

SNAPS WITHOUT PROPS: SNAPCHAT'S BLATANT (MIS)APPROPRIATION OF MAKEUP ARTISTRY

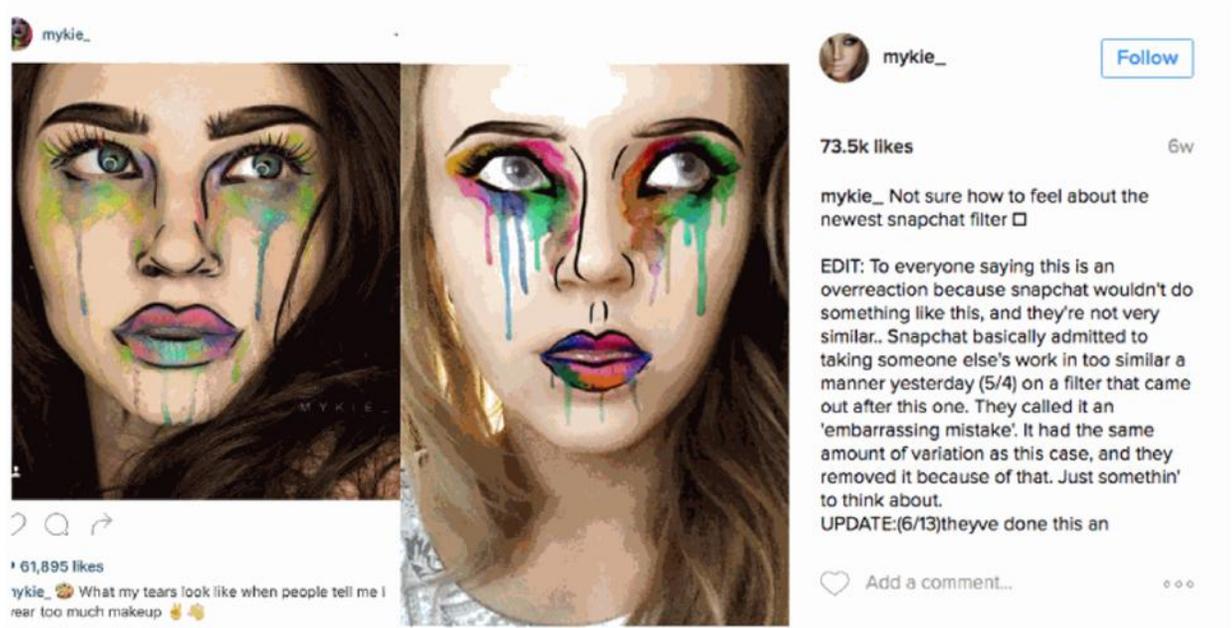
In 1915, Maurice Levy designed retractable lipstick. At that time, theatrical performers were expected to do their own makeup and supply their own costumes (Spivack, 2013). Through the twentieth century, makeup artists were virtually unknown, despite the fact that Oscars are given for special effects, makeup and hairstyling. Before social media became a daily part of culture, makeup professionals depended on word of mouth and networking connections. Perhaps the more tech-savvy artists created websites to showcase their portfolios of work but privacy was more highly guarded in the past, particularly in Hollywood and cell phones were typically not allowed on sets. If a photo was taken, clearing the copyright for the image was a lengthy endeavor, so the public rarely saw the process of a makeup artist's work (Burton, 2016)

In the social media age, the emphasis of the visual has made YouTube and Instagram natural mediums for promoting the evolving genre of makeup artistry, tutorials and professional makeup artists themselves. Today, many artists use Instagram, YouTube, and even Facebook Live to share makeup secrets, before and after images, experimental looks and tutorials. Additionally, celebrities are using social media to showcase "red carpet looks" including their hair and makeup artists in many of their photos or at least acknowledging them by linking to their profiles. Social media has become a consistent tool for self-promotion for these previously unknown professionals. Unfortunately, it has also created a unique avenue for stealing artists' work, most notably turning elaborate makeup designs into uncredited Snapchat filters.

