



Fredericton Society of Artists

founded 1949

COPYRIGHT MATTERS

Copyright, as it pertains to art, is defined as "THE SOLE RIGHT TO PRODUCE, REPRODUCE, OR PUBLISH ANY ARTISTIC WORK, OR A SUBSTANTIAL PART OF IT, IN ANY FORM."

Copyright applies to original works only, but does not require that the subject has never been painted before, e.g. two artists can paint the same scene and each can hold copyright on their own work provided that each was painted independently and one not merely copied from the other.

Virtually everyone living in Canada has an automatic copyright on their original works, which exist from the time the work was created until fifty (50) years following the death of the "author". Only the owner of a copyright can give permission to produce or reproduce their work (or any part of it), and this requires a legal agreement.

The "author" of most types of work is the individual who first conceived and created the work. This does not extend, however, to a student in an art class, where the teacher is instructing and supervising the artistic process. Such work is not considered to be original, and the student painter cannot claim copyright on such work. Also, copyright in a commissioned portrait is held by the person who commissioned the work and not the artist, unless stated otherwise in a contract between the two.

The "author" of a photograph is the person who owns the original negative. Therefore, working from someone else's photograph without his permission is the same as copying from another artist's painting. Exhibiting or selling a painting copied from a copyrighted photo is a definite copyright infringement. The copied work doesn't have to be a perfect match to be judged as a copy, but merely similar enough so as to be recognizable as having originated from the copyrighted source.

It is not an infringement of copyright to reproduce a detail of a work, as long as the detail is not substantial part of the finished work. Therefore, copying the main subject of a photo and changing the background, for example, would not be acceptable and would be a copyright infringement; while using the photograph to obtain information on shape or colour, etc, to use in your own composition would not infringe on copyright.

USE OF PHOTOGRAPHS IN PAINTING

You can use your own photographs in any way you want as you hold the copyright, but you must obtain permission to use someone else's photograph even if it is unpublished. In commissioned work, if the client wants an exact copy of a photograph, you need a contract giving you such permission. (Be sure the client does hold the copyright, however.)

If you photograph people for use in your paintings, you need to have them sign a model release form if they will be recognizable in your painting.

Collage artists should obtain permission from the copyright holders of any photographs (or other items) which they wish to use in their collage arrangement.

ARTISTIC INTEGRITY

When you copy someone else's work, either from a painting or a photograph, you lose sight of what makes you an artist in the first place — CREATIVITY. To create means to invent, to originate, to develop. If someone else has done that part for you, you rob yourself of a good part of the joy of artistic expression.

Sources:

1. "Art, the Art Community, and the law" (Canadian)
2. "You and the Law" (Canadian)
3. Information booklet from N.B. Dept. Supply & Services
4. "The Artist's Magazine" — articles dating from 1986 to 1996.