

Copyrights & Visual Art

Presented by: Carl Butzer

What Is Copyright?

- ◆ Federal Law
- ◆ “Original works of authorship,” including:
 - ◆ Literary works
 - ◆ Dramatic works
 - ◆ Musical works
 - ◆ Artistic works



Federal Copyright Laws Protect Visual Artwork

- ◆ Original “pictorial, graphic, and sculptural works.”
 - ◆ Two-dimensional and three dimensional works of fine, graphic, and applied art, such as:
 - ◆ Comic strips
 - ◆ Paintings
 - ◆ Photographs
 - ◆ Sculpture, such as carvings, ceramics, figurines, molds



When Does Copyright Protection Begin?

- ◆ Upon creation – if it is
 - ◆ 1. “Fixed in a Tangible Medium of Expression” ; and
 - ◆ 2. “Original”



Copyright Protection: ‘Fixation’ Requirement

- ▶ Works Fixed in a “Tangible Form of Expression”:
 - ◆ Books
 - ◆ Recorded Works
 - ◆ Photographs
 - ◆ Paintings
- ▶ Works Not Protected by Copyright Because They Are Not Fixed:
 - ◆ Unrecorded impromptu speeches
 - ◆ Unrecorded Choreographic works
 - ◆ Sports events that have not been recorded

