

Is Art What You Can Get Away With? Copyright Law is Useless for Dagoretti-based Visual Artists

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This section explores the relationship between copyright law and the visual arts. It looks at the historical development of appropriation and imitation culminating in piracy. It highlights the importance of protecting creative expressions through legal frameworks and their limitations. It uses the lived experiences of the visual artists from Dagoretti to tell their stories and determine if copyright is useful.

Introduction

The lively Dagoretti area in Nairobi, Kenya, forms a dynamic community of visual artists of different ages and skills. These visual artists contribute meaningfully to art scenes both locally and internationally. These diverse community includes painters, sculptors, draughtsmen, muralists, and mixed-media artists. Consequently, their practices span various mediums, comprising acrylics, oils, watercolors, clay, wood, and recycled materials. The artists' inspiration is drawn from Kenya's cultural heritage, incorporating traditional stories, motifs, symbols, and contemporary issues, creating a unique blend of traditional and modern art. This diversity allows for a wide variety of innovative artistic expressions and techniques.

In Kenya, works of art are classified as intellectual property protected by the Copyright Law under the Kenya Copyright Board (KECOBO) (Copyright (Amendment) Act, 2019). Both registered and unregistered artworks are protected under the law. Based on this law, acts of plagiarism or forgery can lead to legal prosecution and justice for the original creators. Copyright is the source of all the legal rights that an artist has in the imagery in a work of art created (Bouchoux, 2013). It is the artist's intellectual property interest in their creative expression, apart from the physical artwork.

The relationship between copyright law and creativity is complex. Copyright law aims to protect visual artists' rights and incentivize creation by giving them exclusive rights over their works. However, the impact of unauthorized copying on creativity is not always clear-cut. For ages,

imitation has been an artist's way to refine their technique and develop an individual style. Research shows that one of the training methods used during the Renaissance period was copying images of renowned artists by younger artists (Prowda, 2013) to create new and original works of art.

Appropriation is reworking pre-existing objects and images to translate them into something original (Amerika, 2011). It is a common trope in modern and contemporary art. The practice of lifting and altering pre-existing matter has been in the art world since at least the early 20th century (Gontarczuk, 2017). Artists such as Pablo Picasso, Marcel Duchamp, and Andy Warhol have carried out various approaches involving appropriation aspects. *During Picasso and Braque's Synthetic phase of Cubism, they introduced found objects and materials into art, producing layered collages featuring newspaper extracts, pieces of chair caning, and other ephemera from daily life, which they integrated into their multilayered and richly complex images, reflecting on the increasingly fragmented nature of the modern world (Lesso, 2023).*

Sometimes, the original is slightly altered, leading to debates around copyright and ownership. On other occasions, the original is barely noticeable, having been reworked to the extent that it has been converted into something completely new. Imitation has also evolved into appropriation and is seen in several art movements, from Dada to Pop Art to the Pictures Generation. Artists have been a mutual source of inspiration, influencing and stimulating each other's innovation and creativity. Furthermore, the relationship between unauthorized copying and creativity is not necessarily a zero-sum game. Hence, unauthorized copying may pose challenges to creators in terms of potential lost revenue or infringement of their rights, and it can also be a catalyst for artistic expression.

While technology has democratized access to images and expanded the possibilities for artistic expression, it has challenged traditional notions of authorship and authenticity. Therefore, visual artists continue to grapple with the implications of copying as they navigate the complex terrain of creativity, innovation, and intellectual property in the digital age (Crawford, 2022). Hence, this article interviews artists found in Dagoretti to understand what inspires them and how piracy affects their daily endeavors. Appel et al. (2018) have explained piracy as reproducing someone else's design, meaning there is no significant difference between

a copy and an original. The pirate claims that the designed piece is an original piece of work. Visual art piracy doesn't always make big headlines like other forms of copyright infringement; however, it is an authentic problem (Sanders, 2018).

