

### **Copyright ownership is distinct from ownership of the physical piece of artwork.**

When an artist creates a painting, the artist owns both the copyright in the artwork, and the physical artwork. Ownership of the copyright is an intellectual property right. Ownership of the physical artwork is a personal property right. A sale of the physical artwork does not transfer the copyrights in the artwork. Likewise, transferring the copyright does not necessarily transfer the personal property rights in the physical artwork.

**A copyright provides the copyright owner with a number of exclusive rights, including the right to copy the work, distribute the work, adapt the work, publicly perform the work, and publicly display the work.** Only the artist can reproduce, adapt, distribute, and publicly perform and display the artwork.<sup>1</sup> The copyright owner must enter into a written agreement, specifying the rights being transferred, to sell these exclusive rights.<sup>2</sup> Individual rights can also be licensed with either an oral or written agreement. Edward Hopper could grant the Walker Art Center a license to make its own prints of *Nighthawks* to sell.

When an artist sells a piece of artwork, the artist is just selling the physical object, not the copyright. However, once a lawful copy of the artwork is sold, the copyright owner may not prevent further distribution of that same copy or public display of that copy. This concept is known as the first sale doctrine – once a physical copy is sold (or given away) that same physical copy may be redistributed, resold, and displayed publicly.<sup>3</sup> If the Walker Art Center purchased *Nighthawks*, it would be free to display the artwork on museum property without seeking Hopper's permission.

### **The Visual Artists Rights Act (VARA) grants visual artists additional rights that extend past a sale.**

VARA provides visual artists<sup>4</sup> with the (moral) rights of attribution and integrity<sup>5</sup> so as to protect an artist's reputation.<sup>6</sup> The artist retains these rights even after selling the artwork. Other types of artists, like musicians and book authors, do not enjoy these rights. The artist can waive, but not transfer, these rights in a written agreement.<sup>7</sup>

The attribution right allows the artist to claim authorship of artwork created by him. Likewise, the artist can require the purchaser remove the artist's name from mutilated artwork, or artwork the artist did not create.<sup>8</sup> The integrity right stops others from intentionally distorting, mutilating, or modifying artwork, in a way that dishonors the artist's reputation. Further, if the artwork is of "recognized stature,"<sup>9</sup> the artist can stop "any intentional or grossly negligent destruction" of the artwork.<sup>10</sup>

### **Summary**

When an artist sells physical artwork, the copyrights in the artwork do not transfer to the purchaser. The copyright owner must enter into a written agreement, specifying the rights being transferred, in order to sell a copyright. The first sale doctrine allows the purchaser of a lawful copy of the artwork to resell, distribute, or publically display that copy without the artist's permission. However, the artist retains the copyrights in the artwork, and the rights of attribution and integrity in the sale of the physical artwork.

For information on how to register your copyright, please see the **Copyright Registration** fact sheet.

<sup>1</sup> 17 U.S.C. § 106 (2012). For a helpful explanation of these exclusive rights, and any respective restrictions, see Ralph E. Lerner & Judith Bresler, *ART LAW: THE GUIDE FOR COLLECTORS, INVESTORS, DEALERS & ARTISTS* 933 (Practising Law Inst., 4th Ed. 2012).

<sup>2</sup> 17 U.S.C. § 204.

<sup>3</sup> Lerner, *supra* note 1, at 939.

<sup>4</sup> See 17 U.S.C. § 101 for a full list of qualifying works of visual art.

<sup>5</sup> 17 U.S.C. § 106A(a).

<sup>6</sup> 17 U.S.C. § 106A *et seq.*

<sup>7</sup> 17 U.S.C. § 106(e) (2012).

<sup>8</sup> 17 U.S.C. § 106A(a)(1)-(2).

<sup>9</sup> See Lerner, *supra* note 1, at 1103 ("a plaintiff must demonstrate (1) that the work of visual art has stature—that is, is perceived as meritorious, and (2) that the stature is recognized by art experts, other members of the art world, or some cross-section of society. The court noted that such a showing usually requires expert testimony.") (citing *Carter v. Helmsley-Spear, Inc.*, 861 F.Supp. 303,329 (S.D.N.Y. 1994), *cert. denied*, 517 U.S. 1208 (1996)).

<sup>10</sup> 17 U.S.C. § 106A(a)(3).