

**Beyond simple textual  
plagiarism:  
some probable issues and  
possible answers**

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# My intention is...

- To say nothing about the outrageous and extreme cases where research has been misrepresented or data fabricated.
- To say very little about *conventional* plagiarism.
- I will talk about the academic misconduct that can occur, even when acknowledgement is given, if creative or artistic work is exploited or incorporated. Such work includes poems, plays recipes, images, works of art works (2D or 3D), graphics works, performed music, artefacts, trademarks, etc.

# In short....

- Works capable of holding Intellectual Property Rights. (IPR) that may become part of a presentation by staff or students.
- For me two authoritative guides:
- Cornish, W. & Llewelyn, D (2007) *Intellectual Property: Patents, Copyright, Trade Marks and Allied Rights (6<sup>th</sup> Ed.)*, London: Sweet & Maxwell.
- Padfield, Tim (2010) *Copyright for archivists and records managers (4<sup>th</sup> Ed.)* London: facet publishing.

# Intellectual property rights (IPRs)

- Copyright (2D) – *Automatic* including literary, artistic, audio, visual, filmic, etc. Generally requires fixation (but not always, eg in France). Duration, for example an distinguish between authorship and ownership.
- Trade marks – Registration required, monopolistic and innocent infringement probably possible but passing-off or goodwill influencing infringement actionable.
- Designs (3D) – monopolistic, Design Right (automatic) & Registered Design. Artefact to be of individual character, often co-exists with copyright for the 2D representation.
- Patents & Confidentiality – not covered here.

# And my perspective...

- A tutor working in design, within a creative context concerned that standards are variable and that it appears that rights associated with creative/artistic works are often not acknowledged and respected.
- Who, however, comes across infringements virtually where and whenever *Presentational Software* (eg PowerPoint® ) is used. Perhaps not plagiarism just misconduct!
- And who is concerned that such mis-representation (albeit inadvertent and unknowing) is increasingly publically displayed.



# Over time a technological shift...



Caxton's device (1478). A late 1960s/early 1970s ICL 1906A computer (not yet WIMP – Windows, Icons, Mice, Pixels – driven) and cooling plant.



# Over time a cultural shift...

- “Yet borrowing holds a special place in music written before 1600. Borrowed material is the foundation for much Western sacred music before that date” (Meconi, 2004)
- “The rise of the idea of intellectual property was a response both to the spread of printing and the emergence of consumer society...” (Briggs & Burke, 2009)
- Shakespeare had *unacknowledged* sources (including Plutarch).
- Well known *Artists* had Schools for backgrounds and more. [And still do!]

# But still not ((?)never will be) total...

- “Musical borrowing is a pervasive aspect of musical creation in all genres and all periods” (Arewa, 2006)
- “The UK’s launch design for £2 coin’s edge has “standing on the shoulders of giants” quoting from Isaac Newton’ writing to Robert Hooke (1676) but the remark has been traced back twelfth century. Plagiarism,
- Accidental misrepresentation or Independent crafting? (Merton, 1965)





# Two other factors...

- Student and staff work is, increasingly made public – on Show Reels for open days, on eCVs, at exhibitors of student work and, especially when awards are won, as publicity on Institutional Websites, in the electronic editions of local papers, etc. Much of this will be accessible from anywhere in the world!
- Presenters like adornment and the web and presentational software facilitates and encourages it!



# A first show, ready for marking





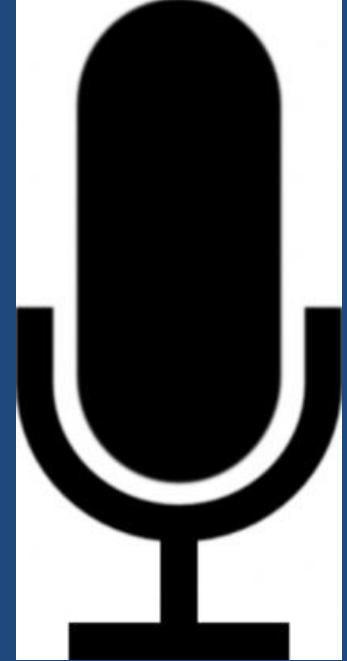
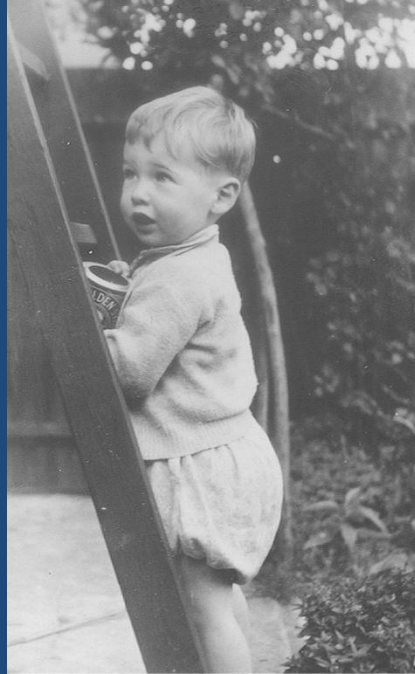
## And some *explanations...*

