your attitude in this matter”. He was obviously trying to establish what my criterion was around copyright issues from the perspective of an artist.

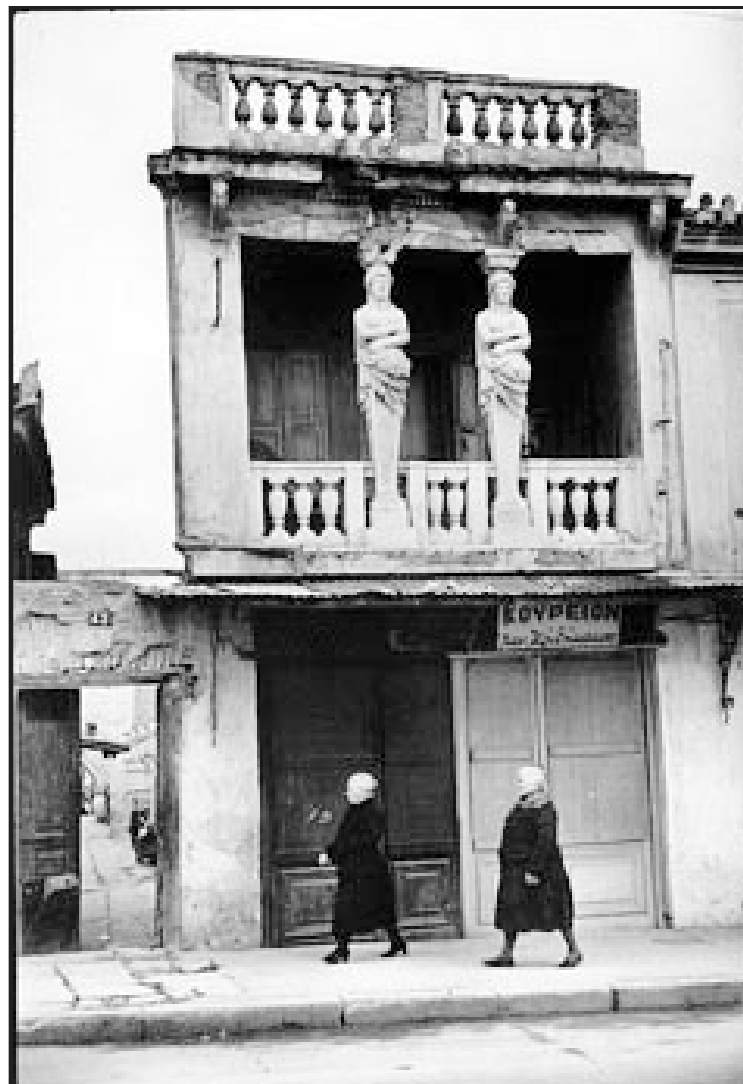
Here are a few of the Q & As.

Q- Could you start by explaining the process by which you work? (How big are the sampled fragments that you use? Do you manipulate these fragments in any way?) What is the reason behind using this method? (Efficiency, making deliberate references, etc) Do the legal aspects affect the way you work?

Let me start out by pointing out the difference between how I approach the issue of sampling and what others do. That difference relies on the fact that for most of the images that I create with the computer I use my own photography as well. Having said that, if one takes the issue of the “original” to its full consequence then one is faced with a lot of issues which have not yet been dealt with appropriately by anyone (from a legal point of view). For example: unless a particular image is solely about a landscape, (as in nature) most anything else contains man made objects and someone who can lay claim to intellectual rights over the design of the objects depicted within the image. For instance, most shopping malls in the United States stop you from taking pictures without specific permission precisely because they lay claim to the copyright of all that is within their building. No longer is the shopping mall experience the equivalent of walking down your local Main St., at least not in photographic terms.

However, in any traditional “street photograph” someone could claim that the building in the background was the creation of a certain architect; or a sculptor if it happens to contain a piece of art; or the designer of the advertising in the billboard; or the coat of the lady walking down the street; or the shoes; or the bus; the car or tram; the chair; the clock; etc. everything can always be related back to someone who created the depicted objects.

