

GETTING INTO THE

ART BUSINESS

A PRACTICAL GUIDE FOR EMERGING & INDEPENDENT ARTISTS
BUILDING SUSTAINABLE CREATIVE CAREERS

FRIST DRAFT
VERSION 1.0

PLAGIARISM,
COPYRIGHT LAW,
AND BEST PRACTICES

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FEBRUARY 2026

WHAT IS PLAGIARISM?
ISN'T JUST COPYING.

ART PLAGIARISM
OVERLAPS HEAVILY
WITH COPYRIGHT LAW
AND CREATIVE ETHICS.

BEST PRACTICES
ARTISTS USE TO STAY
SAFE.

WHAT “PLAGIARISM”?

WHAT “PLAGIARISM” MEANS IN ART

IN VISUAL ART, PLAGIARISM ISN'T JUST COPYING — IT'S: PRESENTING SOMEONE ELSE'S CREATIVE WORK OR DISTINCTIVE EXPRESSION AS YOUR OWN WITHOUT PERMISSION, CREDIT, OR TRANSFORMATION. UNLIKE SCHOOL PLAGIARISM, ART PLAGIARISM OVERLAPS HEAVILY WITH COPYRIGHT LAW AND CREATIVE ETHICS.

CORE RULES ARTISTS SHOULD FOLLOW:

- 1. DON'T COPY PROTECTED WORKS LINE-FOR-LINE** IF AN ARTWORK OR PHOTOGRAPH IS CLEARLY RECOGNIZABLE AS SOMEONE ELSE'S COMPOSITION, POSE, LIGHTING, OR STYLING — THAT'S COPYING, EVEN IF YOU REPAINT IT.
- 2. INSPIRATION ≠ DUPLICATION** USING AN IDEA OR THEME IS FINE. REPRODUCING SOMEONE'S UNIQUE CREATIVE CHOICES IS NOT.
- 3. REFERENCE IS ALLOWED** — REPLICATION IS RISKY. REFERENCE IMAGES SHOULD GUIDE ANATOMY, LIGHTING, OR MOOD — NOT BE TRACED OR RECREATED EXACTLY.
- 4. TRANSFORMATION MATTERS** THE MORE YOU CHANGE COMPOSITION, PERSPECTIVE, MEANING, OR STYLE, THE SAFER YOU ARE ETHICALLY AND LEGALLY.
- 5. CREDIT DOESN'T EQUAL PERMISSION** SAYING “REFERENCE PHOTO BY...” DOES NOT OVERRIDE COPYRIGHT.

CAN YOU USE PHOTOS FROM THE INTERNET?

YES — BUT ONLY UNDER CERTAIN CONDITIONS.

SAFE USES: YOU MAY USE IMAGES THAT ARE:

- ✓ PUBLIC DOMAIN
 - ✓ CREATIVE COMMONS LICENSED FOR REUSE
 - ✓ YOUR OWN PHOTOS
 - ✓ STOCK IMAGES PURCHASED WITH ARTIST-USE RIGHTS
- EXAMPLES OF PUBLIC-DOMAIN RESOURCES INCLUDE ARCHIVES FROM: LIBRARY OF CONGRESS, OR THE SMITHSONIAN INSTITUTION.*

RISKY USES

- ✗ COPYING A PHOTOGRAPHER'S IMAGE COMPOSITION DIRECTLY.
- ✗ TRACING OR REPAINTING EDITORIAL OR COMMERCIAL PHOTOS
- ✗ USING SOCIAL MEDIA IMAGES WITHOUT PERMISSION EVEN IF YOU CHANGE COLORS OR STYLE, THE ORIGINAL COMPOSITION IS STILL PROTECTED.

A HELPFUL RULE: IF SOMEONE CAN PLACE YOUR PAINTING NEXT TO THE PHOTO AND SEE IT'S THE SAME SHOT — YOU'RE TOO CLOSE.

CAN YOU PAINT PUBLIC FIGURES? YES — BUT THE PHOTO SOURCE STILL MATTERS. FOR EXAMPLE, YOU MAY ABSOLUTELY CREATE ARTWORK OF: RUBY BRIDGES. PUBLIC FIGURES THEMSELVES ARE NOT COPYRIGHTED. BUT THE PHOTOGRAPH OF THEM USUALLY IS.

