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Nothing New Under the Sun¹

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Proponents of strong copyright protection stress the significance of an author's contribution to the artistic and economic value of a work. In this vision, "creativity starts with an author's spark of genius."² This genius requires special protection: "Copyright is a unique form of property because, unlike inherited wealth, it springs from an artist's own imagination, hard work and talent."³

To be sure, great works reflect their authors' imagination, hard work, and talent. But authors do not create in a vacuum. The raw material for their creativity is existing works. Artists borrow themes, styles, structures, tropes, and phrases from works that inspire them. And if copyright overprotects existing works—if it restricts authors' ability to build on the creative output of authors who came before them—it will be more difficult for authors to create.

Unfortunately, copyright owners and policymakers often undervalue the importance of this use of source material. They focus on rights, but not on the critical limitations to those rights that enable creativity to flourish. These limitations include: the idea/expression dichotomy and the related doctrines of merger and scenes a faire; fair use; and copyright term, which results in works entering the public domain. The failure to recognize how essential limitations are to new creative expression results in bad policy, such as the Sonny Bono Copyright Term Extension Act (adding 20 years to

¹ The title is based on a verse from Ecclesiastes 1:9.

² Michael J. Remington, *A US Copyright Law for the 21st Century: An American Perspective*, The Copyright Alliance (Mar. 4, 2015), http://copyrightalliance.org/2015/03/guest_post_us_copyright_law_21st_century_a_merican_perspective#.Vl9LMN-rTBI.

³ Sandra Aistars, *On Empowering Artists*, Huffington Post (Feb. 28, 2013), http://www.huffingtonpost.com/sandra-aistars/google-copyright-infringement_b_2782520.html.

the copyright term) or the absence of mandatory exceptions and limitations in free trade agreement.⁴

The purpose of this document is to demonstrate the importance of copyright limitations to the creative process by providing examples of authors building on existing works.⁵ This unlicensed reuse or recycling has occurred throughout the history of art, and in all artistic disciplines. But before we get to the examples, we provide some statements by artists and courts concerning the use of existing material.

Mark Twain wrote:

There is no such thing as a new idea. It is impossible. We simply take a lot of old ideas and put them into a sort of mental kaleidoscope. We give them a turn and they make new and curious combinations. We keep on turning and making new combinations indefinitely; but they are the same old pieces of colored glass that have been in use through all the ages.⁶

Mark Twain also wrote that: “it is better to take what does not belong to you than to let it lie around neglected.”⁷

T.S. Eliot likewise championed the idea of borrowing as essential to the creative process. He is often misquoted as saying “good artists imitate, great artists steal,” and this quotation is often misattributed (by Steve Jobs, among others) to other artists such as Picasso. However, Eliot actually said that:

One of the surest tests [of the superiority or inferiority of a poet] is the way in which a poet borrows. *Immature poets imitate; mature poets steal*; bad poets deface what they take, and good poets make it into something better, or at least something different. The good poet welds his theft into a whole of feeling which is unique, utterly different than that from which it is torn; the bad poet throws it

⁴ For example, the Trans Pacific Partnership Agreement and the bilateral U.S. free trade agreements contain no reference to the idea/expression dichotomy.

⁵ We welcome additional examples. We are grateful to our colleagues who supplied us with examples.

⁶ Albert Bigelow Paine, Mark Twain, A Biography: The Personal and Literary Life of Samuel Langhorne Clemens, 1343 (1912), *available at* https://books.google.com/books?id=EgridR2zyJcC&printsec=frontcover&source=gbs_ge_summary_r&cad=0#v=onepage&q&f=false.

⁷ Merle Johnson, ed., More Maxims of Mark (1927).

into something which has no cohesion. A good poet will usually borrow from authors remote in time, or alien in language, or diverse in interest.⁸

Eliot understood that much of what good artists do is to take what has been created before and transform it into something that goes beyond the original.

More recently, Wilson Mizner, who wrote screenplays for films produced by Warner Brothers, stated: “If you steal from one author, it’s plagiarism; if you steal from many, it’s research.”⁹ A standard question in a magazine interview with an artist is “What artists influenced you?”

Courts have acknowledged that most artistic creations are not original. In 1845, Justice Story stated that:

In truth, in literature, in science and in art, there are, and can be, few, if any, things, which, in an abstract sense, are strictly new and original throughout. Every book in literature, science and art, borrows, and must necessarily borrow, and use much which was well known and used before...The thoughts of every man are, more or less, a combination of what other men have thought and expressed, although they may be modified, exalted, or improved by his own genius or reflection.¹⁰

Judge Kozinski further elaborated:

Creativity is impossible without a rich public domain. Nothing today, likely nothing since we tamed fire, is genuinely new: Culture, like science and technology, grows by accretion, each new creator building on the works of those who came before. Overprotection stifles the very creative forces it's supposed to nurture.

