

## Canadian Artists' Representation and Copyright

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"We're going somewhere you won't believe. London, Ontario has become a North American hotspot." So said Canadian painter William Ronald in 1966, as he stormed onscreen at the CBC in an arts show like no other. The Umbrella ("it covers everything") combined William Ronald's acerbic (and occasionally chauvinist) humour and a certain *je ne sais quoi*, with straight man Lloyd Robertson's (yes, that Lloyd Robertson) stolid commentary.<sup>1</sup> The Umbrella showcased a who's who of the cultural scene of the late 1960s, including interviews with artists (among them Marcel Duchamp), designers, philosophers, and politicians. But the London show was a central one, as Ronald traveled to southwestern Ontario to talk with artists Jack Chambers and Greg Curnoe and poet James Reaney on topics ranging from the new Canada Council grants for artists to an argument over whether or not someone should be able to choose to die on live television.<sup>2</sup>

In 1968, the art scene in London, Ontario was vibrant. Artists such as Chambers, Curnoe, and Bernice Vincent were turning what was little more than a conservative regional centre into an important contemporary art scene. Others came from Toronto and elsewhere, among them Joyce Wieland and Michael Snow. The National Gallery's Pierre Théberge came to town, Buckminster Fuller gave a talk at the University of Western Ontario, artists and locals gathered for a series of happenings and Nihilist Spasm Band performances.<sup>3</sup> Always at the centre, Curnoe's brand of anti-American regional-nationalism took off. "Close the 49th Parallel" and "Use of American spelling of words to be punished by strapping" he wrote (tongue in cheek, or maybe not).<sup>4</sup> London, which had been known as a conservative insurance town in the middle of an agricultural belt, and the home seat of the Ontario Conservative Party, became an important centre for emerging and established artists. The city—equidistant between the heady nightlife, riots, and growing anti-Vietnam protests in Detroit, and the conservatism and Anglo-centrism of Toronto—was, for a time, an artistic hotspot.

It was in this atmosphere that artists Jack Chambers, Tony Urquhart, and Kim Ondaatje came together to challenge the National Gallery's refusal to

secure copyright or reproduction rights for artists. From initial discussions on how artists should be recompensed for their work being shown in the gallery, an artists' union—the Canadian Artists' Representation—was formed. By 1971, CAR had gone national, with the union advocating for artists' rights at a federal level, resulting in copyright fee schedules and exhibition payments in 1976—the first country to do so. CAR (now CARFAC) advocated for an amendment to the Copyright Act in 1988 that “recognizes artists as the primary producers of culture, and gives artists legal entitlement to exhibition and other fees.”<sup>5</sup> In 1992, a Status of the Artist Act was established that endeavoured to recognize the role played by artists in the cultural life of the country through fair compensation for work.<sup>6</sup> In 1997, this was supplemented by the Status of the Artist legislation, which gave artists the right to bargain collectively at a federal level. As the CARFAC website notes, “This means that CARFAC National and RAAV (Regroupement des artistes en arts visuels du Québec) can negotiate collective agreements with all federal institutions such as the National Gallery of Canada, the Department of Foreign Affairs and International Trade (including embassies), the Canadian Museum of Civilization, etc. Once a signed federal agreement is reached with an institution and is ratified by the membership of the certified organization, it is legally binding and will set a major precedent for other federal and even provincial institutions.”<sup>7</sup>

Gregory Sholette, in his chapter in this volume, introduces the Art Workers' Coalition (AWC): “a New York based, though nevertheless international collective of artists and cultural workers founded in the late 1960s.” He notes how, like CAR, the AWC presented the New York art world with a series of demands, “including the right to receive royalties from the resale of their work, the establishment of free legal services for artists, and the opening up of museums to artists without commercial gallery representation.”<sup>8</sup> In addition, AWC also demanded that a trust fund be set up to provide “stipends, health insurance, help for artists' dependents, and other social benefits.”<sup>9</sup> CAR and the AWC emerged simultaneously, but, arguably, CAR was the more effective of the two, banking as it did on the heady combination of residue left from the celebration of Canada's centennial year and a belief that the state should ultimately support the arts.

