

What the Font

Gunnar Swanson, East Carolina University, Greenville, North Carolina USA,
gunnar@gunnarswanson.com

Abstract

The ethical dimensions of basing a typeface on existing faces are unclear. Commentary about “clones” from critics and type designers alike are confused and contradictory. Few writers consider the issues systematically. Misunderstanding of copyright law and unreflective versions of moral rights claims dominate discussion. Open discussion of the models for a type design avoid claims of plagiarism and also affect the reception of the new typeface.

Keywords: ethics, copying, plagiarism, type design, typography

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Simon Garfield’s *Just My Type*—a book about type aimed at the general public— was released to warm reviews by *USA Today*, National Public Radio, the *Guardian*, the *Washington Post* and many others. [Wilson 2011, McAlpin 2011, Hollland 2011, Drabelle 2011.] I wasn’t happy with the book, however. I’m somewhat type obsessed and, as *The New York Times* said in its (quite favorable) review of the book, “font wonks fight.” [Maslin 2011.] To paraphrase an old joke, get four typographers together and you’ll hear five different opinions. This isn’t the forum for most of my objections to the book but the “Pirates and Clones” chapter offers an interesting discussion of the ethics (and legalities) of copying.

Garfield begins that chapter with Helvetica and Max Meidinger. The man who drew what may be the world’s best-known typeface received no royalties and died “virtually penniless.” [Garfield 2011 p 221] Garfield postulates that Stempel (Helvetica’s foundry) and Linotype (Stemple’s parent company) haven’t made as much money as Microsoft “for the simple reason that if your font is any good, it gets copied.” Apparently, Garfield thinks that Microsoft software doesn’t get copied.

If Garfield’s economic analysis is flawed, his formal and ethical thinking is worse, as illustrated in his discussion about the problem of Helvetica “clones.”

“Clone” is an early 20th century coinage from botany. It comes from the Greek “klon”—a twig—and it means that two or more organisms have identical genetic material. By extension, the word is used to mean anything that replicates or, by a weaker analogy, approximates or resembles something else. Garfield’s description of Helvetica “clones” as “often with tiny modifications” makes some sense. The charge of cloning clearly implies close copying. *Just My Type* tells us that “[f]onts such as Akzidenz Grotesk Book and Nimbus Sans Bold display similar attributes to Helvetica; one clone even calls itself Swiss. But the biggest transgressor, in terms of global impact, is Arial.” We get no clue how Garfield thinks his use of the “clone” designation is affected by the fact that Helvetica was largely an update of the much older Akzidenz Grotesk (thus as much a “clone” as some of the faces he derides with the term) or that Nimbus Sans was designed by Helvetica’s designer, Max Meidinger, and that some parts of the Nimbus family predate Helvetica (putting clones and time machines into the same

science fiction movie?) Most of Garfield's dismissal of the clones is directed at Arial—"the Helvetica lookalike favoured by—you can probably guess this—Microsoft." (I should probably disclose that I have a sometimes-irrational antipathy for all things emanating from Redmond so I resent being put in the position of having to defend Microsoft about anything.)

The cloning story goes on to tell us that "[m]any people will prefer [Arial] to Helvetica, for it has a slightly softer and more rounded tone. . . . Arial has always sold itself on these attributes, drawing attention to its fuller curves and angled terminals, claiming it is less mechanical and industrial than other sans serifs. These 'humanist' characteristics ensured it was 'more in tune with the mood of the last decades of the twentieth century'."

"A remarkable thing about Arial," we learn from Garfield, "is that it has many deliberate differences that—when you get used to them—are as different from Helvetica as pineapple is from mango. . . ." He cites specific differences and he is right about those.

So why is Arial "still regarded—and rightly so—as a cheat"? "[I]t was the fact that its width and other key elements fitted exactly the same grids that Helvetica occupied, thus making it interchangeable in documents and printing or display software," and "Arial was cheaper than Helvetica, and [Microsoft] wanted to save money on the license fee. A sound business decision, unless one objected to the principle of capitalizing on another's artistry. Monotype [the company that produced Arial] was not acting illegally, and in any case maintained—with some justice—that Arial was an updated version of their own Grotesque series from more than a century earlier."