SO: PAINT RUBY BRIDGES USING A PUBLIC-DOMAIN OR LICENSED REFERENCE: COMBINE MULTIPLE REFERENCES, AND CREATE YOUR OWN INTERPRETATION

AVOID:

- ✗ REPAINTING A COPYRIGHTED PORTRAIT EXACTLY
- ✗ USING CELEBRITY EDITORIAL PHOTOS WITHOUT PERMISSION. THERE'S ALSO SOMETHING CALLED RIGHT OF PUBLICITY, BUT IT MAINLY AFFECTS COMMERCIAL MERCHANDISE — NOT FINE ART EXPRESSION.

BEST PRACTICES:

BEST PRACTICES ARTISTS USE TO STAY SAFE

PROFESSIONAL ARTISTS OFTEN FOLLOW THESE HABITS:

- ✓ USE MULTIPLE REFERENCES — BLEND ANATOMY, POSE, AND LIGHTING FROM SEVERAL SOURCES.
 - ✓ CHANGE COMPOSITION — ALTER ANGLE, BACKGROUND, EXPRESSION, OR CONTEXT.
 - ✓ BUILD YOUR OWN PHOTO LIBRARY — TAKE REFERENCE PHOTOS WHENEVER POSSIBLE.
 - ✓ USE PUBLIC-DOMAIN ARCHIVES — HISTORIC PHOTOS ARE OFTEN LEGALLY SAFE.
 - ✓ ASK PERMISSION — MANY PHOTOGRAPHERS GRANT ARTIST USE IF CREDITED.
 - ✓ TRANSFORM MEANING — ADD NARRATIVE, SYMBOLISM, OR ABSTRACTION.
- A PRACTICAL RULE ARTISTS LIVE BY REFERENCE FOR LEARNING — CREATE FOR ORIGINALITY. IF YOUR WORK SHOWS YOUR VOICE, YOU'RE USUALLY ON SOLID GROUND.

PLAGIARISM & COPYRIGHT IN VISUAL ART

1. WHAT FAIR USE REALLY MEANS FOR ARTISTS:

ARTISTS OFTEN HEAR:

“IT'S FAIR USE IF I CHANGE IT.” THAT'S INCOMPLETE — AND RISKY.

FAIR USE IS A LEGAL DEFENSE, NOT A PERMISSION. COURTS EVALUATE FOUR FACTORS:

THE 4 FAIR USE FACTORS

PURPOSE & CHARACTER

IS THE WORK TRANSFORMATIVE? DOES IT ADD NEW MEANING, COMMENTARY, OR PURPOSE?

NATURE OF THE ORIGINAL WORK

CREATIVE PHOTOGRAPHS/ART RECEIVE STRONGER PROTECTION THAN FACTUAL MATERIAL.

AMOUNT USED

DID YOU COPY THE “HEART” OF THE IMAGE OR ONLY INCIDENTAL ELEMENTS?

MARKET IMPACT

DOES YOUR WORK COMPETE WITH OR REDUCE THE VALUE OF THE ORIGINAL?

IMPORTANT REALITY:

FAIR USE IS DECIDED IN COURT — NOT BY ARTISTS.

MEANING: EVEN IF YOU BELIEVE YOUR WORK QUALIFIES, YOU COULD STILL FACE LEGAL ACTION.

2) WHAT COURTS CONSIDER “TRANSFORMATIVE” TRANSFORMATION IS THE STRONGEST PROTECTION — BUT IT HAS NUANCE.

A WORK IS MORE LIKELY TRANSFORMATIVE WHEN IT:

- ✓ CHANGES THE MESSAGE OR MEANING
 - ✓ RECONTEXTUALIZES THE SUBJECT
 - ✓ USES THE SOURCE AS COMMENTARY OR CRITIQUE
 - ✓ SIGNIFICANTLY ALTERS COMPOSITION
- IT IS LESS TRANSFORMATIVE WHEN IT:
- ✗ REPLICATES COMPOSITION CLOSELY
 - ✗ PRESERVES POSE, LIGHTING, AND FRAMING
 - ✗ LOOKS LIKE A STYLISTIC REPAINT

THINK OF TRANSFORMATION AS:

NEW EXPRESSION + NEW INTENT + VISIBLE ORIGINALITY

NOT:

“SAME IMAGE, DIFFERENT BRUSH STYLE.”

3) FAMOUS ART CASES — WHAT ARTISTS SHOULD LEARN THESE CASES SHAPED HOW COURTS VIEW APPROPRIATION ART.

THE WARHOL PRECEDENT

THE ESTATE OF ANDY WARHOL LOST A MAJOR SUPREME COURT CASE OVER WARHOL'S USE OF A PHOTOGRAPH BY

LYNN GOLDSMITH.

KEY LESSON:

CHANGING STYLE ALONE DOES NOT AUTOMATICALLY EQUAL TRANSFORMATION.

