

# WHO'D YOU STEAL YOUR IDEAS FROM?

In October 1998 Congress passed the Copyright Term Extension Act which extended the terms of copyrighted works of art and literature up to 70 years after the death of the author. It was heralded as a victory for the rights of artists by the American Society of Composers, Authors and Publishers.

Nonetheless its passage has fueled a vigorous academic and artistic debate and five years later The American Library Association backed a case before the Supreme Court claiming that the Act was unconstitutional. The case was struck down. But the Washington Post noted that the two Justices who held dissenting views, believed that "extending copyright terms repeatedly denies Americans free access to the products of inventive and artistic genius." They considered the Act to be harmful to both society and the artist.

How is it then that these opposing camps can both believe themselves to be on the side of the artist? The root of the problem lurks somewhere beneath the rhetoric.

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## A Tempest in a Teapot

Take authors Jonathan Lethem and Mark Helprin for example.

Both have set about publically arguing for the rights of artists, but Lethem does not believe that there is such a thing as an original idea that can be copyrighted and owned

inalienable right to own and profit from what they have produced and that it is only because of laws like Copyright Term Extension Act that they are able to protect their right to do so.

Writers can of course disagree, but the more you listen, the more you may find yourself asking –what are they *really* arguing about?

Consider writers David Shields and Harold Bloom who have also entered the fray on behalf of art and the artist. Shields believes the restrictions of intellectual property law to be a detriment to creativity and a hindrance to artists everywhere.

While Bloom dismisses the laws as being entirely irrelevant to the real work of the artist who should not be looking to build upon the work of others but rather to discard the past and create something entirely new.

All of this tumult brings to the surface misgivings regarding the clarity of the discussion itself. How can we explain why all of these writers claim to speak on behalf of the artist and yet come to such widely differing conclusions?

Arguments about the difficulties surrounding plagiarism and copyright will continue to rage on and on. But the protagonists will probably never come to a satisfactory solution because – whether knowingly or not - they each come to the conversation

with opposing beliefs regarding the role of art and the artist in society.

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## Pillage & Plunder

Jonathan Lethem's article "The Ecstasy of Influence: A Plagiarism" offers a compelling argument for a loosening of currently held notions regarding intellectual property.

Using the words of other writers in an almost entirely cut and pasted curiosity, Lethem's essay chronicles colorful historical instances of appropriation of another's work by such highly regarded people as Martin Luther King Jr, Shakespeare, James Joyce and TS Eliot.

He goes on to argue against the ever expanding bonds of American copyright laws embodied in the Copyright Term Extension Act. Lethem believes that because "all ideas are secondhand, consciously and unconsciously drawn from a million outside sources," they cannot be the property of any one individual or organization.

Novelist Mark Helprin however sees copyright in an entirely different light.

In the *New York Times* Helprin argues that ""Freeing" a literary work into the public domain is less a public benefit than a transfer of wealth from the families of American writers to the executives and stockholders of various businesses who will continue to profit from, for example, "The

Garden Party,” while the descendants of Katherine Mansfield will not.”

He believes that because ownership of literary publications is no different than any other type of ownership, copyright protection and control should be granted to authors and their descendants ad infinitum.

So, although this discussion appears to be about art, both of these arguments are more concerned with the effect that intellectually property laws have on the role of art and the artist in society than with the effect they may have on the actual creation of art.

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### An Invitation to the Revolution

On the other hand, David Shields’ recent book, *Reality Hunger: A Manifesto*, is a call to arms to rescue art and keep it from languishing in the shackles of the law.

Attempting to lead by example - but cruelly thwarted by his publisher’s lawyers - Shields encourages his readers to cut out and throw away the cited works at the back of his book and tries to persuade all writers to simply ignore the law and plagiarize at will in an act of civil disobedience.

In his online article “In Writing, Art And Music, Everybody Steals” he contends that “in digital culture, it’s especially important for us to be able to sample, remix, mash-up materials available to us at the click of a button, but the law has a stranglehold on literature.”

It is the stirrings of what he hopes will be a revolution in which writers take back their right to freely co-opt and modify the work of others, an artistic privilege that was the norm in

Shakespeare’s day but has since been restricted by encroaching intellectually property laws.

Harold Bloom, author of the pivotal tome *The Anxiety of Influence* (which provides fodder for Lethem’s own title), is also concerned about the well being of art, but he is wholly unconcerned with the law’s effect upon it.

While recognizing that writers – or more specifically poets – are undoubtedly influenced by the work of others, Bloom believes that they absolutely must break free of that influence in order to create something entirely original.

So, to him, intellectual property is wholly irrelevant to the work of the artist and the production of great art, other than possibly to note that extended copyright laws might benefit the artists in so much as they might engender the financial independence necessary for artists to better focus on their work.