What copyright entails

Copyright is an exclusive right automatically granted to creators under the declarative principle once their work takes a tangible form (Abram, 2006). This right is part of intellectual property law and is subject to specific legislative restrictions. Copyright ensures that creators have legal control over the use and distribution of their original works. Copyright is a property right; this means the creator receives legal protection against unauthorized use or without permission (Hick, 2017). Copyright does not last forever. If society uses creations freely, it is unfair to the creator. Conversely, creators' use of creations without time limits also brings injustice to society (Gervais, 2020).

The compromise between copyright proponents and those who reject copyright is that copyright has a limited validity period. The rights included in copyright are exclusive economic and moral rights. Some exclusive rights generally granted to copyright holders are the right to make copies or reproductions of works and sell these copies; import and export creations; create derivative or derivative works based on the creation; display or exhibit the work in public; and sell or transfer the exclusive rights to another person or party (Copyright Act 2019).

Copyright Act 2009 defines "artworks" as original works of art created by artists, including paintings, drawings, etchings, prints, woodcuts, and engravings, among other creations. They should exist in a single copy or a limited edition signed and numbered by the author. Interestingly, copyright law is about copies; however, visual art hardly exists in copies. Visual artworks are almost always produced as unique works or as limited editions. Artists' possibilities to appropriate have encountered rampant growth in the digital age. The reason is that the technological revolution has changed how the information contained in art can be processed and disseminated to the public.

Who are Visual Artists?

Crawford (2022) describes “visual artist” as including cartoonists, craftspeople, graphic designers, illustrators, painters, photographers, printmakers, sculptors, and textile designers.” The author opined that visual artists should not start from nothing because the solution is probably out there. The artists who use the internet to get solutions usually rework the pieces to obscure the source. This appropriation can take many forms, such as lifting part of artwork to create a website heading.

Visual artists in Kenya have exclusive rights to control their works’ reproduction, distribution, public display, and adaptation. These rights allow artists to benefit financially from their creations and to license or sell their works to others. The click, like, and share culture enabled by digital technology has made visual art more accessible to artists and the public (Collopy et al., 2017). This culture has also provided artists with new tools to create and modify imagery, establishing significant marketplaces. Hence, it fosters the creation of a variety of art forms. Courts encounter challenges while attempting to draw a line between legal appropriation and copyright infringement.

The art market rewards scarcity rather than volume and originals rather than copies. Consequently, the distinction between originals and copies forms the foundation of the art market. However, other kinds of intellectual property, like music, generate income from selling copies of their works in high volumes. The foundational premise of intellectual property law is that copyright protection is essential for the progress of the arts; uncontrolled copying would kill the incentives for artists to create Beebe (2017). This article looks at the law of copyright from the reality of visual artists’ perspective. The goal is to see if copyright law can incentivize the creation of visual art. Does copyright law enable art to flourish, or does it impede it?

The advent of technology has equally transformed the creative process for visual artists. Instead of debating whether copying is acceptable, visual artists now focus on selecting suitable sources and methods for incorporating existing works. This shift is attributed to new techniques enabled by technology, which have altered the artistic landscape. In this digital age, the daily experience of encountering countless, fragmented images on screens resembles how the natural landscape of Giverny inspired Monet's art (Hoptman, 2015).

Method and Data

A phenomenological research approach focuses on understanding and describing individuals' experiences with copyright law and piracy in visual art. The interviewees were picked using snowball sampling. Existing visual artists assisted in nominating interviewees from among their peers within Dagoretti. Unstructured in-depth interview questions afforded flexible and open-ended conversations. This allowed for an exploration of issues in a natural manner, leading to richer insights into the artists' experiences. A diverse range of visual artists born or working in Dagoretti, cartoonists, architects, and painters comprehensively understood the visual arts community's creative processes, motivations, and challenges.

Where do you draw your inspiration from?

Visual artists drew inspiration from various sources dependent on their interests, experiences, and artistic goals. Visual artists often draw on their own life experiences, emotions, and memories to create art that is personal and meaningful to them. One painter said that he gets his inspiration from people's situations and by being empathetic to them. While looking at some of his works, one feels his paintings have the same energy as Picasso's during the Blue Period.