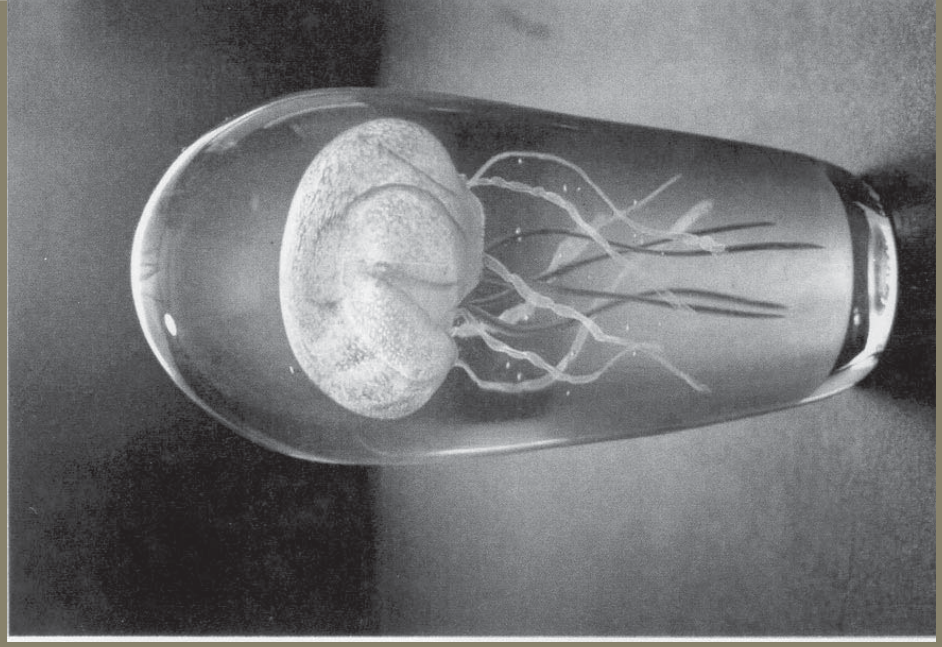


Copyright Protection: “Originality” Requirement

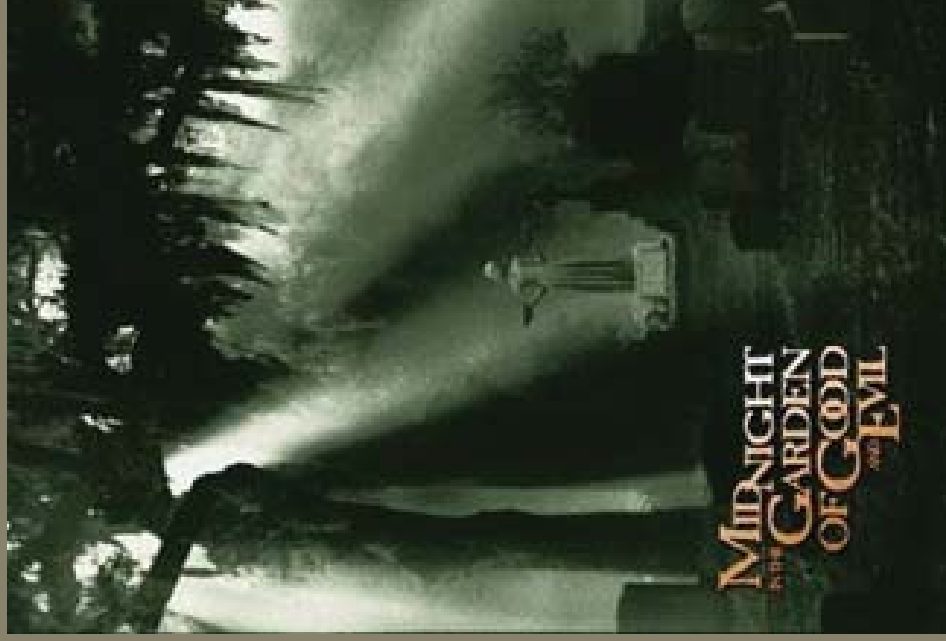
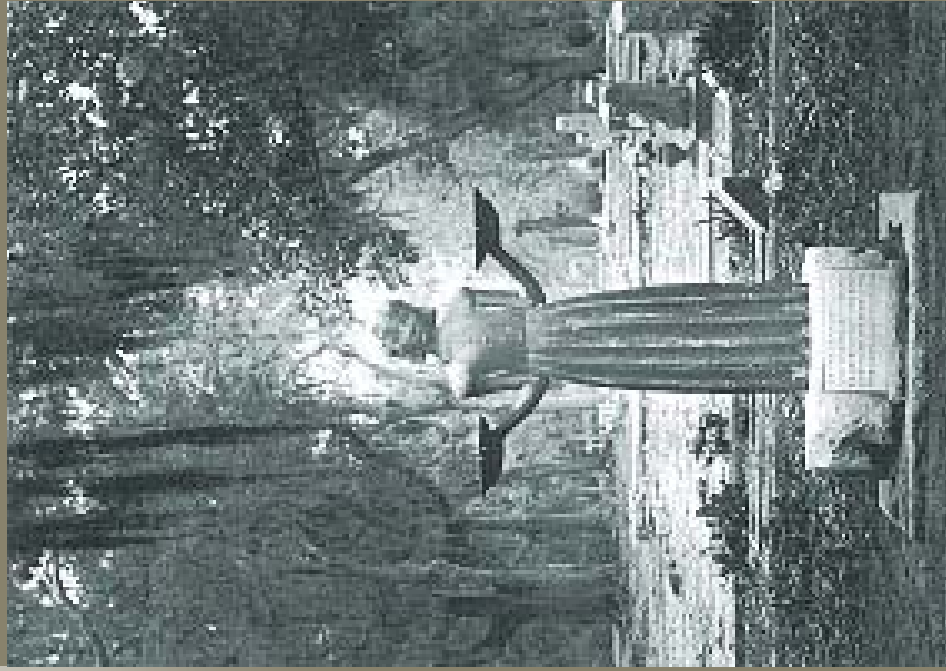
- ◆ Some small measure of originality
- ◆ Does not have to be unique or of high quality



