



District Chapter 221- Oklahoma City,
Oklahoma
Issue No. 5 – March, 2009

Report of February Meeting

At the February meeting we all had a great time painting squares for the poster for our chapter. Most of us took some home to do and bring to this meeting too. We are doing the four seasons as a theme for the poster.

Also, February was the close of our current contest with the theme of "Fur and Feathers". There were some excellent works submitted and the top three were chosen.

The prizes were awarded as follows:

- 1st – June Delaney
- 2nd – Jean Brackett
- 3rd – Joan Vinyard

March Meeting
Tuesday, March 31
6:00 PM – 8:00 PM
at

Hobby Lobby
Midwest City, OK
S.E. 15th St. and Air Depot

Program for Meeting

Turn in your works for the poster to Glenda Mullin
And other business David wants to discuss

Page 1 – Report of last month's meeting with the list of winners for our quarterly contest and announcement of this month's meeting and program

Page 2 - Information about copyright laws for artists.

Page 3 – continuation of copyright law information and Newsletter Editor's letter.

Page 4 – President's notice and article on copying artwork, Email address article

Copyright Laws for Artists

Quote by: Leonard DuBoff- March 27, 2008

Q: How can I get copyright protection for my artwork?

A: Copyright was so important to the founders of this nation that the Constitution contains a provision enabling Congress to enact a copyright law. The First Congress did so and copyright has been a part of this country's laws every since. Most artists believe they have some knowledge of copyright laws as applied to art. However, from time to time the laws have been revised and updated to reflect new technology, and the information that is passed from person to person is often inaccurate.

The law in effect as of the date of this writing is the Copyright Revision Act of 1976, which became effective on January 1, 1978. Since then there have been a number of amendments and revision. The current copyright statute is quite user-friendly and Congress has relaxed many of the formal requirements that were part of the early statutes. Under the current law, all you need for a copyright is an original work, involving some minimal degree of creativity, embodied in some tangible medium of expression. The requirements appear simple, yet they can be misunderstood. Since the law requires the work to be in a tangible form for it to be protected by copyright, you can't protect mere ideas that have not been implemented. Words, symbols and logos used to identify products or services are protectable under the trademark laws-not under the copyright statute.

Generally speaking, copyright protection extends to creative work such as art, music, literature and computer software. Creative work includes paintings, drawing sketches, photographs, collages and sculpture. The protected work need not be unique. That is to say, if two artists by coincidence create works that are virtually identical to each other without copying, each will be entitled to copyright protection if the other requirements of the statute are met. This is true even though the works may be substantially similar to one another.

The law doesn't require you to use a copyright notice, but it's a good idea to do so, since the statute provides that anyone who copies another's protected work –believing in good faith that the work is not protected by copyright – is an innocent infringers. Innocent infringers may not be liable for damages and may even be permitted to continue copying, despite the fact that the work is technically protected by copyright. To defeat the defense of innocent infringement, you should place the appropriate copyright notice on the protected work. The notice is simple; it's either the word "copyright," its abbreviation "copr.," or the international symbol "©"plus the copyright owner's name and the year the work was first published or exhibited.

By law, exclusive rights are granted to the copyright owner, which means that nobody else can legally exercise or use those rights without permission, although there are some public policy exceptions to this rule, such as, for example, the spontaneous use of a copyrighted work by a teacher in a nonprofit educational institution. Regrettably, the balancing of rights as between the copyright owner and other individuals generates a great deal of confusion. The copyright statute prevents others from making a substantial copy of a protected work – whether they are selling their art, entering it in competitions or perfecting their techniques—but there is no substantial definition of substantial copy. Cases have held that creating a three dimensional work from a two dimensional drawing is an infringement as long as the unauthorized three-dimensional copy is substantially similar to the two dimensional drawing.

The unauthorized work need not be a substantial copy of the entire original work in order for there to be an infringement. In one case the court held that an infringement was proved when a portion of a repetitive pattern was copied without permission. Even taking a piece of a protected work and using it as part of a collage has been held to be an infringement.

While the law is clear that no one can make a substantial copy of another's protected work, the application of this simple rule is difficult. If you wish to use the creative works of others for mere inspiration, you certainly may do so, but the use can go no further than that. There are statements to the effect that changing a work by 10%, 20% or some other specified percentage will avoid violation of the copyright statute. This is untrue since there are no cases or statutes providing any percentage that can be considered safe; rather, as noted previously, the law uses the substantial similarity test.

As to the meaning of this test, one of the leading copyright jurists in the U. S., Judge Learned Hand, stated that in his opinion, if one compares the protected original work to the allegedly infringing work and the comparison discloses that the works are substantially similar, then there is an infringement. This is a very subjective test, and those artists who copy the works of others run a great risk that a judge could conclude that the line between

inspiration and copying has been crossed. Therefore, take great care when using the works of others for ideas. When in doubt, you should consult with an experienced copyright lawyer.

