July 23, 2015

U.S. Copyright Office
101 Independence Ave. S.E.
Washington, D.C. 20559-6000
(202) 707–3000

Re: Notice of Inquiry on Copyright Protection for Certain Visual Works.

Dear Copyright Office:

As an artist, creator of original lithographs and scholar who publishes monographs on issues of authenticity for over 30 years, current U.S. Copyright Law is an applicable legal tool for me to use to address contentious issues of authenticity in the art marketplace and to protect the rights of artists and the work they create.

I am firmly against any change in U.S. Copyright that would undermine those artist's rights and would further erodes the public's confidence in the art marketplace.

So, if I briefly may share how U.S. Copyright Law has empowered me to stand up for artists *versus* powerful well funded interests who would undermine the very foundation on what constitutes original works of visual art.

U.S. Copyright law § 101. Definitions, states: "A "work of visual art" is — (1) a painting, drawing, print or sculpture, existing in a single copy, in a limited edition of 200 copies or fewer that are signed and consecutively numbered by the author, or, in the case of a sculpture, in multiple cast, carved, or fabricated sculptures of 200 or fewer that are consecutively numbered by the author and bear the signature or other identifying mark of the author."[FN 1]

The dead don't create "works of visual art," such as etchings, lithographs and sculpture, much less "sign and consecutively number" and /or apply their "signature."

Additionally, under U.S. Copyright Law under § 101. Definitions, states: "A work of visual art does not include — (A)(i) any poster, map, globe, chart, technical drawing, diagram, model, applied art, motion picture or other audiovisual work, book, magazine, newspaper, periodical, data base, electronic information service, electronic publication, or similar publication."[FN 2]

Yet, self-servingly some collectors, museum professionals and others, in an attempt to legitimize their non-disclosed reproductions and posthumous forgeries, have made the argument that a published book from an author's manuscript is still their work, recorded music by an artist copied to CDs and the like is still their music and therefore a reproduction, whether posthumously reproduced or not, of an artist's art is still their work.

Nothing could be further from the truth.

Under U.S. Copyright Law, a “derivative work” is defined as: "a work based upon one or more preexisting works, such as a translation, musical arrangement, dramatization, fictionalization, motion picture version, sound recording, art reproduction, abridgment, condensation, or any other form in which a work may be recast, transformed, or adapted. A work consisting of editorial revisions, annotations, elaborations, or other modifications, which, as a whole, represent an original work of authorship, is a 'derivative work'."**[FN 3]**

Some have defended a collection of non-disclosed reproductions and forgeries with the argument that they are no different that an audio recordings of music.

Under U.S. Copyright Law a Phonorecord is defined as: "a material object in which sounds are fixed and from which the sounds can be perceived, reproduced, or otherwise communicated, either directly or with the aid of a machine or device. A phonorecord may include a cassette tape, an LP vinyl disk, a compact disk, or other means of fixing sounds. A phonorecord does not include those sounds accompanying a motion picture or other audiovisual work."**[FN 4]**

In other words, sounds reproduced to a material object, such as a CD would result in a derivative work a.k.a. reproduction.

Some have defended a collection of non-disclosed reproductions and forgeries with the argument that they are no different that the publication of a book.

Under U.S. Copyright Law, -publication is defined as: "Publication has a technical meaning in copyright law. According to the statute, “Publication is the distribution of copies or phonorecords of a work to the public by sale or other transfer of ownership, or by rental, lease, or lending."**[FN 5]**

In other words, a manuscript published as books, the resulting copies would be considered derivative works a.k.a. reproductions.

Some have defended a collection of non-disclosed reproductions and forgeries with the argument that they are reproduced from the artist's work and therefore still his work.

Under U.S. Copyright Law, § 106A. -Rights of certain authors to attribution and integrity - states: "(a) Rights of Attribution and Integrity. — Subject to section 107 and independent of the exclusive rights provided in section 106, the author of a work of visual art — (1) shall have the right — (A) to claim authorship of that work, and (3) The rights described in paragraphs (1) and (2) of subsection (a) shall not apply to any reproduction."**[FN 6]**

The rights of attribution shall not apply to any reproduction.

Finally, the reputations and legacy of living and past artists, present and future consumers ie. the art-buying public deserve the re-establishment of the obvious; that the living presence and participation of the artist to once again be required, as it always should have been, to create the piece of art attributable to the artist if indeed it is attributed to them, much less purported to have been signed by them.

In closing the proposed change in U.S. Copyright Law would further erode the rights of the artists and the rights of attribution.

I thank you for your consideration.

All the best,

Gary Arseneau
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FOOTNOTES:

1. http://www.copyright.gov/title17/92chap1.html
2. Ibid
3. http://www.copyright.gov/help/faq/definitions.html
4. Ibid
5. Ibid
6. www.copyright.gov/title17/92chap1.html#106a