So Arial replicates/approximates/resembles Helvetica—just like pineapple replicates/approximates/resembles mango—and this despite being patterned after something that existed long before the "original" did. The worst problem, as Garfield would have us believe, is that it capitalizes on the proprietary artistry of character widths.

Mocking the incoherence of *Just My Type* is easy but Garfield isn't the only one confused about the ethics of typeface copying. The argument that Arial and Helvetica are too much alike while not being enough alike seems to be a common and perhaps even the prevailing attitude among those who care about type design—including those who know a lot more than Garfield apparently does. Type designer Mark Simonson writes under the melodramatic heading "The Scourge of Arial" that "Monotype was a respected type foundry with a glorious past and perhaps the idea of being associated with these 'pirates' was unacceptable. So, instead, they found a loophole and devised an 'original' design that just happens to share exactly the same proportions and weight as another typeface. . . . This, to [Simonson's] mind, is almost worse than an outright copy. A copy, it could be said, pays homage (if not license fees) to the original by its very existence. Arial, on the other hand, pretends to be different. It says, in effect, 'I'm not Helvetica. I don't even look like Helvetica!', but gladly steps into the same shoes. In fact, it has no other role." [Simonson 2001]

If Arial is so reviled, why is it so broadly used? Although some people make claims the about bad taste of the masses, choices often have little to do with taste. Arial comes with Microsoft software so these days, it's users of Helvetica who are more likely to take advantage of the

spacing match with the nearly-ubiquitous Arial. If Arial and Helvetica are fungible in the most mechanical sense, the exchange is likely Helvetica being used as a replacement for Arial. It's the "network effect." People are on Facebook (or Twitter or Tumblr or whatever) rather than MySpace not because of more powerful software or better interface or more acceptable policies about privacy and advertising. Just as Dolores Hart, Yvette Mimieux, and their friends went to Fort Lauderdale for spring break in 1960 because it was "where the boys are," people use a social network where there's the opportunity to be social. People use Microsoft Word because they have to share work with people who use Microsoft Word.

People use Arial because they assume they can share a document with anyone and that person will have the font installed. Being able to print pages that come out the same length as they were when they were created in Helvetica may have been a feature at one time. Now it's more likely that Helvetica pages will fit the same space as ones originally in Arial.

Legal protection for type design

The ethics of copying and influence in type design are complex and unclear. The legalities under US law are slightly simpler but still somewhat cloudy. Although they get lumped together in discussions of "intellectual property," copyright and patent are separate and have quite different rules. Copyright covers work that might be called creative, literary, or artistic. It does not affect practical inventions. Patents cover inventions. From the perspective of US copyright law, an alphabet is a functional thing, more akin to pencil than to a poem, so a typeface isn't eligible for copyright protection. [4th Circuit 1978] Letters are, by Copyright Office standard, long established so any new typeface is just a variant of something firmly in the public domain. (If a typeface were highly decorative, the portions separable from the letters themselves might be protectable under copyright.) The Patent and Trademark Office sees no new invention in a typeface. From the standpoint of reading, pretty much any typeface works like any other typeface so is, from a patents and inventions perspective, type is clearly in the public domain. That doesn't leave typeface designers much legal shelter. (Copyright laws, although affected by international agreements, are not universal. While US copyright does not cover typeface design, German law covers typefaces as original works since 1981, as does English law since 1989.)

Copyright has been used to protect fonts as opposed to protecting typeface design. Let me try to translate that into English:

In the days of lead type for letterpress printing, "font" meant what comes in a single type case—a particular instance of a typeface. Helvetica Medium was a typeface. The various weights and styles of Helvetica were a type family. Helvetica Medium in ten-point size (i.e., the stuff that goes in one type case) was a font.

Helvetica Medium in twelve-point size was another font. Helvetica Medium Oblique, Helvetica Bold, Helvetica Medium Condensed—all in ten point size— were each a different font and the same typefaces in twelve point size would be yet other fonts. That distinction makes little sense in an era where most type is in the form of electronically encoded outlines that can be scaled to any size. Even though most people (including a few experts on type and type design) tend to use "font" as synonymous with "typeface," pedantic twits like me make the distinction between a traditional definition of typeface (the

design of an alphabet) and the meaning of font as the physical instance of a face. In current use, the physical instance is a computer program. (You may think that you are typing something in Microsoft Word and in Word alone but a separate set of code describes each typeface that appears.) So one font isn't distinguished from others by occupying a different case; it's a separate computer program that defines the distinction. Even though the printed result might be indistinguishable, Helvetica Postscript format for the Macintosh, Helvetica TrueType format for the Mac, Helvetica TrueType format for Windows. . . is each a different font.