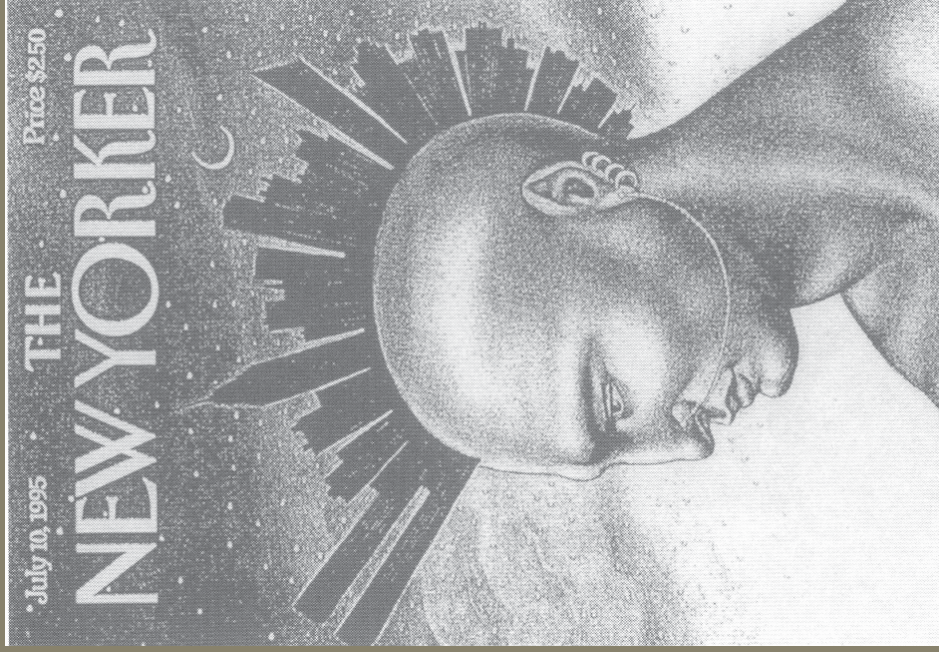
The Jellyfish Sculpture Case



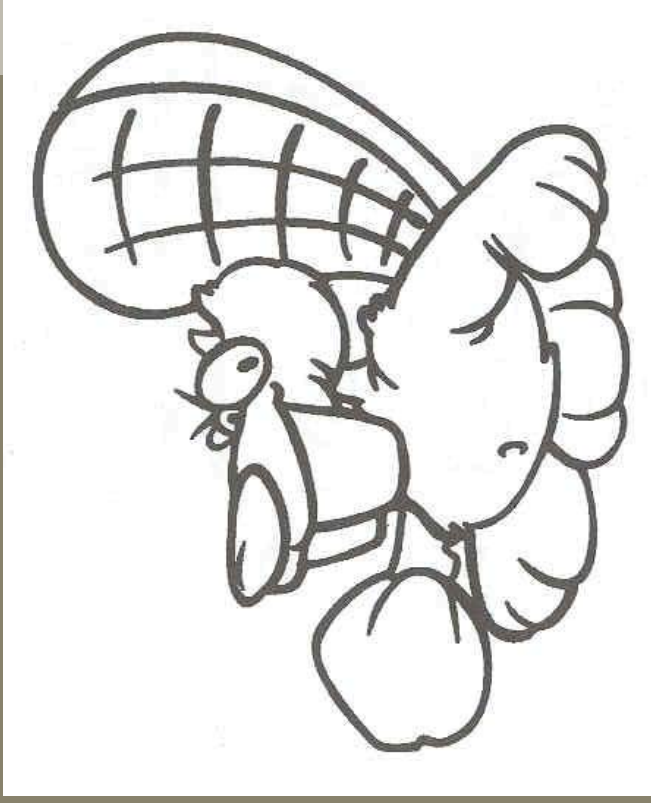
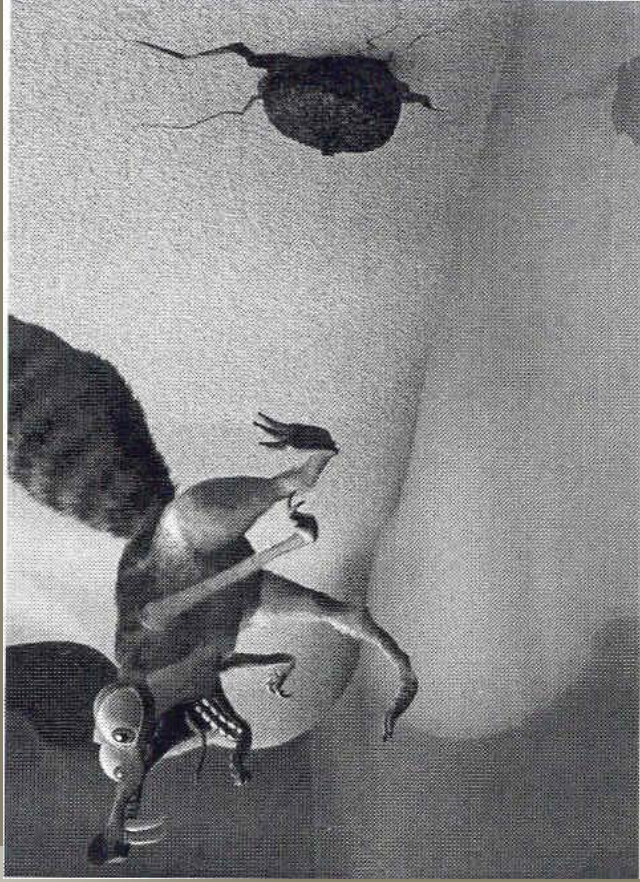
The Case of The Bird Girl Statue



