



April 2019

Copyright and Art

“The copyright bargain: a balance between protection for the artist and rights for the consumer.”

Robin Gross

There are two people art draws together; its creator and owner.

Because art is unique, and not like other generic objects, its creator retains a bag of rights to his art even when he no longer owns it. Among these rights, is copyright.

The Writer’s article entitled “Owning Art” covers many of the rights belonging to an artist that an owner of art must respect. Just contact the Writer if you would like a copy of that article.

Sometimes copyright operates differently, depending on how the art is created. It is in this article that the Writer will explore various aspects of copyright in art pieces while highlighting how copyright is separate from the art piece itself and is dealt with as a separate item altogether.



Why Copyright?

Without owning copyright in art, a person cannot reproduce it.

Hence one cannot take a photograph of a painting and sell it. Neither can one reproduce it on a mug, canvas or website.

By default, the creator of art owns its copyright. This is because it is his thoughts and skill that has given birth to the piece. It is an original which is an expression of himself; his mind and soul. Without this interaction and his effort, there is no art to speak of.

Copyright is a negative sort of right. It gives the copyright holder the **right to prevent** a third party from copying the piece.

In Singapore, copyright is governed by the Copyright Act.

Only the copyright owner can copy the art. By default, this is not the owner of the art, but the creator, the artist. Anyone other than the artist requires consent or must have the copyright transferred or licensed to him before he can copy the image of the art.

Which “Art” forms can have copyright?

Under the Copyright Act, “artistic work” which have copyright are

(Section 7(1))

- “(a) a painting, sculpture, drawing, engraving or photograph, whether the work is of artistic quality or not;
- (b) a building or model of a building, whether the building or model is of artistic quality or not; or
- (c) a work of artistic craftsmanship to which neither paragraph (a) nor (b) applies;

but does not include a layout-design or an integrated circuit within the meaning of section 2(1) of the Layout-Designs of Integrated Circuits Act (Cap.159A). “

The categories are very wide indeed!

To be well noted is that artistic quality is not a qualifying factor for protection and hence an infringer cannot raise an argument on this count.

“Art is a human activity having for its purpose the transmission to others of the highest and best feelings to which men have risen.”

Count Leo Tolstoy (1828-1910)

“What is Art?” 1898, ch.8



Default position on Copyright ownership

As mentioned earlier, by and large the creator–artist is the copyright owner. If you are the artist of an original work, you clearly own its copyright.

If you sell or give your creation away, the copyright remains with you. This is the default position.

The transfer of your copyright to a third party requires a specific act. Hence, for example, unless a contract to sell a painting states that the copyright too is sold or transferred to the buyer, the artist retains it.

Buyers or recipients of art must be clear as to whether they have the copyright together with the art piece. They are two separate items of personal property.

Commissioning art

The artist retains copyright even where you have commissioned him to create the art for you. If you want the copyright, then the commissioning agreement must specifically transfer the copyright to you.

However, this position changes if you have commissioned a portrait. By statute, under the Copyright Act, you have the copyright in the situation where if you have given valuable consideration (ie. paid fair value) for the piece and there is an agreement between the artist and you.

This position is sound as the inspiration for a portrait is the model. The person who commissioned the portrait staged the creation of the art.

Only with consent can the artist copy the image, albeit on his website or elsewhere.

You have rights to prevent a painting of your portrait from turning up on your colleague's mug!

The infringement of copyright can give rise to several remedies of which damages is just one.

The Writer's article entitled "Artists who inspire artists" is based on an English case where the Courts offer guidance on when the copyright in a photograph may have been infringed by a painter. Just contact the Writer if you would like a copy of that article.



How long does copyright last?



For artistic work which is not a photograph, generally copyright lasts for the artist's lifetime plus 70 years after that.

For photographs, copyright begins from the date the photograph was first published and lasts for 70 years.

(Section 28 of the Copyright Act)



Copyright is separate property

As mentioned earlier, an art object and its copyright are two separate items of personal property. The art is tangible and its copyright, intangible.

Being “property”, it can be

- ▶ transferred
- ▶ licensed
- ▶ disposed through a will

This last attribute is often overlooked, especially by artists.

In this day and age where art is most appreciated and highly valued, owners should be clear on what aspects of art they own and who they should give which parts to.

“The secret of getting ahead is getting started.”

Mark Twain

About Amita

Founding member of and Consultant at RHTLaw Taylor Wessing LLP, Amita has more than 2½ decades of experience as a practicing lawyer. She started off in the areas of Property, Banking and Finance and continues to provide valuable counsel in these areas. To support the push by the Singapore government towards building a Private Wealth industry, Amita subsequently carved out and developed the Private Client practice. Her journey to build an ecosystem connecting her professional life of law, her passion for art and returning back to society is a continuous one.

For more information, please contact:



Amita Dutt
Consultant
+65 6381 6900
amita.dutt@rhtlawtaylorwessing.com

Asia > Middle East > Europe > USA

www.rhtlawtaylorwessing.com

© RHTLaw Taylor Wessing LLP 2018

This publication is intended for general public guidance and to highlight issues. It is not intended to apply to specific circumstances or to constitute legal advice.

RHTLaw Taylor Wessing LLP (UEN No. T11LL0786A) is registered in Singapore under the Limited Liability Partnerships Act (Chapter 163A) with limited liability. RHTLaw Taylor Wessing LLP is a Singapore law practice registered as a limited liability law partnership in Singapore (“The LLP”). It is a member of Taylor Wessing, a Swiss Verein, the other members of which are separate legal entities and separately registered law practices in particular jurisdictions. The LLP is solely a Singapore law practice and is not an affiliate, branch or subsidiary of any of the other member firms of Taylor Wessing. Taylor Wessing Verein does not itself provide legal or other services.

A list of all Partners and their professional qualifications may be inspected at our main office at Six Battery Road #10-01, Singapore 049909.

v01.19