Why does this distinction matter? Copyright does not apply to typeface design in the US but computer programming is, for copyright purposes, seen as akin to literary expression. The designing of a typeface cannot result in a work protected by copyright but programming a font can. Type designers are not computer programmers but at least one court has accepted the claim that the choice of placement of points in a drawing program is a creative act even though the choice of the shape of the resultant curve is not. [7th Circuit 1996] US copyrights on fonts are still few and far between and their ultimate legal status is still not clear. The irony is that copyright is meant to protect expressions and most people (including most type designers) would consider the shapes of the letters themselves—not the computer code that records them—to be the expressive stuff.

As much as I'd like to see type designers protected from predatory practices and able to make a living, the legal status of typefaces in the US makes some sense. Copyright cases tend to center on similarity as determined by a jury. I would hate to be in the position of trying to explain to twelve randomly selected people why Helvetica doesn't infringe on Adrian Frutiger's Univers, an earlier type family with some similar characteristics, especially when so many "experts" refer to even less similar typefaces as "clones."

Of course, the law isn't the only restraining force on our actions. Even when the US Supreme Court affirmed that making movies of crushing small animals is legal, [Supreme Court 2010] most of us didn't merely choose to do something else with our free time; we thought the practice repugnant and would not have considered making such films (or crushing such animals) even if we had somehow thought of it. By the same token, typeface designers often have ethical qualms about copying typeface designs that go well beyond the letter (pardon the expression) of the law. Unlike more organized and more heavily scrutinized activities, there isn't a clear or consistent ethical code for type designers. The logic of beliefs about type designs as "proprietary" is often cloudy. Yet the subject of copying typefaces tends to produce more outrage among type designers than, say, crush movies do for the population at large.

A brief history of typeface cloning

Until the middle of the twentieth century, most printing was done using a process called letterpress. Just as with a rubber stamp, a raised surface was inked and paper was pushed against the raised surface. Type was formed as blocks of lead, thus type was a real physical object. The cloning of typefaces—in the sense of making more- or-less exact copies—has a long history but until recently it was the domain of type foundries. In the late 18th century, when Fry advertised copies of Caslon’s faces, [Updike 1922] it took many months of skilled punch cutting to make (quite inexact) copies. Typefaces were created by first carving each letter by hand in a piece of steel (a “punch”) that was used to indent the letter in the brass matrix that forms the bottom of the mold for making lead type.

By the mid 19th century, the copying technique was to buy another foundry’s type and duplicate it by electrotyping matrices. [Lawson 1990 pp 57, 350] Essentially, the lead type was plated then removed from the thin metal of the plating. The plating was reinforced and the resultant cast from the original type was used to make a mold to create more type that matched.

By the end of the 19th century, punch cutting had been replaced by the pantograph, a machine that cut matrices by tracing large renditions of characters, reducing them to the desired size. This made copying easier, requiring less in the way of effort and professional skill. It was still a significant undertaking, however. [Lawson 1990 pp 390–391]

By the 20th century, the real money was in typesetting equipment and manufacturers such as Linotype and Monotype largely treated typefaces as accessories to their expensive machinery. (Linotype, as the name implies, made equipment that dropped the matrices—the indented brass that forms the shape of the letter—into a mold and cast complete lines of type. Monotype’s equipment cast letters as individual pieces of lead but, like Linotype, arranged type using keyboard commands rather than requiring a compositor to pick individual letters from a type case and arrange them in a form, carefully adjusting spacing by hand.) Having a “version” of any popular typeface was an important sales point for typesetting equipment; typeface design “piracy” was, for most of history, the domain of the large type companies.