What about public domain? The copyright laws provide that the Congress shall grant a creative person copyright protection for a limited period, and at the end of that time, the work shall become part of the public domain and may be freely copied. So it is always important when you copy works of others to determine if those works are still protected.

The period of protection for copyrighted works created on or after January 1, 1978, is the life of the creative person plus 70 years if the works were created by an identified human being. Works created anonymously, under a pseudonym or for a business entity, are protected for the shorter of 120 years from creation or 95 years from first publication. Copyrights that predate January 2, 1978, generally have a period of protection of 95 years, though you should see an art attorney if you need to calculate the precise expiration date of such a work. If a work is no longer protected, then it is in the public domain, and there is no prohibition on copying it.

As you can see, U.S. copyright law provides creative people like you with the ability to control the reproduction of their work and reap economic rewards from their creativity, while allowing for the punitive measures against individuals who obtain more than inspiration from the works of other. It's important to note that even subliminal or unintentional copying has been held actionable. It is therefore, essential for you to understand the copyright laws and avoid violating them. When in doubt, you should consult with an expert who may be able to assist you in avoiding liability.

Note: *Copyright laws are subject to change. This article was originally published in the March 2007 issue of **The Artist's Magazine** and reflects the laws in effect at the time the article was written.*

Leonard DuBoff was a law professor for more than 24 years and has testified in Congress in support of laws for creative people including the Visual Artists Rights Acts of 1990. A practicing attorney and pioneer in the field of art law, he has also assisted in drafting numerous states' art laws and has authored more than 20 books. For further information visit www.dubofflaw.com

Newsletter Editor's Letter

I hope all have had a productive month and done lots of painting. I put the article on copyright law in the newsletter because it is something we all need to know something about. Right now especially, as congress has a bill before it to change the copyright laws. The new bill would make it not automatic that you have a copyright on your work but change it to you have to register each work with the copyright office or it will fall in the public domain. This was discussed at the convention last year and we were all asked to contact our congressmen and senators about this. The artistic community is **not** behind the changes. You may think I just do this as a hobby so I am not affected but that isn't true. If you ever exhibit under the new way someone could use your painting any way they chose and publish it wherever they choose without your permission or authorization and they would not have to reimburse you at all or even let you know what they did as your work would automatically be in the **public domain** unless you had registered it. This is worth trying to block. It is being touted in congress as helping older works such as the old masters and impressionists to be used as public domain art. They already are and it is being sponsored by advertising companies, magazines etc. that just want to appropriate artists works without compensation and without the trouble to get permission. I emailed my congresswoman, Mary Falin, and she sent a return Email saying she had read the bill and was for it. She is totally ignorant of art law as are most of congressmen and senators. We need to get as many as possible to contact them. They only think things through if lots of people contact them.

President's Notice

Our president has been very sick and in the hospital. He got out a few days ago so there will be no president's letter this month. I know we all wish him well and a speedy recovery. Due to his illness, we will not have pictures of the winning art this month but we will try to next month. I was going to take pictures too but my digital camera is broken so I was needing David's pictures. I am sure we all understand this and can wait a month to see the pictures of the prize winners.

Copying Artwork

January 1, 2008

By Leonard DuBoff

Q. If I am learning to paint by copying other artists' work from the Internet or pictures in books for my own benefit (not wishing to sell them), is that legal? Also, can I legally sell a copy of a painting of another artist (living or dead) so long as on the front of the painting I sign my name followed by "copied after" plus the original artist's name?

A. Historically, artists perfected their skills by copying the works of old masters. In fact, this still goes on today in many American and European museums, where each copy is required to have different dimensions from the original in order to prevent sale of the copy as an original.

Copying pre-existing work is legal so long as the original work is in the public domain (meaning that the copyright on that work has expired). If, however the copyright has not expired, the copyright owner has several exclusive rights, including the right to reproduce the copyrighted work. This means that unless a defense such as fair use is available, the making of an unauthorized reproduction of a protected work (for example, copying another artist's painting) is an infringement if the copy is substantially similar to the original. The unauthorized sale of an infringing copy may also be an infringement.

It is, therefore, important for you to determine whether the works you copy are still protected by copyright or whether those works are in the public domain. When your copies are substantially similar to the original, your safe only in copying works that are in the public domain. Merely identifying the source of the work you copied will not provide you with a defense, and doing so may even make it easier for the copyright owner to pursue a claim of infringement against you

Note: *Copyright laws are subject to change. This article was originally published in the April 2007 issue of The Artists magazine and reflects the laws in effect at the time the article was written.*

Leonard DuBoff is the author and his credentials were given at the end of the article on Copyright Laws.

Email Addresses Information

Your newsletter is sent to you via Email as opposed to mailing it. This gives you a color Newsletter which would be too expensive to print in color and mail. Some of you don't have Email addresses. If you don't have a computer or aren't online with it and have no Email address, it is possible to set up an Email address at your local library. You can consult with the librarian about how to do this. If you do set one up, furnish me your Email address and I will send it to you there. I will always bring a copy or two of the Newsletter to meeting in black and white but not color copies.