Sometimes, cultural, social, and political issues may inspire. Visual artists use their art forms to comment on specific themes or to raise awareness about important issues. Cultural issues such as identity, heritage, and tradition are explored as they grapple with questions of belonging. Drawing upon their experiences and broader cultural narratives, visual artists create works that challenge stereotypes or critique cultural norms. One artist who draws inspiration from such themes said, *"I do 'research' in the bars and back streets of Nairobi, exploring what goes on after dark when people who are out at that hour believe nobody is looking, things no one wants to discuss."* The goal is to spark meaningful conversations and foster empathy and understanding. The artists look at people in their spaces. *How people relate with each other knowingly and unknowingly.*

Nature has been a template for artists across various mediums. The natural world's intricate patterns, vibrant colors, and sheer diversity offer endless inspiration. Visual artists have explored and captured the essence of nature in countless ways. Hiking is a powerful source of inspiration for artists. The experience of immersing oneself in nature, surrounded by towering trees, winding trails, and breathtaking views, can evoke a deep sense of

wonder. For one visual artist, hiking is his artistic practice, as he sketches and draws trees along the way, which are prevalent in his art forms.



Title: When Nature is you Inspiration

Artist: James Mweu

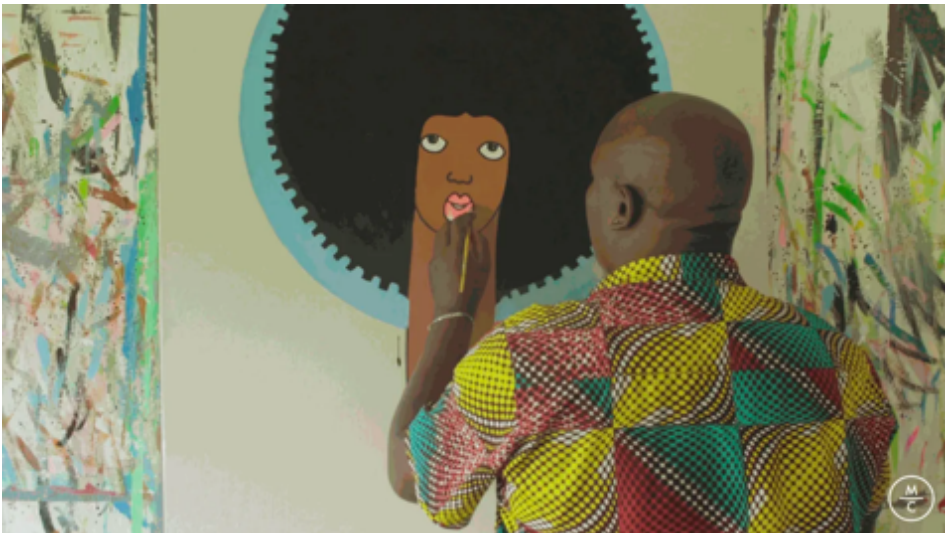
Artist's Instagram @jamo.mweu

How do you deal with imitation?

Imitation refers to works that illustrate both internal and external similarity. This occurs when a visual artist knowingly copies works and passes them off as their own (Lucken, 2016). After copying severally, a creator's style emerges since copying gives the creator a starting point (Dewis, 2017). Copying, whether through direct reproduction, appropriation, or homage, has become a fundamental technique for many contemporary artists. One interviewee was proud that people copy his work: "If someone finds my work worth copying, *I feel impressed.*"

Due to technological advancement, artists have access to an array of images and the capacity to manipulate and reproduce them with ease. The digital age has rendered copying a universal and essential part of the artistic process, blurring the lines between originality and appropriation. As one

artist said, “*Established artists need to give imitators space since we were also given space to copy.*” Hence, the boundaries between inspiration and infringement become unclear: “*If Gucci can be pirated, what is so special about me?*.” Since the artist’s tote bags are hand-painted, most people download his images online, print them on canvas, and sell them as their creations. So, he gets emails asking him if these are genuine bags. Copying has become an essential tool for making art, as basic as oil paints once were (Hoptman, 2015). Exploration of the nature of representation and authenticity can also be done through copying. Furthermore, others may employ it as a strategy for engaging with authorship, ownership, and cultural production issues.