Let us take a look at the image by Henri Cartier Bresson, taken in Athens in 1953, with the two women in black walking down the street. It is obvious that the strength of the image relies on the juxtaposition of the two women with the two sculptures on the balcony of the building in the background. It is quite obvious that such an image could not be created in today’s climate of everyone making all sorts of copyright claims.



©Henri Cartier Bresson 1953

If you want to explore this issue further, just take at random any set of very well known pictures, and explore how many objects you can find that would follow in this pattern of thinking. You will be astounded how we have ever made it this far without everyone making this into a legal issue. One thing that is sure is that photography will never be the same from here on in.

Returning to my own work for a moment, I would say that the fragments that I use within a picture have no relation to size, they are as large or small as needed, that is the only guide that matters to me. But I have to point that it has to do with the fact that I am using solely my own work.

But let us explore another image by the world renowned Henri Cartier Bresson, this time the image is one from Mexico, dated 1964. Here you have the little girl carrying a very large frame towards an opening in a fence of a place we don't know where it leads to. No question in my mind that the image is anchored on that framed picture. In other words, this would be considered in today's jargon "an appropriation". There is obviously no credit to the photographer who made the picture in the frame. But with present day copyright interpretations this might be considered a questionable practice.



© Henri Cartier-Bresson 1964

I have taken the example a step forward and brought the little girl carrying the frame into an image of my own in order to explore what the implications are.



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The first question that comes up is, what portion of the original H.C. Bresson picture has been taken? Is it only the little girl in the back of the frame? Or is the frame with the “appropriated” picture also part of his original image? Because if one could argue that the framed picture is part of his image, then how does that play out with regard to my appropriation of his image? A second question, what is the amount of image that I took from H.C. Bresson’s picture? Are the few pixels that represent solely the image of the little girl, his? And if they are, then how many pixels can I take without incurring into a copyright infringement? A question not unlike that which musicians have to ask themselves when dealing with sampling: how many notes can be taken from someone’s music without having it considered a misdeed?

Getting back to the question of manipulation, as you stated in your initial question, asking if one “introduces manipulation” at some point. Well, I see this very differently. Manipulation exists at the very moment the original picture is made, everything else that follows are only ensuing stages of further manipulation. Art is about manipulation of matter and ideas isn’t it? And the final part of your first question is “Do legal aspects affect my work?” Surely they do. No one wants to find ones’ work against a wall of legal issues. Think of the implications for Henri Cartier Bresson working today with all the those “lawyers” circling around like sharks trying to see what they could scoop up to feed their hungry appetites.

Q. “The original copyright holder should receive payment and credit for all use of his work, no matter how much is used and in what way. If it’s worth copying, it’s worth protecting.”

A- You have to separate the issues of illicit use that damages the pocketbook of the creator, or the reputation of the persons depicted in the image, or the image maker who stood behind it. The issue of copyright goes far beyond just economic issues. I had a situation like this occur to me recently in Argentina, where a picture of my parents, taken from a magazine which in turn was a review of my CDROM disc on my parents’ last days, it was used to create a billboard which was plastered all over Buenos Aires, inviting the population to come to a rally in memory of an Argentinean policeman who had been murdered.

The picture of my parents was made out to portray the parents of this alleged policeman. I obviously had no desire to have the image of my parents associated with that repressive regime or, for that matter, with any police, especially not the Argentinean who were known for their fascist methods. So I sued the advertising agency that used this picture without my permission. A furor erupted all over Buenos Aires when this event was made public in the newspapers and magazines; so here you have an example of misuse of an image, which was lifted from a traditional source such as a magazine, and the damage was not so much material as an affront to my parents memory. What price does that have?

Interesting to observe is that with the advent of new technologies, many more people knew about this image, and therefore were aware that someone was “stealing” it, and also the fact that the picture was not taken off the CD ROM as many had suspected, but in fact from a traditional medium such as the printed page.