THE COURT RULED THAT LICENSING WARHOL'S IMAGE COMPETED WITH THE PHOTOGRAPHER'S MARKET.

TAKEAWAY: COMMERCIAL CONTEXT MATTERS.

THE SHEPARD FAIREY POSTER CASE

SHEPARD FAIREY CREATED THE OBAMA "HOPE" POSTER USING AN AP PHOTOGRAPH.

LESSON:

EVEN ICONIC ART CAN FACE COPYRIGHT CONFLICT WHEN SOURCE MATERIAL IS CLOSELY REPLICATED.

FAIREY EVENTUALLY SETTLED — AND ACKNOWLEDGED COPYING ISSUES.

THE RICHARD PRINCE CONTROVERSY

RICHARD PRINCE USED INSTAGRAM PHOTOS WITH MINIMAL CHANGES.

SOME COURTS SIDED WITH HIM, OTHERS CRITICIZED THE PRACTICE.

LESSON:

APPROPRIATION ART LIVES IN A LEGAL GRAY ZONE — NOT GUARANTEED SAFETY.

4) PUBLIC FIGURES VS COPYRIGHTED IMAGES

YOU MAY DEPICT PUBLIC FIGURES LIKE:

👉 RUBY BRIDGES

BECAUSE **PEOPLE THEMSELVES AREN'T COPYRIGHTED.** BUT THE PHOTOGRAPH STILL IS.

SAFE APPROACH:

✓ USE PUBLIC-DOMAIN ARCHIVES

✓ COMBINE REFERENCES

✓ CHANGE COMPOSITION

✓ CREATE INTERPRETIVE PORTRAITS

UNSAFE APPROACH:

✗ REPAINT A COPYRIGHTED PORTRAIT EXACTLY

✗ TRACE EDITORIAL PHOTOS

THINK:

YOU OWN YOUR INTERPRETATION — NOT SOMEONE ELSE'S PHOTOGRAPH.

5) THE ETHICAL SIDE — BEYOND LEGALITY

EVEN WHEN LEGAL ACTION IS UNLIKELY, PLAGIARISM HARMS:

- PROFESSIONAL CREDIBILITY
- GALLERY TRUST
- COLLECTOR CONFIDENCE
- ARTIST REPUTATION

THE ART WORLD VALUES: **VOICE > IMITATION**

COLLECTORS BUY ORIGINALITY — NOT SKILLED COPYING.

6) A PRACTICAL ARTIST SAFETY CHECKLIST

BEFORE RELEASING WORK, ASK:

✓ ORIGIN CHECK

DID I COPY A SPECIFIC PHOTO COMPOSITION?

✓ TRANSFORMATION CHECK

DOES THIS WORK CLEARLY SHOW MY INTERPRETATION?

✓ RECOGNITION TEST

WOULD SOMEONE RECOGNIZE THE SOURCE

IMMEDIATELY?

✓ LICENSING CHECK

DO I HAVE PERMISSION OR PUBLIC-DOMAIN RIGHTS?

✓ MARKET CHECK

COULD THIS COMPETE WITH THE ORIGINAL IMAGE?

IF MULTIPLE ANSWERS RAISE CONCERN — REVISE.

7) PROFESSIONAL BEST PRACTICES ARTISTS USE

EXPERIENCED ARTISTS REDUCE RISK BY:

✓ SHOOTING THEIR OWN REFERENCES

✓ HIRING MODELS

✓ USING PUBLIC-DOMAIN ARCHIVES

✓ BLENDING MULTIPLE SOURCES

✓ SKETCHING FROM LIFE

✓ ALTERING COMPOSITION EARLY

✓ KEEPING REFERENCE DOCUMENTATION

THESE HABITS PROTECT BOTH CREATIVITY AND BUSINESS.

THE GUIDING PRINCIPLE

REFERENCE TEACHES — ORIGINALITY SELLS.

THE SAFEST AND MOST RESPECTED WORK COMES FROM:

INTERPRETATION → TRANSFORMATION → PERSONAL VOICE, NOT REPLICATION.

8) THE MECHANICS OF ARTISTIC ORIGINALITY

1) HOW COURTS DETECT COPYING (THE "SUBSTANTIAL SIMILARITY" TEST)

WHEN INFRINGEMENT IS ALLEGED, COURTS DON'T ASK:

"DID THE ARTIST CHANGE COLORS OR STYLE?"

THEY ASK:

WOULD AN ORDINARY OBSERVER RECOGNIZE THE SOURCE?

THIS IS CALLED THE SUBSTANTIAL SIMILARITY TEST.

