

## WHAT'S IN A MEME?

Like everyone else, I am an avid consumer of memes. However, it was only recently that I also dabbled in the production of memes. The transition from consumer to producer was prompted by my abiding love for the musical *Hamilton* and my subsequent dabbling in Hamilton social media fandom, which, as it turns out, routinely cranks out memes. I produced a few of my own with modest success (a few hundred likes, some shares, nothing earth-shattering), but it made me wonder: am I infringing any copyright laws? And, conversely, how would I feel if I saw that meme reproduced somewhere else without attribution?

Meme diffusion inevitably occurs without proper attribution, generating gray areas in terms of intellectual property rights. When the creator is known and has a legal claim to the original image, video, or message, legal action to prevent copyright infringement is possible (more on that in a second). However, in many cases the originator is obscure, lost, or tracked down but unable or unwilling to claim intellectual property (IP). To take just a recent example, the #shepersisted hashtag and “Nevertheless, she persisted” meme were lifted from Sen. Mitch McConnell’s tweet explaining his censure of Elizabeth Warren during her Senate speech protesting Jeff Sessions’ nomination as Attorney General in January 2017. The quote became something else entirely in the hands of internet culture and has been featured in countless parodies, Facebook statuses and Tweets, image-based memes, and, of course, T-shirts; so far, there have been no signs Sen. McConnell is interested in claiming IP for any of these cultural products. One may even argue that the relevant creative act occurred not when the tweet was generated but when it was reinterpreted—satirically—in a particular context. “Hamilton’s” author, Lin-Manuel Miranda, similarly appropriated the quote of an unknown exuberant woman who approached him in the street, saying: “I know you. You wrote Hamlet, right?” Miranda tried to deny it: “I wish!” but the woman either ignored him or didn’t hear him and departed shouting “Yay Hamlet!” Miranda related the incident on Twitter, giving birth to a meme - #YayHamlet; you can now buy #YayHamlet merchandise on his site. Should the anonymous, albeit confused fan be entitled to a portion of the proceeds?

In general, nothing about meme authorship is really straightforward. In my case, it is doubtful that I could have claimed any sort of copyright even hypothetically: some of my memes both borrow and parody content, while others were my original lines, yet structurally mimicking other memes based on ironic contrasts and well-trodden Internet tropes. For example, I used mashups of musical lines, my own satirical interpretations of them, lines of dialogue I made up, memes of the LOL guy variety, and pictures of the Hamilton cast. They were shared freely on a large Facebook group (which numbered 16 thousand member at the time I joined and grew to over 40 thousand three months later and closer to the time of this writing). Plenty of others shared fan art, parodies, mashups, memes, and a variety of other creative ways to express fandom.

Thus, when I was asked by a student whether he could create a meme as a form of visual argument for our freshman argumentative writing class, I was torn. On the one hand,

I did understand that certain ways of using memes are creative endeavors that require thought, planning, writing, and a certain nimbleness with visual media. On the other, I had seen too many facile, unimaginative, and repetitive memes to wonder whether the student wasn't trying to get away with something. Even the fact that I could easily "shoot off" into the ether a meme that had taken me less than 15 minutes to create gave me further pause. Was that enough, from the point of view of the course objectives and assignment description, to merit a grade, even if the meme was well executed?

I told the student no. But was I right? Well, as usual, the answer is probably to be found among shades of gray. It would be difficult to separate pedagogical applications from understanding an analyzing meme culture and from addressing potential copyright infringement issues. Therefore, in the remainder of this essay, I will briefly explore some of these issues, paying attention to definitions, recent copyright suits, and finally possible application of memes in the writing classroom.