- It was homage/parody/pastiche – well this might work, better if approval was given and will certainly need to be *good* or the risk is run that it will devalue the original.
- A counter example: Tom Paxton has sung in concerts and included on recordings a parody that he describes as “art” an “additional” verse for his “The Last Thing on my Mind” may be found on the web (eg Valerie, (undated)).

# And some more...

- I acknowledged the work – I followed a “Cite them Right” style. Good! Plagiarism, probably not, but do you have the right? Misconduct?
- Perhaps the work is “out of copyright” (simplistically (and certainly not universally) for authored work, lifetime plus 70 years), perhaps it has been made available under a “creative commons licence”, perhaps your friend took the picture and agrees for you to use it, perhaps you have asked and been given permission.

# Permissions, may vary...



1. (1) Used with the permission of the creator Nick Spencer ;
2. (2) used without the permission of the photographer (my father , died 1981);
3. (3) used with the permission of the photographer Simon Scott-Harden and
4. (4) clip art “free for non-commercial use” located in the search for “Mic” [<http://www.clker.com/clipart-29058.html> downloaded 04/06/10].





US Government images are generally free for *educational* and *non-commercial* use.



Nasa



Library of Congress



# Photomontage/Collage



The upper and lower iceberg images (lower inverted) and a clouded sky have been merged to create this view!



LP Cover (copyright (?) Parlophone/EMI ). The original was created, approximately full-size, by Peter Blake and Jann Haworth, then photographed by Michael Cooper under the art direction of Robert Frazer. (Low resolution copy for identification/commentary but unsuitable for commercial use. (Source: Wikipedia)

# A photograph of a painting...



Physically I own the painting but not the copyright. John Coatsworth, the artist, will sell you a print, I cannot!

Painting John Coatsworth, photographs: Mic Porter



And here could be images, sourced from the web backed by a downloaded sound track for which I may not have approval

- The Prime Minister downloaded from a website that has used Reuters<sup>®</sup>. Avoid secondary sources.
- Highland cattle from a rare-breeds website.
- A University heraldic shield or logo and *strapline*.
- A school photograph of my son.
- A section of an Ordnance Survey map showing...
- My mother-in-law in her Army uniform.



# What does it feel like to be copied?

- Design students experience teaching on IPR but appear to be as bad about sourcing and acknowledging creative works as other groups!
- As students they may be brash but seem to change when they have created artefacts, images, etc, prepare to show them publically or if they find them *copied*.
- Businesses, *Brands* and others that hold intellectual property vary in the extent to which they will defend the IPR; some are much more aggressive than others.

# Creative Commons [1] ...

- An USA based, not-for-profit organisation that seeks to encourage the distribution of creative works. Founded in 2001 by Larry Lessig, Hal Abelson & Eric Eldred.
- Material (pictures, music, moving images, etc) can be made available but with some rights retained and recoverable.
- Offers varying licences that are *approachable* and increasingly passing legal tests in a wide range of jurisdictions.

# Creative Commons [2]...

- Options:
  - Attribution or not
  - Creation of Derivatives permitted or not
  - Commercial use or not
- Eg:
  - Attribution Share Alike [cc by-sa]
  - Attribution Non-Commercial Share Alike  
[ cc by-nc-sa]
  - Attribution Non-Commercial No Derivatives  
[cc by-nc-nd]

# Students of Art and Design need to understand brands, styles etc.

- What makes a, for example, Jaguar the car brand that it is? How are the logos (icons) placed?
- Student Architects and Designers, for example, often develop by undertaking public, publicity gaining, competitions. They may be encouraged to use the brands/icons/ “trade dress” but also find that the constraints are also made very clear in the brief!

# And staff set such briefs [1]:

- Eg:
- Critically investigate a mid-range car brand, consider the essential design details, logo placement etc. and apply your conclusions to a sketch design for a concept urban electric powered car.
- Adopt the distinctive style of an artist to use as inspiration for a range of laptop cases, travel luggage or kitchen storage.



## And staff set such briefs [2]:

- As graduation nears students need realistic topics, redesign a (named) vehicle and convert to electric power. This could make a fine project but what does the actual manufacturer selected think?
- Will they be equally happy if the student does “third” or “first” class work? Indeed, should the third class work get into the “graduating class” exhibition? Does this work enhance the brand?