In the words of Sir Isaac Newton, “if I have seen further it is by standing on [the shoulders] of Giants.” Newton himself may have borrowed this phrase from Bernard of Chartres, who said something similar in the early twelfth century. Bernard in turn may have snatched it from Priscian, a sixth century grammarian...

[I]ntellectual property law is full of careful balances between what’s set aside for the owner and what’s left in the public domain for the rest of us: ...copyright’s idea-

⁸ Austin Kleon Tumblr, <http://tumblr.austinkleon.com/post/129899562931> (quoting T.S. Eliot)(last visited Jan. 14, 2016).

⁹ See Austin Kleon Tumblr (Feb. 10, 2010), <http://austinkleon.com/2010/02/10/25-quotes-to-help-you-steal-like-an-artist/>.

¹⁰ *Emerson v. Davies*, 8 F.Cas. 615, 619 (D. Mass. 1845).

expression dichotomy; the fair use doctrine; the prohibition on copyrighting facts... All let the public use something created by someone else. But all are necessary to maintain a free environment in which creative genius can flourish.¹¹

In a similar vein, the Supreme Court stated that

Copyright assures authors the right to their original expression, but encourages others to build freely upon ideas and information conveyed by a work... [T]he raw facts may be copied at will. This result is neither unfair nor unfortunate. It is the means by which copyright advances the progress of science and art.¹²

The following are examples of well-known authors, composers, musicians, painters, playwrights and directors who to some degree based their work (without authorization) on the work of artists that came before them.

Literature

French literary theorist Roland Barthes wrote that literature is “a multi-dimensional space in which a variety of writings, none of them original, blend and clash. The text is a tissue of quotations drawn from the innumerable centers of culture... The writer can only imitate a gesture that is always anterior, never original. His only power is to mix writings, to counter the ones with the others, in such a way as never to rest on any one of them.”¹³

1. John Milton: based *Paradise Lost*, *Paradise Regained* and *Samson Agonistes* on the Bible.¹⁴
2. The Bible: recent re-tellings of biblical stories include *The Red Tent* by Anita Diamant, *The Last Temptation of Christ* by Nikos Kazantakis; *J.B.* by Archibald Macleish; and *Barabbas* by Par Lagerkvist. Biblical themes are present in many works of fiction, including Ernest Hemingway's *The Old Man and the Sea*, *The Chronicles of Narnia* by C.S. Lewis, and Dante's *Divine Comedy*.
3. William Shakespeare: inspired numerous novels, including *Moby Dick* by Herman Melville, *Brave New World* by Aldous Huxley, *The Dogs of War* by

¹¹ *White v. Samsung Electronics*, 989 F.2d 1512 (9th Cir.)(Kozinski, J., dissenting), cert. denied, 113 S. Ct. 2443 (1993)(citations and footnotes omitted).

¹² *Feist Publications, Inc. v. Rural Telephone Service Co., Inc.*, 499 U.S. 340, 350 (1991).

¹³ Roland Barthes, *The Death of the Author*, 146, <http://artsites.ucsc.edu/faculty/Gustafson/FILM%20162.W10/readings/barthes.death.pdf>.

¹⁴ David Parry, *Milton and the Bible*, Darkness Visible, http://darknessvisible.christs.cam.ac.uk/religion_bible.html (last visited Jan. 14, 2016).

Frederick Forsyth, *A Thousand Acres* by Jane Smiley,¹⁵ and the *Game of Thrones* series by George R.R. Martin.

4. Miguel de Cervantes: parodied knight errant tales and the novel *Amadis de Gaula* in *Don Quixote*.¹⁶
5. Herman Melville: copied portions of *Benito Cereno* from a book by a little-known writer Amasa Delano.¹⁷
6. James Joyce: used source material (particularly Homer's *The Odyssey*) and incorporated it directly in *Ulysses*.¹⁸
7. T.S. Eliot: borrowed lines from Plutarch's *Life of Mark Antony* and Edmund Spenser's *Prothalamion* and placed them in *The Waste Land*.¹⁹
8. Lewis Carroll: parodied Victorian verse in *Alice in Wonderland*.²⁰
9. J.R.R. Tolkien: *The Hobbit* and *The Lord of the Rings* trilogy were influenced by Norse mythology, Shakespeare, and Richard Wagner's opera cycle.²¹

¹⁵ Sally O'Reilly, *Top 10 Novels Inspired by Shakespeare*, The Guardian (Apr. 30, 2014), <http://www.theguardian.com/books/2014/apr/30/top-10-novels-inspired-shakespeare-herman-melville-patricia-highsmith>.

