

DARREN HUDSON HICK, ARTISTIC LICENSE: THE PHILOSOPHICAL PROBLEMS OF COPYRIGHT AND APPROPRIATION (2017).

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Artistic License: A Modern Take on Copyright Law

“We might ask, if we eliminated copyright tomorrow, would the proliferation of ideas slow down and eventually dry up?”¹

Artistic License: The Philosophical Problems of Copyright and Appropriation, written by Darren Hudson Hick, seeks to examine the historical, social, and metaphysical foundations of what we understand as modern copyright law.² This book review will analyze Hick’s primary arguments, concluding that while very insightful overall, this book could see improvement through more thorough examination of appropriation art as it exists in the internet today.

The author, Darren Hudson Hick, has a Ph.D. in Philosophy, and he earned his advanced degrees at the University of Wales and the University of Maryland, College Park.³ He has

¹ See DARREN HUDSON HICK, ARTISTIC LICENSE: THE PHILOSOPHICAL PROBLEMS OF COPYRIGHT AND APPROPRIATION 140 (2017).

² See DARREN HUDSON HICK, ARTISTIC LICENSE: THE PHILOSOPHICAL PROBLEMS OF COPYRIGHT AND APPROPRIATION (2017).

³ Darren Hudson Hick, Curriculum Vitae at <http://www.tytoken.com/cv.html>.

served as a philosophy professor at the University of Maryland, Bucknell University, Susquehanna University, and Texas Tech University.⁴ Currently, Hick is a visiting professor at the College of Charleston.⁵ He has several publications, including two other books published prior to *Artistic License*, called *The Aesthetics and Ethics of Copying* and *Introducing Aesthetics and the Philosophy of Art*, along with several peer-reviewed articles.⁶ His work generally focuses on the ethical and philosophical questions raised in the creation of artwork.⁷

Artistic License discusses various aspects of copyright law, from its historical origins to how it is understood in the present day.⁸ In particular, the author focuses most of the book on how copyright applies to “artistic” works.⁹ The book is separated into eight chapters, along with an introduction and afterword, and each chapter outlines a different aspect of copyright law.¹⁰ The introduction to the book provides a fascinating look into a particularly unique copyright problem surrounding an artist named Mick Haggerty who became infamous for using Mickey Mouse in his work.¹¹ Additionally, the introduction provides a very helpful outline of the entire book, which helped to illuminate the central issues.¹²

Chapter one focuses on modern understanding of copyright from a cultural perspective.¹³ This chapter was one of the most accessible to the average person, as it goes into examples that are well-known in pop-culture, including a recent plagiarism scandal involving actor Shia Labeouf.¹⁴ The chapter goes into different understandings of artistic ownership, describing the

⁴ See *id.*

⁵ See *id.*

⁶ See *id.*

⁷ See *id.*

⁸ See Hick, *supra* note 1, at 5.

⁹ See Hick, *supra* note 1, at 6.

¹⁰ See Hick, *supra* note 1, at 5-8.

¹¹ See Hick, *supra* note 1, at 1.

¹² See Hick, *supra* note 1, at 5-8.

¹³ See Hick, *supra* note 1, at 9.

¹⁴ See Hick, *supra* note 1, at 9.

cultural clashes that occur when artists disagree about the meaning of “originality.”¹⁵ One of my favorite sections of the book is in chapter one, when Hick goes into the history of African-American Blues music and how appropriation was a key element.¹⁶

Chapter two moves onto the ontological understandings of ownership and art.¹⁷ The main argument in this chapter is that the law should not divorce itself from the more philosophical aspects of ownership.¹⁸ Chapters three and four work in tandem to discuss two interrelated concepts -- the natures of “originality” and “authorship.”¹⁹ Chapter three focuses on dispelling the idea that there is no such thing as originality at all.²⁰ Chapter four includes the author’s own theory about what it means to be an “author,” arguing that authorship comes from exercising power over creative elements.²¹

Chapters five and six go on to discuss the rights assigned to authors, including the right to create derivative works from their original pieces.²² Chapter five draws a line between the ideas of “artworks” and “authored works,” while chapter six focuses on copyright as a natural right.²³

Chapter seven shifts from a focus on authors of original works to other people who use original works as inspiration for their own pieces.²⁴ This chapter delves into the argument that people have their own rights to use the works of others as inspiration, usually understood through the Fair Use Doctrine.²⁵ Finally, the book rounds off with chapter eight, which includes several cases of appropriation artists being brought to court, including the case of *Cariou v. Prince*.²⁶

¹⁵ See Hick, *supra* note 1, at 10-12.