Artist at work

Source: <https://www.montaguecontemporary.com/video/10-in-the-studio-with-michael-soi/>

Enforcement of Rights

The Kenyan Copyright law allows visual artists to enforce their copyright by taking legal action against individuals or entities that infringe on their works. Some actions may involve sending cease and desist letters, pursuing civil litigation for damages, or seeking criminal charges for severe infringement cases (Rahayu & Taufik, 2024). The results show that copyright enforcement has been challenging, especially for visual artists

who need more resources to pursue legal action against infringers. It has led to a sense of helplessness when copyright violations occur: a common theme derived from the responses was, “*Will I spend time fighting people online or creating more works?*” Due to the ease of production in the digital age, artistic works can be easily reproduced and shared online across borders, making it challenging to control the unauthorized use or distribution of creative content.

Artists may find monitoring and enforcing their rights in a global marketplace hard. Stemming from a limited understanding of how to do so. One artist said, “*In Thailand, they print my pieces on shopping bags and hand them out at supermarkets for free.*” Copyright law was designed to allow artists to control the use and distribution of their works, allowing them to benefit financially from their creative endeavors. The focus of the artists interviewed is more on creation and less on safeguarding their works. However, creators are provided with a legal framework to protect their intellectual property, fostering a vibrant cultural landscape. When copyright disputes, or violations occur, most holders prefer compensation over legal action; therefore, there is little precedence in dealing with such matters (Kanti Rahyu, 2024).

What does the visual artist do?

Visual art has proven to be fundamentally different from other copyrightable creations. Unlike books, music, or other core realms of copyright protection, copies play a minimal economic role in the art market. In the art market, copying does not harm the market for the original. As this article has shown, copying in art appears to help the market for the original or even to create a market that did not exist before the copy (Stewart, 2014). Consequently, it is deemed that theft produces value.

Despite the legal framework, visual artists in Kenya, like in many other countries, need help to protect their copyrights. Their challenges may include difficulties proving ownership of works, a need for more awareness about copyright laws, and limited resources to enforce their rights effectively. Most artists interviewed have not experienced copyright infringement; the ones who had did not pursue the matter.

Continuous dialogue, education, and adaptation of legal frameworks can ensure that stakeholder perspectives are considered. This, in turn could

assist in upholding the integrity of copyright and still foster a vibrant and diverse creative ecosystem for future generations. Education can assist visual artists in effectively navigating copyright issues, hence promoting more innovation/creativity. By embracing these principles, a dynamic and inclusive creative environment that celebrates the richness and diversity of visual arts while respecting the artists and creators rights can be sustained. This ensures a legacy of cultural vitality for future generations.

Conclusion

Copyright law plays a vital role in protecting visual artists' creative expressions. Art is a passion, so visual artists tend to produce pieces of art for art's sake. This brings about a collision; hence, copyright seems to provide no significant monetary incentive for visual artists to create. As this study shows, copyright is useless for Dagoretti-based visual artists since they have shown no interest in safeguarding their creations. The digital revolution and the dawn of social media networks have made artistic works more accessible and available, expediting imitators' works (Alder & Fromer, 2019).

As the art world evolves in the digital age and global marketplace, visual artists are encouraged to stay informed about copyright laws, understand their rights, and proactively manage their intellectual property assets. By leveraging copyright protection and strategic approaches to licensing and enforcement, painters can maximize the value of their creations and ensure continued recognition and respect for their artistic contributions. Copyright law tells us that creativity would shut down in a world where one cannot control one's copies. That artists would stop producing art if copyists undercut them. This theory seems to misunderstand the market for visual artists because copies upon copies are the model of creativity. Hence, the study has shown that copyright law is useless for Dagoretti's visual artists.

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