

Nobody Can Compete with Free

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My heartfelt thanks to June M. Besek for organizing this Symposium at the Kernochan Center, and inviting me to participate on a panel as a representative of graphic artists. Usually the people who are invited to speak on panels or testify at hearings are aggregators or distributors of copyrighted works (publishers, production companies, stock image companies, etc.), IP attorneys representing large trade associations of corporate rights holders and law professors. Rarely are working professional artists invited to explain what we do in the marketplace and how we work with our clients. I am honored and very grateful for this opportunity, as well as the opportunity to write for the *Journal*.

June prepared those of us she invited on her panel by giving us some questions to discuss. In addition to our shared time at the Symposium, she suggested that we could write more for the *Journal*. There is so much more that I'd like to elaborate on for her first question to us:

“What is it like to earn a living in the current environment (obstacles and advantages, whether it's harder or easier than when you got into your field, etc.)?”

I. WHEN I STARTED . . .

I was the last generation to go through school, including graduate school, without ever touching a computer (except for a cash machine at the bank). Back then, when designers and illustrators used pencils and rapidographs to draw on vellum or illustration board, you had to be able to draw to be accepted to an undergrad art or design program. You had to be able to draw and paint really well to graduate. I spent weeks learning how to letter by hand with calligraphy pens and sign writing brushes, and how to create type with Letraset. My college graduation gift from my parents was a Stacor drafting table almost as big as a twin bed, a mechanical drafting arm and a vinyl upholstered drafting chair (very deluxe!). That set me up to make money. I spent two more years in graduate school reproducing paintings by the masters, learning painting techniques and color theory. Then I bought a Badger airbrush and a little compressor, and I was all set. I still have those things.

What I didn't learn along the way to the B.F.A. and M.F.A. degrees was *how* to make money. How much to charge for my work, how to write an agreement for the jobs, how to operate my “sole proprietor unincorporated business”—a.k.a. freelancing—and I certainly didn't learn anything about copyright.

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I lived and worked in Manhattan. Right out of college, I was thrown into the deep end of the shark tank with thousands of other talented, hungry young artists. I undervalued my work. I worked for too little. I turned nothing down and pulled all-nighters. I got suckered into working for free on the promise that the project would be great “exposure,” and would lead to a great connection and paying work (it never did). I made a lot of free work for my friends’ bands in return for getting into their gigs for free and the empty promise of getting paid someday (I never did). I worked on speculation, although I didn’t understand what that was, and often got screwed. Upon their request, I left my design renderings (on illustration board) with clients so that they could “think about it” for a few days, only to be rudely rejected and later discover that they’d copied my design and went ahead and used it anyway. I realized I had better learn the business of art because I didn’t know how to do anything else, and I’d lasted only five days as a waitress in college.

Then I found the third edition of the Graphic Artists Guild’s *Handbook: Pricing & Ethical Guidelines* and Tad Crawford’s *Legal Guide for the Visual Artist*.¹ I immediately read both cover to cover and joined the New York chapter of the Graphic Artists Guild. I registered my first copyright right after, the logo and stationery system design for a swimming pool company on Long Island. The Guild taught me everything I didn’t learn in my professional design programs—the business of making art. I have no doubt that had I not been a Guild member, I would have given up.

I stopped working for free, I stopped doing spec work, I stopped working for “exposure,” and I stopped working for a promise. I started using written agreements, licensing my work and registering any art that went out into the world.

Fast forward to the early 1990s. I had moved to Seattle for a job as the staff designer and Scenic Charge at a scenic shop (which enabled me to buy a new car and a small house). I was doing all the design drafting with pencil on vellum. We hooked up with a major architectural firm in Seattle and they wanted to give me AutoCAD drafting files. I began to take AutoCAD and Photoshop classes at night, and eventually earned another degree in Multimedia from the University of Washington Extension. I realized I was being replaced by a machine and I’d better learn how to use that machine. My drafting table was covered with software boxes, manuals and tutorial books.

I moved to the Boston area in 2003. The mechanical drafting arm, airbrush and compressor are still in boxes in the basement. I never unpacked them.

