

LAW AND THE ART WORLD

By Bill Frazier, Attorney

Several readers, as well as participants at recent seminars and discussions, have suggested that I use simple bullet points in this column to address important art-related legal issues. That seemed like a good idea, so here they are.

- Under current law, an artist's copyright lasts for his/her life plus 70 years.
- An artist automatically obtains a copyright on the work, when it is completed.
- The artist automatically retains the copyright, when the work is sold, or otherwise transferred.
- Normally, registration of the copyright with the U.S. Copyright Office is not necessary, unless the work is unique and in need of specific protection. This must be done before a lawsuit for infringement can be filed.
- The artist owns the physical piece of artwork and the copyright to it. He or she can sell either or both, or sell the painting or sculpture, while retaining the copyright. If the copyright is sold or transferred, it must be done so with a separate written document; it cannot be transferred accidentally.
- Buyers of paintings or sculptures own only the physical artwork. They do not own any rights of reproduction, such as the right to make prints of the painting, or copies of the sculpture, without the artist's written permission.
- Rarely is there is any compelling reason for artists to transfer away their copyrights.
- Artists may not copyright an idea or concept. They only can copyright their individual, tangible expressions of that idea in a painting or sculpture.
- While this statement is not original to me, it is an artistic truism: The Internet is the biggest copy machine in the world.
- Unless you are very rich and an artwork is a Remington, Renoir, or Monet, or another master artist, do not buy artwork as an investment.
- Do not mess with the Internal Revenue Service regarding appraised values of donated artwork. It has advisory panels made up of people who know more about artwork and their values than we do.
- Do not enter your artwork in a charitable auction, unless you set a reserve price below which it cannot be sold.
- There are "with reserve" auctions and "without reserve" auctions. In a "without reserve" auction, your work can be sold for whatever price is bid, even if there is only one bid and it is unreasonably low.
- Participate only in "with reserve" auctions, and read all of the auction information sent to you.
- Be aware that the "estimated price," often requested by auctions, is not the same as a reserve price. This price typically is for insurance purposes and also serves in the catalogue as an advisory to potential purchasers.
- Do not sign anything without reading and understanding it. Seek legal counsel, if necessary. This applies to all of your endeavors, not just to art.
- Maintain records of locations that are offering your artwork for sale. Stay in touch with your galleries. Know where your work is.
- Do not deal with any gallery, or organization, that does not have insurance coverage on your artwork while in its possession.
- Do not copy other artists' work. Doing so is copyright infringement.
- There is no formula for the amount of another artist's work you can use without permission.
- Avoid agents. Stay aware from self-appointed, non-professional "advisors."
- Do not use photographs, or other images, of people without their permission. For example, get a model release, if you are going to use a recognizable image of someone.
- Remember that images of some famous people—including John Wayne, Elvis Presley, and Marilyn Monroe—are trademarked by their estates. You cannot use those images without permission; doing so is a trademark infringement.
- As a general rule, you cannot use company trademarks in your artwork without permission. Some companies are very aggressive in protecting them and will not hesitate to sue you.
- Artists who donate artwork to a charitable auction or a nonprofit, do not get a fair market value tax deduction. Neither does anyone else who donates their time or work.
- Collectors, the purchase of artwork from a charitable auction, or from a sale sponsored by a nonprofit, is not tax deductible as a charitable donation. You have received value for your payment, just as though you had purchased the artwork at a downtown gallery.
- A buyer's premium at such an auction also is not deductible. You have no choice in the payment and there is no donative intent, so there is no donation or resulting deduction.
- Beware of scams, when buying or selling artwork. They include Nigerian scams, and those involving counterfeit cashier's checks, refund of over payments, and fake awards for which you are required to pay.
- There is no valid reason for artists to transfer their artwork copyrights to a gallery representing their work. Do not do this. Additionally, there is no reason to authorize a gallery to use, or reproduce, your artwork for any purposes other than the promotion, advertising, and sale of the work.
- Artists and galleries should never represent to a potential buyer that the work is "investment" quality, or that it is a "good investment."
- While no longer required, consider placing a copyright notice on your work: your name, copyright symbol ©, and year of completion.
- Gallery owners, if you sell Indian artwork or jewelry—including works by Eskimo and Hawaiian native people—do not commingle it with the jewelry or crafts by other non-Indian artists. You must follow specific laws, regulations, and definitions in the Indian Arts and Crafts Act regarding the sale, identification, and representation of the work. Not doing so can result in steep fines. 

Bill Frazier, a retired attorney, is a consultant to arts groups and organizations and lives part-time in Las Cruces, New Mexico, and Big Timber, Montana.