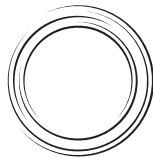


CHAPTER 1

Setting the Stage



DEFINING PLAGIARISM

At the end of his weekly radio broadcast on January 5, 1936, Eddie Cantor made an intriguing announcement. The comedian, whose hour-long variety show was one of the most popular in the country, invited listeners to write essays of up to 500 words to answer the question “How can America stay out of war?”. Cantor declared that he would personally establish a trust fund of \$5,000 to pay for the expenses of the winner, or their designee, at the college or university of their choice. Given that tuition at Harvard University was only \$400 per year during the Depression, the prize would easily provide the lucky recipient with the resources to complete an undergraduate degree.

Cantor announced that the winner would be decided by the presidents of the University of Chicago, Stanford, Vassar, and the City University of New York. The chosen entry, Cantor emphasized, would be the one deemed “the most constructive, sincere, and interesting. Fancy writing or technical knowledge,” he made clear, was not a consideration. The deadline would be Washington’s birthday, which was seven weeks away, and the winner would be announced on his program in early April.¹

Not surprisingly, Cantor’s offices in New York City were soon flooded with submissions: over 212,000 had arrived by the deadline. Entrants included high school students but also college students, faculty members, and elected officials.² The entries were reviewed by Cantor’s staff, and 100 of these were passed along to the judges. During his April 5 broadcast, Cantor announced that the winner was Lloyd Lewis, a seventeen-year-old

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high school junior. He lived on a farm near Plattsburg, a village in north-west Missouri with a population of less than 2,000.³

Cantor arranged to have Lewis flown to New York City to accept the prize on his program. Having never traveled more than fifty miles from his family's farm, Lewis was enthralled by the sights and sounds of the Big Apple. His story was heartwarming – but it would not have a storybook ending.

The New York Times published excerpts of Lewis's essay, and a woman in New Jersey thought that the sentiment expressed sounded familiar. She checked and discovered that the excerpts matched an article that had been published four months earlier in *Peace Digest*. The original had been penned by Frank Kingdon, president of the University of Newark. The woman contacted Kingdon, who then tried, unsuccessfully, to reach Cantor. Kingdon informed a Newark newspaper, and they in turn contacted CBS and Cantor's manager.⁴

When confronted by reporters, Lewis readily admitted to having taken his essay from the article by Kingdon. His history teacher had given Cantor's theme to Lewis's class as an assignment, and he copied the essay between his farm chores. Lewis claimed he didn't understand that his entry had to be an original piece. "I thought you just were to send in the best essay you could find," he said. Lewis added, "If I had known, I would have written one myself."⁵

A chagrined Eddie Cantor allowed that Lewis had made an honest mistake. The following week, he awarded his scholarship to second-place finisher Owen Matthews, a nineteen-year-old Eagle Scout from Portland, Oregon.⁶

Although this episode occurred nearly ninety years ago, it's not hard to imagine a similar story playing out today. The concepts of intellectual property and plagiarism do not come naturally to anyone: they need to be taught.

A lack of familiarity with plagiarism as a concept has arisen in the courtroom as well. Such an episode occurred during the trial in Chicago of Gerald Frank, who was charged with copying from the French painter George Barbier. A decision by the jury was delayed when one of its members admitted that they didn't know the meaning of the word plagiarism.⁷

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If we define plagiarism as the deliberate appropriation of someone else’s words and ideas without acknowledgment or compensation, then it’s fairly easy to articulate the two rules that guard against it. First, if someone wants to use the exact words of another writer, the words must be set off by quotation marks, accompanied by a citation of the original source. This can be provided via a footnote or an endnote, depending on the citation style being employed.

Second, the author can choose to paraphrase the original text. This requires the writer to restate the idea in their own words. Paraphrases don’t take quotation marks, but a citation to the original work is still required. And that’s it – that’s all that is needed to avoid plagiarism.

These two rules may seem simple enough, but as with many things, the devil is in the details. For example, how many consecutive words can be taken from an original source before a citation is required? According to the World Association of Medical Editors, “plagiarism is when six consecutive words are copied” without attribution.⁸ This seems reasonable – but almost every other single-digit number has been proposed as well. Mathieu Bouville, in his review of the issue, found sources claiming that the magic number is “two—three, four, or seven consecutive words.”⁹

A lack of consensus on this issue is problematic because simple similarity detection software might have a relatively low threshold for matching word sequences, and this can result in false positives. For example, a Google search for the phrase “The bloody three-day battle of Gettysburg” yields about 700 results, including several books, although it’s easy to imagine a student or a historian generating this six-word phrase on their own.

