

PLAGIARISM AND INTERFERENCES IN THE NON-VERBAL ARTS

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Abstract: *We aim to analyse the voluntary/ involuntary similarities in the nonverbal arts as well autographic (Visual Arts) and allographic (Music). There will be considered the internal and external connections of the art work, concerning aspects of creativity, culture and communication as: ratio between constant and variables, cultural and inter-cultural influences, emic and ethic reception and relationship between style and signification.*

Keywords: *influences, resemblance-representation, constant-variables, authority.*

Who is browsing the internet to search references about plagiarism in music can note that the overwhelming majority of the results are concerning the recent entertainment field (namely rock and/or derivatives). There are few references concerning classical or modern classical music. The most obvious explanation consists in the fact that music is based on a limited number of pre-existent patterns and the composer's mastery comes from those particular combinations he is able to forge. Moreover, the choice of the combinations is also predetermined according to the epoch's style in addition to a lot of rules, restrictions and a variable number of common places to adopt in order to ensure a familiar linking binder with the receptors.

In the not too distant past, the borrowings of the themes of other composers or a self-quotation were frequent; the quest for original themes rose only in the 19th century. Before this period, the main concern for musicians was rather than otherwise oriented toward the conformity to an ideal model, consecrated by tradition. So, the European cultured musical creation is illustrating during its history the extent to which the ratio between authority and originality has been fluctuating over the last centuries. Generally, the ancient cultural model promoted what Saint-Simon called the "organic" period, in accordance with an established authority, being in opposition with the more recent "critical" one, centred on the individual's expression, but, in fact both the tendencies are co-existing¹. We must note that the emphasis on individual expression and hence the quest for originality is mainly a European particularity, even if that has become a widely known fact that can be found in all references treating comparative cultures.

¹**Robert Nisbet:** "The Nemesis of Authority", *The Intercollegiate Review*, 1972, p. 3

The appropriation of musical themes was rather current in the 18th century. During his first travel in Italy (starting from December 1779) the young Mozart was delighted to stay in a modest inn, which was attended mostly by musicians because, through the thin walls he had the opportunity to hear a lot of instrument players practicing, which was giving him “ideas” to be inspired from². In his fundamental work, *The Unknown Mozart*, Hanns Dennerlein shows a lot of Mozart’s manuscripts with variants of fugue themes copied or adapted from J.S. Bach creation³. In the contrapuntal part of the works of Mozart, which is less representative, less known and less finalized we can hardly find a theme entirely original. Besides, Mozart took themes from other composers also in his main creation, especially from J. Haydn, as, for instance in the Piano Sonatas. In their turn, some Mozart’s themes were borrowed too; as the famous theme of The Ode of Joy from Beethoven’s 9th Symphony⁴... Here is one fact, which needs a supplementary discussion to deepen essential issues concerning the time’s mentality and the extent of the appropriated fragment.

Plagiarism in visual arts seems to be less ambiguous, even if in the 1960s and 70s some visual artists as Claes Oldenburg or Andy Warhol created an important stream based on the re-using of objects from the public space, including art works too. Even though, the first important trial concerning fine art copyright infringement took place only in 1989 against a successful artist, Jeff Koons for his repeated uses of images borrowed from other artists. Such a case implies the taking over of the whole art-work as such and not just a theme, an idea or a manner. He established a new genre, the “Appropriation Art” which continued to develop as part of what might be called Pop Art. The copied objects are part of the everyday images of the contemporary life. Such borrowings, more or less modified are becoming part of a broader image of the contemporary society or, sometimes, a tool for a social protest. Besides, the justifications of the Appropriation Art, which could also be met in the lawyers’ plea for Jeff Koons are that the visual art is essentially an interpretation process, where the object *per se*, whether created or copied is just a transmission channel for a message, a start point, or a detail. In that particular concept, the objects were meant to prove the insertion of the artist in the daily life. Perhaps more than in other fields, the appropriations in the visual arts cover a need of legitimacy. However, the juridical developments of all kinds of appropriation are usually envisaging the patrimonial (financial) rights.