## **WHAT MAKES A MEME A MEME?**

The prevalence of social media and visual culture can obscure the more abstract original meaning of meme as proposed by Richard Dawkins in *The Selfish Gene* (1976), in which the term (an abbreviation from the Greek *mimema*, "something which is imitated") is used as a cultural analogue for gene: as genes encode biological information and are subject to both replication and evolution, so memes encode cultural information that is similarly replicated and can evolve. For Dawkins, God is, famously, a meme. Other examples include "... tunes, ideas, catch-phrases, clothes fashions, ways of making pots or of building arches." The mechanism of transmission from brain to brain is imitation. Dawkins quotes his commentator, N. K. Humphrey: "... memes should be regarded as living structures, not just metaphorically but technically. When you plant a fertile meme in my mind you literally parasitize my brain, turning it into a vehicle for the meme's propagation in just the way that a virus may parasitize the genetic mechanism of a host cell"—a passage that certainly evokes the idea of digital virality *avant la lettre*. Just as genes, memes can mutate and mix in ways that depart significantly from the original. This definition of meme gave birth to memetics, a whole field of study that pre-existed the Internet and is being renewed by recent scholarship.

Memes have been radically transformed by Internet culture: they thrive on the Internet due to the speed of propagation and wide reach, but also are more potentially controversial for the same reasons. One of the more prominent emerging meme scholars defines an "Internet meme" as "(a) a group of digital items sharing common characteristics of content, form, and/or stance, which (b) were created with awareness of each other, and (c) were circulated, imitated, and/or transformed via the Internet by many users" (Shifman, 2014, p. 41). Memes are not to be confused with viral content: some videos or images can go "viral" but not be turned into memes, although they can do both, at which point the distinctions between memetic propagation and virality can become considerably blurred (Soha and McDowell, 2016 p. 2).

Memes start on a "micro" level (Shifman, 2013, p. 365) as individual expressions but end up being propagated socially on a massive scale; often, they offer a lens through which culture can be interpreted or encapsulate vital features of a cultural moment. They are highly

adaptive and sensitive to the sociocultural environment and are defined by varying degrees of success. Propagation models may include genetics or epidemiology—as in the “virus” metaphors; this latter model is considered highly problematic by Shifman because it construes of people as passive hosts or milieus that can be parasitized by ideas or media. (The implied irony is strong: the “viral media” uses the person as a conduit, in a tautologic, McLuhanesque effect in which people would become media propagating media.)

A meme is not a meme until it is replicated; in fact, mass replication is its single most important feature. Its reproducibility and capacity for adaptation beyond the singular event of its inception are really what make memes memes. Memes can also, of course, mutate, and that transformation is related to their evolutionary fitness—proving it or helping it, as it may be the case. This fitness is therefore manifested in the robustness of replication in terms of numbers and lengths of time. Patel (2013) explains the most important features of meme replicability as follows:

Three attributes influence replicability: fidelity, fecundity, and longevity. Memes with fidelity are memorable, meaningful, and intuitive—regardless of their utility or their truthfulness—and thus are easily replicated and disseminated without losing their inherent value. Fecundity refers to the degree of reproduction and dissemination of a meme; successful memes must achieve a high degree of fecundity.... Longevity is also a key element of replicability because the longer a meme exists, the more recognized it becomes, and this recognition in turn enables easier reproduction, mutation, and dissemination. [First World Problems, 2014, p. 249]

## CAN MEMES INFRINGE COPYRIGHT?

In a word, yes. Several lawsuits and other legal actions taken by copyright owners have ended favorably for the plaintiffs. In other cases, the copyright owners successfully claimed ownership to monetize their original work, or at the very least they managed to convince certain website to take down the image in question in accordance with the Digital Millennium Copyright Act (DMCA). The website Know Your Meme keeps a public log of the memes they were requested to remove from the site (<http://knowyourmeme.com/forums/q-a/topics/15676-kym-office-of-cease-and-desist-records>). Let’s take a look at some of the recent cases that have been triggered copyright action:

