

CASE FILE #5: THE TERRIBLE SHARK

LEARNING AIMS

- Understand why we have exceptions to copyright
- Be able to discuss the importance of having an exception for parody, caricature and pastiche

KEY QUESTIONS

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

- What are copyright exceptions?
- What are parodies, caricatures and pastiches, and why is it important to have copyright exceptions to enable them?

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.

WHAT ARE COPYRIGHT EXCEPTIONS?

- See **TEXT BOX #1 and #2**
- Copyright exceptions are specific circumstances when it is possible to use protected works without permission from the copyright owner. There are a number of copyright exceptions set out in the CDPA (the UK Copyright Act), concerning [non-commercial research and private study](#), [quotation](#), [news reporting](#), [education](#), and other uses.
- Copyright law permits these uses because they are socially, culturally, politically or economically beneficial. Also, practically, the process and costs of getting permission might prevent these useful activities.

For example, think of a large digitisation project conducted by a library or a museum. Because they may be digitising thousands of works, it would be almost impossible (or too time-consuming and expensive) for these organisations to get permission from every single copyright owner of each of the items in their collections.

At the same time, preserving our cultural memory is vital for helping people connect with and understand their identities, their communities and their cultural heritage. This is why there is an exception in copyright law that allows archivists to make copies of any type of work for preservation purposes (see [Case File #24](#)).

WHAT ARE PARODIES, CARICATURES AND PASTICHES, AND WHY IS IT IMPORTANT TO HAVE COPYRIGHT EXCEPTIONS TO ENABLE THEM?

- See **TEXT BOX #3 and #4** and the Copyright User page on [Parody](#).

- The Oxford English Dictionary defines parody as ‘an imitation of the style of a particular writer, artist, or genre with deliberate exaggeration for comic effect’. It further explains caricature as ‘a grotesque usually comically exaggerated representation especially of a person; ridiculously poor imitation or version’; and pastiche as ‘an artistic work in a style that imitates that of another work, artist, or period’.

From a copyright perspective, there are two main types of parody: ‘target parody’, which directs its critique to the work being used or its author; and ‘weapon parody’, which uses an original work to critique a third party or phenomenon.

- Digital technology has made parody, caricature and pastiche much more accessible to the general public, in terms of both production and consumption. Think of how many parodies of famous songs or mash-ups of TV series are uploaded and watched every day on YouTube; or the millions of memes that are shared via other social networks.

While many of these are created purely for fun, often parodies and mash-ups are also produced to make a critique of a well-known artist or her work; and/or to draw attention to or comment upon a particular social phenomenon or political issue. As such, they are a crucial tool to exercise our freedom of expression.

- There are many obvious reasons why a copyright owner would not grant permission to make a parody of her own work: she may not have a great ability to laugh at herself (if she or her work are the target of the parody), or she may not agree with the political message behind the parody.

But, as we noted above, parodies are a fundamental aspect of our freedom of expression. For this reason, it is important to have exceptions for parody, caricature and pastiche: without these exceptions, copyright could be used to hinder political dissent and social commentary.

SUGGESTED ACTIVITY

After discussing the KEY QUESTIONS above, show the students the following memes:



Ask the students to identify the difference between the two memes. The one on the left hand side can be considered a ‘target parody’ (the target of the parody is the person appearing in the photo, the actor Chuck Norris), whereas the one on the right hand side is a ‘weapon parody’ (it uses a still from the series *The Fresh Prince of Bel-Air* to criticise something else).

But how about this one:



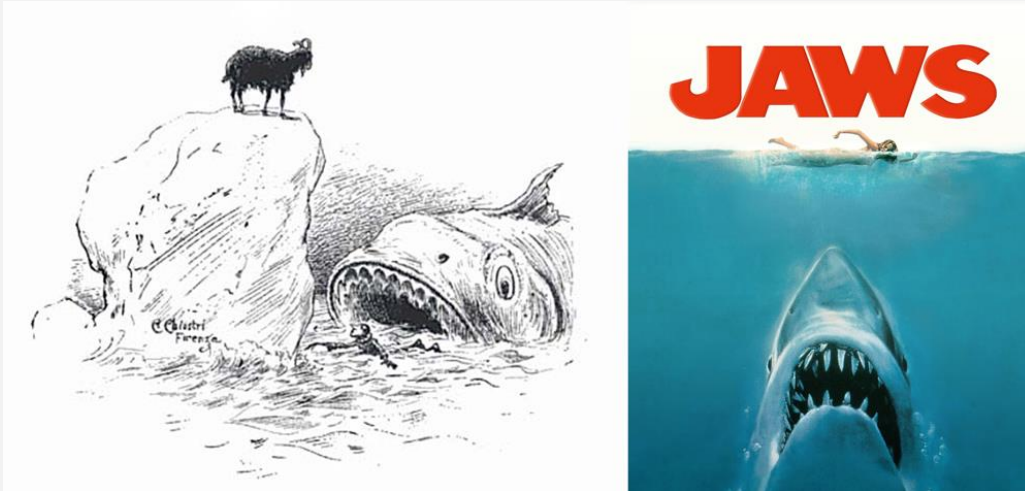
This meme combines a still from the film *Labyrinth* with distorted lyrics of the song *Call Me Maybe*. What or who is the target of the parody? Is it a 'target parody' or a 'weapon parody'?

