

Plagiarism in Photography...Towards a Code of Conduct

An interpretation by Christine Widdall AFIAP DPAGB BPE3, President L&CPU (Dec 2010)

What follows is not a legal document but an essay on the subject of visual plagiarism. I don't claim that it is complete, only that it is my interpretation of a difficult subject and, as with many subjects, there are inevitably going to be grey areas that will cause further discussion and disagreement. However, I hope that it will lead to a rather better understanding amongst photographic club members of what is and what is not acceptable in photography.

How do we define plagiarism?

The Oxford English Dictionary, Vol. XI, Second Edition describes plagiarism as, "the wrongful appropriation or purloining and publication as one's own, of the ideas, or the expression of the ideas (literary, artistic, musical, mechanical, etc.) of another."

In other words, plagiarism is the act of putting one's own name to another person's work and that can be writings, ideas or visual media. It is generally considered to have occurred when someone takes/uses another person's work or part of someone's work and makes it appear to be his/her own. Plagiarism is not a legal term in the UK, but is always an unethical practice and essentially is a means of deceit (either intentional or unintentional). When plagiarism does become the subject of legal action, it comes under the legally defined areas of infringement of copyright and/or theft of intellectual property.

When plagiarism breaks the rules of photographic competition, it may be subject to disciplinary action.

A first look at visual plagiarism

I want to introduce visual plagiarism by means of some examples:

Example 1. Let's say that I have produced a masterpiece of photography and I make a large mounted print. You come along and photograph me holding my picture. That is clearly not plagiarism...you are not trying to deceive someone into believing the picture that I am holding is your own work. You have made a photograph of me holding a picture and there is no claim of authorship of that mounted picture implied in your photograph. Any ambiguity may be laid to rest when you entitle it "Chris Widdall with her picture of..."

Example 2. Now zoom in to the picture I am holding (or crop afterwards) to show only the picture itself. Make a faithful copy of this and put it into a competition entitled "Chris Widdall's masterpiece". You have made a record of my photograph and have titled it accurately to reflect that it is someone else's work. That is not plagiarism either.

Example 3. Now take that same zoomed in picture of mine, change it slightly by adding a find edges filter, change the colour and tone a bit and give it a name of your choice. I'm going to be very angry with you! because whether you realised it or not, you have plagiarised my work. The original idea and execution were mine and you have just taken my picture and changed it a bit without my permission and output it as your own. You have infringed my copyright and possibly even my intellectual property rights. Other people seeing that image think it is yours, but it is still my work, my original idea and my execution. **This equally applies to copying any piece of artwork, such as a painting or drawing or an**

advertising poster...the fact that it has no copyright symbol visible does not mean it is not protected by copyright. "Copyrighted works may not be used for derivative works without permission from the copyright owner, while public domain works can be freely used for derivative works without permission."

http://en.wikipedia.org/wiki/Public_domain#Defining_the_public_domain

Work certified as "public domain" (not subject to private ownership) or "copyright free" may be used or copied without conditions and is not covered by intellectual property rights, no rights reserved, no restrictions on use. There is no reason why you should not use such images in your own work, for your own enjoyment, or to learn how to make composites. Magazines may circulate such images and encourage you to use them. It might be easy to put such derived images into competition, even accidentally but **they are not allowed!**

Even artwork that is circulated for people to use freely often has a "creative commons license", which allows the original artist to keep copyright of their work but share it with others under a series of conditions which they choose to apply. <http://creativecommons.org/about/licenses/> This automatically excludes it as legitimate material for you to use in competition, because it is not all your own work. There are a number of sites on the internet where images are shared in this way and photographers and image makers are encouraged to share images and develop new work from them. One such site is Deviant Art <http://www.deviantart.com/>

There is no harm in this so long as you obey their rules...post your derivations with a link back to the original artist/photographer. But you cannot use such pictures in competition in your club, the L&CPU, the PAGB, etc.

Example 4. Now make as close a copy of my photograph as you can that is entirely your own work, maybe the same location and different model, but essentially the same picture...you could have had the idea yourself, of course. But if my image is a bit "special" or "unusually imaginative" I might still claim that you had copied my idea too closely for it to be out of your own imagination and that could often be construed as plagiarism. An interesting article at <http://www.epuk.org/The-Curve/456/visual-plagiarism> highlights what happens when this type of plagiarism becomes the subject of litigation.

However, it's a bit daft to imply plagiarism has occurred if you just happen to stand in a popular place to take photos, e.g. of Eilean Donan castle. Many people will come up with much the same picture and no-one can claim the original idea or the intellectual property rights. The idea of a picture of a Goth on a gravestone would be an obvious subject if you visit Whitby at Halloween. No-one has the right to say they thought of it first...and if you were there at the same time as me, we could have taken almost identical pictures.

Example 5. Take inspiration from seeing my "wonderful creation" but make something of your own that is influenced by my picture but is developed with your own style and interpretation. That is not likely to be plagiarism unless you follow my picture too closely. It is probably true to say that art and photography would not have progressed as it has without people taking influence from others and then going on to develop their own work.

