

CASE FILE #30: THE CREATIVE COPY

LEARNING AIMS

- Understand that creativity often involves copying (and that is okay)
- Be able to discuss how copyright law allows copying for a variety of reasons

KEY QUESTIONS

The following key questions should be discussed to address the learning aims:

- Why was the composer Nino Rota not nominated for an Oscar in 1972?
- How does copyright law treat artists differently from other creators?
- Does our use of the theme tune from the film *The Godfather* infringe copyright?

Students will be expected to use Case File information to analyse ideas, to give opinions, and to justify opinions. Other questions posed within the Case File can be used to generate further discussion.

WHY WAS THE COMPOSER NINO ROTA NOT NOMINATED FOR AN OSCAR IN 1972?

- See **TEXT BOX #2 and #3**
- It was discovered that he had plagiarised his own earlier composition from the 1958 film *Fortunella*. Because of this, the Academy said his score for the 1972 film *The Godfather* was not 'original' and so could not be nominated for the category of 'Best Dramatic Score'.
- It is unclear whether he was aware of his self-plagiarism, or whether he had done so unconsciously. But he is not the only author or creator who re-uses his own earlier work. This happens quite often.

HOW DOES COPYRIGHT LAW TREAT ARTISTS DIFFERENTLY FROM OTHER CREATORS?

- See **TEXT BOX #4**
- The law recognises that artists often revisit and repeat themes and elements from their earlier work when creating new paintings or a new body of work.
- For this reason, the law provides a specific exception for artists to reuse aspects of their earlier work.

DOES OUR USE OF THE THEME TUNE FROM THE FILM THE GODFATHER INFRINGE COPYRIGHT?

- See **TEXT BOX #2**

- **NO.** (At least we are 99% sure that it doesn't – which is about as good as it gets, when trying to answer copyright questions.)
- Copyright law provides various exceptions that allow you to make use of someone else's work without having to ask for permission. These include:
 - Quoting from a work
 - Criticising or reviewing a work
 - Creating a parody of a work

So long as you are copying someone's work for one of these purposes, and your use of their work is fair, then it is entirely lawful to do so.

- Arguably, our use of the theme tune could be understood as simple quotation.

Or, it could be a form of criticism and review. That is, we are using Nino Rota's theme tune to explore the concept of self-plagiarism and creativity. Perhaps we are critiquing the idea that all creativity is entirely original in the sense that it is not influenced by existing work, whether your own or someone else's. Is anything truly original in this sense?

Or, our use of the theme tune could be regarded as a form of parody. We might be reusing his work to gently poke fun at Rota and the whole Oscar debacle of 1972.

- Might any other exceptions apply?
- If the students explore the [Exceptions](#) page of Copyrightuser.org they might be directed to the material on exception for [Education](#).

One important exception for education allows the use of any type of work for the purpose of 'illustration for instruction'. This allows teachers and educators to make use of someone's work to give or receive instruction. Moreover, the instruction does not have to take place within an educational institution.

We believe that The Game is On! resource falls within this exception. That is, our use of someone's work might be parodic, or critical, or quotation ... but it is also for the purpose of illustrating for instruction.

SUGGESTED ACTIVITY

Organise a mock trial.

The creators of *The Game is On!* are on trial for copyright infringement. The descendants of Nino Rota are suing for damages. They are accusing *The Game is On!* team of infringing Rota's copyright in the main melody from *The Godfather*.

Split the class into four groups. Two groups are lawyers for Nino Rota's descendants. Two groups are lawyers for *The Game is On!* team. Give them time to prepare the arguments for and against the allegation of copyright infringement. You might direct the groups to think about:

- How much of the original musical work has been copied? Is it too much? Too little?
Guidance: even if the melody is short, they have probably copied too much – after all, even this snippet of melody is very famous, and very recognisable.
- Does it make any difference that the melody has been altered?

Guidance: no; it doesn't make any difference if they have changed and altered the work in a significant way; all that matters is whether they have copied without permission, and, if they have, then in theory, they should be liable for infringement.

- If they have copied too much without permission, can they rely on any of the exceptions to copyright?

Guidance : this is where the argument for the defence is probably strongest. The exceptions discussed above are likely to be very relevant, especially the exception for quotation, as well as criticism and review, parody and so on. But all these exceptions also depend on the use being fair. Is the use fair? This is likely to produce some interesting debates.

Once the groups have had time to discuss their arguments, they should appoint someone to present those arguments before the court.

For the mock trial itself, pick two teams to present. Each team should appoint someone to present their team's argument before the court.

In addition, appoint one student from each of the other two groups to act as judges. Working together, they can ask questions during and after each of the presentations to the court, asking for further clarification of arguments, trying to explore any potential weaknesses in reasoning, and so on.

All the remaining students are appointed to the jury. Once both arguments have been presented, and the judges have concluded their questions, the jury vote either in favour of Nino Rota's descendants, or in favour of *The Game is On!* team.

If more than two-thirds of the jury vote in favour of Nino Rota's descendants, then *The Game is On!* team have been found guilty of copyright infringement!

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1. INTRODUCTION

In *The Missing Note*, a digital file contains a recording of the soundtrack to the film *The Forger's Apprentice*, but with one note missing. The missing note is the key to a cipher that holds the answer to the whereabouts of the anarchist group.