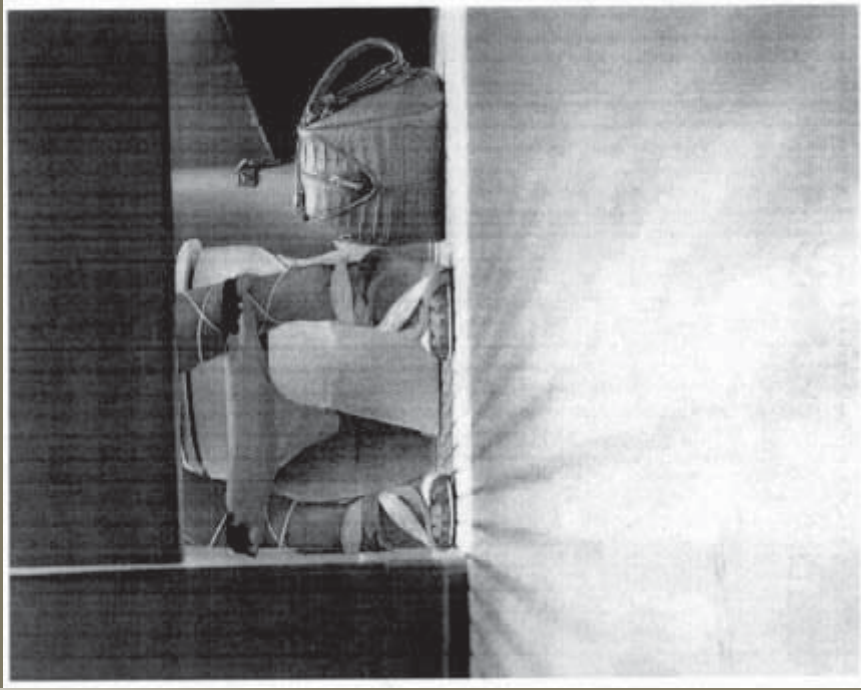
The Mohawk Case



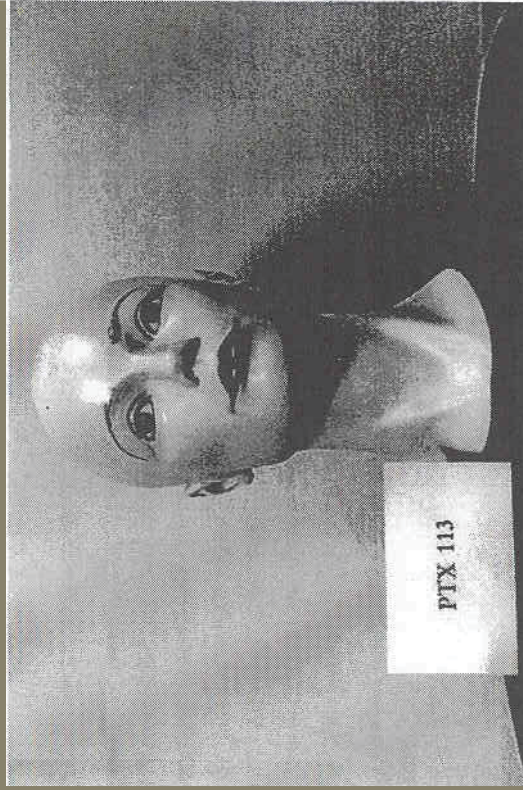
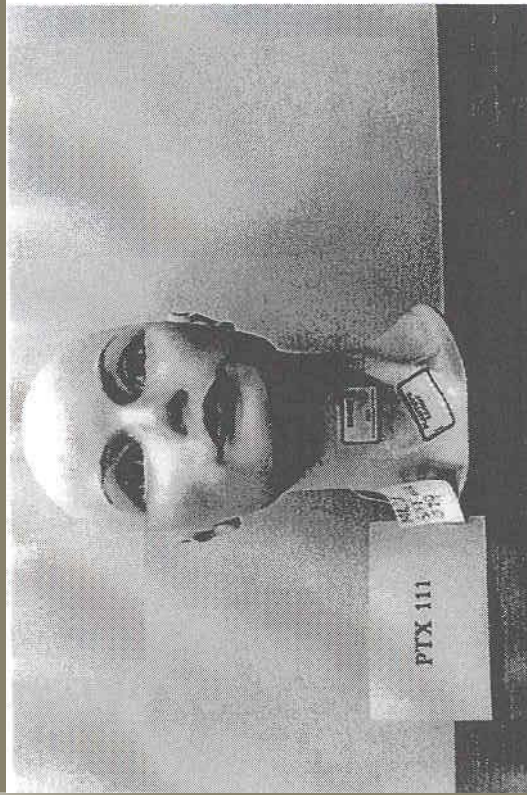
The "Sqratt" Case



The Kate Spade Case



The Mannequin Case



What Works Are Not Protected By Copyright?

- ◆ Titles
- ◆ Names
- ◆ Short phrases and slogans
- ◆ Symbols or designs
- ◆ A list of ingredients
- ◆ Ideas, procedures, methods, systems, processes, concepts, principles, discoveries, or devices

Expressions,
not Ideas, are
Protected.



