

A Steamin' Second Helping of "Inside Straight" Stew

Thank you all for your cards and letters! Next issue, we'll move on to happier things...but, as promised last time, here are the rest of your views and thoughts on photo showing a model without the permission of the owner:

From Lynn A. Fraley, Los Alamos, NM: I have been mulling over model horse artists' vs. buyers' rights. Actually, I shouldn't have said "versus"—it shouldn't be an adversarial relationship! Yet, the recent and varied controversies are making it one.

It may be helpful to look for a legal guideline so that we all stay in touch with business reality, for if a model horse artist is selling his/her work, the artist is in business (whether or not there is any true profit is another issue altogether).

I have found a helpful article, "Law and the Art World," by Bill Frazier, Attorney, published in *Art of the West* magazine, September/October 1988; and a book, *The Legal Guide for the Visual Artist: The Professional's Handbook* by Tad Crawford. Both address the issue of copyright.

From Mr. Frazier's "Law and the Art World": "The column is prompted by recent questions raised by both collectors and artists regarding reproduction rights. The typical example involves the sale of a painting or sculpture through an art gallery. Who owns the copyright? ...The artist automatically retains the copyright, but only if he puts his copyright notice on it. The copyright notice is a very simple thing consisting of three elements: the artist's name, the date and the copyright symbol, which is a "c" inside a circle. ...The buyer does not get the copyright unless the artist sells it to him, and there must be a written document transferring the copyright. ...The result is that the collector may not reproduce the work in any fashion without the permission of the artist, but the artist, who owns the copyright, may reproduce it without the permission of the buyer/owner. This seems to create more problems than any other art-related legal issue. For a more comprehensive treatment of this area, refer back to the November/December 1987 issue of *Art of the West*."

I haven't had the time or library resources to look up the other article that Mr. Frazier referred to, but I encourage someone to do so, so that we may all be more clear on the issues.

From *Legal Guide for the Visual Artist* (Chapter 2, page 3): "January 1, 1978, marks the dividing line between the old and new copyright laws. ...All works will now be protected by statutory copyright as soon as created in tangible form. This immediate statutory copyright protection, regardless of registration or publication with copyright notice, is an important change in the law. It is not necessary to comply with any formalities to get a statutory copyright, because it comes into being as soon as the artist creates the work. ...Pictorial, graphic and sculptural works are copyrightable. ...Work must be original and creative to be copyrightable. Originality simply means that the artist created the work and did not copy it from someone else. ...Creative means that the work has some minimal aesthetic qualities. A child's painting, for example, could meet this standard. ...Also, the fact that part of a work may infringe someone else's copyrighted work does not deny protection for the rest of what the artist creates. For example, if an artist publishes a group of drawings as a book, and fails to get permission to use one copyrighted drawing, the rest of the book would still be copyrightable. ...If new elements were added to a work in the public domain, the new work would definitely be copyrightable. However, the copyright would only protect the new elements, and not the original work that was in the public domain." From Chapter 5 of the same book: "What is the test for copyright infringement? It is whether an ordinary observer, looking at the original work and the work allegedly copied from it, recognizes that a copying has taken place."

Now, the first thing I learned in business law classes in college is that nine-tenths of contract law is *intent*. (If I remember correctly, sales fall

under contract law.) So, here's the rub, in my opinion: From the very beginning of our hobby, we have been taking pictures (i.e. reproducing the image of...) our models for the purpose of competition, education, sales, etc. It has become such an important facet of our hobby that we *create models with the intent of taking pictures of them to compete with*. It is also accepted within the hobby that when we buy a model, it is *with the intent of taking pictures of/using pictures of the model to compete with*. So, it seems to me that when a model horse artist sells a model he/she has repositioned, resculpted, repainted, haired etc., the transfer of the copyright of that piece of artwork is implied in the sale. That is, it's a package deal.

The second rub that I see, since we're getting technical, is that the basis of the majority of our model horse creations are Breyer figures, which have their copyright notice stamped ever so boldly on the inside of a hind leg. Are we all culpable for violating manufacturers' copyrights? My gut feeling is that no, we are not. My rationale is that Breyer-Reeves and other manufacturers are producing figures *en masse* to sell for profit. We artists use these figures as a starting point for a new work, not the copying of their existing products.

Now, I am *not* a lawyer. So, my opinion is just that. However, somewhere in the ranks of our hobby, we must have at least one trained lawyer, and I would like to call upon her/him to step forward and help us all figure this one out! Many of us have literally grown up in the hobby, and the hobby has grown up with us. I believe that it is appropriate and beneficial to us all to discuss important topics like business practices, copyrights, and ethics in order for our hobby/micro-industry to continue to flourish, and us all with it.

From Rebecca Choquette, Honolulu, HI: I got a laugh out of your poem in the previous issue, but didn't realize that there is a fairly large club where artists show other people's models.

I am curious about how this club operates, and would like to hear from some of the members about their showing practices. Do these customizers show only halter pictures that were taken of their customer's models, or do they show performance photos also? Do they show copies of photos that were taken for customers, or do they show photos which they took for their own private use? Are there owners out there showing their expensive model with "one [crummy] picture" while the customizers are campaigning sets of high quality professional photos of the model without giving the horse's owner access to those photos?

Money is not the only motive behind an artist *creating* a model, but it is the only motive behind an artist *selling* a model. "Why should someone create a model for someone else's glory" you ask? Because that person is paying you to do it. If you like the model so much that you want show rights to it, don't sell it. When I buy a model, I expect to own full show rights to it. If the customizer who did the model wants to use photos of it, they can come and ask me. In my opinion, the price of customized models has become outrageous. Now customizers want partial show rights to the horses they've sold at these unGodly prices? I don't think so.

By the way, I am not a self-proclaimed "I can't remake a model worth anything" person. I consider myself an artist, I do nice (though unusual) work, and I resent Carla's insinuation that all artists feel the way she does. I share Carla's appreciation for the time, patience, etc. that goes into creating models, and I rarely sell my models because I can't bear to part with them.

Carla says that there is nothing buyers can do but stop buying models and that the artist can find another buyer but I will be stuck showing OFs. Is the model world really such a seller's market that customizers can afford to take that attitude? I can always show my own models more, instead of buying from other customizers. And what is wrong with OFs anyway? Many are nicer than some of the customized models out there.

From Dana Bennett, St. Charles, MO: I've been in this hobby for 20+ years and I've run into all kinds of people, including all kinds of