

BOLD COLORFUL MIXED MEDIA FIGURE PAINTING



www.annieobriengonzales.com

Copyright & Fair Use Related to Art

"Fair use is a defense in cases where copyright infringement is charged. The concept of fair use is grounded in fulfilling the very purpose of copyright: to promote the progress of the arts and sciences and allow authors, artists and others to be able to express their creativity. Still, this concept must be balanced with honoring the property rights established in creative works under copyright law. Kathryn Dalli, Intellectual Property Lawyer. www.hamptonsarthub.com

Mixed media collage frequently involves the use of published images that may be copyrighted. It is important for artists to understand the distinctions between "public domain", "copyright" and "fair use." Of course, I am not an attorney, so the following information will define these terms and lead you to resources which will help you understand the distinctions so that you can decide for yourself how to approach your art.

Public Domain

"The public domain is not a place. A work of authorship is in the "public domain" if it is no longer under copyright protection or if it failed to meet the requirements for copyright protection. Works in the public domain may be used freely without the permission of the former copyright owner." www.copyright.gov

Copyright

"Under the copyright law, the creator of the original expression in a work is its author. The author is also the owner of copyright unless there is a written agreement by which the author assigns the copyright to another person or entity, such as a publisher. In cases of works made for hire, the employer or commissioning party is considered to be the author." www.copyright.gov

Fair Use

“What is fair use? As a general rule, if you use a copyrighted work without the copyright owner’s permission, you will be liable for copyright infringement. “Fair use” is a limited exception to this rule for certain kinds of use. The most well-known examples of fair use are parody and news reporting, but many other types of use could qualify. The copyright statute sets forth 4 factors for courts to consider in determining whether a particular unauthorized use qualifies as fair use:

- (1) the purpose and character of the use, including whether you’ve made a new transformative work, and whether your use is commercial*
- (2) the nature of the original work, such as whether it is more factual than fictional*
- (3) how much of the original work was used*
- (4) whether the new use affects the potential market for the original work”*

To summarize, collages that have more of the following characteristics are more likely to qualify as fair use:

- the collage incorporates many different materials from many different sources*
- the materials are juxtaposed or arranged in ways that create new visual and conceptual effects, the more different from the effect of the original materials, the better*
- the collage does not feature a copyrighted work as the central focus or dominant image*
- only portions of copyrighted materials are used, rather than the entire image”*
- the collage is a one-of-a-kind piece of fine art, or published in a limited edition of fine art prints”*

**Owen, Wickersham & Erickson Law Firm specializing in Intellectual Property:
<https://www.owe.com/>*

Artists depend on fair use (the right to reuse copyrighted material without permission or payment for some purposes) in making many kinds of work. For a better understanding how to apply fair use in making art, I refer you to the attached handout—the Center for Media & Social Impact’s [Code of Best Practices in Fair Use for the Visual Arts](#)--to understand how to use it when creating your own work. You are responsible for determining when you are applying fair use, and to explain why

your use is fair; the Code will help you with both. Pay particular attention to Appendix A: Fair Use Today.

The following excellent websites and documents contain lots of valuable information on copyright for artists.

- **US Copyright Office:** <https://www.copyright.gov/>
- “Creativity & the Law: Collage and Fair Use under the Copyright Laws” - Kathryn Dalli--<https://hamptonsarthub.com/2018/05/16/features-creativity-the-law-collage-and-fair-use-under-the-copyright-laws/>
- **Center for Media & Social Impact:** <http://cmsimpact.org/fair-use-blog/fair-use-ever-more-useable-cao/>