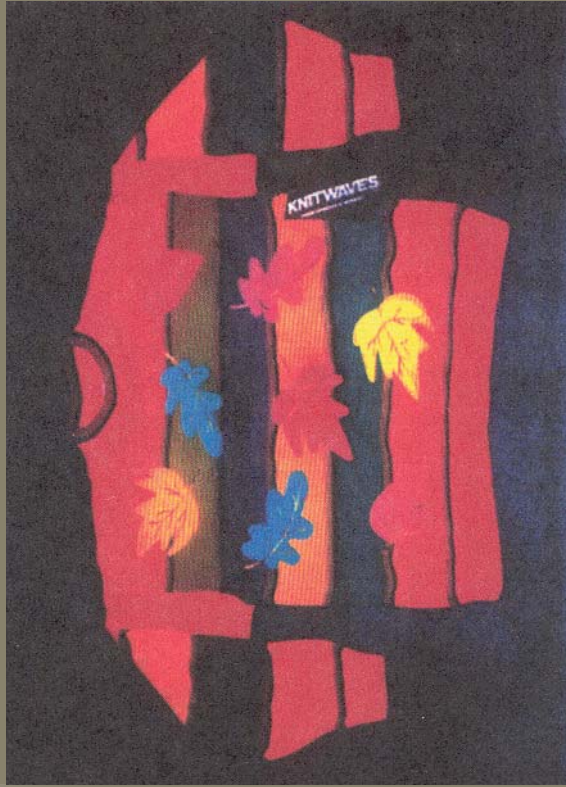
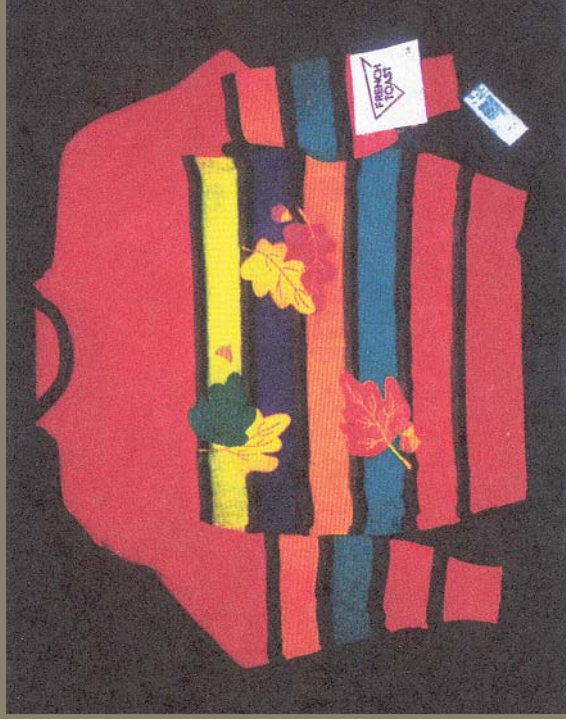
What Works Are Not Protected By Copyright?

- ▶ Works consisting entirely of information that is common property (containing original authorship)
 - E.g., Clothing, vehicles, furniture
- ▶ “Useful articles”: works having an intrinsic mechanical or utilitarian aspect.

Copyright may, however, protect any pictorial, graphic, or sculptural authorship (the aesthetics) that can be identified separately from the utilitarian aspects of an object.



Fabric Designs Case



What Kinds of Copyright Rights Exist?

◆ The 1976 U.S. Copyright Act generally gives the copyright owner the exclusive right to do and to authorize others to:

- ◆ 1. Make copies;
- ◆ 2. Prepare derivative works;

E.g., a movie based on a book; a sculpture based on a photograph

A “derivative work” is a new work that adds something copyrightable to a prior work



What Kinds of Copyright Rights Exist?

◆ The 1976 Copyright Act generally gives the owner of copyright the exclusive right to do and to authorize others to do the following:

- ◆ 1. Make copies or phonorecords;
- ◆ 2. Prepare derivative works based upon the work;
- ◆ 3. Distribute copies of the work (sale, transfer, rental);



What Kinds of Copyright Rights Exist?

- ◆ 4. Perform the work publicly;
- ◆ 5. Display the work publicly; and
- ◆ 6. Perform the work publicly by means of a digital audio transmission (sound recordings).



Derivative Works: From Photo to Sculpture



Extra Rights of Authors of Visual Artworks

- ◆ (1) to prevent the use of his or her name as the author of any work of visual art which he or she did not create;
- ◆ (2) to claim authorship of the work;
- ◆ (3) to prevent the use of his or her name as the author of the work of visual art in the event of a modification of the work which would be prejudicial to his or her honor or reputation; and
- ◆ (4) the (limited) right — to prevent any intentional distortion, mutilation, or other modification of that work which would be prejudicial to his or her honor or reputation.
- ◆ (5) the (limited) right—to prevent any destruction of a work of recognized stature.



What if my painting or sculpture has been incorporated in or made part of a building and the owner of the building wants to remove it?

1. If removing it will modify or distort the work:
 - ✦ Did you sign an agreement which says that installation is subject to modification if the work is removed?
 - ✦ If you can answer either question with a “Yes,” then you probably do not have the right to prevent modification upon removal.
 2. If the work can be removed without being modified, then the building owner must attempt to notify you.
- ✦ Copyright Office registry: allows owners of buildings and authors of visual art incorporated in buildings to record statements in the registry.



Duration of a Copyright

- ◆ Individual: Life +70 years
- ◆ Work Made for Hire: the earlier of 95 years from publication or 120 years from creation of the work



Myth:

“I own the copyrights in a new work that I created that is based on someone else’s copyrighted work.”