Letterpress printing gave way to offset lithography (where photographic printing plates are a flat surface and ink distribution is controlled by water on the plate) as the dominant form of commercial printing in the second half of the 20th century. This allowed the rise of photo type, where type is set using photographic negatives exposing light sensitive paper. A character could be drawn in ink and placed under a camera with relatively little labor so more typefaces were produced. Copying the characters of an existing typeface was equally simple so the practice of reproducing faces otherwise available only on competitors’ systems became even more widespread.

When I started as a graphic designer, nearly all designers specified Helvetica at some time so, to be commercially viable, every typesetting equipment company had to have a version. Several of the typesetters I used had the low-end Compugraphic systems; the version they had was called Helios. Helios was clearly a Helvetica clone. I couldn’t tell the difference then and I

assume I could not tell

Helios from Helvetica now (had Compugraphic not been absorbed by Agfa in 1989 and Helios not disappeared down the rabbit hole of technological history.)

There were urban legends that Compugraphic made the hyphen shorter and that if you just changed one thing on a typeface, copying was okay. The fact was, the letter shapes were not (and are not) legally protectable under US law. The name, however, was a trademark, so the clones couldn't be called Helvetica. When I spec'ed Helvetica, my typesetter delivered Helios without apology (unlike the waiter who is likely to ask "Is Pepsi okay?" when you order a Coke.)

There were some attempts to reign in the copying of typefaces by the major foundries or at least get compensation for the designers; legendary type designer Hermann Zapf mounted a campaign and finally resigned in 1993 from Association Typographique Internationale (ATypI) in protest over copying typified by Monotype's Book Antiqua, a typeface modeled closely on Zapf's Palatino.

Three type designers started International Typeface Corporation in 1970. Unlike earlier type companies, ITC did not make metal type and did not sell typesetting equipment. They licensed their designs for a variety of phototype and digital systems and other uses such as Letraset rub-on letters.

Although ITC moved the type design world away from being an appendage to heavy equipment manufacturing, the advent in the late 1980s of small general-use computers as the primary means of typesetting changed both type design and the type industry. As use of the Macintosh computer proliferated, so did the market for typefaces. Programs like Fontographer made the production of working typefaces easier. Producing a working typeface was within the reach of any designer. The nature of fonts for small computers made copying typefaces trivial. Even as the market for type boomed, the problem of "piracy" exploded, presaging the recording industry's experience of a decade later. Suddenly the major typeface companies (until recently the big typeface "pirates") became the voice of the ethical protection of the rights of type creators.

Much as the computer revolution has made copyright issues—previously only important to professional writers and creators—relevant to a broad range of the public. The relative ease of creating a working typeface expanded the ranks of professional type design and, in turn, the range of people who have ethical concerns about type copying. An esoteric issue became mainstream. "Not only does the Macintosh enable anyone willing to invest the time to design and manufacture typefaces, it has also turned every computer user into a potential purchaser of fonts, making typefaces a rather valuable economic commodity" writes *Emigre* magazine editor/publisher Rudy VanderLans. (*Emigre* was an important graphic design magazine for over twenty years.) "Since type design has been a very exclusive field until recently," writes type designer Zuzana Licko, "there is little information available as compared to other design disciplines. Often, people tend to forget that typefaces are in fact designed, and not merely static forms handed down from generation to generation." (Licko and her company, Emigre

Type, were among the most important forces in the changes in type design that started in the late 1980s; she is VanderLans' wife and business partner.) [Licko 2000]

In an era where fonts were no longer tied to proprietary typesetting equipment, the licensing restrictions that gave rise to Helios and its ilk became unlikely to be a reasonable excuse for the direct copying or mere software format conversion of typeface software. If they are at all thoughtful about it, even the most rabid copyright opponents tend to look down on doing nothing but gathering the work of others, copying, and reselling it (with or without a name change.) Even if one believes that we would be better off with no copyright law, it is hard to applaud commercial activity on that level. The tricky questions of typeface design ethics emerge when we look beyond direct reproduction and cloning.

Classifying copies

Although most type designers would characterize their work as creative, original, and unique, designing a useful and readable typeface requires working under great restraints.

Inventing truly unique forms would render the alphabet unreadable. In the design of type meant for continuous reading—as opposed to “experimental” or “novelty” typefaces—too much originality destroys the value of a typeface.

