

## Copyright: Transfer and Exhibit

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## Transfer of Rights

- ✧ Owner may transfer copyright in whole or in part.
- ✧ Transfer of the material object does not carry transfer of copyright.
- ✧ Must have express written agreement for transfer of copyright.

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## Museums and Transfer of Rights

- ✧ Transfer of rights is a significant issue for both museums and artists.
- ✧ Museums don't want just the physical work, but they also want the right to promote the work for their benefit.
- ✧ Rights differ with the type of acquisition: ownership or loan.

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## Right of Display

- ✧ Transfer of ownership of a work of art carries the right of display, while possession under loan does not.
- ✧ In the case of a sale of the work, the artist loses control over public display, and has to trust that the owner - museum or collector - will display the work properly and respectfully.

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## Rights Museums Need

- ✧ Museums may acquire other rights held by the artist by either exclusive transfer or non-exclusive license.
- ✧ The differences between these are very important to the artist:
  - ✦ Exclusive transfer means that the artist has lost that right and it may be exercised only by the museum.
  - ✦ Non-exclusive license means both may exercise it.

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## Rights to copy and reproduce

- ✧ Museums want to be able to photograph the work, to include photos in an exhibition catalogue, to sell reproductions in the museum shop.
- ✧ From museum's point of view, the exclusive transfer is best, because they then can control access to the images

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## Protecting the Artist's Interest

- ✧ Exclusive transfer is not an advantage for artists, though, because they lose the right to reproduce their own work and to gain any advantage from sales of copies of the image if it becomes popular - prints, t-shirts, mugs, note paper, tote bags - and so forth.

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## Museum Policies

- ✧ Artist viewpoint: museums which attempt to acquire the entire copyright are abusing artist's rights.
  - + E.g. Museum of Modern Art, NY uses limited non exclusive license for particular purposes: catalogues, postcards, slides, publicity.
  - + E.g. San Francisco Museum of Modern Art requires exclusive transfer of all rights.
- ✧ Some have proposed museum boycott if they try to obtain all artists' copyrights.

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## Collector's Interest in Art

- ✧ Art collectors are in a similar position to that of museums: they want to have maximum control over the art they have purchased.
- ✧ Right of exhibition and display go along with the sale, so artist loses control.
- ✧ Rights of reproduction and adaptation for derivative works are separate; if a collector wants to reproduce the work and sell copies, needs to obtain transfer of rights from artist.

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## Collectors and Rights

- ✧ Collectors usually advised to try to obtain all copyrights when they buy a work of art.
- ✧ Must be done by written agreement, so the artist can refuse to transfer and protect own rights to copy and reproduce the work.

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## Resale Royalties in Visual Art

- ✧ California law provides that the artist is entitled to 5% of the gross sales price upon resale of a work of fine art (not prints or photographs).
- ✧ Right may not be waived except by contract for a higher percentage!
- ✧ Galleries, dealers, brokers, and museums must withhold 5%, locate the artist, and pay up.
- ✧ Law applies to all sales of works by artists who have resided in California for 2 years.

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## Artists Rights Society

- ✧ Artists Rights Society of New York exists to protect copyright interests of artists.
- ✧ Also provides a means of obtaining permission to use images in new work.
- ✧ Web site found at: <http://www.arsny.com>.

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