

# Some notes on Copyright for Artists

## Photographs

We need to be aware to always obtain consent in writing from the artist for use of their work eg. using another person's photograph to create our painting/s is protected by copyright laws.

Just because a photo is made public on a website, magazine, social media etc. in no way allows another 3rd person to then take and use that photo, unless the original owner of the photo gives them their explicit permission to do so.

## Copying another artist's work

It is **not** OK to copy another artist's work by any percentage. The key to copyright infringement, is whether that part that has been copied is a 'substantial part'. It could be a very small part of a painting, but if considered 'substantial', then that would infringe copyright laws. It does not relate for example, to 1%, 5%, 30% or any other particular percentage.

The excerpts below are referenced from the *Australian Copyright Council's* Information Sheet G033v17 dated January 2017 **Artists & Copyright** in the Frequently Asked Questions (FAQs) section. Also online at

[http://www.copyright.org.au/ACC\\_Prod/ACC/Information\\_Sheets/Artists\\_Copyright.aspx?WebsiteKey=8a471e74-3f78-4994-9023-316f0ecef4ef](http://www.copyright.org.au/ACC_Prod/ACC/Information_Sheets/Artists_Copyright.aspx?WebsiteKey=8a471e74-3f78-4994-9023-316f0ecef4ef)

"Copyright is infringed when a person uses all, or a "substantial part", of copyright material in one of the ways exclusively controlled by the copyright owner without the express or implied permission of the copyright owner, where no defence or exception of infringement applies".

and

"What is a "substantial part"?"

A "substantial part" is any important, distinctive or essential part of the original material, not necessarily a large part."

"A person may also use a "substantial part" of copyright material by paraphrasing, or closely following the structure and order of another person's work, even if they have not directly reproduced any of it."

There is another interesting law that pertains to copying of a style of another artist, known as the law of "passing off".

The *Australian Copyright Council* provides Fact Sheets and other helpful information. The information below is from their website at <https://www.copyright.org.au/browse/book/ACC-Artworks:-Getting-Permission-INFO086>

## Artworks: Getting Permission

**This fact sheet outlines the obligations of people who want to use artworks protected by copyright and need to seek permission.**

This fact sheet is for people who want to use photographs, paintings, drawings, book illustrations, cartoons, graphics on websites and other artworks, for example by reproducing them, for their own purposes. We provide a brief overview of when permission, also known as a licence or copyright clearance, is required to use artistic works. We also suggest how to seek permission.

You can download their Fact Sheet at <https://s3-ap-southeast-2.amazonaws.com/dimoacc/factsheets/INFO086.pdf?t=2304260438>

*Thanks to Sharon Martin for referring this information*

There is an exception to copying from another artist. To copy a living artist it is okay for learning but must never be sold or published, which includes social media posts. In Australia, if an artist is deceased 70 plus years, that copyright expires but moral rights continue.

## **PSVA Copyright & Image Use Guidelines (Deceased Artists)**

### **1. How long does copyright last?**

In Australia, artwork is protected by copyright for **70 years after the end of the calendar year in which the artist died**.

After that point, the work enters the **public domain**, meaning it can be reproduced without needing permission.

### **2. What this means**

If an artist has been deceased for more than 70 years:

- We can safely use images of their work
- We should still credit the artist out of respect for their legacy.

If the artist passed away less than 70 years ago:

- Permission is required from the copyright holder (usually the estate, family, or a gallery representing the estate).
- This applies to printed material, online posts, catalogues, and promotional use.

### **3. Moral rights still matter**

Even when copyright has expired, it's good practice to:

- Attribute the artist's name
- Avoid altering the artwork in a way that misrepresents it
- Present the work respectfully and accurately

### **4. When in doubt**

If the date of death is unclear or the copyright holder is unknown, artists should:

- Use public-domain works instead, or
- Request permission before proceeding

### **5. Why this matters**

Clear copyright practice protects you, respects artists, and ensures publications and exhibitions remain professional. It also gives us confidence when sharing images online.

*Thanks to Kayleen West for providing this information*