¹⁶ Daniel Eisenberg, *Romances of Chivalry in the Spanish Golden Age*, Biblioteca Virtual: Miguel de Cervantes, http://www.cervantesvirtual.com/obra-visor/romances-of-chivalry-in-the-spanish-golden-age-0/html/ffcd58ce-82b1-11df-acc7-002185ce6064_37.html (last visited Jan. 14, 2016).

¹⁷ Naomi Abe Voegtli, *Rethinking Derivative Rights*, 63 Brook. L. Rev. 1213, 1215 (1997).

¹⁸ John Carlin, *Culture Vultures: Artistic Appropriation and Intellectual Property Law*, 13 VLA J.L. & Arts 103, 106 (1988)(citing Murray McArthur, "Signs on a White Field: "Semiotics and Forgery in the "Proteus" Chapter of Ulysses, 53 ELH 633 (1986).

¹⁹ Joseph Maddrey, *The Making of T.S. Eliot: A Study of Literary Influences*, 119-124 (2009). See also Carlin at 106; Austin Kleon, *Steal Like An Artist*, TEDxKC, TEDxTalks (Apr. 24, 2012), <http://tedxtalks.ted.com/video/TEDxKC-Austin-Kleon-Steal-Like>; Alex McCown, *In Praise of Artistic Theft*, A.V. Club (Feb. 18, 2015), <http://www.avclub.com/article/praise-artistic-theft-214962>.

²⁰ *Analysis*, AliceinWonderland.net, <http://www.alice-in-wonderland.net/resources/analysis/> (last visited Jan. 14, 2016).

²¹ Wikipedia, *J.R.R. Tolkien's Influences*, https://en.wikipedia.org/wiki/J._R._R._Tolkien%27s_influences.

10. J.K. Rowling: has cited many influences for *The Harry Potter* series, including British folklore (particularly the legends of King Arthur), Homer's *The Illiad*, *The Bible*, Aeschylus, Geoffrey Chaucer's *The Canterbury Tales*, Shakespeare's *Macbeth*, and C.S. Lewis's *The Chronicles of Narnia*.²²

Music

"Composers necessarily listen to other people's music. Composition does not occur in a vacuum. It occurs instead within an artistic culture that includes well-defined techniques and styles, as well as recurrent technical problems. Thus, it is natural that composers take ideas and inspiration from their colleagues. In addition, any new piece of music, if it is to be comprehensible to most listeners, must bear at least *some* similarity to works that have gone before."²³

1. Classical composers: frequently copied other composers; one composer borrowing from another "did not make these works any less creative. The works simply incorporate motives with which the audience is already familiar. This helps to evoke a certain emotion, place, or era. Borrowing is a way for classical composers to absorb the culture around them and to mark their place in time."²⁴ For example, the "variations on a theme by..." was a popular technique for composition.
 - a. George Frederic Handel: is considered the "'poster boy' of historic borrowing."²⁵
 - b. Johann Sebastian Bach: borrowed from Antonio Vivaldi's concertos.²⁶
 - c. Wolfgang Amadeus Mozart: borrowed from Josef Haydn.²⁷

²² Wikipedia, *Harry Potter Influences and Analogues*, https://en.wikipedia.org/wiki/Harry_Potter_influences_and_analogues.

²³ Aaron Keyt, *An Improved Framework for Music Plagiarism Litigation*, 76 Calif. L. Rev. 421, 427-28 (1988).

²⁴ Dawn Leung, *Did Copyright Kill Classical Music?: Copyright's Implications for the Tradition of Borrowing in Classical Music*, 3 Sandra Day O'Connor C. of L. Sports & Ent. L.J. 138, 141 (2014)(quoting Amanda Scales, *Sola, Perduta, Abbandonata: Are the Copyright Act and Performing Rights Organizations Killing Classical Music?*, 7 Vand. J. Ent. L. & Prac. 281, 285 (2005).

²⁵ *Id.* (citing Ellen T. Harris, *Integrity and Improvisation in the Music of Handel*, 8 J. Musicology 301 (1990); John T. Winemiller, *Recontextualizing Handel's Borrowing*, 15 J. Musicology 444, 450 (1997)).