Important differences between typefaces are invisible to most people, making standards of originality less clear.

Even if we agree that *all* of culture is based on previous culture, the principal is even more obvious in type design. All useful letters are necessarily based on previous letters. How, then, do we determine the difference between preservation, progress, and plagiarism?

Plagiarism is not copying. It is lying about copying. This means that honesty with oneself and with others is a good first step. As type designer John Downer notes regarding revivals (new typefaces based closely on earlier typefaces), “The integrity of a typeface revival depends not solely on what the designer does to create a workable version of an old idea; it also depends on what the designer, or the designer's copywriter or publicist, has to say about the genesis of the design.” Downer points out that inaccurate or misleading discussions about a typeface can lead to disputes. On the other hand, “if the story behind the designer's effort stands up to the scrutiny of type historians and scholars, a revival has a far better chance of being considered a welcome addition to the world of revivals—not so much for being a ‘servant’ to a given typographic model as for bearing a relationship to its history.” [Downer 2003]

Downer suggests a range of categories from revivals to knockoffs. He says that knockoffs “don't rate as revivals because they don't revive.” He also characterizes encores and extensions as “milking the Cash Cow one more time.” His disapproval is pretty clear for most typefaces that would fit those descriptions.

Downer's claim about people's “milking the cash cow” assumes to understand the motivation

of copyists and to know that financial gain is at the heart of the replication. That's not clear to me. Some typeface releases seem to be akin to fan fiction where the author of the project wants to be immersed in an admired creation. Some seem to be exercises in understanding an admired typeface. Someone who painstakingly rebuilds letterforms or makes significant changes to the computer file *may* have raw financial gain in mind but making a blanket statement about motivation is difficult. Even though I generally agree with Downer's assessment of the ethics, I can't assume to know the mind of the copyist.

Rudy VanderLans suggests that "Ethics, the rules or standards of conduct governing the members of a profession, is all we have to guide us. Milton Glaser, appropriator extraordinaire, and probably one of the most ripped off designers alive today, once said something to the effect that he wouldn't copy anybody's work unless the originator was dead. In case of doubt, that's not bad advice." Clearly VanderLans sees copying in terms of injury—financial and possibly personal—to the creator of the original typeface. Another argument for his and Glaser's rule of thumb connects with Downer's call for sensitivity and a real appreciation for history before copying. Responding to a typeface that is new and popular might not result in as thoughtful a project as one whose place in history is more secure.

But waiting for people to die has, in addition to ghoulish possibilities, some dissatisfactions. One is that it apparently assumes a version of moral rights albeit (unlike many moral rights claims) an un-inheritable one.

One mode of copying that doesn't fit neatly into any of Downer's categories is sampling. "A sampled font. . . is a hybrid made up of distinctive parts copied directly from existing digital fonts" VanderLans writes. [VanderLans 1996] VanderLans and many designers object to copying from computer files. Claims that such acts are too easy have a similar tone to objections to photography or music sampling. Objections to using someone's work based on the amount of labor they put in seems to value labor over the creative vision we supposedly revere.

My typeface Rosemary, designed for production as wood type for letterpress printing, might be described as a sampled typeface or, more accurately, a mashup. (Craig Malmrose of Trade Union Press in Ayden, North Carolina, made the Rosemary typeface in wood.) It has the even stroke weight usually associated with san serif type and short slab serifs with heavy bracketing usually associated with faces that display much more thick and thin. On the poster announcing the typeface, I described it as "the love child of Trade Gothic and Clarendon." Is it a problem that Rosemary's O is pretty much indistinguishable from Trade Gothic's? When typeface designers rhapsodize about their creative freedom in creating a capitol Q or an ampersand, the O isn't usually mentioned, especially in a typeface with very even weight. John Downer's honest commentary test gets me past any real plagiarism claim but it's clear to me that universal approval of almost anything in the typeface design world is highly unlikely.

Restricting copying

Different typeface designers have different "rules" of proper type design procedures. Ethical objections to using the font files of other typefaces (AKA "point theft"—the software that used

to draw most typefaces relies on points on outlines of letters to establish their shapes) are common as are objections to auto tracing other alphabets. The usual rationale is that these are shortcuts; real type design is a lot of work and point rustling and auto tracing avoid the labor and appropriate the efforts of others.