² **Wolfgang Amadeus Mozart**: Letters (Romanian translation) Humanitas 2007, p. 14

³ **Hanns Dennerlein**: *The Unknown Mozart*, Breitkopf & Härtel, Leipzig, 1955

⁴ The actual European Union anthem actually originates from a Church music by Mozart: *Offertory* K 222 (1775)

In the traditional cultural pattern, which was subsisting in the Medieval Europe too; most of the artists, whether visual or musicians were anonymous. Only few names, of most remarkable of them were kept in the collective memory. The individuality and the originality (in the sense of mark of creativity and not just deviation) became mass cultural phenomenon starting from the European Renaissance and culminating in the Modern times.

For the ancient guilds of visual artists or artisans the pride, hence the secret to be protected, was related to the achievement's techniques and not to the themes. The ancient fine artist had in view an established canon, even much more precisely designed than the musicians' traditional patterns. The thousands of Crucifixions, Madonnæ etc. as well the later added recurrent laic subjects (mainly from the Greek mythology) are witness for such a mentality. The "guilds' secrets", eagerly preserved were concerning materials, catalysts, engineering solutions, or technology. Any professional information presupposed a thorough initiation and was never communicated to everyone. The legend of "Meşterul Manole" ("Manole the Master") which was doomed to death to ensure the secret of his work is illustrating a specific medieval mentality whose traces are still persisting in the collective mind.

The history of the classical visual arts is illustrating the duality between stability and novelty. Even today a proper painting of an Orthodox Church must follow a specific and detailed canon. The traditional, stable elements had usually to do with thematic and framing. They were eventually improved by technical peculiarities and, sometimes, by details of expressive communication. The vision that the art cannot break away from the past has continued even in an epoch where the novelty became to be praised. Goethe stated in 1827 that "the entire evolution of the art is based on filiations; namely descensions or transmissions form a particular element of the past"⁵.

The conception according to which the intrinsic value of an art object and not just the means for realisation is proportional to its novelty is a recent acquirement, which was strengthened in the public space and in art education during the Romantic century. Ever since, originality became an aesthetical imperative, which progressively gained an absolute priority. That fast overthrown of mentalities led to the fact that for most of the contemporary visual artists the necessary and absolute condition for the value of a work is given by its novelty. „The absolute novelty is becoming more diabolic as the tension between individuals and

⁵ **Johann Wolfgang Goethe**: *Conversations of Goethe with Eckermann and Soret*, (January 4, 1827), John Oxelford Ed. Smith, Elder & Co. London, p. 318

society is relaxing. Today the demand for novelty, any kind of novelty is universal. [...] The decomposition of the subject achieves in its own abandon in the stereotype of a fake mimesis”⁶. The promotion of individuality with its implicit concern for originality is bringing to light also the relationship between order and disorder.

Starting with Romanticism, the disorder, meaning asymmetry, deviation or defy of the dogmatic model became emblems of creativity and expressive values⁷. In that very moment when the art work starts to generate power and prestige by itself, the artist becomes to claim paternity and the society find the means to recognize and protect it⁸.

André Kéréver found a synthetic formula for the circumstances leading to the copyright⁹. This juridical precaution was born “through the conjugated action of a technological revolution (starting to typography), of a cultural revolution (apparition of a large mass of culture consumers), of a political-juridical revolution (the awareness of the individual’s rights, the ideology of liberty and of the juridical equality) and an economical revolution¹⁰. The origin of the word comes from *plagiarius*, which meant “one who kidnaps the child or slave of another” (*plaga* = snare). Another root comes from the Greek *plagios* (πλάγιος) defining “one who acts indirectly, oblique, devious”.

If the literary paternity is easy to establish and to protect, the plagiarism problematic is somewhat complicated for music and visual arts. The first and most important difficulty is given from the centennial tradition of reproduction of the above-mentioned established and rather limited patterns. The artistic achievement was not given by „what is created” but by „how (it) is created”. Another related difficulty comes from the fact that the legal aspect of the copyright takes into consideration similarities and not differences¹¹. At that juncture the elements of “disorder” (i.e. the personal touch meant exclusively to better serve the generating idea) had to cover just a limited percentage of the work. The traditional artist was similar with the today’s performer: nobody asks a pianist “why are you playing for an umpteenth time the

⁶Theodor W. Adorno: *Minima moralia. Reflections from damaged life* London (NLB), p. 238

⁷Simona Tănăsescu: *Aspects of Communication in Contemporary Visual Arts*, Doctoral Thesis, National University of Arts, Bucharest, 2011, p. 181