²⁶ *Id.*

- d. Ludwig van Beethoven: borrowed from Mozart; for example, the *Moonlight Sonata*'s arpeggios are based on Mozart's *Don Giovanni*.²⁸
- e. Franz Schubert, Felix Mendelssohn, and Johannes Brahms: all borrowed at length from Beethoven.²⁹
- f. Béla Bartók and Zoltán Kodály: both wrote variations on the same Hungarian folksong.³⁰
- g. Georges Bizet: the habanera from *Carmen* borrows on Sebastian Yradier's *El Arreglito*.³¹
- h. Frederic Chopin: borrowed Polish folk music themes.³²
- i. Peter Illyich Tchaikovsky: borrowed either directly from Russian folk melodies or was heavily influenced by them.³³
- j. Gustav Mahler: borrowed from Brahms.³⁴

²⁷ *Id.*

²⁸ *Id.* See also Stephen Klugewicz, *Did Mozart Actually Write the "Ode to Joy?"* The Imaginative Conservative (Aug. 20, 2014), <http://www.theimaginativeconservative.org/2014/08/did-mozart-write-ode-to-joy-theme.html>.

²⁹ Leung at 141-42. See also Eva Badura-Skoda & Peter Branscombe, eds., *Schubert Studies: Problems of Style and Chronology* 45 (1982)(discussing Schubert's borrowing)(quoting Edward T. Cone, *Schubert's Beethoven*, 56 Music Q. 779, 779-80 (1970)); Joscelyn Godwin, *Early Mendelssohn and Late Beethoven*, 55 Music & Letters 272 (1974)(discussing Mendelssohn's borrowing); *Brahms Symphonies: Where to Start*, Classic FM, available at <http://www.classicfm.com/composers/brahms/guides/brahms-symphonies-where-start/#yJUWFj2jvZCZuehV.97> (last visited Jan. 14, 2016)(discussing Brahms' borrowing).

³⁰ Marin Alsop, *Bela Bartok: Finding a Voice Through Folk Music*, NPR (updated Dec. 12, 2012), <http://www.npr.org/templates/story/story.php?storyId=14416746>.

³¹ Wikipedia, *Sebastian Yradier*, https://en.wikipedia.org/wiki/Sebasti%C3%A1n_Yradier (last visited Jan. 14, 2016).

³² Leung at 148.

³³ Leung at 148.

³⁴ Leung at 142.

- k. Charles Ives: borrowed from hymns, popular songs, ragtime, and marches.³⁵
 - l. George Gershwin: borrowed from many African-American musical forms, some directly, including jazz, ragtime, blues, and spirituals.³⁶
 - m. For more on classical music borrowing, this annotated bibliography lists alphabetically influences on composers.³⁷
2. Frank Sinatra: borrowed from Johannes Brahms' *Symphony No. 3 in F* for the melody of his song *Take My Love*.³⁸
 3. Pat Boone: borrowed from Little Richard when he made the song *Tutti Frutti*.³⁹
 4. The Beatles: had numerous influences, including American popular music (soft rock and rolls, rhythm and blues, soul) like Little Richard and Bob Dylan, and in later years added more Asian musical influences.⁴⁰
 5. Bob Dylan: appropriated many of his lyrics and melodies from other sources, including American folk songs.⁴¹ Dylan explained his borrowing like this: "It's an old thing—it's part of the tradition. It goes way back... I'm working within my art

³⁵ *Id.* at 150 (citing J. Peter Burkholder, "Quotation" and Emulation: *Charles Ives's Uses of His Models*, 71 *Music Q.* 1 (1985)).

³⁶ *Id.* at 151-52 (citing Joahn Peyser, *The Memory of All That: The Life of George Gershwin* 84 (1998)).

³⁷ J. Peter Burkholder, ed., *Musical Borrowing: An Annotated Bibliography*, Center for the History of Music Theory and Literature, Jacobs School of Music, Indiana University, <http://www.chmtl.indiana.edu/borrowing/> (last visited Jan. 14, 2016).

³⁸ *Brahms Symphonies: Where to Start*, Classic FM, available at <http://www.classicfm.com/composers/brahms/guides/brahms-symphonies-where-start/#yJUWFj2jvZCZuehV.97> (last visited Jan. 14, 2016).

³⁹ See Gary North, *Pat Boone: Cover Charge*, Lew Rockwell (May 31, 2006), <https://www.lewrockwell.com/2006/05/gary-north/the-reverse-minstrel-show/>.

⁴⁰ Arewa at 616-17, n. 401, 402.