¹⁶ See Hick, *supra* note 1, at 12-15.

¹⁷ See Hick, *supra* note 1, at 31.

¹⁸ See Hick, *supra* note 1, at 31-33.

¹⁹ See Hick, *supra* note 1, at 5-8.

²⁰ See Hick, *supra* note 1, at 50-52.

²¹ See Hick, *supra* note 1, at 67-69.

²² See Hick, *supra* note 1, at 6.

²³ See Hick, *supra* note 1, at 87-89, 101-102.

²⁴ See Hick, *supra* note 1, at 120.

²⁵ See Hick, *supra* note 1, at 122-127.

²⁶ See Hick, *supra* note 1, at 139-140.

One of the overarching arguments throughout the book is that an “author” is someone who makes artistic choices in hopes of portraying a particular idea.²⁷ Even if any idea has been “done before” by someone else, it may still be a copyrightable work if the author makes their own artistic choices.²⁸ Hick manages to balance both the interests of those who author original works and the rights of those who use works as inspiration.

One criticism of this book would be that it does not dedicate a significant amount of space to the online landscape, despite being published just this year. I went into the book expecting more information about how copyright law operates online, but was left slightly dissatisfied on that front. Copyright has been increasingly complicated due to work being posted online, especially when one considers the recent popularity of fan fiction and fan-made art. In my opinion, Hick missed an opportunity to examine various types of online work, instead choosing to mention them only in passing. I think that the major focus on modern art found in museums could alienate most readers, who do not necessarily have as much of a stake in that subject. The average reader is more likely to have put some thought about the legality of fan fiction than modern fine art.

Another critique of this book would be that it leaves the reader wondering whether there is actually an “answer” to understanding the complexities of copyright law beyond “it depends.” While I personally have come to expect those kinds of conclusions as a law student, I can imagine a layperson becoming frustrated when they finish the book without a fulfilling sense of closure on the topic.

Overall, I did enjoy reading this book despite the above criticisms. I think that it was well-written and thoroughly researched, and I appreciated the broad array of real-world

²⁷ See Hick, *supra* note 1, at 6.

²⁸ See *id.*

examples. There was only one section of the book which I was not engaged by. My least favorite chapter in the book would have to be chapter four, which describes theoretical bases for authorship.²⁹ I found this chapter to be the weakest in the book, as it lost the easily accessible language that made the first few chapters so enthralling. As a reader with no formal background in philosophy, I found myself confused at the more complex metaphysical concepts. Certain sections were so esoteric that I found myself skimming rather than taking in the information.³⁰ The average reader with minimal interest in philosophy might be turned off by the heavy metaphysical concepts in this chapter.

In general, I enjoyed reading this book and found it really fascinating, even though I do not have a formal background in intellectual property. Hick did an excellent job of making copyright law relevant to the average person by including examples from pop culture which most people would be familiar with. Though I do believe that the book should have included more on the legal landscape as it exists online, this book does manage to feel fairly modern in its analysis. The language Hick uses is conversational and easy to absorb - the only parts that were a little daunting were the philosophical models. I would recommend this book to anyone who has even a passing interest in intellectual property, copyright law, or even someone who is an artist concerned with the idea of ownership. As a law student who is an artist in her spare time, this book was enlightening. I will certainly be taking what I learned into the future as I consider monetizing my own work, and I believe that others are likely to do the same.

²⁹ See Hick, *supra* note 1, at 67-69.

³⁰ See Hick, *supra* note 1, at 69-72 (a section in chapter four which includes quasi-mathematical equations meant to conceptualize philosophical theories).