As Jack Chambers put it, "What CAR is is a bunch of artists together, doing something for one another.... Canada is unique in one way ... the galleries, the government and the artists are all interdependent and so you can't do one without the other. So if you try to undo the artists the artists get together and you undo the gallery, and you undo the government ... and that's the way it should be.... And you gotta have it in the hands of the artists, because the artists will work with anybody."<sup>10</sup>

While CARFAC and London, Ontario, no longer have the same relationship, and the scene into which CAR was born has changed dramatically, many of the issues remain the same. In fact, perhaps the original impetus behind the formation of CAR—the securing of reproduction rights for artists—has become even more important in recent years as intellectual property has emerged as an important economic engine. Artists such as Chambers, Ondaatje, and Urquhart supposed a direct relationship between the gallery and the artist that now has to be contextualized by international agreements and negotiations over IP rights. Agreements such as TRIPs (Trade Related Aspects of Intellectual Property Rights) and WIPO (World Intellectual Property Organization) have placed copyright and intellectual property at the forefront of twenty-first-century global capitalism.

As Susan Crean writes, noting a disjuncture between the way that free trade is preached and the way that it is practiced, the liberalization and openness of the economy to trade in knowledge relies on the strict regulation of intellectual property. She suggests that whereas individual creators used to have to struggle to obtain copyright and recompense for their work, this ideal has now been taken on by massive multinational corporations (with, it should be noted, much greater success).

How do these issues play out? Often, Crean suggests, what is guaranteed through law for corporations does not filter down through the system, where creators' work continues to be regularly used without acknowledgment or payment. Somewhat contradictorily, access can also be an issue. In a recent case in point, the National Gallery of Canada (NGC) (a publicly owned, state-supported institution), operating at arm's-length from the government, used existing copyright legislation to target the Manitoba Frontier School Division (MFSD).<sup>11</sup> In 2004, the Stark Museum, in Orange, Texas, donated four reproduction paintings by

Canadian artist Paul Kane to the MFSD. As Michael Geist reports, “the paintings were seen as a homecoming of sorts since one of the portraits features the only known likeness of aboriginal elder Ogemawwah Chack, ‘The Spirit Chief,’ who is a direct ancestor of many local residents.”<sup>12</sup> To include the paintings in local school curricula, the MFSD contacted the NGC to ask for a copy of a photo of the painting held in its collection. The gallery asked for \$150, more than ten times the amount charged by the National Archives for a similar request. The NGC also claimed the right, “to see and approve final design proofs for the use of this public domain image.”<sup>13</sup> School Board officials wrote to Liberal Minister of Canadian Heritage Liza Frulla, but Frulla’s office declined to intervene. The MFSD officials went public with their concerns, trying to draw attention to “the misuse of copyright law to restrict access to Canadian culture.”<sup>14</sup> The double assumption here is that Canadian culture is a shared knowledge that should be accessible to all Canadians, and that the NGC, as a public institution, should not be making money from the symbolic heritage of Canadians. In truth, galleries and museums have for some time been at the forefront of copyright regimes. Though the Manitoba case did not garner a great deal of attention, it is exemplary of the direction that copyright protection could take in Canada over the coming years as the management of rights comes increasingly to be seen as a source of potential revenue.