⁴¹ Lethem, *The Ecstasy of Influence*. See also Andy Greene, *Bob Dylan's Greatest Lyrical Thefts*, *Rolling Stone* (May 11, 2011) (listing just a few of the influences Dylan stole from to make song lyrics). For a discussion of Jimi Hendrix, see Ray Padgett, *The Story Behind Jimi Hendrix's "All Along the Watchtower,"* *Cover Me* (Mar. 20, 2014), <http://www.covermesongs.com/2014/03/the-story-behind-jimi-hendrixs-all-along-the-watchtower.html>.

form... It's called songwriting. It has to do with melody and rhythm, and then after that anything goes. *You make everything yours*. We all do it.”⁴² Christopher Ricks, who wrote a study on Bob Dylan, said “I do think it's a characteristic of great artists and songsters to immediately draw on their predecessors...”⁴³

6. Elvis Presley: popularized the “rockabilly” style, which was a fusion of the existing rhythm & blues and country music genres.
7. The Rolling Stones: took their name and much of their early music from Muddy Waters. Waters said of the Stones, “they stole my music but they gave me my name.” Keith Richards also admitted to borrowing from Chuck Berry when inducting Berry into the Rock’n’Roll Hall of Fame, saying “I lifted every lick he ever played.”⁴⁴
8. Led Zeppelin: lifted *Whole Lotta Love* from Willie Dixon’s song *You Need Love*.⁴⁵ Many of their other hits, including *Dazed & Confused* and *Since I’ve Been Loving You* were also based on other works.⁴⁶
9. Queen: appropriated bass lines, riffs, and other elements from preexisting music. One example is the song *Another One Bites the Dust*, which takes the base line from Chic’s *Good Times*.⁴⁷

⁴² Mikal Gilmore, *Bob Dylan Unleashed*, RollingStone (Sept. 27, 2012)(answering a question during an in-depth interview about allegations of appropriating from Henry Timrod’s poetry), available at <http://www.rollingstone.com/music/news/bob-dylan-unleashed-a-wild-ride-on-his-new-lp-and-striking-back-at-critics-20120927>.

⁴³ Motoko Rich, *Who’s This Guy Dylan Who’s Borrowing Lines from Henry Timrod?*, NY Times (Sept. 14, 2006), available at <http://www.nytimes.com/2006/09/14/arts/music/14dyla.html?pagewanted=all>.

⁴⁴ James Maycock, *Music: White Men Sing the Blues*, Indep. (June 3, 1999), available at <http://www.independent.co.uk/arts-entertainment/music-white-men-sing-the-blues-1097966.html>.

⁴⁵ Keith Aoki, *Distributive Justice and Intellectual Property: Distributive and Syncretic Motives in Intellectual Property Law (with Special Reference to Coercion, Agency, and Development)*, 40 U.C. Davis L. Rev. 717, 762-65 (2007). The band eventually avoided litigation with Dixon by providing attribution.

⁴⁶ Joey DeGroot, *7 Songs that Led Zeppelin Ripped Off*, Music Times (May 20, 2014), <http://www.musictimes.com/articles/6250/20140520/7-songs-other-than-stairway-to-heaven-that-led-zeppelin-stole.htm>.

⁴⁷ Olufunmilayo B. Arewa, *From J.C. Bach to Hip Hop: Musical Borrowing, Copyright and Cultural Context*, 84 N.C. L. Rev. 547, 617 (2006)(discussing Queen generally). This

10. Jay Z: lifted the refrain from *99 Problems* from an earlier song by Ice T.⁴⁸
11. Jamaican reggae tradition (including the work of Bob Marley): is based in large part on three forms of appropriation: "riddims" (compositional pairings of bass lines with drum beats, replayed, transposed and reinterpreted in thousands of variations); "versions" (backing tracks which are reused with multiple lead vocal tracks, often for entirely different compositions); and "dubs" (elements of recorded tracks appropriated to create sonic collages, sometimes explicitly referencing the original composition, but often not).
12. Modern jazz: many of this genre's songs are based on one of two chord progressions: "rhythm changes" (based on Gershwin's *I Got Rhythm*, which was in turn appropriative of African American musical styles) and "blues changes" (variations on a 12-bar form based around the I, IV and V of the major scale). The most celebrated jazz album of all time, Miles Davis's *Kind of Blue*, draws heavily on this form.
13. Pachelbel: many popular rock and pop songs are based directly on the harmonic structure of Pachelbel's *Canon*, including songs by U2, Green Day, and Nicki Minaj.⁴⁹
14. David Bowie: described himself as a "tasteful thief" who appropriated from glam rock, soul, disco, new wave, and punk rock. "He cited influences from Elvis Presley to Andy Warhol—not to mention the singer Edith Piaf and writers William S. Burroughs and Jean Genet..."⁵⁰

base line was also used by the group Sugarhill Gang for "Rapper's Delight." For more on "Good Times," see Ben East, *With Nile Rodgers, it is Always Bound to be Good Times*, The National (Dec. 28, 2014), <http://www.thenational.ae/arts-lifestyle/musicians/with-nile-rodgers-it-is-always-bound-to-be-good-times>.