⁸*Idem*: p. 221

⁹The conference “Les droits de l’auteur: un acquis et une condition pour le développement de la culture juridique européenne” (The copyright: acquis and condition of the juridical culture in Europe) presented at the International Colloquium INTERGU, Bruxelles 21-23 September 1989 (Proceedings published under the title “Author’s Rights without Author?” in 1993)

¹⁰Yolanda Eminescu: *Copyright; Comentaries on the Law No. 8 from March 14 1996*, Ed. Lumina Lex 1997, p. 4

¹¹*Idem*: p. 37

Beethoven's seventh Sonata?" but "how are you performing it?" Likewise, a medieval painter was not questioned about the theme's choice, or about the features of the painted saints that had to be anyway conventional. For the visual artist the uniqueness of the theme and hence the copyright issues evolved recently, along with the emergence of the non-figurative works. The modern artist is no more a performer in a play written by others, but the creator of his own world.

The problem of the musician's originality is even more complicated. It is hard to determine a constitutive element which would have the stability of a word in a literary work. A group of sounds might be considered as mere phonemes to get further by combinations and developments the status of morphemes (sense unities) and, eventually, to aspire, under the authority of the musical environment to the status of an original idea. Generally, a musical work is defined by a larger structure (the musical phrase or period) even if, sometimes, the history of music retained some shorter combinations, which might contain defining attributes, as, for instance "Mozart's cadence", "Wagner (Tristan's) motive", "Scriabin mystical chord" etc. but, in fact, a musical work had and has designation, originality and value by an extended combination of sounds and groups of sounds, including already known themes. For a musician, to borrow a theme and to create variations from was and still is a common fact. A famous theme by Paganini provides hundreds of variations during the 19th and 20th centuries, for violin, piano, two pianos, piano and orchestra, guitar, chamber music, jazz-band, percussion, flute, cello and eventraditional instruments as balalaika or ukulele¹².

The mentality "to take the good wherever you can find it" was prevalent at large scale among musicians, especially before the 19th century, with the necessary and sufficient condition to make it the starting point for a personal construction. Given these, the coincidence between the themes from Mozart's Offertory and from the 9th Symphony cannot be read under the lens of the contemporary copyright issues. It could be a fortuitous borrowing, as a theme wandering in the mind or could be a popular motive also borrowed by Mozart himself from an unknown source. But even if the taking off was in the full awareness, the prevalence of the construction on the mere quotation was still actual at that time. The musical structure of this fragment is not uncommon in the Beethovenian creation. The connoisseurs of Beethoven's creation know that the sequence of a musical motive or cell to the lower third is a procedure intensely used by this composer.

¹²**Veronica Gaspar:** "Paganini's Heritage in the Piano Music" in: International Conference *Nicolò Paganini Diabolus in Musica*, 8th edition of the Festival paganiniano of Carro Società dei Concerti, La Spezia 16-18 July 2009

The musical phenomenon is more exposed to an opposite problem, which gives rise to more important controversies than the borrowings or appropriations: the imperfect copy. To use a theme or even a structured tune sounds less disturbing than its wrong reproduction. The most representative example is given by the transcriptions of folk music using culturally different means, language and structure. It was the case of the tunes collected from Asia, Eastern Europe, Middle East, Africa etc. in the 18th and 19th centuries by Western musicians, which used their own musical system. In spite of their undoubtedly good intentions, the foreign tunes were distorted either by the involuntary process of musical correction¹³ or by a sincere impulse to “improve” them, according to the sole selection criterion they could consider as adequate.

The endeavour to make a copy as accurate as possible has operated also in the fine arts as part of the learning, implying a reverence for the creator. More than one apprentice confined themselves to remain anonymous imitators of a renowned master all their life, identified as “from the school of...” In the appropriation processes the limit of fraud was reached only when some material reward was implied.

Modernity brought to the fore the concept of intellectual property not just enhancing individuality, but also because a basic mutation in the social mentality, rose by moving the centre of gravity from the author-creator to the industrialist producer or distributor¹⁴. The related rights brought juridical and social supplements to an individual calling; in a paradoxical way they have restored the collective levelling. The authorship rights reward more the publishers, or the advertising and support industries than the work itself. It is a contradiction between the interest of the creator who wants to broadcast his/her creation and the interest of the associated industries to condition financially the access to the work. As for music, the constraining law of 11 March 1958 in France has caused serious prejudices in the dissemination of the contemporary French creation, which included also George Enescu’s works, bequeathed to Salabert publishers.

