



THE GOVERNMENT IS HERE TO HELP, I THINK

BY PETE JOHNSON

TO AVOID GETTING RUN OVER BY BAD KARMA, DON'T RIP OFF PEOPLE'S ART. FOR YOUR OWN DEFENSE, KNOW YOUR OPTIONS ABOUT COPYRIGHT.

EXPECTED DISCLAIMER

This article is written regarding the laws of the United States. For information on other countries' copyright laws, contact an artists' association locally. Trademark examples and references in this article are purely for editorial exploration under fair use.

Of course, I'm not a lawyer and *Airbrush Action* magazine isn't a legal journal. If you've run into legal trouble as a visual artist, or need more background, there are some excellent resources available. An internet search on legal assistance for artists locates a lot of leads. One of the most well-known sources of information, for example, is Volunteer Lawyers for the Arts, at www.vlany.org. Additionally, there are many local organizations that can provide assistance, depending on where you live.

MORE RESOURCES

Tad Crawford's *Legal Guide for the Visual Artist* (Allworth Press, Fourth Edition, 1999) is an interesting and informative read. Crawford is a

graduate of Columbia Law School in New York, and really knows his stuff. His book lists many national- and state-level resources. Many of these local groups focus on prevention rather than crisis intervention; artists who are educated in copyright issues might head off problems before they happen.

Other professional organizations, such as the Graphic Artists Guild (www.gag.org) and the American Society of Media Photographers (www.asmp.org), have been active in the artists' rights movement.

WHAT IS COPYRIGHT ?

Copyright is the legal guarantee that you own what you create, and other people can't rip you off. Of course, like all things that are illegal, people sometimes do it anyway. Copyright theft is often a case of infringement, and our courts exist to resolve those disputes.

HOW IS INFRINGEMENT DETERMINED ?

Infringement usually means copying somebody else's art, without paying or even acknowledging the artist. And art is in the eye of the beholder, right? Well, so is infringement. The law says that if a reasonable person (say, on a jury) thinks it's infringement, a blatant copy, against the law, then it is. That sounds pretty flaky, but if you think about it, how could you measure what a copy is and what it isn't? The law appeals to common sense.

Beware of opinions that you can alter an image by 10 percent, or 30 percent, or turn it upside down, or make it pink, or some other ridiculous claim, in order to skirt copyright issues. There is no such allowance as far as the law is concerned. The post-modernist term for this stealth theft is "appropriation." It's tempting to do. But when

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some miscreant “appropriates” your work, you’ll call it stealing.

DIGITAL MONKEYBUSINESS

Hair-splitting about percentages and rules-of-thumb regarding infringement is in part due to the sophistication of digital imaging. Flagship photo and graphic manipulation software like Adobe Photoshop make it possible to make the Mona Lisa look like your Aunt Margot, the circus performer, beard and all. You might get away with selling a thousand prints of it. But if the Mona Lisa was still copyrighted and a jury said, “Yeah, that looks too much like the original,” you’d have problems.

Related digital note: Don’t rip off images from somebody else’s web site, say of custom-painted motorcycle tanks, post them on your web site, and say it’s your work. If you don’t believe people would do that, then believe it. There is a special place in artist hell for people who do that.

Let’s explore redress in this scenario, because dealing with infringement often follows this pattern. First contact the violator. You can have an attorney craft a desist letter and send it registered mail, though as we all

know, some web sites are hard to tie to a postal address. (Look up the domain name’s “who is” with register.com or other internet resource and often you can find the domain owner’s information.)

Often, a letter is all it takes. “Gee, I didn’t know,” sounds weak, but if the problem gets solved, move on. In one case, after a number of unsuccessful letters and contacts, an artist took the problem in her own hands and publicized the alleged violator’s name and domain on the internet in a discussion group devoted to custom paint. The thief sheepishly took the images down from his web site. I don’t advocate vigilante justice, but only mention the case to highlight the problem.

But...to strengthen your position, register your art with the United States Copyright office.

THE U.S. COPYRIGHT OFFICE AND FORM VA – AS IN VISUAL ARTS

The U.S. Copyright Office (www.copyright.gov—how easy is that?) is staffed to assist you. Their web site is a no-brainer and has all the important forms. Get—and fill out—a Form VA for your designs, or group of designs, and send in copies of your artwork. Then it’s in the

permanent record.

Along with Form VA, you mail in a filing fee as well. As of this writing, it’s \$30 per filing. Don’t worry, you can send artwork printouts or copies in groups, listed on a single form, for your \$30. In the case of, say, a web site that you want to copyright, print the pages from an open browser, list them on the Form VA, and attach them together. Or, let’s say you do a family of twelve cartoon characters. Send them all in as one batch, under one title on the form.

Then, go back and mark your designs or artwork with the Copyright symbol or the word Copyright, along with your name, and the year. Sometimes this is enough to make someone think twice about stealing your art, and it’s your proof of ownership.

Get to know the website for the U.S. Copyright Office. There are many resources that you pay for every year with your tax dollars. So use them. For example, you can search for exiting copyrights by title or keyword listing to see what might be similar to your intended or existing works. The site’s a goldmine of other forms, circulars, fact sheets, and so on that will provide hours of reading and clarification. ❖