1. **The Socially Awkward Penguin:** In 2015, Getty Images, the copyright owners of a National Geographic penguin photo used in countless memetic reinterpretations successfully argued that their copyright was infringed when the image was reproduced on a variety of social media. In at least two documented cases, Getty threatened to sue a relatively obscure German blog, whose owner removed the images as a result and paid the ensuing fine. Many speculated that this was a rather incongruous battle (Getty’s legal behemoth vs little known bloggers in a different country), but it was meant to set clear boundaries and precedents. The actual photographer of the penguin, who is now retired, could not be reached for comments. The *Washington Post* reporter wonders:

But what of the “artists” whom Getty does not work with — the ones who have contributed to the vast oeuvre that is Socially Awkward Penguin? In the six years that Getty and National Geographic have allowed the meme to flourish, it has far transcended Mobley’s original photo: It’s a remix, a discourse, a pastiche assembled — like so much of popular Internet culture! — from the aggregated efforts of millions of people. (Dewey, 2015, para. 13)

Indeed, one may argue that George Mobley’s wildlife photograph in and by itself does not constitute a meme, and it was not initially considered one. Rather, from the moment that it was cropped out of context and offered for consumption accompanied by memetic captions, it became something else entirely, and only superficially resembled the original (*ceci n’est pas une pipe!*), much like the “Nevertheless, she persisted” quip-turned-catchphrase. Furthermore, as I have outlined above, such images become memes only when they have been successfully and abundantly replicated in a variety of “mutations.” The meme as a cultural phenomenon is a completely distinct entity from the original nature photograph; in fact, it cannibalizes that artifact to transform it into something completely different. Finally, high-powered legal teams of big players like Getty may only serve to control access to content and thus stifle creativity and enthusiasm among consumers and fan. In the end, these practices may backfire.

2. **Nyan Cat and Keyboard cat:** In 2013, Charles Schmidt and Christopher Torres, creators of Nyan Cat and Keyboard Cat, sued Warner Bros. for copyright infringement. The company had used their creations in the *Scribblenauts* game. The case was settled out of court, with Warner Bros. agreeing to pay for the use of the images.

3. **The Harlem Shake** (a “dance craze” video meme widely spread on YouTube) benefited from YouTube’s automated system for copyright detection, which eventually allowed them to steer ad profits into the pockets of the song’s creator and license owner. The case is a little more complicated, as documented in Soha and McDowell’s 2016 study. Memes involve brief dance sequences by various participants using a sample of a song by Baauer, a DJ specializing in Electronic Dance Music (EDM), and who himself relied heavily on sampled music. Soha and McDowell argue that “The commonplace notion of ‘authorship’ as either an individual or group of individuals laying claim to a work, already on shaky ground with EDM music, seems to fall short when attempting to encapsulate the large collections of digital labor that go into Internet memes” (p. 6). The YouTube Content ID mechanism, a finely tuned system, allows for content matching and several options for copyright holders whose rights appear to be infringed: blocking, tracking, or (the preferred route), monetizing content versions (via pre-roll and overlay ads)—in which case ad revenue is split more or less evenly with YouTube. This system has been soundly critiqued as enabling a few large corporations to profit from the work of the many, and has been dubbed “digital sharecropping by Nicholas Carr:

One of the fundamental economic characteristics of Web 2.0 is the distribution of production into the hands of the many and the concentration of the economic rewards into the hands of the few. It’s a sharecropping system, but the sharecroppers are generally happy because their interest lies in self-expression or socializing, not in making money, and, besides, the economic value of each of their individual contributions is trivial.” (Carr, *RoughType.com*, 2006).

Because of YouTube's content ID mechanism, the authors of the Harlem Shake were able to profit handsomely from "hours of creative free labor" to the tune of what Soha and McDowell estimate to be at least \$4.5 million from ad revenue, to say nothing of exposure, direct song sales, and Billboard chart rankings (2016, p. 9).