# And not just design staff ...

- A marketing student writes a dissertation on a particular business success. Can they use the logo, propose new advertising (mocked up as a PowerPoint® show)? What if they wish to comment on the competitors or show their work to a potential employer?
- Can they seek to publish the work or the department include the advertising proposal into a show reel for use at an “Open Day” for potential students and their parents?

# One approach, fictional businesses/brands[1]...

- Sue, Grabbitt and Runne – lawyers, sometime referred to in “Private Eye<sup>®</sup>” (Satirical news magazine, founded 1961).
- Dewey, Cheatem & Howe – Generic financial advisors.
- Rolls-Gentley – Lord Snooty’s Limo, “Beano<sup>®</sup>” (Comic Magazine founded July 26<sup>th</sup> 1938).

# One approach, fictional businesses/brands [2]...

- Sam 'n Ella's Restaurant – Seen in a food hygiene case, various web references found to, clearly, quality establishments.
- R. Soles – signature on carriers sheet when parcel left at an unattended location.
- Don't assume “no conflict” – check the registration!

# Recent choices by students

- Bas-kit – for a demountable basketball hoop but also, sometime a Trademark for men underwear.
- Paraflex – for an upper limb exercise device designed for wheelchair users also a trademark for patio parasols. Check registration for overlap.
- “Sit-easy – helping handle”, “E-Tar”, “Spin” & “Ugro” are examples of student proposed brands that might, if made public, infringe rights held by others.



# A pedagogically respecting solution [1]...

- Take advice from Practitioners, potential employers, Professional Bodies, External Examiners, etc.
- Review teaching materials, proposed briefs, intended outcomes and where/how delivered.
- Decide upon expectations regarding the potential use of material protected by IPR.
- Communicate this to all members of the course team and students.

# A pedagogically respecting solution [2]...

- Ensure fit of proposals with Institutional structures and regulation. Appeals, for example, will involve the people outside of the teaching team and, if necessary, revise.
- Devise and deliver instructional material appropriate for the student of the students receiving this. Consider a progressive programme that develops in step with the needs of the students.

# A pedagogically respecting solution [3]...

- Ensure that students understand their responsibilities regarding rights held by others and the constraints this imposes upon their use of their work for anything other than internal assessment.
- Ensure that staff understand their responsibilities regarding rights held by others (including students) and the constraints this might impose upon their use of work for anything other than internal assessment.

# A pedagogically respecting solution [4]...

- Apply, monitor compliance and, if required, deliver remedial support/guidance.
- Seek feedback from all groups.
- Monitor/review (at least) annually and ,if required, adjust