II. TODAY’S WORLD

Nearly every American business has a computer and Internet access. According to a 2013 U.S. Department of Commerce report, approximately 76% of Americans

1. Both books are still in print; the *Handbook of Pricing and Ethical Guidelines* is in its fourteenth edition, and *Legal Guide for the Visual Artist* is in its fifth edition. GRAPHIC ARTISTS GUILD, *HANDBOOK OF PRICING AND ETHICAL GUIDELINES* (14th ed. 2013); TAD CRAWFORD, *LEGAL GUIDE FOR THE VISUAL ARTIST* (5th ed. 2010).

have computers and 72% use the Internet at home, too.² Mac and Windows operating systems come with graphic editing software. According to Pew Research, 90% of Americans have a cell phone and 58% have a smart phone.³ Nearly all of those phones have digital cameras, and some have digital video cameras with sound recording. Most high schools and all colleges have extensive computer technology and students work on computers.

Graphic design programs have sprung up in four-year universities and two-year for-profit private colleges like weeds. Anyone can get into a graphic design program, even if they can't draw at all.⁴ Some of these college programs don't teach the graphic design students to draw; those course credits and time are now used to teach software applications.⁵ It seems that some graphic design programs have become the dumping ground for high school students who aren't good at academics but whose parents want them to get a degree in something. Students are often still not being taught about business practices and copyright.⁶

So, what do you do when you can't draw but you can use a computer and other digital devices, you have Internet access and you know nothing about copyright? You steal images.

III. IT'S A LOT HARDER TO EARN A LIVING NOW THAN WHEN I STARTED OUT

Artists used to be hired on staff. There would be an in-house graphic designer. Or people were hired as employees on contract for the entire duration of a project or show. Small businesses and businesses that didn't use art and design regularly hired design studios for projects. Now most illustrators and graphic artists freelance: independent contractors working full time ("full-time freelancer"), or for hourly or day rates. Our clients—who are not our employers—insist on work made for hire (WMFH) or all rights, in all media, "in perpetuity" contracts, the most unjust result for authors and creators under the 1976 Act. Corporate acquisitions in publishing and media industries have resulted in conglomerates that own a huge number of publications, production companies, subsidiaries and outlets which use a master contract for all that is non-negotiable. Look up the contracts used by Sony,

2. U.S. DEP'T OF COMMERCE, *EXPLORING THE DIGITAL NATION: AMERICA'S EMERGING ONLINE EXPERIENCE* 26 (2013), available at <http://perma.cc/PZ46-FF6F>.

3. *Device Ownership over Time*, PEW RESEARCH INTERNET PROJECT (Jan. 2014), <http://perma.cc/8E24-GRLB>.

4. See, e.g., *Graphic Design Degree Requirements*, ART INST. OF PITTSBURGH—ONLINE DIVISION, <http://perma.cc/M85K-NQ9R> (last visited Feb. 1, 2015) (stating that prospective student must have a high school grade point average of 2.0 or higher, hold a GED Certificate or hold an associate's degree as a prerequisite for admission; there appears to be no portfolio or other art-based requirement).

5. See, e.g., *Graphic Design*, PRATT INST. CTR. FOR CONTINUING & PROFESSIONAL STUDIES, <https://perma.cc/527H-S3LD> (last visited Mar. 1, 2015) (listing course requirements for a Professional Studies Certificate in Graphic Design, with no required drawing class).

6. See, e.g., *Graphic Design: Undergraduate*, R.I. SCH. OF DESIGN, <http://perma.cc/WCE6-XMBB> (last visited Mar. 1, 2015) (listing course requirements for a B.A. in Graphic Design, with no business or copyright classes listed).

Condé Nast or Hallmark and you'll understand.

Pay rates have stagnated or decreased as a result of an ever-increasing flood of young graduates of graphic design schools and amateurs, as well as a proliferation of stock image companies online. Attorneys hired by our clients decided it was most convenient for them to insist on contracts transferring all rights, even when the work will be used only for a limited time. Clients expect to pay the one fee for the initial intended use of the art, but be granted unlimited use in any media forever, because they can't be bothered to contact us again and license (pay for) additional usage if and when needed.

Many businesses no longer use professional graphic designers. They have computers; they assign the administrative assistant to make the advertisements, brochure, business cards and stationery, newsletter, flyers, whatever. Even better, find a graphic design student intern and have them build your website and everything else you need for free. Or maybe pay them \$150 a week.

When the mandatory registration requirement for copyright was dropped in 1978, even more businesses figured out what some already knew: that individual creators and small studios couldn't afford to take legal actions against unauthorized use of their unregistered work or relatively low- or no-profit infringing usage of registered works.

