

Copyright and royalties for artistic expression

Madam, Sir,

It is said that the Creator of an artistic work enjoys Copyright, hence royalties. Then what is an artistic work in the industry or business? According to the international conventions on copyright and the internal laws of Nations, a work that represents an object (*concrete or abstract*) created according to the rules of art through graphic means (*with or without colors*), is a creative work of art that can rightfully be considered the property of its author.

Drawing and perspective make up the **rules** of graphic art.

1 – The rules of graphic art: In the sphere of industrial endeavors, graphic art is a form of human expression requiring the mastery of the art of **drawing** and of **perspective** in order to represent the external and/or internal shape of a body or object (*with or without color*). In any Nation that joined the World Intellectual Property Office, **drawing** and **perspective** are recognized as essential elements in the creation of a graphic work representing a body or an object.

2 – The techniques of graphic art: In every sphere of activity, a graphic artist can only claim authorship of his work if the concept that he represents is **original**; in other words, the author must express a creative idea by putting it into concrete form onto some physical medium... The work also requires an artistic quality, which is inherent to the artist's **style**. Such a style either belongs to a school of art, or it is original and thus ushers a new school. In any case, there is no art without a proper technique...

Originality and style make up the **techniques** of a graphic art.

3 – Work of the Mind: In any sphere of activity, it is by applying these **rules** and **techniques** that one creates a **Work of the Mind**. Why " of the Mind "? Because a creative work originates in its author's mind. This explains why an author is always an individual entity (*i.e. a natural person*). In accordance with the internal laws of Nations and the International Conventions on copyright, a Work of the Mind is, by nature, the property of its author. It is the only **Property** that the author can rightfully own. The right to produce, reproduce and interpret such a work results from this natural property (*somewhat like the relation between parents and children*); the internal laws of Nations and the International Conventions call such a right: **Copyright**.

4 – Copyright: In order to *hold a Copyright*, and thus enjoy its commercial and tax-related benefits, the graphic artist must first and foremost be a true *Author*. His graphic work must therefore be *creative*, which means that it must be original. Moreover, such a work must be representative of a personal *artistic quality*, which transcends mere technique: the author's style. However, even though he may have style, a plagiarist is an artist who does not create! Indeed, the notion of a work of art, in itself, is not enough to provide copyright. Only by putting his creative (*original*) idea into concrete form onto some physical medium, according to the rules of art and in a personal style, can the author own a Work of the Mind and, therefore, hold its copyright. The internal Laws of Nations and International Conventions on Copyright therefore result from this initial property.

5 – Result: Respect of the rules and techniques inherent to creative graphic art is what distinguishes an author's truly original work from an unskillful amateur's attempt at drawing, which cannot result in copyright. There lies the difference between a talented author and an incompetent, would-be artist. This is the reason why works of graphic art result in copyright, while mere doodles do not.

6 – Example: Consequently, thanks to its anteriority, Pierre Aguesse's *undisclosed* Work of the Mind prevailed over the design patent subsequently registered by an uninformed third party at a National Institute (*I.N.P.I., France*). This State-controlled Institute had granted the individual in question (*who was unaware that he was plagiarizing a creative work of art* *) a design patent of Pierre Aguesse's concept. The latter's original work had previously been created in compliance with the rules and techniques of graphic art, and which, therefore, met all the criteria of a Work of the Mind. Furthermore, "*by virtue of its creation*", such a work of art remained the non-transferable (*universal*) property of its author. Consequently, the judges who presided at the successive levels of jurisdiction (*i.e. 1st instance, Appeal and Supreme Court*) had no choice but to recognize the preponderance of copyright over a subsequently registered temporary title of monopolistic development. The ruling would have been the same ~ *and for the same reason* ~ if the third party had registered a utility patent.

7 – Conclusion : In every Nation that respects graphic art, the internal laws are based on the criteria that make up ownership of a Work of the Mind, in accordance with the International Conventions on Copyright. Without such criteria, there is no copyright. These fundamental principles are applied in every State or Nation, regardless of the legal system in force. Indeed, beyond politics and economics, such principles ensure the worldwide recognition and survival of our cultural heritage.