And issues surrounding paraphrasing are even more problematic than mere quotations. Expressing a complex idea in one’s own words is hard, which is why student writers and non-native speakers of a language struggle with rephrasing. As a result, many writers end up engaging in so-called patch writing or mosaic plagiarism. This occurs when the writer maintains the same sentence structure as in the original and simply plugs in synonyms to replace some of the terms. This practice is also called “Rogeting” because those who engage in the practice often sound like they’ve swallowed a copy of *Roget’s Thesaurus*.¹⁰ In this way, an ordinary phrase like “the shadowy house” might be transmogrified into an awkwardly worded equivalent such

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as “the obscure habitation.” In a student essay, such a phrase would be a red flag that its author is engaging in patch writing.

PLAGIARISM VERSUS ORIGINALITY

One way to define plagiarism would be to describe it as the opposite of originality. Instead of bringing something new into the world, the plagiarist duplicates the work of another and does so without attribution. Viewed in this way, plagiarism and originality could be thought of as binary labels, with all creative work pigeonholed into one category or the other. In practice, however, there exists a considerable degree of ambiguity. It might be better to characterize the two terms as endpoints on a continuum, and to assign other labels to cases that fall somewhere in between. People might appropriate the work of others for a variety of reasons, and some of these may not merit the scarlet letter of outright theft.

Consider, for example, the case of celebrity impersonators. In 1954, the actor Hal Holbrook created a one-man show in which he took on the persona of the elderly Mark Twain. The actor’s transformation into the humorist involved a three-hour makeup routine as well as donning a three-piece white suit, bushy mustache, and white-haired wig.¹¹ During his performances, Holbrook would dispense the humorist’s homespun wisdom in a quavering Southern drawl. After an appearance on “The Ed Sullivan Show,” Holbrook began to perform his routine, titled “Mark Twain Tonight!,” on a regular basis. He took his show to Broadway in 1966 and received an Emmy for a televised version of the routine during the following year.¹²

Was Holbrook appropriating from Twain? If so, he had plenty of company. During the 1870s and 1880s, several actors found employment impersonating the humorist, even as the real Twain was still active on the US lecture circuit.¹³ And when Holbrook created his one-man show, the humorist had been dead for over forty years. Holbrook’s performance shouldn’t be characterized as plagiarism because he wasn’t passing off Twain’s *bon mots* as if they were his own. Everyone in Holbrook’s audience understood that the man in the wig was channeling Twain, not stealing

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from him. His take on the humorist could best be described as pastiche: an affectionate tribute to the man’s memory and work.¹⁴

But in 1975, a young actor named Michael Randall went beyond pastiche by performing a one-man show he called “Mark Twain Live!”, and Holbrook sued him for plagiarism.¹⁵ His claim was that Randall was cribbing from Holbrook’s distinctive characterization of the humorist, and one that he had been honing for decades. Ultimately, the two men settled out of court: Randall was allowed to continue his performances but was forbidden to make use of Holbrook’s take on Twain.¹⁶ For Holbrook, at least, an impersonation of his impersonation was a step too far.

In comparison to pastiche, homage may not imitate the original source closely. Nevertheless, the spirit of the original may suffuse a performance to such a degree that the source of inspiration is unmistakable. The original artist may be flattered by the tribute. In other cases, however, the homage might be viewed as an infringement of the artist’s intellectual property. This was the reaction, for example, of the Belgian choreographer Anne Teresa De Keersmaecker to Beyoncé’s music video for “Countdown” in 2011.¹⁷

When artists draw on two or more sources for their creations, the resulting work can be referred to as bricolage (from the French *bricoler*, “to tinker,” or “do it yourself”).¹⁸ The term is most frequently used in reference to mixed media in the visual arts but can also be applied more broadly. In music and the performing arts, the result might be described as a mash-up. And this is in keeping with Beyoncé’s reply to De Keersmaecker: the singer maintained that her music video was “inspired” by artists such as “Brigitte Bardot, Andy Warhol, Twiggy, and Diana Ross” as well as by De Keersmaecker.¹⁹

Parodies are also derivative works that hew closely to an original, but in this case the intent is to satirize or to mock. It is also recognized as a form of fair use that is permitted by US copyright law. That’s not to say that parodists haven’t been taken to court, however, and we will return to this issue later in the book.