⁴⁸ Soren Baker, *Ice T Discusses Jay Z Using his "99 Problems" Song*, HipHopDX (July 21, 2014), <http://hiphopdx.com/news/id.29861/title.ice-t-discusses-jay-z-using-his-99-problems-song>.

⁴⁹ Rob Paravonian, *Pachelbel Rant* (uploaded Nov. 21, 2006), <https://www.youtube.com/watch?v=JdxkVQy7QLM>.

⁵⁰ Tara Bahrapour, *David Bowie Dies at 69; Mesmerizing Performer and Restless Innovator*, Wash. Post (Jan. 12, 2016), available at https://www.washingtonpost.com/entertainment/music/singer-david-bowie-dies-at-69-mesmerizing-performer-of-many-alter-egos/2016/01/11/e133f63c-b859-11e5-99f3-184bc379b12d_story.html.

Movies and Stage

1. The Bible: has been a rich source for films including *The Ten Commandments*, *Noah*, *Exodus: Gods and Kings*, *The Greatest Story Ever Told*, *Ben Hur*, and *The Last Temptation of Christ*. The Bible also has inspired musicals such as *Jesus Christ Superstar*, *Godspell*, and *Joseph and the Amazing Technicolor Dreamcoat*.
2. William Shakespeare: based much of his work on folklore and other stories written by other writers/playwrights.⁵¹
3. Shakespeare in the movies: his plays have repeatedly been adapted for the screen, including *Hamlet* with Lawrence Olivier, *Henry V* with Kenneth Branagh, and multiple versions of *Macbeth* (most recently with Michael Fassbender) and *Romeo and Juliet*. Further, films such as *Shakespeare in Love*, *Lion King*, *West Side Story*, *Forbidden Planet*, *10 Things I Hate About You*, and *Ran* have borrowed themes and settings from Shakespeare's plays.⁵²
4. Shakespeare on stage: his plays also have inspired musicals such as *The Boys from Syracuse*, *Kiss Me Kate*, and *West Side Story*.⁵³ Plays based on Shakespeare include Tom Stoppard's *Rosencrantz and Guildenstern are Dead*.
5. Wicked: was adapted from Gregory Maguire's 1995 novel *Wicked: The Life and Times of the Wicked Witch of the West*, which was a parallel story to the L. Frank Baum classic *The Wonderful Wizard of Oz*.⁵⁴

⁵¹ See, e.g., Voegtli at 1215 (citing Kenneth Muir, *The Sources of Shakespeare's Plays* (1978)).

⁵² See, e.g., Louis Peitzman, *15 Movies You Might Not Know Were Based on Shakespeare Plays*, BuzzFeed (Apr. 23, 2014), <http://www.buzzfeed.com/louispeitzman/movies-you-might-not-know-were-based-on-shakespeare-plays#.ldO5Z55Eb>; Andrew Dyce, *10 Movies Surprisingly Based on Shakespeare*, Screen Rant (Oct. 12, 2013); Jillian Rayfield, *7 Movies that are Cleverly Disguised Shakespeare Adaptations*, The Week (Mar. 13, 2013), <http://theweek.com/articles/466742/7-movies-that-are-cleverly-disguised-shakespeare-adaptations>.

⁵³ *Shakespeare Sings: Stage Musicals Based on the Bard's Plays*, Hitchhiker's Guide to the Galaxy: Earth Edition (updated May 30, 2013), http://h2g2.com/edited_entry/A2903609.

⁵⁴ *The Best-Selling Book Behind Wicked*, Insights, The Apollo Victoria Theatre (Dec. 23, 2011), <http://www.apollovictoriatheatre.org/the-best-selling-book-behind-wicked/>.

