

COPYRIGHTS

We get many requests for copyright information. Here are the minutes from a 2008 program on the subject. Please Note: The Newsletter Editor and Secretary of CPSA DC 207 are obviously not experts in the very complex field of Copyright Law. We believe we have correctly written what we heard at the meeting, but should you have any questions or problems, you should contact an expert.

Our main program was a talk about Copyright Law by guest speaker Mr. Derek Linke. Mr. Linke is a copyright lawyer who works directly with artists. He gave an overview into the world of copyrighting law and the *Orphans Works Act*.

All copyrights are valid for the lifetime of the artist plus 90 years. You own the copyright to anything you create whether it is registered officially with the US Copyright office or not. However, if your work is used without your permission, you increase your chances of recovering the (up to) 150K copyright infringement fine, plus attorney fees, by doing two things:

- First, sign the work with the official “copyright notice” (Artist Name ©2008). You can claim willful infringement, not innocent infringement.
- Secondly, officially register your work with the US Copyright office. Works can be copyrighted one at a time, or as a collection. For example, an artist can copyright all works created in a period of time (like 2008), or other criteria desired. You cut down on the individual damage award you might receive by copyrighting as a group, but it is less expensive to copyright this way. Once the artist has a registered copyright he/she can sue directly without issuing a warning. Information: <http://www.copyright.gov/>.

After publishing a work, you have 90 days to register that work in order to be able, at any point, to claim damages. “Publishing” includes magazines, books, websites, or any form of printed material available for public viewing.

Apart from protecting the works of artist, there is a ‘fair use’ doctrine in place in defense of copyright infringement. It protects artists from borrowing if you can show fair use. Some (but not all) examples of some “standards” to reach are:

- Look at the character of your use: If you take another work and comment or criticize it, you are okay. If you are passing it off as your own, you’re not okay. Artists can use public statues, sculptures, architectural buildings as part of their work. There is only a limited protection on architectural buildings.
- The nature of the original work: Is it fact or fiction? An abstract work that is a totally unique is easier to claim infringement on than a picture of Mt. Rainier. Many people take a picture of Mt. R from the same location and paint it.
- If you are using a picture taken in public with several people in the scene, this image can be used as a reference as long as the people in the picture are not recognizable. Whenever an artist intends to use a person as a reference, it’s mandatory to get a model release form signed.
- How does your work affect the market for the original item? Using a Coke can in your painting is not going to affect Coke sales. Think of Andy Warhol’s work.

There was quite a discussion about the newly proposed *Orphan Works Act*. Many of us have received emails from various arts organizations about this proposal. There is a lot of opposition to it and a perception that there is a new set of fees that will be instigated with this legislation. We asked Derek to explain it. This was his take on the legislation.

Orphan’s Works Act

An orphan is a creation whose creator is unknown. Example: postcards from the 1930s. If someone wanted to publish a book of those postcards, the author/publisher would need to track down every original photographer/artist of each postcard to get permission to put it in a book. Sometimes that information is simply not available. Usually a publisher will choose not to do that sort of project at all because of the risk of copyright infringement. The purpose of copyright law is to protect the creator, but also after a time, allow the creation to move into the realm of public domain, making it available for everyone to enjoy.

The Orphan Works Act sets up a mechanism for potential publishers to search for the work’s creator. They must thoroughly document this search. If they can prove they searched and couldn’t find the owner, they must file a special notice with the Copyright Office before using the work, with a detailed account of their search. They will then receive permission to print the item with a special notice symbol (different than the present copyright symbol) on the piece. Derek said the copyright office has been working on a way to deal with this very difficult orphan issue for about six years, and that the director of the office is very much an advocate for artists. *Note: At the reprinting of this article in February 2014, the status of this act appears to still be in flux: <http://www.copyright.gov/orphan/>.*

In summary: You own the copyright of something you create. If you want to totally protect your creation, you should register it with the copyright office. This registration will allow you to collect the highest award and your attorney’s fees should there be infringement. You may be able to recover some money if you are not registered, but you increase your chances of success with the registration. Registered or not, it is a good idea to put “name©2008” on everything you do. This allows the artist to claim willful infringement, not innocent infringement.