

Artists and Copyright Law – research from internet

With constantly changing laws and complicated terms, you almost have to be a copyright lawyer to be fluent with the plethora of rights and usage restrictions that apply to art-related media. Many artists don't know how their works are protected under law or how these laws may apply to the creations of others. It's important for the artist to be literate with basic copyright terms and to be conscientious of other artists' rights.

Even artists who paint or draw from their own imaginations sometimes need to use photos for reference. (Keep a big shoebox full of photos, magazine clippings, etc. to look through to get ideas for paintings and to help with fine details of perspective and color.) Unfortunately many people copy a painting or photo they saw in a book or magazine, believing they are free to sell it – unaware that they are infringing copyright law. So how far are you allowed to use other people's materials?

Intellectual Copyright

All created works – a painting, a photograph, an essay, or a poem – are covered by **intellectual copyright**. This is basically a legal term of ethics, entitling people to the rights of their own creations. If you create an original work, it belongs to you, and any modification and/or sale of it outside of your permission is considered illegal (regardless of whether it bears a © copyright symbol). This applies likewise to the works of others. If it's there and you see it, *someone* had to create it – which means they hold the rights to it. (There are a few important exceptions to this rule.)

When using other artworks or photographs for reference – even if you don't know who the artist is – there's a rule of thumb that your artwork has to be changed from the reference work by at least 30% (i.e., beyond easy recognition). If it contains a particularly unique or unusual concept, your margin of use will be much narrower, while a very general subject can't help but resemble its reference in many ways.

For example: let's say I want to paint a cardinal. Most cardinals look pretty much alike (all the cardinals I've seen are red, a few inches high, and feathered).

- NOT ALLOWED: I find a copyrighted photo of a cardinal on a greeting card. I copy it exactly in my own medium, sign my name to it, and put it up for sale.
- NOT ALLOWED: I find an unusual shot of a cardinal on a professional photographer's online gallery. I really like it and so I decide to paint it. Everything in my painting is identical except that I make the background a different color. I sell it as my own original work.
- ALLOWED: I use three or four reference shots – one from an encyclopedia, another from a birdwatcher's manual, a magazine, etc. – to make sure my cardinal has overall good proportions and accurate details, but the composition is my own. The backdrop/props I paint from my head, or use a totally different set of reference photos. The final artwork is completely mine and I am allowed to do pretty much anything I want with it.

Bottom line: unless you can document that the picture is in **public domain** – or unless you have the express **written permission** of its owner – DON'T copy it. Be fair and use it as a rough guide only. In most cases you'll just have to use your own judgment and do some research. It's a little more work this way, but you may find it's better off for your creativity in the long run.

Public domain is the term for media that is totally free for the public to use. If you're an artist looking for a reference photo to model a painting after, these are the words you want to see. Previously I said that practically all works are protected by intellectual copyright – and that's true, but there are a few exceptions. For example:

1. Copyright does not apply to works before 1921. The concept of legal copyright just didn't exist then. This generally applies to historical photographs, prints in old books, etc. They are considered to be in the **public domain** – that is, public property.
2. Some works may be in the public domain if their copyright has lapsed (as in the case of the Edward Curtis collection).
3. The creator of the work actually releases his/her work into the public domain. This means they graciously give their work to the public without retaining any rights to it, and anybody can do with it what they wish.

Using pictures from the public domain, however, assumes that you don't claim rights to the *concept* – saying you actually came up with the original. So you could sell a painting that includes an image of the *Mona Lisa*, but I wouldn't try saying that you were the one who came up with the original idea.

Also, your work doesn't affect the status of the original, **so you can't restrict others from using it as well**. Therefore you can claim copyright only to *your* **version** of it. This can mean that any number of individuals may create a painting based on the exact same public domain image – provided they are using the image as their reference, and not each others' paintings

What's "royalty-free"?

Artists searching for reference material on the internet run across many collections listed as "free photos" or "royalty-free" – but this can be something of a catch-22. These terms are NOT equivalent to public domain (i.e., unrestricted use). Generally, royalty-free just means that you don't have to pay a leasing fee for using the photo and that intellectual copyright still applies. This is to differentiate them from websites that actually sell stock photos under varying usage licenses. Most free-photo sites will have disclaimers saying that their photos are "100% free" to download, but are restricted to personal or educational uses only. Granted, this is fair, but it's easy to be misled by thinking that "free" is an all-encompassing term. Check the source to find out just what is meant by "free."

If you intend to draw heavily on any kind of visual reference material for **commercial** art (that is, art you intend to sell) make sure to do the research to confirm that it is public domain, or get the owner's permission. Today there's an ocean of photo material available on the internet through open image searches. Some of it is deliberately posted as multi-purpose content, while much of it is gleaned from personal websites by search engines such as Google Images or Bing. In response, there's a new breed of legal classification for visual/photo art designed to help specify the legal status of a work. A photographer can designate his work under a **rights-managed license** to specify exactly how much or how little restriction he wishes to place on the use of his photos. This is much more flexible than copyright but is still legally binding. The licenses range in strictness from the traditional "All Rights Reserved" to completely unrestricted "Public Domain."

The most frequent rights-managed licenses are known as **Creative Commons licenses**. Most of the photos you see on Flickr or Wikipedia, for example, will be under this kind of license. Anyone who accesses a work under a Creative Commons license can easily find out exactly what level of use is permitted by its author. So if a photographer submits a photo on the web for completely unrestricted use, he licenses it as public domain. If he wants to be given credit in any future use of his photos, he can license it under a Creative Commons Attribution license. He may choose a license which allows any use of his photos except commercial or resale, or a Non-Derivative license, which grants free use but stipulates that the image be unaltered.

Model Releases

If you paint a portrait of a live model, or from a photo you've taken of someone, it's important to get the person's permission in a **model release**. This just needs to be a simple document signed by the model that states clearly that he or she approves having their likeness used by the artist in a painting. This gives legal clearance to the artist to sell and reproduce that painting. It's worth having for the record because it's legally binding and more concrete than a verbal agreement, and it's flexible enough to be customized to your particular situation. A model release is especially important if the subject is underage, in which case you should have a release from a parent or guardian. Along these lines it's worth noting that the likenesses of deceased individuals and historical figures are not necessarily fair game for artists. While in most cases the face of a famous person long dead is more or less public domain (e.g., Abraham Lincoln or Napoleon), many celebrities and other cultural icons actually have ongoing legal restrictions through their estates that restrict or require permission for the use of their images. No one is quite sure where this line exists legally, but the artist should still be aware of these issues and be prepared to do some research ahead of time.

Sources for Reference Photography: For starters, there's the collection of [artist's reference photos](#) on Painting.About.com. While these photos remain the copyright of the photographer, the [terms of use](#) let you use them for paintings. There's also a folder for sharing reference photos on the [Painting Forum](#). Another good source of photos is [Flickr](#), but be sure to use the [Search Tool](#) that enables you to find those photos labeled with a [Creative Commons Attribution License](#). This license allows for copies and derivatives to be made from a photo (which a painting would be) and commercial use (which you'd be doing if you then sold the painting or exhibited it in a show) provided you give credit to the photographer. Then there's the Public Image Reference Archive [Morque File](#), which provides "free image reference material for use in all creative pursuits".