4. **The *Downfall* meme** (Hitler's final bunker scene from the movie *Downfall*) was highly popular for a while after the movie came out. All versions modify the English subtitles and use Hitler's rage to comedic effect by applying it to relatively minor nuisances, such as manuscript rejection by peer reviewers, or getting a ticket to an Adam Sandler movie. (When a study of Internet memes as a genre is written, it will have to include hyperbole, irony, and dramatic contrast among its primary features). While the director of the movie has apparently approved of the memes and found them funny, the company that released *Downfall*, Constantin Films, found the memes less amusing and demanded that YouTube take down the videos. Schwabach provides arguments in support of the idea that the *Downfall* videos are transformative rather than derivative (and thus not infringing copyright), and argues that, as parodies, they may fall squarely within fair use (2013, p. 15). Fans claimed that the videos only enhanced the profile of the movie, though the production company reported no increase in revenue from DVD sales. In the end, Constantin Films stopped blocking the propagation of the meme in favor of monetizing it. Thus, Schwabach concludes, "The work of the fans . . . benefits the original content owners without harming the fans or deterring the creation of such works and, interestingly, without actually requiring any resolution of possible copyright claims" (2013, p. 22).

These cases differ in significant ways. Warner Bros., for example, a large company with abundant financial means, used memes with identifiable authors for the purpose of making money; the case was settled to the benefit of the copyright holders. Schmidt and Torres, however, never went for the likely millions of users who spread the memes and reinterpreted them. If anything, the copyright holders benefited from the digital work of those fans, which contributed to the huge popularity and visibility of the memes, and which led to the use of those memes for commercial gain by Warner Bros. It was that commercial purpose that enabled Schmidt and Torres to claim their dues for their original productions (which are separate from the memes); without the memetic replication, their work might not have been so recognizable as to be profitably used by a commercial enterprise. The Harlem Shake also profited from the invisible digital labor system, though the money came from companies placing ads on YouTube, and eventually the *Downfall* movie distributors may profit in a similar manner. However, Getty's claim to the Social Awkward Penguin, in my opinion, would not or should not stand scrutiny in court. The memes generated through the use of copyrighted photography would fall under fair use as argued by Patel (2013):

Memes are worthy of the judicial protection because they effectuate cultural interchange and the productive use of copyright, and because protecting memes responds to a market failure-i.e. the inability for memes to develop without copyright infringement. When analyzing fair use, courts should consider the unique role that Internet memes play in providing clear expression of thought and purpose, as well. When courts do, it will be clear that Internet memes are well deserving of the fair use defense's protections. (p. 256)

Fear of litigation and possible liability, however, has likely deterred the blogs targeted by Getty from pursuing these arguments in court.

Finally, another factor to consider is racial bias. Kayla Lewis, the inventor of the catchphrase “on fleek,” which rapidly propagated and became a successful meme, was eventually recognized as its author but was not able to monetize her IP due to what some argue is a familiar pattern of racial discrimination. Eventually she set up a crowdfunding site to finance her cosmetics line, but questions linger: “...why didn’t she get college scholarships like Chewbacca Mom, whose claim to fame boils down to laughing while wearing a plastic mask? Lewis’s problem is part intellectual property law, part access to influence, and all systemic racial inequalities. However egalitarian the internet was supposed to be, creatives’ ability to profit off their viral content seems to depend on their race” (Ellis, *Wired*, 3/1/2017).

## HOW CAN MEMES BE USED IN THE CLASSROOM?

There are fruitful ways to engage memes in writing pedagogy. It is hard to deny that the process of appropriating a digital meme and adapt it to a novel circumstance requires some creativity and pop culture savvy. However, doing so may still be considered by many a mimetic exercise, something that could be done in class as a practice or group activity, rather than a graded assignment. I see nothing fundamentally wrong with using memes this way. Indeed, embracing memes in that way in the classroom may produce insightful conversations about authorship and intertextuality. Furthermore, the same factors embedded in the very definition of meme and in the evaluation of copyright claims should be considered here. Serving as a propagation vector for replicating a meme could potentially open up issues of intellectual property: students should ponder whether using a certain meme to make a point may fall under fair use. Such a prompt can generate productive discussions of mashup culture (in this, *Hamilton* the musical and the *Hamilton Mixtape* that mirrors it in some ways can offer abundant lessons, as Miranda copiously borrows from a wide variety of artists and genres to produce a highly original work of art). Eventually, students can engage in another useful class exercise: drafting their own plagiarism and fair use policies, inclusive of the use of images/videos.