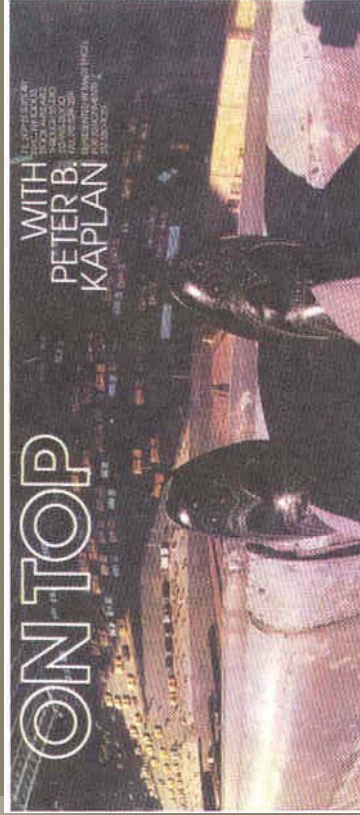
False: that is probably an infringing “derivative work”



Derivative Works: From Character to Sculpture



The Thoughtful Man Case



Myth:

“I can copy someone else’s work as long as
I give them credit.”

False: that is probably copyright
infringement



Myth:

“If I copy only some of the work, that’s
O.K.”

False: that is probably copyright
infringement



Myth:

“I’m just giving other people free copies, so
it’s O.K.”

False: that is probably copyright
infringement



Who Can Claim Copyright?

- ◆ Author
- ◆ Employer/Hiring Party (Works For Hire)
 - ◆ Employer: where an employee created the Work in the course and scope of employment
 - ◆ Hiring Party: a “specially commissioned” Work (limited to certain types of works – sculpture works, paintings and photographs are typically not included); must be in writing
- ◆ Owner by Written Transfer Agreement



Employment Status Matters For an Artist

- ◆ Employed Artists: copyrights owned by their employers.
- ◆ Free-Lance Artists and Entrepreneurs: ordinarily presumed to own copyright in their work – unless they give up their rights by signing Work For Hire Agreements or Assignments.



Employment Status Matters For an Artist

- ▶ Copyright transfers must be in writing
- ▶ CAUTION: transfers or grants of any of the “exclusive rights” can mean you lose your copyrights to those rights
- ▶ Transfer of a right on a nonexclusive basis does not require a written agreement.



Myth:

“If my painting does not have the © or say
“copyright,” I’ve lost my copyrights and
anyone and freely copy it.”

Use of the copyright notice is not required
under U.S. law (unless published before
March 1, 1989)

◆ Benefits

- ◆ informs the public
- ◆ infringers can’t claim “innocent infringement”



Myth:

“I have to Register my photograph with the
United States Copyright Office Before I
Can Place a Copyright Notice on it”

The use of the copyright notice does not
require advance permission from, or
registration with, the Copyright Office.



Notice of Copyright

- ◆ 1. © (the letter C in a circle), or the word “Copyright,” or the abbreviation “Copr.”; and
- ◆ 2. The year of first publication of the work.
 - ◆ “Publication”: distribution of copies of a work to the public by sale or other transfer of ownership or by rental, lease, or lending.
 - ◆ A public display does not of itself constitute publication. E.g., a statue erected in a public place is not necessarily published.
- ◆ 3. Owner Name
 - ◆ **Example: © 2002 John Doe**
- ◆ 4. May be beneficial to add: “All rights reserved”



Myth:

“I can’t be sued for copyright infringement if the owner did not register the copyright with the U.S. Copyright Office.”

False: a copyright owner can still register after your infringement and sue.



Benefits of Copyright Registration

- ▶ Public record
- ▶ Pre-requisite to filing a lawsuit
- ▶ Can create a presumption of a validity
- ▶ Statutory damages and attorneys' fees



Registration Procedures

- ◆ A properly completed application form
- ◆ A nonreturnable deposit of the work to be registered, and
- ◆ A nonrefundable filing fee of \$30



Application Form for Works of Visual Art

◆ Form VA

◆ Deposit Requirements:

- ◆ Two-dimensional works: typically a copy of the published work
- ◆ Three-dimensional work: typically photographic prints, photocopies, or drawings



Application Form for Works of Visual Art

FORM VA For a Work of the Visual Arts UNITED STATES COPYRIGHT OFFICE

REGISTRATION NUMBER

VA _____ YEAR

EFFECTIVE DATE OF REGISTRATION

USVA _____ DAY

YEAR

DO NOT WRITE ABOVE THIS LINE. IF YOU NEED MORE SPACE, USE A SEPARATE CONTINUATION SHEET.

USE A SEPARATE CONTINUATION SHEET.