6. The Man of La Mancha: the musical and film are based on the novel *Don Quixote*.⁵⁵
7. Camelot: the musical and film are based on the legends of King Arthur. The legends of King Arthur have inspired many other films, including *Monty Python and the Holy Grail* and *Excalibur*.⁵⁶
8. Disney: the entertainment giant has based at least 50 of its commercial hits on folk stories and fairy tales, including those written by Hans Christian Anderson and the Brothers Grimm.⁵⁷
9. Jane Austin: her novels have inspired many films and television series, including loose adaptations such *Clueless*, *Bridget Jones's Diary*, *Pride and Prejudice* and *Zombies*, *The Lizzie Bennett Diaries*, *Lost in Austen*, and *Death Comes to Pemberly*.
10. Film noir: This style of Hollywood crime dramas in the late 1940s and early 1950s (e.g., *The Big Sleep*) has roots in the German Expressionist style of the 1930s, such as Fritz Lang's *M*.
11. Star Wars: incorporates archetypes of mythology, particularly the King Arthur legends. The series also reflects elements from science fiction films such as *Flash Gordon*, *Buck Rogers*, and *2001: A Space Odyssey*; the *Foundation* series by Issac Asimov and the *Dune* series by Frank Herbert; the films of Akira Kurosawa, including *Seven Samurai*, *The Hidden Fortress*, and *Dersu Uzala*; Westerns such

⁵⁵ *Man of La Mancha*, IMDB, <http://www.imdb.com/title/tt0068909/> (last visited Jan. 14, 2016).

⁵⁶ Anne Billson, *The 10 Best Films About King Arthur*, The Telegraph (Jan. 31, 2014), available at <http://www.telegraph.co.uk/culture/film/10610096/The-10-best-films-about-King-Arthur.html>.

⁵⁷ See Derek Khanna, *Disney Works Based On Public Domain*, Medium (Jan. 26, 2014), <https://medium.com/@derekkhanna/disney-works-based-on-public-domain-eb49ac34c3da>; Derek Khanna, *50 Disney Movies Based On The Public Domain*, Forbes (Feb. 3, 2014), <http://www.forbes.com/sites/derekkhanna/2014/02/03/50-disney-movies-based-on-the-public-domain/>. An interesting twist is that Disney reaps the benefit of the public domain while advocating for longer copyright terms in order to keep others from doing the same with the works it reaped. See Steve Zeitlin, *Strangling Culture with a Copyright Law*, NY Times (Apr. 25, 1998), <http://query.nytimes.com/gst/fullpage.html?res=9507eed6123ff936a15757c0a96e958260>.

as *The Searchers* and *Once Upon A Time in The West*; and World War II films such as *Dam Busters*.⁵⁸

12. Quentin Tarantino: his films imitate (and parody) the styles of many film genres, including Asian martial arts films, spaghetti westerns, and Italian horror films.⁵⁹

13. Spike Lee: his film *Chi-Raq* is based on Aristophanes' *Lysistrata*.⁶⁰

Visual Arts

All artistic disciplines have conventions (e.g., the haiku or sonnet in poetry, or the sonata structure in classical music), but conventions are particularly important in the visual arts. "Convention in art is a term used to describe an accepted way of representing something, either formal or symbolical. For example there is a tacit consent when looking at Florentine Renaissance painting, to interpret linear perspective as indicating depth and recession. There is a similar agreement between artists and audience to read that the smaller figures in Byzantine mosaics represent ordinary human beings while the larger figures represent Christ, the Virgin Mary, or the saints."⁶¹

1. The Bible: before the 19th century, many paintings and sculptures depicted scenes from the Bible or Greek and Roman mythology.
2. Michelangelo: like other Renaissance artists, including Leonardo da Vinci, Michelangelo was heavily influenced by Classical art. Michelangelo was also influenced by early Renaissance masters such as Ghiberti, Ghilandio, and Giovani. Perhaps his most famous statue, *David*, is a depiction of a Biblical

⁵⁸ Jonathan Band, *What the Release of Star Wars: The Force Awakens Teaches Us About Copyright Policy: Part I*, Disco (Dec. 22, 2015), <http://www.project-disco.org/intellectual-property/122215-what-the-release-of-star-wars-the-force-awakens-teaches-us-about-copyright-policy-part-i/#.VnwKJJMrLYK>.

⁵⁹ Nathaneal Arnold, *7 Killer Movies that Inspired Quentin Tarantino*, CheatSheet: Movies (Dec. 24, 2015), <http://www.cheatsheet.com/entertainment/7-killer-movies-that-inspired-quentin-tarantino.html/?a=viewall>.

⁶⁰ Scott Tobias, *Spike Lee Declares an Emergency In Chi-Raq*, NPR (Dec. 3, 2015), <http://www.npr.org/2015/12/03/458188846/spike-lee-declares-an-emergency-in-chi-raq>.

⁶¹ ArcyART, *Convention*, <http://www.arcyart.com/ad-convention.htm> (last visited Jan. 14, 2016).

character in a Classical Greek heroic pose.⁶² His statues influenced generations of other sculptors, including Rodin and Henry Moore.