And what if the students claim they want to create their own original memes—e.g., a novel idea in a unique, replicable form? (This would be basically the equivalent of a student creating the Nyan Cat or the “on fleek” meme and seeing it become a cultural phenomenon.) This is an unlikely, though not impossible scenario, given that the essential features of memes (factors such as fidelity, fecundity and longevity—Patel, 2013) need typically a longer time frame to be developed and assessed than a traditional quarter or semester. Furthermore, while memes are intentional mutations and replications of the original, the original instance rarely sets out to be a meme (The *Downfall* meme, the Socially Awkward Penguin, and the Harlem Shake Meme all have this in common). By contrast, a lot of content is created in hopes it goes “viral.” However, students *may* conscientiously isolate an image or idea as potentially meme-generating and enhance its profile and distribution until, in effect, it becomes a meme. In this scenario, the Harlem Shake song is not the “moment zero” of the meme: the meme is born when the first dance video using the song is produced and published. I could see this as a semester-long (or even year-long) project, ideally in a digital writing class, in which students (in pairs or groups, maybe) can work from the beginning on launching and monitoring a number (fixed or unlimited) of “original”

memes on various social media channels for the purpose of observing and analyzing their Internet fate. Using pre-determined measures, students can describe and interpret factors that lead to the relative success of a meme over another (number of shares for virality is not enough, number of replications with mutations would be a much more telling one; so would longevity). The downside of this project is that the potential for failure or stagnation is high, as memes only come into existence when they are (abundantly) propagated and reused, and there are no precise formulas for why certain ideas or images are fertile memes while others are not. (Kairos and luck may play a role.) Even so, there are valuable lessons in perceived failure—in this case, failure to replicate and therefore, to actually generate a meme. On the flip side, if a meme so created becomes wildly successful, students may be confronted with actual rather than academic issues of copyright and monetization.

Finally, writing students can learn a lot from studying the propagation of a meme and analyzing it. There are already several very good analyses that could be used as models (Ronak, 2013; Shwabach, 2012; Shifman, 2013; Soha and McDowell, 2016). In particular, Shifman (2013) establishes a rigorous theoretical apparatus that can be employed in digital meme analysis (either of single memes or meme clusters). She proposes an analytical framework based on three fundamental dimensions; content (“the idea/s and the ideology/ies conveyed by a specific text”), form (“the physical formulation of the message, perceived through our senses”), and stance (“information about the communicative positioning of the addresser in relation to the text/message, the context, and other potential speakers”); stance also has various subdimensions such as participation structures, keying, and communication functions (2013, p. 369). This type of analysis would produce different results for the original or generative work (e.g., the *Downfall* movie, which is based on actual events and has a serious key) and for the derivatives (which are ironic). Other issues of broad rhetorical appeal can always be analyzed in sample meme subsets—such as hidden gender or racial biases that may infuse meme culture (Seget et al., 2015).

The rhizomatic (rather than hierarchical) structure of the Internet makes IP claims difficult to track, prioritizes a point of origin, and obscures the creative labor of meme distributors. As Soha and McDowell argued in their study of the Harlem Shake meme, “[t]he distributed and networked nature of authorship for digital cultural production, and memes in particular, runs against the legal premise of contemporary intellectual property” (2016, p. 6) and enables what Carr has dubbed “digital sharecropping.” A proper discussion and practice analysis of memes in the writing classroom can, therefore, be extremely useful for exploring concepts of authorship and copyright and may even generate creative, useful content that demonstrates the compositional abilities of the students.

And as for my Hamilton memes? I may return to producing them as an enthusiastic fan, without fearing either copyright infringement or further distribution. And yes, you have my permission to freely share them if you can find them. I’m willing to wait for it.

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