Should the makers of these memes get permission from the copyright owners of the works they use? Should the online platforms that distribute these memes pay compensation to the copyright owners of the works being used in the memes? What do the students think?

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1. INTRODUCTION

This illustration from our video depicts a terrible shark-like creature about to eat Joseph's toy. It was inspired by two different images: an illustration of the 'Terrible Shark' by Carlo Chiostri (1863 – 1939), from one of the first editions of Carlo Collodi's (1826 – 1890) *The Adventures of Pinocchio*, and a theatrical release poster for Steven Spielberg's classic film *Jaws* (1975).



While the former is in the public domain because Chiostri died more than 70 years ago, the poster for *Jaws* is still in copyright. So, if you want to copy the artwork from the *Jaws* poster you need to ask for the copyright owner's permission unless, that is, you can rely on one of the exceptions to copyright.

This Case File #5 demonstrates that you are free to make use of a copyright work, without seeking the owner's permission, if your use falls within one of the copyright exceptions.

2. COPYRIGHT EXCEPTIONS

UK copyright law provides for a number of [exceptions](#) to copyright, specific circumstances when work can be used without the need to get permission from the copyright owner. There are a number of copyright exceptions set out in the Copyright, Designs and Patents Act 1988, concerning [non-commercial research and private study](#), [quotation](#), [news reporting](#), [education](#), and other uses.

A number of these exceptions are sometimes referred to as 'fair dealing' exceptions because the law often requires that your use of the material for that particular purpose must be fair. Indeed, each copyright exception has specific requirements about how and when the material can be used without permission, and in order to benefit from an exception you must make sure you fulfil the relevant requirements.

For our illustration above, we have relied on the exception for Caricature, Parody or Pastiche in referencing the iconic artwork for the *Jaws* poster.

3. CARICATURE, PARODY AND PASTICHE

To parody a work is to use it a humorous way to make a particular point. This might be to make a comment on the work that you have parodied, or you might be making fun of, criticising or drawing attention to a different work or issue altogether.

Before October 2014, creating a parody of a copyright work in the UK would typically have been considered copyright infringement. However, with the introduction of a new exception for parody, copyright material can now be parodied without the permission of the owner, in certain circumstances. Specifically, your use of the copyright work must be fair.

How much copying from a work is fair or unfair is an issue ultimately decided by a court of law on a case-by-case basis, taking into account the interests and rights of the owner as well as the freedom of expression of the person relying upon the parody exception. In making this decision, a court will typically take a number of different factors into account, such as the amount of the work that has been copied.

As the exception is new, the government have produced guidelines to help owners and users understand what it means in practice. The government's guidance is available [here](#). It suggests that you should only make a limited or moderate use of someone else's work to create your parody. For example, it is unlikely to be considered 'fair' to use an entire musical track, without any alteration or change, to create a spoof video to post online. If you are using someone else's work in its entirety, you should almost certainly get permission from the owner.

On the other hand, there are plenty of circumstances under which the new exception can be relied upon: a comedian using a few lines from a film or song for a parody sketch; a cartoonist referencing a well-known artwork or illustration for a caricature; or an artist using small fragments from a range of films to compose a larger pastiche artwork.

We have parodied the poster from *Jaws* to make the point that parody is now lawful under the UK copyright regime. What do you think? Can we rely on the new exception? Is our use fair?

For more information on the exception for caricature, parody and pastiche, see the [copyrightuser.org](#) page [here](#).

4. THE CASE: *Twentieth Century Fox Film Corp v Anglo-Amalgamated Film Distributors [1965]*

This case also concerned movie posters. The defendants created a poster for their film *Carry on Cleo* that was based on the artwork for Twentieth Century Fox Film's film *Cleopatra* starring Richard Burton and Elizabeth Taylor.

The judge decided that as 'the defendant's poster reproduce[d] a material part of [Twentieth Century's] poster', their use amounted to [substantial copying](#) and so infringed the copyright in the original work. On this basis the judge granted an injunction against the second work, stopping the defendants from distributing or displaying their poster.

[See the posters on the next page.]



5. FOR DISCUSSION: A CLEOPATRA FOR THE 21ST CENTURY?

As mentioned, in October 2014 new copyright exceptions were introduced into UK copyright law. One of the new exceptions permits the use of copyright material for the purposes of parody. The Cleopatra case, referred to above, was decided before the introduction of this exception, but what if the case were decided today? The defendants would certainly argue that their use fell within the exception for parody. Do you think they would be successful? Is their work really a parody? Is it fair? Does it matter that they were parodying the work for their own commercial purposes?

Do you think the law today strikes a better balance between the rights of copyright owners and the interests of the general public, compared to the law before an exception for parody was introduced?

6. USEFUL REFERENCES

Twentieth Century Fox Film Corp v Anglo-Amalgamated Film Distributors [1965] 109 SJ 107 (unfortunately, this is not freely available online)