

THE COPYRIGHT CLIFF



By Gaye Adams,
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FCA STANDARDS CHAIR

If you are in any way involved in a creative activity, there is no escaping the necessity of having a working knowledge of copyright law.

Here, at the FCA, we are mindful of that fact. We want to encourage our membership to be educated; to understand their rights as an artist, and to respect the rights of other artists. To that end this short article is written. I hope it will bring some clarity to what can often be a confusing and charged topic.

Here is the first thing to understand about Canadian Copyright Law:

COPYRIGHT LAW EXISTS TO PROTECT CULTURE AND ITS CREATORS

That means copyright law exists to protect you, and to protect your fellow artists as well, whether they be writers, musicians, sculptors, painters...

This is the main reason that the FCA advocates so strongly against copyright infringement in our shows. Borrowing heavily from someone else's creative output is not okay, either legally or morally. You wouldn't want it done to you, so apply the Golden Rule here, and you can understand the spirit of Copyright Law.

An artist does not need to register a copyright; it automatically exists upon the creation of the work – so no need to sign your paintings with a copyright symbol as it is redundant. Nor should you ever assume that something is unprotected by copyright because you don't see anything saying that it is. When the work is created, it is automatically protected under our copyright laws. It does not need to be registered.

Copyright law protects expression, but not ideas or concepts. While a photograph, novel, or painting is protected under Canadian Copyright law, the concept for that novel or painting is not protected. A way of painting, or a process or technique is not protected, but any particular painting is. For example, there is no copyright on impressionism, or cubism, but there is on an impressionist's or cubist's painting. The exception would be when direct copies are made for the purpose of personal

study, which is a time honoured way to learn; just don't be entering those copies in shows, or selling them for profit.

Artists have always stood on the shoulders of other artists that do something fresh, and that is present in all art forms as they grow and evolve. Standing on the shoulders of others is not the same as copying or making use of their material without permission.

If you use not only the concept (idea) of another's painting, but copy their work in a substantive way, (i.e. the essence has been copied) you are in violation of copyright law.

When a violation of copyright is discovered, the offending artist can pay for it in a number of different ways; sometimes a declination for a show, perhaps in the embarrassment of having an award or designation rescinded, or by having to refund the purchase price of your painting to the purchaser because it was discovered that you capitalized on someone else's creation. In the worst cases, artists get sued for damages.

I have seen all of the above happen during the course of my career, and some of them within the FCA. It's not pleasant for anyone to deal with it; staff, executive, standards... but it is often hardest on the offending artist.

Here's a Q&A to help you understand some specifics:

Q: *If I find an image on the internet, and it doesn't say that it is copyrighted, can't I just go ahead and use it as reference material for one of my paintings?*

A: No. Unless the site you are on specifically gives permission for you to use that image, it is not yours to use. Many sites exist these days to furnish reference material to painters, but there is generally a fee involved. Most photographers expect to be paid for their work. Due diligence here is the name of the game.

Q: *What about copying from a painting I see online or in a book?*

A: Definitely a no-no. Copying someone else's work in a substantive way is ALWAYS a copyright infringement.

Q: *What if it is a very OLD photo I am using for reference material?*

A: If a photograph is in the public domain it is okay to use, but otherwise not.

The photographer needs to have been dead for at least 50 years for a photo to be in the public domain, so it would be your responsibility to determine if that is the case. In US copyright law, it is 70 years before a photo is placed in the public domain.

Q: *What if I gain permission to use the photograph?*

A: Well, then it's A-OK of course. It would be a good idea to include that information with

your artwork submission if you feel it may raise a question.

Q: *Are their exceptions to the above?*

A: Yes. Artworks can fall into the realm of "Fair Dealing" (called "Fair Use" in US copyright law). If the photo/painting/illustration/trademark is used in research or parody to illustrate a point, then it is ok OR if its use does not constitute the "essence" of the new work it is most often allowable. Copyright law judges this on a case by case basis, so we are in a grey area when in the arena of "Fair Dealing".

Q: *What about taking someone's photo or painting and changing it substantially?*

A: What "changing something substantially" looks like can be rather subjective. Also, if it is still recognizable as the piece of art in question and you have made changes to suit yourself and presented it as your own work – or even as your own version of someone else's work, you could stumble into the realm of Moral Rights in copyright law. Altering someone else's work and presenting it as your own work is not acceptable. Moral Rights within copyright law protect the integrity and reputation of both the created original artwork and the original artist.

Q: *What about doing a painting of someone's sculpture?*

A: It COULD be an infringement. Several things come into play here. If you have made substantive use of someone's sculpture (it constituted the major element or essence of your painting) you may have created a problem. If, in addition, the sculpture in question is not in the public domain, an additional layer of difficulties could exist, such as "fair dealing" in copyright law, and the consideration of how transformative the work is. Google these definitions to deepen your understanding of these terms. (I am trying to keep this article as brief as possible). You can see why these questions, when they rise, are dealt with on a case by case basis. Changing a three dimensional work into a two dimensional work does not nullify copyright law.

A PERSONAL WORD

When a work comes into the FCA gallery, staff is having to judge if something is in obvious copyright infringement before it even gets juried. Our staff has received training in understanding copyright law as they make first contact with all submissions. If it is not obvious, but they have doubts about it, they call on the Standards Committee to make a judgement. We are artists, not lawyers, but we do our best to work with the knowledge that we have.