JUDGES COMPARE:

- COMPOSITION LAYOUT
- POSE AND GESTURE
- CROPPING AND FRAMING
- LIGHTING PATTERN
- DISTINCTIVE VISUAL ELEMENTS

IF THE CREATIVE FINGERPRINT MATCHES, REPAINTING DOESN'T PROTECT YOU.

A FAMOUS JUDICIAL PHRASE SUMMARIZES IT:

"STYLE CHANGE DOES NOT EQUAL ORIGINALITY."

THIS PRINCIPLE WAS REINFORCED IN LITIGATION

SURROUNDING THE WORK OF ANDY WARHOL, WHERE THE COURT EMPHASIZED THAT COMMERCIAL SUBSTITUTION MATTERS.

2) HOW MUCH CHANGE IS "ENOUGH"?

THERE'S NO PERCENTAGE RULE. COURTS EVALUATE

QUALITATIVE CHANGE, NOT QUANTITY.

WEAK TRANSFORMATION (HIGH RISK)

✗ SAME POSE, SAME CROP

✗ SAME LIGHTING

✗ SAME EXPRESSION

✗ RECOGNIZABLE COMPOSITION

STRONG TRANSFORMATION (LOW RISK)

✓ NEW NARRATIVE CONTEXT

✓ ALTERED VIEWPOINT

✓ COMBINED REFERENCES

✓ SYMBOLIC ADDITIONS

✓ STRUCTURAL REDESIGN

A USEFUL PROFESSIONAL BENCHMARK:

IF THE SOURCE PHOTO VANISHED, YOUR WORK SHOULD STILL STAND INDEPENDENTLY.

IF YOUR ARTWORK DEPENDS ON THE PHOTO'S COMPOSITION — IT'S TOO CLOSE.

3) PORTRAITURE OF PUBLIC FIGURES — THE SAFE WORKFLOW

YOU MAY PORTRAY HISTORICAL OR PUBLIC FIGURES SUCH AS:

👉 RUBY BRIDGES

BECAUSE IDENTITY IS NOT COPYRIGHTED.

THE DANGER LIES IN **COPYING PHOTOGRAPHIC EXPRESSION.**

PROFESSIONAL PORTRAIT WORKFLOW

- ✓ COLLECT 3–6 REFERENCE IMAGES
- ✓ SKETCH COMPOSITE ANATOMY
- ✓ ALTER EXPRESSION OR ANGLE
- ✓ REBUILD LIGHTING
- ✓ ADD NARRATIVE CONTEXT

THIS PRODUCES:

AN INTERPRETATION — NOT A REPLICA.

MUSEUMS OFTEN SOURCE PUBLIC-DOMAIN IMAGES FROM ARCHIVES LIKE THE LIBRARY OF CONGRESS FOR THIS REASON.

4) GALLERY & COLLECTOR EXPECTATIONS

SERIOUS GALLERIES ASSUME:

- YOUR WORK IS ORIGINAL
- YOU OWN RIGHTS TO SELL IT
- NO THIRD-PARTY CLAIMS EXIST

IF COPYRIGHT CONFLICT ARISES:

- SALES CAN BE FROZEN
- REPUTATION DAMAGED
- CONTRACTS VOIDED

COLLECTORS BUY CONFIDENCE AS MUCH AS ART.

PROFESSIONAL NORM:

ARTISTS WARRANT ORIGINALITY.

THAT'S A LEGAL PROMISE.

5) REFERENCE DOCUMENTATION — WHAT PROFESSIONALS DO

THIS IS RARELY DISCUSSED BUT CRITICAL.

EXPERIENCED ARTISTS KEEP:

- 📁 REFERENCE FOLDERS
- 📷 SOURCE ATTRIBUTION
- 📝 NOTES ON TRANSFORMATION
- 📅 CREATION TIMELINES

WHY? IF QUESTIONED, YOU CAN DEMONSTRATE:

INDEPENDENT CREATIVE PROCESS.

THIS MATTERS LEGALLY AND PROFESSIONALLY.

6) RISK SPECTRUM — HOW ARTISTS EVALUATE PROJECTS

THINK OF ARTWORK ON A CONTINUUM:

- LOW RISK
 - ORIGINAL PHOTOGRAPHY
 - LIFE DRAWING
 - PUBLIC-DOMAIN REFERENCE
 - COMPOSITE INSPIRATION
- MODERATE RISK
 - LICENSED STOCK PHOTOS
 - HEAVILY TRANSFORMED REFERENCES
- HIGH RISK
 - DIRECT REPAINTING
 - EDITORIAL PHOTOS
 - CELEBRITY PORTRAIT REPLICATION

PROFESSIONAL ARTISTS AIM FOR GREEN-ZONE.