IV. THE INTERNET IS FREE

Then the Internet came along and blew the doors off the hinges of Free Speech and Free Expression. Freedom of exchange of information, ideas and "culture." The leap in ethical and legal logic was instant; the Internet is "free"; therefore, everything on the Internet is "free." Anyone could make a website and post anything on it. Right-click your mouse and you could copy or save anything on the Internet. As Internet connections, browsers and e-mail applications improved, it became possible to e-mail even large image, music and video files to other people.

The digital media industry renamed us "content providers." We were no longer artists, photographers, writers, musicians, songwriters and filmmakers. The dehumanization in public consciousness was complete. "Content" is what's inside a carton. The work I create is my art.

Free speech doesn't include the right to unauthorized use. "Access" is not a synonym for free, as in, no fee. The Copyright Clause and the First Amendment are entirely separate rights.⁷

The fact that technology exists that enables people to do things with creative works that were unimaginable when copyright law was first codified doesn't mean that authors' and creators' rights should dissipate, nor does it mean that all digital uses should be free. It's just another medium. The methods and mediums of creation and distribution have changed with the advent of digital technologies. This change necessitates a change in distribution business models, not the reduction

7. See U.S. CONST. art. I, § 8, cl. 8; U.S. CONST. amend. I.

of copyright protection.

When I started out, graphic artists, illustrators and designers had portfolios: presentation cases with samples of our work. We called them our “books.” We spent a lot of money on our portfolios. They were precious. We met with prospective clients in person and showed them our book. The clients didn’t get copies of our portfolio. As soon as we could burn CD-ROMs, we made digital portfolio CDs and mailed them to prospective clients, agencies and production companies. Most of them couldn’t copy the digital files, but they had copies of our work to keep, and they could print out the images. As soon as it was possible, graphic artists and illustrators made portfolio websites. This opened our client reach beyond our local area. Our clients no longer wanted to meet with us in person to look at our book; they wanted to visit our portfolio website at their convenience. If you didn’t have a portfolio website, you didn’t get clients.

And then the mass looting of our work began.

There was a lot of discussion about the risks of portfolio websites when they started showing up online amongst graphic artists. The resolution of images on the Internet is 72 dpi and RGB color mode. In the early years, most websites and monitors could display only the 256 “web safe” colors. Images used for print need to be created at a resolution of at least 300 dpi to be sharp, in CMYK color mode and can have unlimited color range. We told each other that people would never swipe our images off the Internet to use for print because the quality would be unacceptable. RGB images have a huge color shift when output as CMYK in print. We believed we’d still be hired to create print work, and we were very, very wrong. Nobody can compete with free. The public thinks everything on the Internet is free. Blurry or pixelated images appeared everywhere in print. Even adding a visual watermark with a © and our name across the image didn’t stop people; they used it anyway. The infringers blithely shrugged and excused the crappy quality of the image because they “got it off the Internet” and it was free, and everyone accepted that. Infringement of images quickly became rampant. It’s now seen as evidence of being computer savvy and time-saving. Why waste time and money hiring an illustrator or photographer for a project when the Internet has loads of “free” images that you can just grab and use and—voilà!—your project is done, quick and cheap. It’s considered the smart way to use modern technology.

When our work was reproduced or displayed in “analog” media—print, film or video, on consumer products (tangible stuff)—we had longer deadlines because there was longer lead or production time. We had two weeks, sometimes more, to create our work. The advent of digital technology in production and output in these media and the use on websites has shortened deadlines to days, sometimes hours. What no one understands, even today, is that it still takes time to create our work. Digital technology doesn’t shorten the creative process. The short deadlines also encourage stealing existing images rather than taking the time to license use or commissioning new work.

Clients sometimes demand native software working files. (A “native” file format is a proprietary format that is created by and recognized by a specific

software application.) They believe that the fee they pay us for use of finished, production-ready art also includes the copyright and all working files leading up to the final art, including the font file licensed to us for the project. Let's get the ground rules straight. It is not customary business practice for graphic designers to provide clients with native working files and the font files along with the final art for the job/project. Ownership of native working files has nothing to do with WMFH or copyright. WMFH or assignment of copyright is about the finished design/illustration image. Not the working files. The font file is licensed to us, not the client.