Nowadays, the specialists in copyright laws try to refine their demarches in view to discern the degree of the offense and to make a difference between the stylistic theft and the

¹³ Our brain is perceiving music in the parameters of pre-established patterns. Any incongruence (mismatch) triggers a reaction. If the deviation is small, the receiver does not realize this, because the brain corrects it spontaneously. When the deviation is more important, it triggers an emotional reaction (hilarity, rejection, repulsion, irritation etc.) hence the impulse for a conscious correction. The Cognitive Sciences are providing numerous research studies on the musical negativity, especially by the professor Stefan Koelsch.

¹⁴ **Yolanda Eminescu:** *Copyright...* p. 6

thematic one. The extent of influences is also playing a role to establish whether some appropriation is a fraud or a matter of cultural influence. To be epigone or to undergo the influence of a prominent personality is not an infraction; but just an artistic insufficiency, which can be punished only by the public's interest. Neither quotation, parody, nor even the taking over as starting point, especially for music can be reckoned as felonies. An inventory¹⁵ of possible ways of contaminations unearths cloning, calking, copy, compilation, quotation, remake, similarity, pedagogical copying, pastiche, parody and subliminal influences. The possibility of involuntary contamination cannot be totally rejected; it occurs often to musicians ("it sounded through my mind") but is less plausible to happen in case of a visual image. Of course, an idea, a hidden gesture or an unusual pairing could be, voluntarily or unvoluntarily, the root of a visual concept, but no copyright law envisages the idea behind a work, but solely the final product which can be seen and, subsequently, can be sold.

Some important musicians in the first half of the last century have made dissenting opinion to the general trend to enhance the authorship's protection acting especially in literature. They expressed doubts referring to the importance of the theme; in a way recovering the ancient European artistic thinking. Béla Bartók in an article from 1931 is defending Igor Stravinsky "who never mentioned the sources of his melodies". He strengthened the idea that "it is irrelevant whether a composer is using in his works his own musical material or a foreign one". Both composers believed that a creator has the right to use any source, if suitable with his project, no matter the provenience. "By the mere fact of its utilisation, any musical material is becoming the spiritual property of the user"¹⁶. Bartók repeatedly stated that "for the musical art, as well as for literature, sculpture or painting the most important is not the provenience of some theme, but the way we are processing it. This 'how' conceals the mastery of the artist and his power to mould shape and expression [...]"¹⁷.

George Enescu also minimized the importance of the theme in a musical project. "A theme is just a simple step on the vast way of a musical entity"¹⁸. "The theme, the famous theme, unfortunately has nothing from a wheat grain brought by wind in your palm. Very often the theme is not a starting point but a result. A theme is already a material; the work is

¹⁵Made by **Simona Tănăsescu** in the above-quoted doctoral thesis *Aspects of Communication in Contemporary Visual Arts* pp. 225-228

¹⁶**Béla Bartók**: "The Influence of the Peasants' Music on the Cultured One" in: **Béla Bartók**: *Notes on the Folk Song* [Romanian translation] Editura de Stat pentru literatură și artă, Bucharest, 1956, p. 59

¹⁷*Idem*: p. 25

¹⁸**Wilhelm Berger**: *Aesthetics of the Contemporary Sonata*, Editura Muzicală 1985, p. 13

in progress, while its conception is longer and, mostly, farther [...]”¹⁹. But even if Enescu believed that the work is essential and not the themes, he gave the impression to be very protective with his projects. At least, in his last years he did not divulge any detail about his projects, neither state nor type of work (symphony, quartet etc.) If a colleague or a pupil visited him in his work space, he covered the score with a piece of blotter²⁰. The general impression was that he feared the theft of his ideas. Nevertheless, such gesture could also represent a kind of decency: the refusal to display an unfinished creation, like a painter who covers the easel where a painting which is not yet ready lays on.