7) THE REPUTATION DIMENSION

LEGAL TROUBLE IS RARE — BUT REPUTATION

CONSEQUENCES ARE REAL.

THE ART WORLD REMEMBERS ARTISTS ASSOCIATED WITH COPYING CONTROVERSIES, INCLUDING DISPUTES INVOLVING FIGURES LIKE SHEPARD FAIREY.

COLLECTORS WANT: **AUTHENTIC CREATIVE VOICE, NOT BORROWED COMPOSITION.**

TRUST IS CURRENCY.

THE ADVANCED GUIDING PRINCIPLE BORROW IDEAS. BUILD EXPRESSION. OWN INTERPRETATION. OR MORE BLUNTLY: IF SOMEONE ELSE COMPOSED IT — DON'T REPRODUCE IT.

LEGAL DIFFERENCE: INSPIRATION VS DERIVATION

1) THIS DISTINCTION SITS AT THE HEART OF PLAGIARISM DISPUTES.

INSPIRATION (SAFE ZONE)

YOU ARE INSPIRED WHEN YOU BORROW:

- CONCEPTS
- THEMES
- MOOD
- TECHNIQUE
- SUBJECT MATTER

...BUT CREATE NEW EXPRESSION.

EXAMPLE: SEEING A CIVIL RIGHTS PHOTOGRAPH INSPIRES YOU TO PAINT RESILIENCE — BUT YOU DESIGN A NEW POSE, SETTING, AND COMPOSITION...THAT'S INDEPENDENT AUTHORSHIP.

DERIVATION (RISK ZONE)

A DERIVATIVE WORK IS LEGALLY TIED TO AN EXISTING COPYRIGHTED WORK. IT INCLUDES:

- REPAINTINGS
- CLOSE COMPOSITIONAL COPIES
- STYLIZED RECREATIONS
- TRACED IMAGERY

EVEN IF RENDERED IN YOUR STYLE, IT REMAINS BASED ON PROTECTED EXPRESSION.

COURTS ASK:

DID THE ARTIST APPROPRIATE CREATIVE CHOICES — NOT JUST IDEAS?

THAT STANDARD WAS EMPHASIZED IN MODERN RULINGS INVOLVING ANDY WARHOL, WHERE STYLISTIC TRANSFORMATION ALONE DID NOT ERASE DEPENDENCY ON THE ORIGINAL PHOTOGRAPH. **PRACTICAL RULE IDEAS INSPIRE** — COMPOSITIONS BELONG TO THEIR CREATOR. IF YOUR WORK VISUALLY DEPENDS ON A SPECIFIC SOURCE IMAGE, IT'S DERIVATIVE.

2) COMMISSION PORTRAIT CONTRACTS — WHAT

PROFESSIONALS INCLUDE

PORTRAIT COMMISSIONS INVOLVE OWNERSHIP, LIKENESS RIGHTS, AND REPRODUCTION PERMISSIONS. A SIMPLE HANDSHAKE IS NOT ENOUGH.

ESSENTIAL CONTRACT SECTIONS

SCOPE OF WORK

- SIZE, MEDIUM, DEADLINE
- REFERENCE PHOTO SOURCE
- REVISION LIMITS

COPYRIGHT OWNERSHIP

DEFAULT RULE: THE ARTIST OWNS THE COPYRIGHT UNLESS TRANSFERRED.

3) HOW MUSEUMS HANDLE IMAGE RIGHTS

MUSEUMS OPERATE UNDER STRICT INTELLECTUAL PROPERTY PROTOCOLS.

INSTITUTIONS LIKE THE SMITHSONIAN INSTITUTION MANAGE ARTWORK RIGHTS SEPARATELY FROM PHYSICAL OWNERSHIP. KEY DISTINCTIONS:

PHYSICAL OBJECT OWNERSHIP ≠ COPYRIGHT OWNERSHIP
OWNING A PAINTING DOES NOT GRANT REPRODUCTION RIGHTS.

MUSEUMS MUST:

- LICENSE IMAGES FOR PUBLICATIONS
- TRACK ARTIST ESTATE RIGHTS
- MANAGE PUBLIC-DOMAIN STATUS

PROFESSIONAL TAKEAWAY

A WORKING ARTIST OPERATES AT THE INTERSECTION OF:
CREATIVE FREEDOM + LEGAL AWARENESS + CONTRACTUAL CLARITY OR MORE SIMPLY:
CREATE BOLDLY — PROTECT INTELLIGENTLY.