Some pictures inspired by others will be plagiarism and some not and it's hard to draw a definitive non-fuzzy line between. Similarity alone is not necessarily proof of plagiarism. It is possible for similar creative inspiration to occur in different people at different times and

when people work closely together with mutual knowledge of each other's work, plagiarism may not have occurred at all.

Example 6. Make a copy of my image, all your own work, and then change it in a way that parodies my work...usually parody is an exception to plagiarism, e.g. French artist Marcel Duchamp made a copy of the Mona Lisa in 1919 and gave her a moustache and beard in a deliberate act of degrading and parodying a famous work.

Soooo....plagiarism is a complicated subject and therefore one that tends to confuse and/or enrage people, even when it doesn't break the rules of competition! The best advice is NOT to copy others too closely...be inspired by them, yes, but don't religiously copy.

Why do people commit plagiarism? Here are a few suggestions...

1. They do not have the ability to think originally, so find it easier to "pinch" other people's ideas.
2. They love someone else's work and want to make something like it but get just a bit too close to the original. It's so easy to do.
3. They do have an original idea but need an element to finish the picture off and it's easier to take something from the internet or a free cd to finish it off.
4. They do it accidentally, not knowing they have transgressed.
5. They do it knowingly thinking they won't be found out.
6. They do not see the boundary between being influenced by and directly copying other work and this is compounded by the fact that the boundary is fuzzy.
7. They do not believe they are doing wrong.

When Plagiarism Breaks the Rules of Competition

When entering a competition, you should read the rules. Writers of competition rules should also be clear what is and what is not allowed. It would seem obvious that the work must be entirely the work of a single individual made from elements which he/she has the right to use in competition and has been captured by him/herself. I am not sure that this is always stated, perhaps because it seems so obvious, but it is invariably the case!

Although plagiarism is always unethical it is not necessarily against the rules and often comes down to a personal matter between the alleged plagiariser and the complainant! and that introduces another level of complication. There are many examples of work where a picture is so close to that of another photographer as to be easily mistaken for the original, but it has not broken the rules of the competition or exhibition.

There have also been cases of individuals stealing images from the internet or from exhibitions and then passing the image off as their own. This is clearly a very serious offence as it is plagiarism, theft, copyright infringement and against competition rules. These cases, when discovered, tend to be dealt with very severely.

If you are unsure about what the rules mean, ask for clarification before the event. Prevention is better than cure! Be clear about what you have the right to photograph and use.

What will happen if I break the Competition Rules?

In the case of the discovery of infringement of the rules, the L&CPU, PAGB, BPE, FIAP etc will have their own method of dealing with this and may have a written policy to make disciplinary action fair to everyone. It is reasonable to say that if, as a driver, you do 40 mph

in a 30 mph limit, regardless of whether or not you knew the law, your speed was inaccurate or it was accidental, you would be subject to punishment. This principle is the same in photographic competitions. However, mitigating information should be taken into consideration in addition to the severity of the infringement. Sanctions may take the form of one or more of the following:

- Explaining where the candidate has gone wrong with a warning not to infringe again and an explanation of what will happen in respect of repeated infringement.
- Disqualification of the whole or part of the candidate's entry from the competition/exhibition.
- Ban from entering for a defined period or a lifetime ban.
- Rescinding the individual's awards and distinctions.
- Reporting the infringement to other organisations.

FAQ in relation to photographic competitions

Finally, I have included some frequently asked questions and my replies relate particularly to the L&CPU competitions. For other competitions, you must consult the rules/organisers.

1. What if I take a photograph in the street and there is a poster, hoarding or other copyright work included in the picture?

This is generally allowed in competition because there is no deceit implied...it is clear you are not trying to pass off the copyrighted work as your own. It is clearly just incidental and a "part of the scene".

2. May I use photographs of statues, models and stained glass windows in my pictures?

There is generally no deceit involved in any of these, so generally the answer is yes, you can use them. This would tend to apply to other 3-dimensional objects.

3. May I use stock photographs that I have bought or downloaded from the internet?

You may use them in your own work if the conditions of purchase/download say that you can but you may not use them in competitions.

4. May I use copyright free images and clipart?

You may use them in your own work if the conditions of purchase/download say that you can but you may not use them in competitions.

5. May I use images that have a "creative commons" license?

Creative commons licensing allows you to use images in defined ways and may require you to give credit to the original author in your derived work. You may not use such images in competitions.

6. May I incorporate part of a picture taken by my spouse with their permission?

No. You may not use all or part of anyone else's image.

7. What about AV presentations?

This needs to be clarified by the AV community itself. It is clear that some stories cannot be easily told without using historic material, which may still be covered by copyright laws. Permission should be sought to use that material and the AV competition organisers should be clear about what may or may not be used. Music is also subject to licensing rules.

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