# Referencing may not be sufficient [1]...

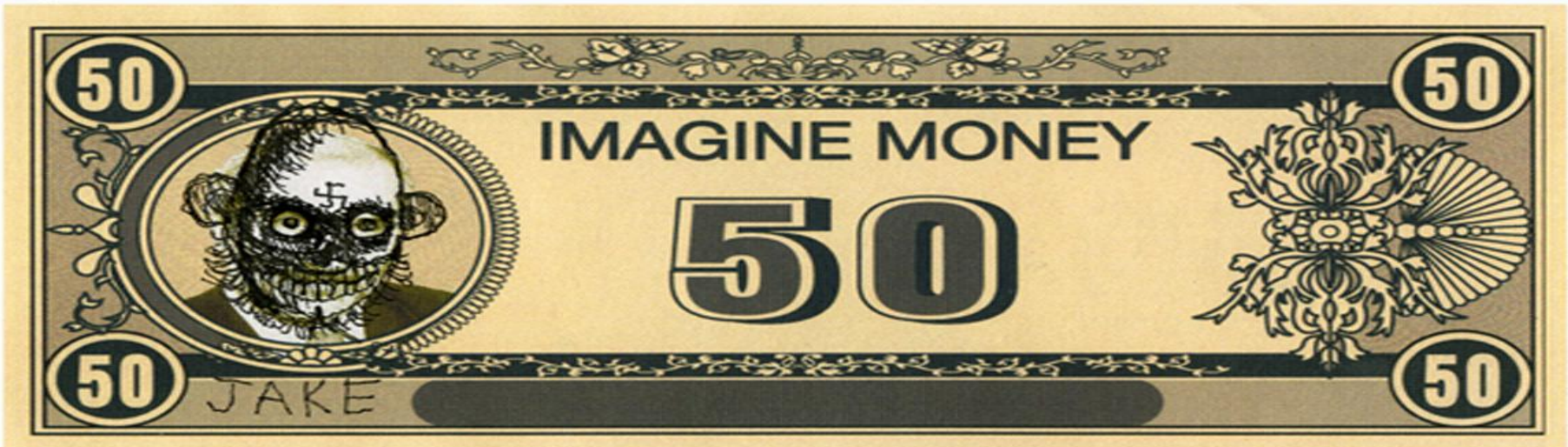
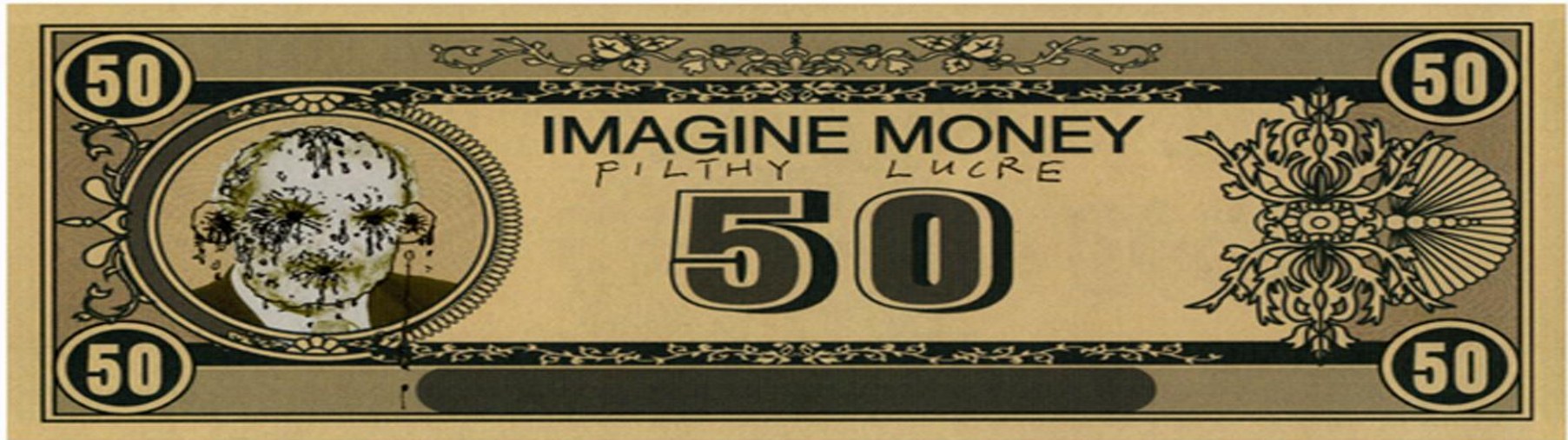
- But, probably, not an issue if only used within the Course/University but not so if publically discoverable/available.
- Acceptable for short sections for illustration or orientation providing it does not harm or bring disrepute upon the IPR/brand.
- Insufficient for larger elements; approval of the rights holder required.

# Referencing may not be sufficient [2]...

- If you follow the “no publicity” route then work cannot be:
- Used in “show reels” presented to parents and prospective students on “open days”
- Placed on eCVs created by students, for example, when seeking employment.
- Finals/Graduate exhibitions.
- Used in conference papers or journal publications.
- However, to acknowledge may draw the attention of the rights holder to the “infringement”.

- Mike Batt pays a “a six-figure sum” to settle a infringement of John Cage’s copyright to a silent musical work (4'33", premiered on 29/08/52).
- A key element of the case was Batt’s acknowledgment of cage as “Co-writer” and the defense’s clarinetist performing Cage's silent composition was indistinguishable from the original. [Silent Music dispute resolved, 2002]

# Thank you! Any Questions?



# References [1]

- Arewa, O.B. (2006) 'From J.C. Bach to Hip Hop: Musical Borrowing, Copyright and Cultural Context', *North Carolina Law Review*, 84(2), pp 547 – 645.
- Briggs, A and Burke, P (2009) *A Social History of the Media: From Gutenberg to the internet (3<sup>rd</sup> Edition)*, Cambridge: Polity Press.
- Meconi, H. (2004) *Early Music Borrowing*. London: Routledge.
- Merton, R.K. (1965) *On The Shoulders of Giants: A Shandean Postscript*, New York: Free Press.



# References [2]

- Padfield, T (2010) *Copyright for archivists and records managers (4<sup>th</sup> Edition)*, London: facet publishing.
- Silent Music dispute resolved, (2002) *Silent Music dispute resolved*, (23 September) [Online]. Available at:  
<http://news.bbc.co.uk/1/hi/entertainment/music/2276621.stm>. Accessed: 12 March 2010).