PREVIOUS OR ALTERNATE TITLE

Published in a Contribution: If this work was published as a contribution to a periodical, serial, or collection, give information about the collective work in which the contribution appeared. Title of Collective Work

If published as a periodical or magazine, give Volume Number, Issue Number, and Date

NAME OF AUTHOR Year Born Year Died

Was this contribution to the work a "work made for hire"? Yes No

Nature of Authorship (Check appropriate boxes). See instructions: Map Technical drawing 2-Dimensional sculpture Photograph Text 3-Dimensional artwork Jewelry design Reproduction of work of art

Name of Author Year Born Year Died

Was this contribution to the work a "work made for hire"? Yes No

Nature of Authorship (Check appropriate boxes). See instructions: Map Technical drawing 2-Dimensional sculpture Photograph Text 3-Dimensional artwork Jewelry design Reproduction of work of art

Year in Which Creation of This Work Was Completed

Year in Which Publication of This Particular Work Was Completed

APPLICATION RECEIVED

ONE DEPOSIT RECEIVED

TWO DEPOSITS RECEIVED

FUNDS RECEIVED

MORE ON BACK

60 (NOT WRITE HERE)

Page 1 of _____ Pages

EXAMINED BY _____ FORM VA

CHECKED BY _____

CORRESPONDENCE YES NO

FOR COPYRIGHT OFFICE USE ONLY

DO NOT WRITE ABOVE THIS LINE. IF YOU NEED MORE SPACE, USE A SEPARATE CONTINUATION SHEET.

PREVIOUS OR ALTERNATE TITLE

Published in a Contribution: If this work was published as a contribution to a periodical, serial, or collection, give information about the collective work in which the contribution appeared. Title of Collective Work

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TWO DEPOSITS RECEIVED

FUNDS RECEIVED

MORE ON BACK

60 (NOT WRITE HERE)

Page 1 of _____ Pages

See instructions on reverse side of this page.

Copyright © 2002 by the U.S. Copyright Office.

Printed in the United States of America.

For more information, contact the U.S. Copyright Office, 1077 G Street, NE, Washington, DC 20540.

U.S. GOVERNMENT PRINTING OFFICE: 2002-461113-021

Application Form for Works of Visual Art

FORM VA
 For Works of Visual Arts
 UNITED STATES COPYRIGHT OFFICE
 REGISTRATION NUMBER

VA _____
 EFFECTIVE DATE OF REGISTRATION
 Month _____ Day _____ Year _____

DO NOT WRITE ABOVE THIS LINE. IF YOU NEED MORE SPACE, USE A SEPARATE CONTINUATION SHEET.
 Title of this Work _____
 NATURE OF THIS WORK See instructions

Precedent or Alternative Titles

Publication as a Contribution: This work was published in a contribution to a periodical, serial, or collection, in a collection, in a collective work, in which by
 contributor appeared. Title of Collective Work _____

If published in a periodical or serial give: Volume _____ Number _____ Issue Date _____ On Pages _____

NAME OF AUTHOR _____
 DATES OF BIRTH AND DEATH
 Year Born _____ Year Died _____

Was this contribution to the work a
 "work made for hire"? Yes No
 Author's Nationality or domicile
 Name of Country _____ OR Citizen of _____ Domiciled in _____
 Nature of Authorship (Check appropriate boxes) See instructions
 3-Dimensional sculpture Map Technical drawing
 2-Dimensional artwork Photograph Text
 Reproduction of work of art Jewelry design Architectural work

Name of Author _____
 Date of Birth and Death
 Year Born _____ Year Died _____

Was this contribution to the work a
 "work made for hire"? Yes No
 Author's Nationality or Domicile
 Name of Country _____ OR Citizen of _____ Domiciled in _____
 Nature of Authorship (Check appropriate boxes) See instructions
 3-Dimensional sculpture Map Technical drawing
 2-Dimensional artwork Photograph Text
 Reproduction of work of art Jewelry design Architectural work

Year in Which Creation of This Work Was
 Completed _____
 This information is required if the work has been published.
 Date and Nation of First Publication of This Particular Work
 Year _____ Day _____ Month _____
 Date and Nation of First Publication of This Particular Work
 Year _____ Day _____ Month _____

COPYRIGHT CLAIMANT(S) Name and address must be given even if the claimant is the same as the
 author given in space 2.

Transfer of the claimant's interest here in space 4 (See Manual form the author's name) is space 2, give 4
 brief statement of how the claimant obtained ownership of the copyright.

APPLICATION RECEIVED
 ONE DEPOSIT RECEIVED
 TWO DEPOSITS RECEIVED
 FUNDS RECEIVED

See instructions before completing this form.
 MORE ON BACK See box of instructions. Get Form VA-108.
 DO NOT WRITE HERE
 Page 1 of _____ pages

NOTE
 Under the law, the author of a work made for hire is the employer or other person by whom the work was prepared, if that person has the right to control the work, for the purposes of publication, distribution, and other rights of the author. If the work is not made for hire, the author is the individual who created the work.



Application Form for Works of Visual Art

EXAMINED BY _____
FORM VA

CHECKED BY _____

FOR COPYRIGHT OFFICE USE ONLY
 CORRESPONDENCE
 Yes

DO NOT WRITE ABOVE THIS LINE. IF YOU NEED MORE SPACE, USE A SEPARATE CONTINUATION SHEET.

PREVIOUS REGISTRATION Has registration for this work, or for an earlier version of this work, already been made in the Copyright Office?

- a. Yes No If your answer is "Yes," why is another registration being sought? (Check appropriate box.)
 - This is the first registration of a work previously registered in unpublished form.
 - This is the first application submitted by the author as copyright claimant.
 - This is a changed version of the work, as shown by space 6 on this application.

