An accusation of theft is an ugly thing. Stealing, in the form of copying ideas from another designer, strikes at the core of what most of us find of rewarding in our chosen profession – the generation of ideas and ~~ultimate~~ creation of unique performance experiences. Accusations of design theft have become more frequent, heightened no doubt by the availability of production photographs on the Internet making it easier to detect. Plays involved in design copyright disputes include *Most Happy Fella* (1992 Broadway revival, 1994 Drury Lane Oakbrook disputed production), *Love! Valour! Compassion!* (1995 Broadway original, 1996 Boca Raton, Florida disputed production)*,* and *Urinetown* (1999 NY Fringe Festival, 2001 Broadway disputed production, 2006 Chicago disputed production). All these cases were settled out of court. While the settlement details are not public, there is a pattern, with a director and designers in New York alleging design theft by subsequent regional theater efforts. Copyright, once thought to reside with playwrights alone, is now being claimed by production teams raising unresolved issues about what is inherent to a text and what choices are specific to a production.

**Where’s the original anyway?**

It is worth noting what a designer *can* copyright. A set designer and a lighting designer may protect documents related to a production (e.g. drawings, paint elevations, lighting plots), but cannot protect the ideas, conversations, and circumstances that led to the creation of those documents. Even these documents may be of limited value. Moving to a new venue inevitably changes a designs. A lighting plot is tied to the specific geometries of a theater and the cues to the specific actions, timings, and intentions of the performers. Even the attempt to make a wholesale copy still requires transformational act for the new physical context.

A sound designer faces a similar challenge. Recordings or compositions written out on staff lines on paper (or digitally in ones and zeros) are easily protected. The choices related to sound distribution within a room, the timing, and the dynamics are not. Consequently, a good number of the things that make a sound designer a potentially Tony-worthy creative actor, and not just a guy with a huge iTunes library, are unprotected.

Costume designers face another obstacle: clothes are considered utilitarian objects and not protectable. It is also impossible to copyright how the clothes are worn by a particular actor or the countless other physical details that make an outfit for a particular performer in a particular production *work*. Costume designers can only protect the costume sketch. Beautiful though the image on paper may be, it is only a small portion of the final work.

Directors face similar limitations on their legal design protections. Blocking notes can be written down, but staging a play is not baking a cake: one can’t simply follow the instructions. Creating a faithful copy ~~of a set~~ using a different group of performers requires new and specific staging choices, even if the only objective is to replicate as precisely as possible the feel of the original production. Ironically, the production that is completely faithful to the written directions may be less true to the original production than one that is making “changes.”

While protecting designs is difficult, it can be equally challenging to agree exactly when theft has been committed. For example, two photographs show remarkably similar scenery for the same show. Surely, the one that was produced first is the original. But perhaps both also bear a remarkable similarity to architectural research conducted by both designers. Working closely from research, “reeaallylooking” as Jane Greenwood might say, is a mainstay of a designer’s arsenal. Indeed, copying well is the calling card for some designers. (Consider Joanna Johnston’s remarkable clothes for the 2012 film *Lincoln.*)Does the mere existence of one designer’s choice invalidate another designer’s subsequent right to access and utilize that same research?

In all of this discussion of copying, borrowing, or stealing outright, the core issue for me remains *intent*. When an opera company rents a physical production of *La Bohéme*, there can be little intent to create distinctly new work from the director. They merely wish to make a reasonable facsimile done with the same level of integrity (and lack of originality) you might hope for in well-made dish of Pasta Puttanesca. The same desire to ”order up” a production can be seen in the regional desire for co-productions or pseudo-tours (where a show travels from theater to theater, production team intact, except perhaps for a rotating cast). Co-productions and modified tours are not cheaper to produce, but the product is guaranteed. Making original work has become so terrifying that some theaters decide their best course is to replicate what they deem a proven success as exactly as possible in the hopes that they too can safely produce a “triumph.”

Whereas those whose *intent* is to create new work roll the dice every time they work.

As an artist, I believe our stake in copyright and trademark protections lies not in protecting the property rights of the few, but rather in how the system can expand, reward, and promote innovation, experimentation, and creativity. When we look at fertile periods of artistic development (say, the first half of the 16th century in central Italy), we see massive amounts of copying, reproduction, and stealing of technique. But this borrowing existed within a group of relatively evenly matched centers of artistic activity without a single center: Urbino, Florence, Arezzo, Verona. Now far too many theaters look only to New York, and they aren’t seeking to be inspired, but merely to duplicate.

We need a new way of visualizing the field as flat, one in which works are neither ascending towards Broadway (imagining a future) nor coming down from the mountain (recreating a past), but rather are *right here* and *right now*. We need to work, write, and think about theater as if important, valuable, and meaningful productions are happening *everywhere*. We need a theater in which the countless versions of a new play produced across the country are seen as a collective, cultural effort to make a more perfect drama; to chart its implications across a thousand bodies politic; to see how it resonates differently in Portland, Maine and Portland, Oregon.

Consider the work of Sherrie Levine. She re-photographed Walker Evans’ photos from the book *Let Us Now Praise Famous Men* (1941)in her book *After Walker Evans* (1981). Levine demonstrated in her exact, mechanical reproductions which made no effort to hide or disguise their origins that re-contextualizing art creates new content in and of itself. By maintaining content but changing the institutional frame, she created a potent critique of race, gender, and authority, though if you saw both works without knowing any background, you might proclaim one a “rip-off” of the other.

So I say steal away, *but* use it make truly new work. Adopt the strategy the art world has framed as *appropriation*, a technique that takes things from existing cultural productions and re-contextualizes them in order to create new content, even if at a glance things look a bit similar.