In my time as Standards Chair, I have found the membership often alerts us to a

copyright infringement. We have had very obvious infringements submitted, like published National Geographic photos being used as references, paintings of other's paintings, paintings of calendar images. We have had cases where we have had to call artists and ask them to confirm their rights to the reference materials they used because it looked highly suspect and we needed some assurance. We have had to rescind designations and strip awards, and ain't none of it fun for us. We hate having to take actions like that – it gives us absolutely no pleasure, and it makes everyone cranky.

If we (staff and Standards Committee) err in the direction of giving the benefit of the doubt, sometimes the show jurors or award jurors won't let a painting into a show because they have significant doubts about whether it might be in violation of copyright law and just may

choose to decline a piece on that basis.

We're doing our best to do the right thing, and to encourage creativity and originality and to respect the creative rights of all artists.

So my advice to you for avoiding having a work declined because you have been dancing near the edge of the copyright cliff is: STAY AWAY FROM THE EDGE. Use references that are solely your own and the issue never arises. If you find you can't do that, make sure that you have the necessary permissions, and let us know about those permissions when you feel there is a chance it may raise a question with staff and jurors.

We have everyone check a box on our submission form that says your work is not derivative or in any way a violation of copyright law, and we ask that you have done your due diligence before checking that box. We recognize

that some may check that box because they are not aware they are in violation of copyright law. It is important that you exercise due diligence here.

I hope this article has been informative and in some measure helpful. There is an abundance of material online that can help you further understand copyright law as this short article cannot cover the full scope of what there is to know. I have shared what my understanding is, and would encourage you to continue to expand your own knowledge in this area.

Our mandate is to work together to promote excellence, growth and professionalism within our membership, and heeding copyright law is an important part of that mandate.

So put that in your pipe and smoke it. Happy painting all.

THE BIGGER PICTURE



By Peter Stuhlmann, AFCA

Dear Artist,

I want to help. And because I want to help, today we're going to tackle a rather delicate subject that plagues all of us as artists. Who's ever (hands up, please) had a show, or been part of a show, with a bushel of sparkling new work needing homes—only to have an eager collector come along with “So, what can you tell me about your art?” From personal experience I can relate that replying with “Boy, can I ever tell you were captain of the short bus on the way over!” only hurts the billfold.

It gets worse. Gallery owners, magazine and book editors, and newspaper types (who should all know better) want us to write or say something about our pictures as well. There's just no getting away from it—we have to make folks happy. Years ago, I'm disappointed to report, I failed to launch an initiative whereby every painter on the planet would have floated exactly the same biography, resume, and artist's statement. It would have been so simple. But, as we all know getting artists to agree on anything is more difficult than marshalling a team of mosquitoes to harvest pineapples. Down in flames that idea went.

I'd like to try something else, something that's hopefully more useful to your needs. In

a word, we're going to come up with a revolutionary approach that, when we're done, leaves us sounding so impressive folks everywhere will line up to thrust their babies out for us to monogram. I'm talking of course about a description makeover. Now don't worry—it's very easy. Keeping in mind Leonardo's famous quote “If a thing is worth doing, it's worth doing to excess”, we'll simply take what you already have and run with it. A few examples if I may.

I'm thinking now of an artist I know who's terribly fond of math. So much so, that each of her compositions is intricately mapped out before anything resembling a tree or rock goes in. I know, but we don't judge. Now if she says to her collectors “All my pictures are based on math...” Call 911, we have a patient in a coma. So. Here's what we do. We take the math fact—and add another juicy tidbit—she only paints in tertiaries. Refuses to use primaries—it's her struggle against an unjust class system. Fair enough. We now do a few easy-peasy calculations—and come up with ‘Tertiarily Egalitarian Archimedian’. Seriously, can't you already see the look of awe? All she needs do now is walk about chanting “Do not disturb my circles”, preferably in Latin, and we have a winner.

Here's another one. Say you can only paint after three glasses of wine. That automatically becomes ‘Bacchanalian’. And then not without wearing your fuzzy slippers, you say? Sure. You're a thoroughly grounded ‘Velutinous Bacchanalian’. What if, after your wine, you can only manage one or two strokes across the canvas? Now you're a Velutinous Bacchanalian Minimalist'. Wow. Better start flexing the elbow of your autographing arm.

Don't say ‘Impressionist’. Ever. Not even with ‘neo’ in front of it. You're only going to disappoint and irritate folks. They've seen and heard it all before. These days it's on their kids' lunch pails, placemats and shower curtains. More likely than not they drive a Dodge Monet. We need to dig much further in if we're to hook folks into taking a painting home. Now, we should know that Impressionism arose as a much needed freshener after the centuries-old hockey bag that was the renaissance. Impressionism threw up the blinds, let sun and colour in. It embraced nature's fleeing moments, all with vigorous “hey, I was here!” brushwork. No problem—plenty to work with here.

We'll start with ‘temporal’ to address time's passing in what we do and then—let's see, we need to mention light...I know, we're now ‘Temporal Illuminati!’ Wait, that's not good—too close to those secrecy nutjobs that chant up the spirits of deceased tree frogs before affecting global monetary policy. If we want that sort of edge, we'll get a tattoo. Instead, we'll use the much more jovial and inviting ‘illuminist’. Brilliant. ‘Temporal Illuminist!’ Who wouldn't want to own work by someone like that?

Before you're ready to have a go at making up your own, it's important to mention that we never—ever—tell the truth. The collector doesn't want the truth, to them it's about as interesting as dusting the bingo dauber cabinet. They want a flamboyant, enticing myth—one that says “Not only is this a painter of skill and note, this is a painter who'd think nothing of walking a pet anteater through the streets of Manhattan”.

Wait, that gives me an idea...