A cover version of a song, performed or recorded by a different artist, may also be quite similar to the original, and it requires negotiation between the would-be interpreter and whoever holds the work’s copyright. Typically, a licensing fee is required. In some cases, a cover version may become

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much more popular than the original. For example, Whitney Houston's *I Will Always Love You*, recorded for a 1992 movie soundtrack, is a cover of a song written and recorded nearly twenty years earlier by Dolly Parton.²⁰ By 2022, Houston's version had sold more than 10 million copies.²¹

But even "original" works may not be truly original. A book or a film might be based on some earlier work, with previously established characters finding themselves in a new situation – as in a sequel – or in one that predates the original, as in a prequel. Hollywood has made extensive use of this tactic, since new intellectual property may be expensive to acquire and to market.

A successful film may give rise to a multi-work franchise. This is less of a financial risk than a totally new property, as there will be a built-in audience for such familiar, if derivative, efforts. This can make good economic sense, but audiences may not always care for such warmed-over fare if taken to extremes. When sequels draw too much from earlier works, they may be criticized as mere fan service, as in Marvel's 2019 release of *Avengers: Endgame*.²²

Finally, let's consider the question of intent. In some cases, it's easy to conclude whether similarities between creative works are the result of pastiche, homage, or appropriation. Artists are often inspired by earlier works in their medium, and they expect others to be able to discern and to celebrate these resemblances. When critics of Johannes Brahms pointed out similar motifs in his First Symphony and Beethoven's Ninth, he is said to have growled *Das sieht jeder Narr* ("any fool can see that").²³

Other cases of intent have proved to be exceptionally murky. Consider the case of a symphony completed by Austrian composer Hans Rott in 1880. Brahms's criticism of the young man's work is thought to have been a factor in Rott's descent into delusions of persecution. He died of tuberculosis in a psychiatric hospital at the age of twenty-five, and his symphony went unperformed until 1989. At that time, critics noted "quotations" from Rott's music in the symphonies of his conservatory classmate, Gustav Mahler. Mahler is known to have studied Rott's symphonic score, and some of the resemblances are striking, but musicologists are divided about what they mean.²⁴

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Some of the clues that we have are beguiling. Mahler is known to have heaped praise on Rott's memory, describing him as "a musician of genius . . . who died on the very threshold of his career" and as "the founder of the new symphony as I myself understand it." But even though he became one of the leading conductors of his day, Mahler never made an effort to see Rott's work performed.²⁵

Had Mahler been inspired by the work of his deceased classmate? Were the musical quotations intended as a tribute to him? Did Mahler unconsciously appropriate musical ideas that lodged in his mind when he studied Rott's score? And did he worry that a performance of Rott's symphony would expose these appropriations – unintentional or otherwise? Or did the two composers simply draw upon the same musical influences? It's impossible to say – but this example underscores how difficult it can be to draw conclusions when the evidence for appropriation is fragmentary.

PLAGIARISM OR COINCIDENCE?

A secret society. A globe-spanning conspiracy. The revelation that Jesus was married to Mary Magdalene. An individual who happens to be albino.

Some readers may recognize these plot points and details from Dan Brown's novel *The Da Vinci Code*, published in 2003, or the film starring Tom Hanks and Audrey Tautou. However, these elements also appear in *Sirkelens ende* ("Circle's End"), a thriller written by Norwegian author Tom Egeland and published in 2001, two years before Brown's bestseller.

At first blush, these similarities are striking. Does this mean that Brown plagiarized from Egeland? It seems unlikely. Egeland's novel was not translated into English – under the title *Relic* – until 2010, well after *The Da Vinci Code* was published. And Brown almost certainly did not read *Sirkelens ende*, as he isn't known to be fluent in Norwegian.

In addition, despite the similarities between the two books, the main characters and the story arcs are clearly different. In Egeland's thriller, the person with albinism is Bjørn Beltø, a professor of archeology and the story's protagonist. In Brown's, he is Silas, a murderous monk who plays a fairly minor role in the story. Brown's main character is Robert Langdon, a Harvard professor who studies art and symbols. Langdon

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had also appeared in Brown's previous book, *Angels & Demons*, which was published in 2000.

In Egeland's story, Beltø steals and hides an ancient relic. Brown's thriller begins with a murder at the Louvre. In Egeland's, most of the action takes place in Norway, London, and Israel. Brown's tale includes an interlude in London, but the story is principally set in Paris and Scotland.

In an interview, Egeland asserted that any similarities between the two books are pure coincidence, probably arising from the fact that he and Brown drew from the same sources, such as *Holy Blood, Holy Grail*,²⁶ a speculative work about a bloodline descended from Jesus, published in 1982. (The authors of that book did sue Brown, unsuccessfully, for copyright infringement.²⁷) As it happens, Egeland made clear he was grateful for Brown's book, because it raised the visibility of his own novel.²⁸

The human mind excels at detecting patterns, and it strains to do so even when there is no pattern to be found. We also tend to view coincidences with suspicion and assume there must be some underlying connection to explain them. This predilection serves us well most of the time, but it can also cause us to suspect appropriation when it is unwarranted. Coincidences, it seems, may be more common than we would think.