One of the basic musical features is that the semantic ambiguity of the musical discourse makes that a same grouping of sounds gets a different signification if put in a different structure. Even then the group is perfectly recognizable. A musical grouping performs the role of a word, or even of a syllable from the spoken language. Therefore one could conclude that, in the classical music the plagiarism issue is quite difficult to establish if just a theme is concerned. The well-known “Tristan motive” has a strong individuality²¹. It contains not only an unusual harmony and a salient melodic chromatics, but it also bears the charge to be the symbolic representation of a major turning point in the music history: the limit of the tonal system. This motive was often taken over by the next generation of composers, but even such powerful construction changed its role in accordance to the new musical environment. An example can be found if comparing two piano works of two composers, which had an opposite attitude toward Wagner’s creation: Igor Stravinsky, one of the most zealous detractors (in the *Etude* op. 7 No. 1, 1908, mm. 32-34) and George Enescu who declared to be “Wagnerian until the backbone”²² (in *Pièces Impromptues* op. 18 No. 4 *Burlesque*, mm. 82-83). Not even the personal feelings of the composers regarding Wagner’s creation can be considered absolutely relevant regarding the role of the motive in the structure of the work. We could assume that Stravinsky found the motive led by a fortuitous harmonic development, or that he deliberately use it in a parodic way. The presence of this motive in Enescu’s *Burlesque* is even more intriguing. The *Burlesque* op. 18 is a work evoking the vivid disorder and variety of a popular fair, plenty of distorted suburb folklore themes. The

¹⁹**Mircea Voicana** (Ed.): Firca Clemansa, Hoffman, Alfred & Collaborators. 1971. *George Enescu, (Monography, Vol. I, Ed. Academiei, Bucharest, p. 161*

²⁰**Marcel Mihalovici**: *Remembrances about Enescu, Brâncuși and other Friends*, Ed Valeriu Râpeanu, Editura Eminescu, Bucharest, 1987 p. 77

²¹ The first notes of the opera *Tristan and Isolde* written by Richard Wagner in 1857-59 and premiered at the Königliches Hof- und Nationaltheater in Munich on 10 June 1865

²²**Bernard Gavoty**: *The Remembrances of Georges Enesco*, Flammarion 1955, p. 71

presence of the emblem of the “Musikdämmerung” in such trivial conjuncture might indicate an intention of depreciation, which is false, precisely because as well signification as framing are obeying to a musical logic *per se*, which can be deprived of general, biographical or literary circumstances. Another famous quotation belongs to Gustav Mahler. In the third movement of his first *Symphony* in D major (composed 1887-1888) he includes the well-know children song: “Frère Jacques” but in minor mode and played in the low register. The impression is terrible precisely because the contrast between an innocent song and its funeral covering. The composer based this effect on the general recognition of the initial tune, combined with the momentary perception²³. Another deformed quotation of a popular tune was made by Camille Saint-Saëns in 1886 in his *Carnival of the Animals*. The low register of the 4th movement *Tortoises (Turtles)* is the quotation in minor of a slow rendition of the famous 'Galop infernal' (known as the French Can-can emblematic tune) from Offenbach's operetta *Orpheus in the Underworld*. This piece has a same registration, a same deformation in minor mode, quite a same (slow) tempo as Mahler's “Frère Jacques”, and yet the effect is far from being sinister; the comic-parodist intention is undeniable. These two examples are illustrative for the fact that the musical expression and the defining particularity of a musical work cannot be reduced to a limited number of elements and that those essential features can never be framed in a fixed pattern. Hence, a musical plagiarism is difficult to be demonstrated as far as just a reduced number of features can determine a specific difference.

If the important classical musicians from the 20th century expressed doubts regarding the importance of the themes for the identity of a musical work and, therewith, they highlighted the importance of the processing, the entertainment (light) music of the last decades seems more dependent of the thematic aspects. This can be explained by the quasi-uniformity of the musical development and the dominant impact on the audience of the inspired tunes. Withal, the financial stake is essentially more important and the numerous related activities involved in this kind of shows are maintaining a huge competitive pressure, which is probable the main reason of the plagiarism trials. The modern visual art is more exposed because not just the final shape is visible, i.e. stable, but also the concept, or the relation with other objects, environment etc. As the literary works, the art object can be reviewed, compared, kept in the immediate memory. Yet, in contrast to these, they don't need a time to be read, heard or seen; even the visual happenings can be wholly perceived. An artistic work is exposed to the danger of plagiarism as far as it relies on a reduced number of

²³**Veronica Gaspar:** *Spatial and Semantic Landmarks in the Musical Perception*), Editura Muzicală, Bucharest, 2000, p. 67

defining elements and, especially, as far as these elements are stable. Regarding the act of appropriation, we believe that a more detailed discussion on the artists' motivation (as reverence, social integration or legitimacy) can be useful to understand the intimate resorts linking the art creator to his ultimate aim: the audience.

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