Of course, the only reason to have the native graphic software working files is because they intend to change or recreate the work without our permission. We sell and license finished art. Our working files are like our trade secrets. We spend years learning and educating ourselves about our profession, and real money on our equipment and software. Our working files are the product of our intellect, our talent and our training. We don't give that to other people; we sell them design/illustration services. When we worked in traditional media (on paper), the rendering, mechanical or paste-up went to the service bureau or printer for production and then was returned to us. Sometimes the client kept it, but they really couldn't do anything else with it.



V. THE NEW BUSINESS MODELS OF DIGITAL TECHNOLOGY HAVE DRIVEN THE PRICE OF IMAGES DOWN

Public domain and copyright-free stock images have been around for a long time, on-hand at print shops as engraved wood-blocks in the mid-1800s, and

published in books available to the public and called “stock art” a hundred years ago.⁸ Dover Publications, established in 1941, specializes in publishing books of stock and copyright-free art for commercial reproduction. Digital stock images, called “clip art,” appeared about the same time as graphic software for the computer. And once the Internet improved the display and electronic transfer of large image files, royalty-free image businesses sprung up on the web. All of a sudden, people who weren’t professional artists or photographers could sell their work to these stock web businesses for far less than what we professionals priced our work in the marketplace. And much to our chagrin, many businesses responded very favorably to the low prices and ease of online shopping, browsing thousands of different images leading to a speedy download purchase.

Graphic artists asked: What business would want a sub-professional image? Who would want to run the risk of the image they’ve chosen for their brochure, annual report or book jacket turning up at the same time on something else in the marketplace? We told ourselves that our clients were sophisticated enough to understand the value of working with professionals like us, commissioned to create unique images just for them.

The marketplace will choose the winners and losers. We live in a free market economy of supply and demand. Our work is bought with no more personal interest than a can of soda, to be used today and forgotten about tomorrow, in the enormous volume of media we are bombarded with daily. The marketplace has decided that it wants to buy images the way we shop in a supermarket: go to one store, have a huge assortment to choose from ready on hand with price tags, buy what’s needed and go. The abundance of royalty-free stock images available instantly online has driven our commission and licensing fees way down.

VI. SPECULATIVE PRACTICES

Logo and website design mills, as well as stock image web businesses, now exist, competing with lower prices than we’ve ever charged in the past. We’ve lost most of our business to these business models. And there’s no turning back. Many professional artists and photographers have embraced stock art by creating their own collections and selling or licensing their images to stock houses. They have decided to change their business model from a visual creator marketing individual images directly to individual clients, to utilizing the stock houses as agents, or reps, or buyers for large collections of original work for much less.

Logo design mills utilize crowdsourcing. They provide an online exchange to bring buyers and sellers together. A client posts its request for proposal (RFP) for its job and the price it wants to pay, for example \$600 for logo, letterhead, business card and website. Multiple graphic designers submit work and might bid against each other; the client picks one. The web business is the interface between the

8. See, e.g., *BOOK OF TYPE SPECIMENS: SPECIMEN BOOK NO. 9*, at 673–78 (Barnhart Bros. & Spindler 1907); *CLICHÉS & GRAVURES* (Fonderies Deberny & Peignot 1900); *PHILIP B. MEGGS & ALSTON W. PURVIS, MEGGS’ HISTORY OF GRAPHIC DESIGN* 139 (4th ed. 2006).

designer and the client and basically manages the business aspects of the project, such as the agreement, job tracking, billing and payment. Copyright is always taken by the client.

Logo mills are literally speculative work. Multiple designers (usually only amateurs and newbies participate in these design websites) are expected to produce designs for a particular “client” with no guarantee that they will be paid for any of their work. It’s heinous, but the reality is that’s what we’re competing against.

It has been observed that often the “designers” who participate in American online logo mills with American clientele live in developing countries. Some of these “designers” are minors. Undoubtedly they may not find the pay rate low. There is also concern that “designers” in countries outside of North America and Europe may be totally unaware of copyright and trademark law in general and U.S. copyright and trademark law in particular. There is serious risk that designs produced by these people may include infringing copyrighted images owned by others, or logos already trademarked in the United States. If an American rights holder were to discover infringing use in a logo created by a foreign national through an online logo mill and took legal action against the business for which the logo was created, that business would have no legal recourse against the “designer.”

