

# VISUAL ARTS

## Art and the Law

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### Licensing agreements:

A licensing agreement is an arrangement whereby an artist or lawful copyright owner can grant permission to another party to use material for a particular period of time. Details of how the material will be used form part of the agreement. The copyright owner might set conditions such as payment as part of their agreement to assign or license rights. Mambo is a company that will often use images created by artists to print onto their garments. A licensing agreement may be drawn up to allow Mambo to print a certain image on a specified number of garments, on a garment range or for a particular period of time. The artist will usually receive royalty payments or flat fee according to the terms of the licensing agreement.

### Copyright:

Copyright is the legal right of artists to protect their artwork from being plagiarised, exploited or reproduced without permission from the copyright owner. In Australia, copyright protection lasts for the creator's life plus 70 years. The artist does not need to register for copyright in Australia. Artworks are automatically protected by copyright once they are created and put into material form. However it is recommended by the Australian Copyright Council to feature a copyright notice on the artworks that includes: the name of the owner, and the year the work was created, e.g. C Miles Nilbert, 2009. Copyright does not protect ideas, information, styles or techniques. There is no rule allowing you to copy artworks without permission if you make a certain number of changes, or change a percentage. Copyright will only protect artistic works provided they are not copied from something else or recorded in material form, i.e. a form from which they could be reproduced. An example would be that a photograph, painting and artwork produced in a digital form.

### Appropriation:

Appropriation is the practise of openly borrowing, re-working and re-presenting, quoting existing imagery or the style of an artist for use in a new artistic context i.e. artwork.

### Resale Royalty:

A resale royalty right entitles the artist to a percentage of the sale price each time their work is resold. Artists and their beneficiaries will be entitled to 5% of the sale price for certain resales of their work, even if someone else owns the copyright of the work. The entitlement to the royalty cannot be transferred to anyone else, but passes to the artist's estate when the artist dies. The resale royalty is able to be received for 70 years after the artist's death. The seller is liable to pay the royalty; the seller's agent, the buyer or the buyer's agent are also jointly liable. The introduction of the resale royalty benefits artists financially when their works are sold on the secondary art market.

### Moral Rights:

Since December 2000, Australian artists have received moral rights protection. Artists have moral rights even if they do not own the copyright. Moral rights are the artist's personal, legal rights. Moral rights allow an artist to demand that, they are attributed as the creator of the artwork, their work is not falsely attributed to someone else and that their work is not used in a way that is prejudicial to their honour or reputation. Only the original creators have moral rights. These rights cannot be transferred, assigned or sold. Courts are able to award a range of damages for infringements of

moral rights. Moral rights continue after the creator's death and are then administrated by the creator's personal legal representative.

### **Plagiarism:**

Plagiarism refers to the taking and using of someone else's words or ideas and passing them off as your own. It is dishonest, unethical and can be illegal.

Whether it is plagiarism or appropriation, street artist and visual communicator, Shepard Fairey both has gotten into legal issues regarding copyright. In 2009 a year following the release of Fairey's Obama 'Hope' poster, he was confronted by the Associated Press who said they were going to sue him for failing to propose a licensing agreement for the original photograph taken by Mannie Garcia, though Fairey may consider it an appropriation as it's been changed and manipulated.

Fairey originally tried to conceal the evidence of this photo and evidently his mistake, through fabricating documents and subsequently destroying evidence claiming that his use of the photograph came under the 'Fair use' law because he "cropped the actor out of the shot and made changes." Early last year, Fairey admitted to attempting to deceive the Court by destroying evidence that he had instead used the photograph alleged by the Associated Press, he pleaded guilty to this case though if he had not have committed fraud he may have won. Parties in the case gained publicity from this 'Hope' poster, they made an 'undisclosed' financial settlement and the case was closed.

Many artists borrow and incorporate images from pre-existing works. I believe that artworks made by artists that reach out and communicate to a wide audience should, honour license terms and moral rights to images or works they do not own which they intend working with.

Like the Obama 'Hope' case, Fairey has also gotten into a similar problem though this time he successfully gained a licensing agreement; he just ironically failed to 'obey' it. Dina Douglass's photograph now known as Fairey's 'Jessica' piece was initially only meant to be created for a 'cancer foundation' to raise awareness for this disease and to raise money in the foundation's auction. Douglass was not told nor did she give permission for the piece to be put on web sites or in museums/art shows on display, she was fundamentally not credited on his poster but through dispute about the licensing terms not being met, she got her credit, a tiny signature in the bottom right side of the poster. Fairey aborts resale royalty himself, but protests and protects his own property when another artist tries to use it as he uses others. The hypocrisy in this is that he threatened, self-professed 'Propaganda Re-Engineer' Baxter Orr for making prints and parodies of some of his most iconic images from the 'Obama' campaign. He claims Orr is making a clear copyright violation but Fairey's art is intended to be made from other artists' works, he promotes his brand 'Obey Giant' through breaking the law and somewhat plagiarising works of other artists. Orr states, "I wanted to parody the guy who parodies everything. He's based his career off this. If he gets mad at this, he's become just like Tide detergent or Coca-Cola."

So is it really fair for Fairey to issue complaints for use of his political artworks in a way he never intended it to be? Should another artist not be able to adapt another style into his works and it not be known as the legal art form appropriation? Fair use of another artist's property should be followed by anyone, credit needs to be given to the artist and if profits are going to be made from this 'poster' or image, and damages should be endorsed if the artist fails to follow these ethical legal requirements.

### **Resources:**

<http://jonfinearts.com/GIANTEssay2.html>  
<http://andrenaphoto.com/blog/index.php/2012/02/shepard-fairey-dina-douglass/http://www.youtube.com/watch?v=P-56rcLxmk4&playnext=1&list=PLAE640863C7FC6D7C>  
[http://en.wikipedia.org/wiki/Shepard\\_Fairey](http://en.wikipedia.org/wiki/Shepard_Fairey)