The dichotomy of these positions is striking in that, once again, while appearing to be talking about the same thing – what’s best for the artist – what they are really talking about is their own personal, sacred relationship to the world and how art, the artist and society fit into their particular world view.

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### Set Them Free

Although Lethem and Shields have different reasons for being against the Copyright Term Extension Act, both approach the issue from the same world view; their utmost concern is to find a solution that is the best for society as a whole.

They value the benefit that society would gain in allowing a copyright to expire and a work to fall into the public domain more than they value the right of individuals to own their work. Helprin and Bloom on the other hand share a diametrically opposing world view; one in which the rights and concerns of the individual artist take precedence over those of society as a whole.

How can writers with such divergent points of view be expected to carry on a dialogue?

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### Good Artists Copy

To Lethem the role of copyright rests on the notion that no one can *really* claim originality therefore the law should not grant ownership of cultural ideas for extended periods of time to individuals or corporations.

He believes that all art is by its very nature a product of a common culture and so, after a short period of time during which the creator can benefit financially from their work, it should be given back to that culture to be protected, reused and built upon. In other words, everything should flow back into the “public commons.”

He also points out that while “a car or a handbag, once stolen, no longer is available to its owner...the appropriation of an article of “intellectual property” leaves the original untouched.” Disagreeing with the idea that it is possible to equate the use of another’s artwork without permission as a kind of theft.

But to Helprin, whose focus is solely on what benefits the individual, “you can always make a case for the public interest if you are willing to exclude

from common equity those whose rights you seek to abridge.”

He even goes so far as to compare the idea of limiting copyrights to Congress allowing “the enslavement of foreign captives and their descendants.”

But what Helprin does not take into consideration is that the individual does not exist in a vacuum and therefore the public, which he so disdains, cannot be ignored.

Besides, the artists and the viewer (the public) have a symbiotic relationship that must be nurtured or the art itself will have no value at all.

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### Great Artists Steal

Shields meanwhile is upset because he believes that - in terms of intellectual property laws and copyright - literature is held to a different, higher standard than other arts such as painting or photography whose creators are able to copy anything and everything they see without having to give credit to, say, the architect of the building they are capturing in their work.

Shields does not believe that citation belongs in literature at all. Writing on *The Huffington Post* he argues that “citation domesticates the work, flattens it, denudes, it, robs it of its excitement, risk, danger. I want to make manifest what artists have done from the beginning of time-- feed off one another's work and, in so doing, remake it, refashion it, fashion something new.”

Shields’ argument however weighs much too heavily on the side of public ownership of individually created works of art and does not take into consideration that artists might want

to have a say in how their art is used and distributed.

Likewise, although Bloom recognizes that new art is influenced by all that has come before, he considers the influence of other poets upon the new poet “a destruction of desire.” By this he means that the new writer loses heart when faced with the influential work of others. To Bloom the idea of encouraging the second use of another’s work as Shields and Lethem do, would be an anathema to the creative process. But his is an argument concerned solely with the individual and it does not engage the public in the debate.

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### We the People

When there are so many dissenting voices all claiming to represent the same side, the conversation needs to be clarified. To do so we must first uncover the root of these divergent points of views.

Upon closer inspection the arguments seem to break down into two distinct camps. In one are those that value what benefits society over what benefits the individual and in the other, are those that value the rights of the individual over the potential benefit to society as a whole.

After we have unveiled the roots of the discussion we must then move the dialogue outside the rarefied worlds of art and academia. The discussion needs to be taken to the people so that we can reconcile these ideas regarding plagiarism and copyright with the beliefs held sacred by the majority of Americans.

America however is not a communist country. We do not live by the creed that goods and property should be

publically rather than privately owned.

On the contrary we value the rights of the individual above almost everything else. With that in mind the possibility of rescinding the Copyright Term Extension Act must seem like a pipe dream.

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### Into the Light

However there have been instances which, in retrospect seem almost socialist, wherein the government has taken control of certain aspects of society solely for the benefit of the many.

Examples such as the postal and highway systems come quickly to mind. It has even confiscated land and set it aside in a trust purely for the American public when the National Parks were created.

So there is yet an inkling of hope that a belief in the greater good can flourish in the American psyche.

Maybe a compromise can be reached if we bring the issue to a more public forum.

Thomas Jefferson wrote that “he who receives an idea from me, receives instruction himself without lessening mine; as he who lights his taper from mine, receives light without darkening me.”

Maybe we - the beneficiaries of the wisdom of our founding fathers – can find a way through a public dialogue to share our modern art and ideas without compromising the ideas of individuality that we hold so dear.

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- By K.M. Churchill