In 2011, the U.S. Department of the Interior (DOI) used the crowdsourcing design website crowdSPRING.com to solicit a new logo design. The Creative Brief for the DOI logo offered these three “awards” (fees): Award 1: \$1000; Award 2: \$250 and Award 3: \$250.⁹ Do the math: if the DOI paid for every one of the designs submitted (over 279 submissions), each design would earn less than \$5.37. A professional designer would charge a client the size of the DOI a design fee between \$20,000 and \$50,000 for a logo design, design implementation guidelines and buyout of copyright.

Although the business models of logo mills are completely legal, they are considered highly unethical by the Graphic Artists Guild and the American Institute of Graphic Arts (AIGA).

Many businesses and organizations have discovered online crowdsourcing and art contests as a means to solicit a vast amount of graphic artwork. Contests are held for a variety of reasons. Publicity for the organization or business holding the contest, of course, is an obvious reason. Collecting a huge amount of free artwork to possibly use (or license or sell) in the future is another reason. Generating revenue from entry fees could be the sole reason for a competition’s host/sponsor when the winner’s “prize” is only an award and the prestige of winning. And in some cases, the organization or business simply may have no idea how to go about finding and hiring a graphic designer or illustrator and commission artwork, so it holds a contest that is nothing more than a cattle call of spec work. The most

9. John M. Broder, *Sketching a New Home for the Buffalo*, N.Y. TIMES: GREEN BLOG (June 3, 2011, 8:18 AM), <http://perma.cc/MYZ8-S336>; Logo: U.S. Department of the Interior, CROWDSPRING, <http://perma.cc/FTG6-6YGZ> (last visited Mar. 1, 2015).

egregiously unethical contests rob artists of their copyrights by claiming a transfer or assignment of “all rights in perpetuity” to all artwork submitted upon receipt of entries, regardless of whether the entrants win or not. Some contests’ IP rules state that the finalists as well as the winners will relinquish their copyrights by transferring “all rights in perpetuity” when chosen as finalists, when only the winner(s) receives the award money. This business or organization is simply collecting artwork for free, and the value of the “prize” is far less than the total value of all the artwork it acquires.

These contests are 100% legal, and although the Graphic Artists Guild and Graphic Designers of Canada feel these contests are unethical, there is nothing we can do to stop them. Professional graphic designers and illustrators generally don’t participate in logo mills or crowdsourcing.

The appropriate approach to a new logo design would be to produce and announce an RFP in which designers are asked to submit a limited number of samples of previous work for the client to review. From those submissions, the client would choose a designer and commission a new logo. It is perfectly acceptable to commission several logo designs from the designer to choose from.



VII. WE’RE DYING FROM EXPOSURE

In general, we don’t learn about copyright in school in this country. Many Americans have no idea that what they’re doing is actually against the law when they use someone else’s work without permission: that they’re stealing. They come up with all sorts of rationalizations and justifications why what they’re doing is okay. I spoke on the Symposium panel about the disassociation of value and ownership from a physical object like a printed book, magazine or poster (that obviously costs money to produce and distribute) and an intangible, invisible digital file: those are just 1s and 0s, they don’t cost anything, right?¹⁰ The same

10. See Panel Transcript I: Authors’ Perspectives, Part One, 38 COLUM. J.L. & ARTS 399, 417–

people who would never, ever consider stealing a poster or a music CD from a retail store think nothing of stealing (copying/downloading) a digital file of the same work from the Internet or copying someone else's digital file directly.

There are three specious rationalizations for unauthorized use of images that I hear most often:

1. I'm not printing it and selling it. I'm not making any money from it.
2. As long as I provide attribution—include the artist's or photographer's name with the image—it's okay, that's not infringement. Using the image without attribution would be unethical.
3. Of course I will show the artist's/photographer's name with the image, because it will be great exposure for them. I'm actually doing them a big favor by using their image (without permission or payment) because I'm giving them free promotion. I'm not charging them to put their image on my website. Think of all the people who will see their work and their name that otherwise wouldn't have.