If our goals are to encourage creation and to protect or honor originality, “sweat of the brow” arguments are problematic as ethical constraints. It is a lot of work to design a typeface, but nobody would ever choose one face over another based on how long it took to create. The work involved is not the part we value; demanding that creative activity be slow, laborious, or inefficient runs counter to the goal of encouraging creativity. There’s room for debate about what originality means. It’s clear that the answer won’t be found on a card beside a time clock, however.

Type designers’ assumptions about their rights are often expansive, despite the limits of their actual legal protections. For examples, read type design blogs and the EULA (End User Licensing Agreement) of fonts. One example is James Montalbano’s Terminal Design EULA which proclaims a list of prohibited uses including religious or political campaigns. [Montalbano EULA] A EULA *may* possibly be an enforceable contract, but Montalbano is certainly wrong when he claims, “I get to control what I create. I own the copyright, therefore I control the right to copy.” [Montalbano 2011] He is wrong under US copyright law. Ethically, trying to restrict others’ freedom of expression and religion raises questions.

Type designers’ tendency to be invested in their work is understandable and even admirable. In a sense, they are like songwriters. They make an aesthetic object that in turn depends on someone else making an aesthetic object using it. Even if a moral rights argument made sense, songs and type are in some respects more like brushes than they are like paintings. It would be hard to imagine a blacksmith getting much traction arguing that, as the author of a hammerhead, he should control what sorts of nails others may pound with his creation or what sort of building can result. That doesn’t imply that painters are more important than blacksmiths. But there are ethical dimensions in depiction and different ethical dimensions in forging a hammerhead. It’s hard to justify the idea that creativity is one thing and all creative activities come with the same limitations, the same responsibilities, and the same control over the ultimate results. (Musical compositions are subject to compulsory licensing in the US; if you let someone record the song you wrote, you have to let anyone record it.)

Type designers’ discussions about originality and their proprietary interests in their design can be both bitter and a bit incoherent. I have high regard for type design and for type designers, but it wouldn’t be surprising to learn that someone more distant from that world paraphrased the cliché about academic politics: “so vicious precisely because the stakes are so small.” [quote investigator] Anglo-American copyright protects creation from copying largely because we want to encourage further creation but I suspect that most people don’t care if typeface design is encouraged. If new models of cars or new styles of clothing ceased to appear on a regular basis, many people would be bothered. If new books and magazines weren’t published regularly, readers would be upset (despite the backlog of reading most of us have.) Even most graphic designers wouldn’t be affected by an embargo on new type. Styles and fads would still happen but they would focus on the rediscovery of extant typefaces.

If nobody really cared about new typefaces, however, nobody would bother copying them. The renowned graphic designer Massimo Vignelli famously claimed that there were only a handful of good typefaces and a designer only needed five of them but it's clear that others disagree. Some people collect so many fonts they couldn't possibly ever use them but many designers are prolific users of letterforms. Graphic designer Jeff Keedy claimed that designers should make a new typeface for each job. That's not practical for a range of reasons but it seems that some designers try to buy a new typeface for each job. The search for a face that perfectly fits the project may be never-ending for some and that may mean that encouragement of new designs is not just worthwhile but vital.

If we do want to encourage creative activity such as typeface design, discouraging rote copying and resale makes sense (at least for a limited time.) Anything that limits truly transformative works serves to discourage the sort of activity we claim we want, however. That distinction requires people recognizing the difference between *derivative* in copyright lingo—anything based on a previous work—and *wholly derivative*—work patterned after something that doesn't really offer a worthwhile new contribution. Unfortunately, the difference in type design requires more knowledge and attention than can be expected of most people and more analysis and detachment than can be expected of most type designers.

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Author Biography

Gunnar Swanson

Gunnar Swanson is a writer, editor, educator, and graphic designer. His writing has covered topics of design education, design business, graphic design, and ethics and has been published on the internet and in trade publications as well as the academic press. Much of his current work centers on issues of copies, copying, and originality. Swanson has taught at a variety of universities and art schools and lead graphic design and multimedia programs across the United States. He lives in Greenville, North Carolina where he is a professor in the School of Art & Design at East Carolina University.