The melody in question is taken from the film score of *The Godfather*, written by the Italian composer Nino Rota, and it was subject of some controversy when the film was first released. In [Case File #18](#) we considered the similarities and differences between plagiarism and copyright infringement. In this Case File #30, we consider the concept of self-plagiarism and how it relates to creativity and copyright.

2. COPYING AND CREATING

Many of the Case Files created for this resource explore when it is appropriate and lawful to borrow from and make use of the work of others. But, what about when creators borrow from themselves?

The author and playwright Luigi Pirandello is a good example of a creator who often reused and recycled his own earlier work. Indeed, in many respects, the practice of self-plagiarism lay at the heart of Pirandello's writing and method.

For example, Pirandello's novel, *Her Husband* [*Suo Marito*], first published in 1911, considers what it means to create original work, and what it means to be an author. The novel's central character is Silvia Roncella, a writer who is unconcerned with the commercialisation of her work. Indeed, she often insists on giving her work away for free, which frustrates her husband's attempts to benefit financially from her writing.

However, in the novel, the works that are attributed to Silvia are actually re-cycled representations of some of Pirandello's earlier texts. That is, Pirandello presents Silvia as the author of Pirandello's own earlier work. The boundaries between quotation and original text are blurred in the novel in a way that encapsulates the extent to which Pirandello deliberately conflated copying and creation throughout his literary career. This was just one of the reasons that we wanted to borrow from Pirandello's work when creating episode 2 of *The Game is On! The Adventure of the Six Detectives*.

Moreover, like Pirandello, and many others, we have also borrowed from our own earlier work in creating *The Game is On!* series. In this episode, for example, we reuse scenes and material from the first two episodes (can you spot them?). And, we'll reuse material from this episode in the next two that follow (we don't believe in spoilers, so you'll have to wait and see).

3. AND THE OSCAR DOESN'T GO TO ...

In 1972, Nino Rota's score for the *The Godfather*, directed by Francis Ford Coppola, was nominated for an Oscar for Best Original Dramatic Score. However, the nomination was subsequently withdrawn by the Academy on the grounds that Rota – when writing the Love Theme for the film – had reused music from a score that he had written for the 1958 Italian film comedy *Fortunella*. The Academy argued that as Rota had reused his own music from an earlier film, the score to *The Godfather* could not be considered 'original'.

With *The Godfather* out of the running, the Oscar for Best Dramatic Score that year was awarded to the film *Limelight*, written, produced and directed by Charlie Chaplin in 1952. Chaplin also co-authored the score with Raymond Rasch and Larry Russell. Although *Limelight* had first been released twenty years earlier, it had not been screened in Los Angeles until 1972; as such, it was eligible for nomination.

Whereas today the soundtrack to *Limelight* is not particularly well known, Rota's Love Theme from *The Godfather* has become one of cinema's most famous and recognisable pieces of music. And yet, Rota had indeed reused his tune from *Fortunella*, albeit played in a very different way. In *Fortunella* the tune is played as a fast march: it is upbeat, raucous, and full of energy. In *The Godfather*, the orchestration, tempo and mood are completely changed: the melodic line may be the same, but the effect – what the music evokes – is entirely different.

Rota's act of self-plagiarism, whether conscious or unconscious, had other knock-on effects. Dino De Laurentiis, who produced *Fortunella*, subsequently reissued the *Fortunella* soundtrack featuring the ironic claim that it was 'The Godmother of the Godfather'. De Laurentiis was seeking to capitalise on the scandal of plagiarism surrounding Rota's Love Theme.

As it happens, two years later, Nino Rota and Carmine Coppola were awarded the Oscar for Best Dramatic Score for *The Godfather II*. Naturally, the film score for the *Godfather II* reused and recycled much of Rota's original score for *The Godfather*.

4. CREATE, AND REPEAT

Artists often incorporate motifs and elements of their earlier work when creating new works. However, if they have sold the copyright in those earlier works to someone else, they run the risk of infringing copyright when creating their new work. For this reason, the CDPA provides a specific exception allowing artists to reuse aspects of their earlier works. Section 64 states that where the author of an artistic work is not the copyright owner of that work, she does not infringe the copyright by copying the work in making another artistic work, provided she does not repeat or imitate the main design of the earlier work.

Consider, for example, an artist commissioned to paint a group portrait of seven or eight individuals. Later, the artist might reuse the sketches she made for the group painting to produce individual portraits. This type of use would fall within the scope of s.64: the artist would not infringe the copyright in the earlier painting as she is not repeating or imitating the main design of that earlier work.

Why do you think the CDPA specifically provides an exception for artists to reuse their earlier work, but not for authors or composers?

5. FOR DISCUSSION: TOO FAR? OR FAIR ENOUGH?

The melody at the heart of the mystery in *The Missing Note* is based on the Love Theme from *The Godfather*, by Nino Rota. Our version is an adaptation of Rota's melody, by the Italian composers Pietro Bartolotti and Filippo Terni, under the supervision of Adriano Cirillo. Cirillo was taught by Nino Rota. The notes are the same, but the timing, phrasing and effect is different.

But, have we infringed the copyright in the original melody? Or, does our reuse of the melody fall within one of the exceptions to copyright? Perhaps it qualifies as quotation (see [Case File #25](#)), criticism or review (see [Case File #6](#)), or even parody (see [Case](#)

