Lichtenstein: creator or copycat?

By Alex Beam, Globe Columnist  |  October 18, 2006

Art teacher David Barsalou has an interesting avocation. He has found and cataloged almost every comic book panel later blown up and sold for megabucks by 1960s Op Art icon Roy Lichtenstein. So far, Barsalou has about 140. You will see a sample on this page, or go to his website, Deconstructing Roy Lichtenstein.

Color me naive, but I never thought Lichtenstein's work was a direct copy of scenes from comic books. I assumed that he stylized certain scenes suggested by the comic vernacular of the 1950s and 1960s. "He tried to make it seem as though he was making major compositional changes in his work, but he wasn't," says Barsalou, who teaches at the High School of Commerce in Springfield. "The critics are of one mind that he made major changes, but if you look at the work, he copied them almost verbatim. Only a few were original."

"Barsalou is boring to us," comments Jack Cowart, executive director of the Lichtenstein Foundation. He contests the notion that Lichtenstein was a mere copyist: "Roy's work was a wonderment of the graphic formulae and the codification of sentiment that had been worked out by others. Barsalou's thesis notwithstanding, the panels were changed in scale, color, treatment, and in their implications. There is no exact copy."

Lichtenstein's fans, and the collectors who now pay millions of dollars for individual canvases, will continue to revere his work. But what are the implications for copyright law? Barsalou correctly points that musicians who "sample" other artists' music have to pay them royalties. Does the Lichtenstein estate owe compensation to the creators of the original work?

After visiting a Lichtenstein exhibition in Chicago, attorney Mark Weissburg wrote an article titled "Roy Lichtenstein, Copyright Thief?" "I was struck by the fact that Lichtenstein was never sued for copyright infringement," Weissburg wrote. "Under copyright law if you copy a protected work without permission you are breaking the law. . . The Copyright Act also prohibits what are called 'derivative works.' These are works that play off of or incorporate or embellish another.
work. Virtually every one of Lichtenstein's paintings was either an out
and out copy or at least a derivative work."

Intellectual property attorney Stacy Friends agrees. "It is just like
sampling, and this is considered 'stealing,'" she says. "The
question to be asked is why people who clearly had a right to sue
chose not to. In the time period that we are talking about, there
might have been some historic leeway for fine art." It is possible that a
copyright holder did threaten to sue, and instead reached a private
settlement, she speculates. It is now a moot point. The statute of
limitations for copyright infringement is three years.

Comic book companies owned the original copyrights. DC Comics
deprecated to comment for this article. Russ Heath, a DC artist whose
work Lichtenstein used, says the publisher was never interested in
suing Lichtenstein, probably because there wasn't much money to be
made. "He never even had me over for a cocktail, and then he died.
So I guess I'm out of luck."

Ninety-year-old artist George Tuska couldn't come to the phone, but
his wife, Dorothy, says they had no idea that a 1961 Buck Rogers
panel drawn by her husband became "Emeralds," a valuable
Lichtenstein canvas. "Oh my God," she says. "That is unbelievable."
Sotheby's sold "Emeralds" to an anonymous buyer for $1.6 million in
1999.

One artist whose work Lichtenstein appropriated, Joe Kubert, says
he doesn't care. "My focus is on what is happening today." As it
happens, the Lichtenstein Foundation uses an exact copy of a Kubert
picture of a fierce dog, titled "Grrrrrrrrrrrr!!" to illustrate a warning to
copyright violators on its website. Grrrr indeed.

"Nobody seemed to raise this issue way back when," says the
Foundation's Cowart. "This wasn't supposed to be about exploiting
the exploited. We are all in favor of having the drawers and writers
receive as much credit as humanly possible. We owe them esteem
but can't pay them back for the royalties they might have received."

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