3. Rembrandt van Rijn: was influenced by many Dutch painters (who had studied in Italy and had been influenced by painters such as Caravaggio), including Anthony van Dyck and Peter Paul Rubens. Rembrandt was particularly influenced by the compositional structure of his teacher, Pieter Lastman, a well-known painter of historical and biblical scenes. Lastman helped Rembrandt master this genre. “[I]n several instances Rembrandt deconstructed his former master's compositions and reassembled them into his own, a practice carried on by Rembrandt's own pupils later on.”⁶³
4. Neoclassical style: this form coincided with the 18th century Enlightenment era and drew inspiration from the classical art and culture of ancient Greece and Rome. Neoclassical painting, epitomized by the works of Jacques-Louis David, is characterized by the use of straight lines, smooth paint surfaces, the depiction of light, a minimal use of color, and the crisp, clear definition of forms.⁶⁴
5. Edward Manet: his painting *Olympia* is modeled after Titian's Venus of Urbino, which in turn refers to Giorgione's Sleeping Venus. Subsequently, Paul Cezanne painted *A Modern Olympia* as an homage.
6. Monet: his landscapes were influenced by Japanese woodblock prints by rejecting three-dimensional perspective.⁶⁵
7. Van Gogh: copied 30 works by some of his favorite artists, primarily Jean Francois Millet, but also Rembrandt, Delacroix, Daumier, and Hiroshige. “Rather

⁶² Wikipedia, *David (Michelangelo)*, [https://en.wikipedia.org/wiki/David_\(Michelangelo\)](https://en.wikipedia.org/wiki/David_(Michelangelo)).

⁶³ Bio., *Rembrandt*, <http://www.biography.com/people/rembrandt-9455125#early-life>.

⁶⁴ Boundless, *Artistic Conventions in Painting*, <https://www.boundless.com/art-history/textbooks/boundless-art-history-textbook/europe-and-america-in-the-1700s-and-early-1800s-ce-34/neoclassicism-in-britain-208/artistic-conventions-in-painting-752-11033/> (last visited Jan. 14, 2016).

⁶⁵ Heilbrunn Timeline of Art History, *Claude Monet (1840-1926)*, Metropolitan Museum of Art, http://www.metmuseum.org/toah/hd/cmon/hd_cmon.htm (last visited Jan. 14, 2016).

than replicate, Van Gogh sought to translate the subjects and composition through his perspective, color, and technique.”⁶⁶

8. Picasso: blended stylized treatment of the human figure in African sculptures with the post-impressionist painting style.⁶⁷ Additionally, in 1957, Picasso painted a series of 58 interpretations of Diego Velazquez’s *Las Meninas*.⁶⁸ This series now fills the *Las Meninas* Room in the Picasso Museum in Barcelona. *Las Meninas* also inspired works by Francisco Goya and Salvador Dali.
9. Andy Warhol: appropriated many images, including the Campbell’s’ soup cans, photographs of Marilyn Monroe, and photos of hibiscus flowers by Patricia Caulfield for his *Flowers* series. The last of these brought on a suit against him for infringement. Following the suit, Warhol began taking his own photographs for his screen prints.⁶⁹
10. Roy Lichtenstein: borrowed heavily from comics and other forms of “low” art. New York’s Museum of Modern Art has a page on its website explaining how Pop artists such as Lichtenstein appropriate pre-existing images.⁷⁰

⁶⁶ Wikipedia, *Copies by Vincent van Gogh*, https://en.wikipedia.org/wiki/Copies_by_Vincent_van_Gogh (last visited Jan. 14, 2016).

⁶⁷ *Picasso’s African-influenced Period – 1907 to 1909*, Pablo Picasso: Paintings, Quotes, and Biography, <http://www.pablopicasso.org/africanperiod.jsp> (last visited Jan. 14, 2016).

⁶⁸ Wikipedia, *Las Meninas*, https://en.wikipedia.org/wiki/Las_Meninas (last visited Jan. 14, 2016).

⁶⁹ Carlin at 128–30 (discussing the Caulfield lawsuit specifically).

⁷⁰ MoMA Learning, *Pop Art: Appropriation*, Metropolitan Museum of Art, https://www.moma.org/learn/moma_learning/themes/pop-art/appropriation (last visited Jan. 14, 2016). See also About Education, *Appropriation/Appropriation Art*, About.com, http://arthistory.about.com/od/glossary_a/a/a_appropriation.htm (last visited Jan. 14, 2016).