If your answer is "Yes," give Previous Registration Number _____ Year of Registration _____

DERIVATIVE WORK OR COMPILATION Complete both space 6, and do for a derivative work, complete only 7a for a compilation.

- a. Preexisting Material Identify any preexisting work or works that this work is based on or incorporates.
 - _____
 - _____
 - _____

- b. Material Added to This Work Give a brief, general statement of the material that has been added to this work and in which copyright is claimed.
 - _____
 - _____
 - _____

DEPOSIT ACCOUNT If the registration fee is to be charged to a Deposit Account established at the Copyright Office, give name and number of Account.

Name _____ Account Number _____

CORRESPONDENCE Give name and address to which correspondence about this application should be sent. Name and Address (City, State, ZIP) _____

Are code and expiration number _____ Fee number _____

CERTIFICATION I, the undersigned, hereby certify that I am the _____
 check only one author other copyright claimant owner of exclusive rights authorized agent of _____
 Name of author or other copyright interest or owner of exclusive right(s) _____

of the work identified in this application and that the statements made by me in this application are correct to the best of my knowledge.
 Typed or printed name and date _____ If this application gives a date of publication in space 3, do not sign and submit it before that date.

Handwritten signature (s) _____ Date _____

Certificate will be mailed in window envelope to this address:
 Name _____
 Number of copies _____
 City/State/ZIP _____

U.S. Copyright Office, 1077 D Street, N.W., Washington, D.C. 20540-4001

Form VA 2002-01-01 Web File 2002 Printed on recycled paper

U.S. Government Printing Office, 2002-451-112/0021

To Register or Not to Register: That is the Question

- ◆ Registration is not necessary to have a copyright
- ◆ Inexpensive
- ◆ Can reduce the time and expense of a lawsuit
- ◆ If mounting costs of registration are a problem, be selective
- ◆ Conclusion: Only you can decide if it's “worth it”

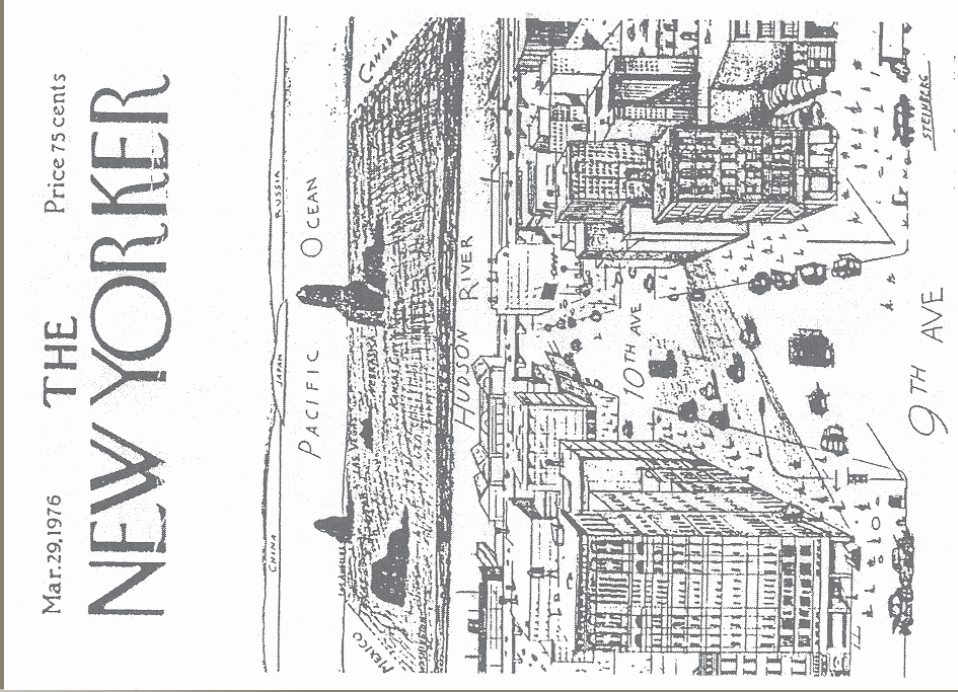


Infringement

- ▶ Work is protectable,
- ▶ Copying, and
- ▶ Defendant's work is substantially similar to the protectable part of Plaintiff's work.
- ▶ Safest course of action: Do not copy unless you have permission or are sure it is in the public domain.



From Magazine Cover to Movie Poster



The Defense of Fair Use

- ◆ The Fair Use doctrine limits an author's exclusive rights concerning some copying, such as for criticism, news reporting, teaching, etc.
- ◆ Factors considered are
 - ◆ (1) the purpose and character of the use,
 - ◆ (2) the nature of the copyrighted work,
 - ◆ (3) the amount and substantiality of the portion used, and
 - ◆ (4) the effect on the market for or value of the copyrighted work.



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