Snapchat is a messaging platform, launched in 2011, where the images and videos that users post disappear in 24 hours. In a recent study published in *Computers in Human Behavior* participants explain that the ability to send drawn or typed text along with photos allows for a deeper understanding of "emotional contexts" of conversations because they can see what someone's face, expression, or surroundings are like (Vaterlaus, 2016). The hybrid text-image creates an immediacy and an intimacy because unlike Twitter, Facebook or Instagram the image has a sense of time as well as a brief shelf-life. In 2015 Snapchat created one of their most popular features: lenses. Lenses are filters that act as live overlays on pictures or "snaps". Popular lenses can make you look like you're vomiting a rainbow or have cute, animated dog ears, or allow you to swap faces with someone else in often hilarious results. The filters change frequently; there's a new option almost every single day. The high turnover of filters and expectations of users to constantly have something new with which to play may be what leads the need to borrow images and using them without concern. In an article in *Bloomberg*, Max Chafkin and Sarah Frier called Snapchat the "looser, goofier social network." But recent controversies over racially and culturally insensitive lenses, one which allowed users to face swap with Bob Marley led many to accuse the company of creating digital blackface. The "nerd filter" included thick-rimmed glasses and braces while an "anime filter" created buckteeth and narrow eyes in what many users described as yellowface. Others have raised concerns about the ways in which various filters

“whitewash” their skin. These instances showcase at best, a lack of oversight when creating lenses and at worst, a thoughtless disregard for those who use its services (Lee, 2016).

In April of 2016 makeup and special effect artist Mykie, who has millions of followers on her Instagram account, Glam&Gore, used her popularity to speak out against Snapchat when they copied her pop art melting watercolor look. Mykie filed a report with Snapchat who eventually responded by saying they did not believe the image infringed any copyright.



On the right, Mykie’s original makeup, on the left, the Snapchat filter. Photo from her Instagram feed.

In May 2016, a new geometric design filter appeared on Snapchat that bore a strikingly similar pattern down to the order of colors Russian artist Alexander Khokhlov used in his 2D design, which had been widely seen as part of a collaboration with makeup artist Valeriya Kutsan and featured on the cover of *Scientific American Mind* in 2014.



Shortly after Khokhlov and his fans noticed the Snapchat filter, they began tweeting and mentioning Snapchat asking for answers. Khokhlov received no compensation nor acknowledgment of the use of his design. Snapchat issued an apology and removed the filter, saying, “We agree that this lens is similar to other artists’ creations and we have removed it. We are sorry for this embarrassing mistake and we are taking action to make sure it won’t happen again” (Miranda). Only it did happen again, several more times, in fact. (Orlan Loses Trial Against Lady Gaga at First Instance, 2016)

In June 2016, Argenis Pernal, a veteran makeup artist who frequently posts his face and body painting designs to thousands of Instagram and Snapchat followers, was flipping through the various Snapchat filters when he saw his own Joker face paint design as a filter. Like Mykie, he posted a

side by side comparison on his Instagram account and wondered why his work had been used without his knowledge or permission. The filter later disappeared without a statement from Snapchat.



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titter is 🤩 My Joker race Paint. immmmm soooo flattered they chose my face paint design since they are clearly running out of Filter Ideas to do BUT At Least Ask the Artist for the filter Idea and give them credit- wouldn't you Think 🤔??? I Did it better Sorry 🙄

And clearly it's not the first time they do it, I just found out they took @mykie_ Look too and many artist, they need to stop because we spend a great amount of time creating looks and deserve the credit as an artist !!! #buzzfeed #hudabeauty #vegas_nay #laurag_143 #wakepandmakeup #makeupfanatic1 #cosmopolitan #snapchatnoswiping

view all 314 comments

hood.raat And I don't see why there's any reason to bring someone else into our conversation. I've been watching mykie for decades and she's one of my favorite