Q—An American law-professor wrote in 1991: “If a neutral observer can recognize the sampled parts, too much has probably been sampled, due to one or more of the following reasons: a. He’s taken too much (quantity). b. The sampled parts are too significant (quality). c. The public would assume that the copyright holder of the original photograph in some way authorized the new photograph. Are these reasons relevant? Are the criteria of the neutral observer recognizing the heritage of the sampled parts one that makes sense?”

A- I believe that the statement you quote from the law professor has more to do with the traditional way of thinking, of trying to establish how much one get away with without becoming liable for having broken a law. I view this quite differently, it’s like the issue of being “a little bit pregnant”— you either are or you are not, there is no “little bit”. And again like with pregnancy, it can be either great or it can be a disaster, it all depends. I can imagine of a situation of having taken a lot from another picture, and it still being quite OK. The issue of how much was taken does not determine this as a sole arbiter.

Let me give you an example, which can turn the entire argument on its head. I could take the Mona Lisa image and then create a new image with that reference, there is no copyright on the Mona Lisa, it’s in the public domain. But what would happen with the image I just created (see cover of ZoneZero), would I have no copyright protection for my new image because a substantial portion of this picture is derived from the Mona Lisa? Or if my picture was copyrightable, would I then have by extension made the Mona Lisa my own? And if not, to what extent would that be true? The question remains: Is she now mine? Let me introduce you to another of my own pictures with yet another Mona Lisa, this one taken at a Wax Museum in San Francisco.



© Pedro Meyer 1991

Sure, the Mona Lisa depicted in the frame is a copy made by someone to provide the visitor of the wax museum with the illusion that you are there witnessing the original Da Vinci in the act of his creation. But my image is nothing but the sum of these

representations which in turn have all their own creators, and so the spiral continues as to the question of what is the final resting point for this issue of “appropriations”. It might be interesting to note that most people imagine this picture to be the result of a composite done in the computer. The truth is that it’s a “straight” picture, only one with a very much layered reality. So what is the difference if I do this in the computer or not?

Q- At what point would you like to stop someone sampling your photographs? Would it make any difference if it were for an “artistic” photograph or an advertisement? Is the matter of “artistic integrity”, f.i. – to be able to determine in what context your picture can be used – more important than getting paid for the right to use parts of your work?

A- A great Japanese master of ceramics, famous for his breathtaking beautiful teacups was asked if he did not object to the fact that there were so many lesser artists copying his work. He nodded and commented that, on the contrary, he was pleased with that. In the future, when someone makes a splendid teacup, they will think it’s mine, and all my mistakes will be attributed to those that made imitations of my work.

Aside of what this metaphor teaches us, I would say that if someone uses some of my work and acknowledges the source, as I have done when that has been the case, then I would have no basic problem. Probably, I would also want to see that my portion of the image would be a minor part to his or her creation, and not it’s foundation.

Now, if the context would be for a commercial use, I would want to know the exact details of the context. For instance, what responsibility do I have towards those depicted in my own images? Aside from the economic issues that would have to be dealt with, I have to retain the integrity of my own work. Today you can see actors that have been dead for a long time, such as John Wayne, appearing in a new commercial for beer. He might not have liked the idea of his image coming up in such a context, yet someone is exploiting precisely such a situation using digital technologies to do so. The same happened to Fred Astaire, who ended up in an advertising campaign for a vacuum cleaner, to the great consternation of many.

There are plenty of good motives to protect the integrity of the work that we are doing, when in today’s world the possibility for unending alterations are there for anyone to apply without constraint. So the need to protect the work with strong copyright laws are certainly justified. On the other hand, the mood for litigation can get so out of hand that the spirit of creativity can end up being stifled. It is our outmost desire that the child not be thrown out with the dirty water.

My final words then, were to wish him well with his thesis. Hoping that we would have in him a good new lawyer, with full understanding for the ever more complex issues of representation in the digital age.

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