It is not, however, capital accumulation that is always at stake. Crean, Edwards and Hebb describe a case with a different emphasis: “Recently, however, the Snuneymawx (Nanaimo) First Nation on Vancouver Island took an innovative step in establishing a number of the petroglyphs found on Gabriola Island as marks under the Trade-Marks Act. These images were being widely exploited by artists and entrepreneurs without reference to the native community. The Band did this on the basis of its being a public authority not a commercial operation and this is indicative of its intent to preserve a limited commons rather than create a private interest. What is innovative about the move is that it advances a method for the collective ownership regime operating in native culture to be recognized.”<sup>15</sup>

Copyright has become an increasingly complex field of negotiation in the art world as some artists lobby for compensation and others for the right to freely appropriate images and circulate work outside of IP regimes. In Canada, for example, numerous artists and others have gathered together

under the label Appropriation Art in order to contest the imposition of stringent copyright law on the arts. For these artists, recompense for reproduction pales in comparison to what they see as a crackdown on their right as artists to use preexisting material in their artworks.<sup>16</sup> In 1968 London, Ontario, it is unlikely that Chambers, Ondaatje, and Urquhart could have foreseen the importance that intellectual property rights would come to hold in the twenty-first century. The heady days of 1960s London are now almost entirely absent from the national and international forums in which IP agreements are negotiated. And yet, what was set in place in 1968 remains an important standard by which the rights of artists can be legally upheld.

### Notes

- 1 Lloyd Robertson became a well-known news anchor on CTV, a privately owned competitor to the national broadcaster CBC. He announced his retirement in 2010 after 37 years on the air.
- 2 *The Umbrella*, Canadian Broadcasting Corporation, 1966.
- 3 See, for example, Nancy Geddes Poole, *The Art of London, 1830-1980* (London: Blackpool Press, 1984); Dennis Reid and Matthew Teitelbaum, eds., *Greg Curnoe: Life & Stuff* (Vancouver: Douglas & McIntyre, 2001).
- 4 Greg Curnoe, "Amendments to Continental Refusal/Refus Continental," in *Beyond Wilderness: The Group of Seven, Canadian Identity, and Contemporary Art*, ed., John O'Brian and Peter White (Montreal and Kingston: McGill-Queen's University Press, 2007), 57.
- 5 CARFAC, [www.carfac.ca](http://www.carfac.ca).
- 6 The Status of the Artist Act can be found at <http://laws.justice.gc.ca/en/S-19.6/index.html>.
- 7 CARFAC, "Status of the Artist," <http://www.carfac.ca/about/federal-status-of-the-artist-certification/>
- 8 See Gregory Sholette in chapter 3 of this volume.
- 9 See also Lucy R. Lippard, "The Art Workers Coalition: Not a History," in *Get the Message: A Decade Of Art For Social Change* (New York: E. P. Dutton, 1984).
- 10 Jack Chambers, from the AGO collection. This interview can be accessed by dialing 1-888-244-4184 (code 110#).
- 11 The Canadian Heritage website on the National Gallery notes that, "Copyright in the Artists in Canada Database belongs to the National Gallery of Canada. No part of the Artists in Canada Database may be stored, transmitted, or otherwise used or reproduced in any form except for non-commercial study or research purposes with a proper acknowledgment or citation of the Artists in Canada Database. Any commercial use of the database or extracts thereof is prohibited without the express written

- consent of the National Gallery of Canada” (Canadian Heritage Information Network, “Museums and Sustainable Communities” (April 1998), [http://www.rcip.gc.ca/Resources/Icom/English/e\\_conf\\_agenda.html](http://www.rcip.gc.ca/Resources/Icom/English/e_conf_agenda.html)).
- 12 Michael Geist, “Harry Potter and the Right to Read,” (17 July 2005) <http://www.michaelgeist.ca/index.php?option=content&task=view&id=896>.
  - 13 Ibid.
  - 14 Ibid.
  - 15 Susan Crean, Laurie Edwards, and Maria D. Hebb, “Intellectual Property and International Trade.” *Paper Prepared for the Canada Council* (August 2000), <http://www.cra-c.ca/CanadaCouncilpaper2.doc>.
  - 16 Appropriation Art, “Appropriation Art,” <http://www.appropriationart.ca>.