♥ Add a comment... ⋮

Argenis Penil's Joker Face Paint on left | Snapchat filter on right

Around the same time, illustrator and artist Lois van Baarle; whose work appears on her website, Instagram feed, and books she publishes as Loish; decided to join Snapchat. In the process of setting up her account she came across her drawings of foxes that the platform had traced and made into a “sticker” which users can add to their photos. Van Baarle tweeted her original image beside the Snapchat one and accused the company of breaching intellectual property. Van Baarle told *The Ringer* that she drew the foxes as a challenge in stylizing shapes. She believes someone at Snapchat copied and traced the foxes. “[...] it seems very unlikely that an artist working with Snapchat coincidentally happened to create the exact same level of stylization in their graphics” (McHugh, 2016). Snapchat did not respond directly to van Baarle nor did they remove the stickers. Instead, they issued a comment to *The Ringer* story about the numerous instances of theft. “The creative process sometimes involves inspiration, but it should never result in copying” their statement read. “We have already implemented additional layers of review for all designs. Copying other artists isn’t something we will tolerate, and we’re taking appropriate action internally with those involved.” What that action has amounted to, isn’t exactly clear.

Copyright protects original works of authorship, while trademark protects distinctive pictures, words, or symbols used by businesses to identify goods or services in commercial activity. The band KISS was the first to register a makeup-related trademark for their distinctive geometric black and white makeup. In *Carroll v. Shubert* the stage makeup for the Broadway musical *Cats* which requires up to eight layers of makeup and several hours of work each night, was found to be an original work of authorship fixed in a tangible medium, and thus protected under copyright (Carroll v. Shubert Organization, 2000). While there are legal actions available to Khoklov and Van Baarle given the nature of their graphics which can be seen as art and therefore protected under copyright law, as a finished product, makeup design is tricky, though not impossible to protect.

Contemporary French artist Orlan who modified her face through multiple plastic surgeries sued Lady Gaga in 2013 on claims of plagiarism and copyright infringement for her use of facial prosthetics and body modification in both the music video and the album art for the “Born This Way.” Orlan also felt that a scene where Lady Gaga recites “The Manifesto of Mother Monster,” was a clear reference to Orlan’s *Manifesto of Carnal Art*. According to her lawyer, Orlan considered Lady Gaga’s album a copy of her “universe of hybridisation” rather than merely an inspiration for Gaga’s work. After hearing the case in early 2016, a Paris court dismissed the claims, ruling an artistic installation could not be reduced solely to its physical elements. It further stated that the idea of transforming the human body into a hybrid being is a “concept that should remain free” (Orlan Loses Trial Against Lady Gaga at First Instance, 2016).

Many makeup artists who post images, videos and tutorials to social media sites want their makeup looks recreated by users. One of the fastest growing genres on YouTube is makeup tutorials which help viewers replicate high fashion makeup from home. Vloggers like Jaelyn Hill, Zoella, and Michelle Phan spend hours creating looks for viewers to try (Marshall, 2014). Everyday makeup, however, lacks sufficient originality for copyright law. It

is significant that, at least in the eyes of the law, it is unnecessary to credit makeup artists in photography portfolios, at red carpet events, or in celebrities' social media feeds.

Perhaps because makeup artistry can legally go unacknowledged, makeup artists like Mykie and Argenis Pinel seem particularly vulnerable to having their work used without their consent. Mykie told *The Ringer* she can't afford an expensive court case and that it seems like not much can be done when makeup artists' work is unattributed, "I believe many makeup artists do not have a lot of recourse in these situations because of that factor, more than anything else" (McHugh, 2016). Van Baarl suggests the speed with which today's professionals are asked to create a look or emulate a style quickly may be the cause of such frequent plagiarism. But as Holly Mchugh points out in her piece, Snapchat has worked with corporate entities like Gatorade, Taco Bell, the Superbowl, and musicians like DJ Khaled to create branded filters beneficial to both Snapchat and the brand. Nothing would stop them from creating the same relationships with graphic designers, artists, and makeup professionals. It would be easy to, at the very least, credit an artist for their work or link to their profile. When a social media platform like Snapchat takes a makeup artist's work and turns it into a filter, uncredited and unacknowledged, there's something that feels unethical about that. And while the landscape of makeup art and intellectual property needs much more nuanced development, the pattern Snapchat has developed thus far is increasingly problematic. And it looks an awful lot like plagiarism.

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*I dedicate this article to my Grandmother who passed away just before its publication. She was one of my biggest supporters though she rarely understood “all the digital Google” I am into.

I also offer a sincere thank you to Clancy Ratliff for her patience as I worked on this piece from the road.