The New York Times, in its "Saturday Review of Books" on July 10, 1909, compared two recently published novels that possessed uncanny similarities. One was *By Their Fruits*, written by Australian-born novelist Rosa Campbell Praed. The other was *Michael Thwaite's Wife* by American author Miriam Michelson. Published about six months apart, their overall theme, plot points, and main characters were noted to be "almost identical."

Both novels are about twin sisters, one of whom represents goodness while the other embodies evil. And in both, the evil twin marries and then is ultimately replaced by the good twin. The reviewer concludes:

One can hardly think that here is a case of deliberate plagiarism – and yet, what is the explanation of so curious a coincidence as exists here in the

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work of two contemporary writers – one in England, the other in America – who have, in all probability, never communicated with each other?²⁹

Or consider the case of British author William Golding. On the eve of Golding's receipt of the Nobel Prize in Literature in 1984, journalist Auberon Waugh published an article in *The Spectator*, a British weekly, about Golding's best-known novel. Waugh claimed that there were striking similarities between Golding's *Lord of the Flies*, published in 1954, and British writer W. L. George's *Children of the Morning*, which had been published nearly thirty years earlier, in 1926.

In both stories, children are marooned on a desert island. There is conflict as they split into groups. In both, a red-headed bully emerges as a leader. There is a fire. And in both, the story ends with the appearance of a navy cruiser – an American ship in George's story, and a British one in Golding's.

Waugh didn't accuse Golding of having deliberately plagiarized from George. Instead, he theorized that Golding had read George's story in his youth – he would have been fifteen when *Children of the Morning* was published – and that George's story had “an extraordinary subliminal effect on him.” Waugh suggested that Golding should offer George's descendants a token of his appreciation, such as “a tin of pickled herrings,” after he returned from the ceremony in Sweden.³⁰

Golding was forced to defend himself from his hotel room in Stockholm. He told reporters that:

As far as I can recollect I have never heard of this author or book, and it is most unlikely that I read it as a child. I cannot comment on the parallel plots until I have read *Children of the Morning* and reread *Lord of the Flies*, which I wrote more than a generation ago. The similarities must be coincidental. After all, there are a great many books in the world about a great many islands written by a great many authors.³¹

He continued, in a pricklier vein, with “I was awarded the Nobel Prize for a literary career which contains nine novels, not one.” Golding's defensiveness is not surprising, as many critics, particularly those in the US, had been critical of the Swedish Academy's choice.³²

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Coincidental similarities also show up in places besides novels. In the world of comics, we have the curious case of Hairbutt and Hip Flask. Both creatures are anthropomorphic hippopotami, and both happen to be private detectives. Hairbutt the Hippo debuted in 1991, the brainchild of Australians Jason Paulos and Amerikah Bodine. Hip Flask appeared four years later, in 1995, and was the creation of British font designer Richard Starkings.

In 2001, when Bodine became aware of Hip Flask's existence, she accused Starkings of plagiarism. Given the remarkable degree of overlap – humanoid hippo private eyes – it's not surprising that Bodine assumed the worst. Starkings, however, protested that he was unaware of Hairbutt until 1998, when the character was brought to his attention by a reporter. At that point, he tried to differentiate the characters and dropped Hip Flask's private detective persona. Starkings has maintained that the similarities were "just a bizarre coincidence."³³

As a final example, this time drawn from the world of music, consider the case of Tom Petty and Sam Smith. In 1989, Petty had a hit with "I Won't Back Down," released as a single from his "Full Moon River" album. And in 2014, Sam Smith released a song called "Stay with Me" on his first studio album. A cover version of Smith's song by Darkchild would go on to win a Grammy for Song of the Year in 2015.

Petty's publisher, however, noted similarities between the melodies and choruses of the two songs and contacted representatives for Smith. Although Smith claimed not to be familiar with "I Won't Back Down," he did admit that there was a resemblance, which he attributed to "a complete coincidence."³⁴

Petty, for his part, was understanding, saying "All my years of songwriting have shown me these things can happen. Most times you catch it before it gets out the studio door but in this case it got by."³⁵ The two sides quickly came to an amicable settlement: Petty and his co-writer Jeff Lynne accepted Smith's offer of songwriting credits and 12.5% of the royalties from "Stay with Me."³⁶

ORIGINS

The concept of plagiarism existed in classic antiquity, although it was not referred to by that term. The scholars of ancient Greece made use of