The scamming myth of "exposure" is as old as the hills. To use an old New York expression, "That—and a token—will get you on the subway." Young artists often fall for this because when we're starting out, our ego and desire to get eyeballs is most important and we don't have a lot of living expenses. Yeah, I'll tell the bank that I can't pay my mortgage this month because I got a lot of exposure but nobody paid me for my work; any day now my phone will ring nonstop and my inbox will be flooded with new clients! It never happens. If I wanted exposure, I'd streak through Gillette Stadium during a Patriots game in December. *Show me the money.*

As I mentioned at the Symposium, Digital Millennium Copyright Act (DMCA) notice-and-takedown doesn't work in reality; people just repost the image, music or video again.¹¹ Even if I digitally watermark my images with Digimarc and locate unauthorized display on a website, if that website has a foreign host I can't get my images taken down. Some websites, including social media sites, automatically remove the metadata identification of the creator (file info) when image files are uploaded, inadvertently potentially creating orphan works.

VIII. MAKE SOMETHING NEW

Digital technology has enabled everyone to be creators because of the ease of copying creative works to make "appropriation art" (collage) and mash-ups. But what's the distinction between plagiarism, copyright infringement and fair use? If a parody (allowed under fair use)¹² or satire is visually successful, it should be obvious to the viewer without separate narrative explanation from the creator. Of course, using someone's original art in your "new" art is a derivative work.¹³ If the artist who copies and incorporates someone else's original image doesn't

18 (2015).

11. *Id.* at 412.

12. *E.g.*, *Campbell v. Acuff-Rose Music, Inc.*, 510 U.S. 569 (1994).

13. *See, e.g.*, *Horgan v. MacMillan, Inc.*, 789 F.2d 157 (2d Cir. 1986).

acknowledge that—ethically, they should ask the other creator for permission—isn't the resulting use at least plagiarism? The trick is to change it enough to make it your own.

When I started out in the profession, copying or plagiarizing art was a lot of work; it took a lot of time and some skill. You had to photocopy or hand trace images from a printed source, so it was obvious that you didn't create those images yourself and the rights holder's name was usually printed close to the image (he/she was identifiable). Then you had to recreate the image. It wasn't fast. Artists copied other's work either because they couldn't draw well or because they had no ideas. Digital technology has made this easy and instantaneous; come up with an idea then search the web for existing images that depict your idea and just copy/paste. Grab a photograph and apply one Photoshop filter. Anyone can do it.

Don't get me wrong, there's nothing wrong with incorporating a significant amount of someone else's work, *as long as he or she gives you permission to do so*. I have to disagree with Pierre Leval's notion, quoted in *Cariou v. Prince*, that other people's work is "raw material."¹⁴ Paper, fabric, paint, wood, glue, etc. are raw materials. My art is my original creation, my work. It belongs to me. It is not art supplies.

Looking at images created by other people for visual research purposes to prepare to create a graphic or illustration is a necessary part of the working process and is not copyright infringement. Graphic designers often commission illustration or photography from other visual creators or license stock illustrations or photography to use in the work they are designing for a job. This is a regular part of the design business. Once we decide we want to use someone else's image in a comp as part of a job/project and a final design or illustration that will be produced, we have a legal obligation to get permission from the rights holder for that particular use, and pay them a licensing fee if they ask for one. That is also a regular part of the design business and should be planned for in our production schedule and budget. When "studio" artists work this way, their ethical and legal obligations are no different.

Some artists complain that copyright inhibits their freedom of expression to create new works by using other artists' original works. I've found that when I ask them, they never even attempted to contact the original creator to ask permission. They don't want to spend the time and effort, they fear they might have to pay a licensing fee, but often they really just don't want to be told "no." *Rogers v. Koons*, *Fairey v. Associated Press*, *Seltzer v. Green Day* and *Cariou v. Prince* all come to mind.¹⁵ It's better to *ask first* than to be sued later. If the artist or photographer denies permission, well . . . you'll just have to make something new all by yourself.

14. See Pierre N. Leval, *Toward a Fair Use Standard*, 103 HARV. L. REV. 1105, 1111 (1990) (quoted by *Cariou v. Prince*, 714 F.3d 694, 706 (2d Cir. 2013)).

15. See generally *Rogers v. Koons*, 960 F.2d 301 (2d Cir. 1992); *Fairey v. Associated Press*, No. 09-01123 (S.D.N.Y. 2010); *Seltzer v. Green Day*, 725 F.3d 1170 (9th Cir. 2013); *Cariou v. Prince*, 714 F.3d 694 (2d Cir. 2013).

“Art is making something out of nothing and selling it.” —Frank Zappa¹⁶

16. PETER ARCHER, *THE QUOTABLE INTELLECTUAL* 11 (2010).