



art journal open
Publication Agreement for Making Art

This agreement between _____ (“you”) and the College Art Association (“CAA”) sets forth the terms and conditions in connection with the publication of the text or project “_____” (the “Contribution”), which has been accepted for publication in Art Journal Open (the “Publication”), an open access website published by the College Art Association.

1. COPYRIGHT LICENSE

You hereby grant a perpetual, worldwide, royalty-free, paid-up license to CAA to reproduce, distribute and publish the Contribution in the Publication.

2. REPRESENTATION AND WARRANTIES

You represent and warrant that (a) you are the sole creator of the Contribution; (b) the Contribution is original and has not previously been published by you or any other person in any other form; (c) the Contribution does not defame any person or unlawfully invade his or her privacy; and (d) subject to Paragraph 3(a), that the reproduction, publication or distribution of the Contribution by CAA will not infringe upon or misappropriate the proprietary rights of any third party.

3. PERMISSIONS, FAIR USE AND INDEMNITY

a. CAA requires that you determine, prior to CAA’s publication, whether it is necessary to obtain permissions from all third parties who own rights in any photographs, illustrations, drawings, text or any other material (“third-party work”) to be published with or in connection with your Contribution. In making that determination, please refer to the “Addendum: Invoking Fair Use to Publish Third-Party Materials—Making Art” and to the *Code of Best Practices in Fair Use for the Visual Arts*, available at www.collegeart.org/fair-use. For each third-party work, you must determine, in accordance with the Addendum and the Code, whether the use thereof in your Contribution is a fair use under U.S. copyright law. If you determine that such use is a fair use, you need not obtain permissions from the third party who owns the U.S. copyright rights in the third-party work and your representation (in Paragraph 2(d)) that the reproduction, publication or distribution of the Contribution will not infringe the proprietary rights of any third party will not include copyright rights. If, however, there are proprietary or private rights in the third-party work other than copyright, or if you determine that your use is not a fair use under U.S. copyright law, then you

represent and warrant that you have obtained all such rights that are necessary to reproduce, publish or distribute such third-party works in the Contribution, whether in any hard copy, electronic or other form or media, and whether or not your Contribution or such third-party work may be individually accessed, perceived or retrieved apart from the Publication, as set out in Paragraph 1. In addition, prior to publication of the Contribution, where you are required by the foregoing to obtain permissions, you agree to supply copies of signed permissions or other clearances, in a form satisfactory to CAA, from the rights holder of each third-party work.

b. You agree unconditionally to release, and to indemnify and hold harmless, CAA, its affiliates and its and their licensees, and its and their officers, directors, employees, agents, representatives and assignees from and against any and all liability, claims and costs, including losses, expenses and reasonable attorney's fees and expenses, that it or they incur as a result of any breach by you of any of the foregoing representations and warranties, including, but not limited to, liability, claims and costs arising out of any claims by third parties with regard to the publication of third-party works with or in connection with the Contribution, in any form or media. You do not have to indemnify CAA for any third-party claims of copyright infringement with respect to third-party works for which you have determined your use is a fair use in accordance with Paragraph 3(a).

4. GUIDELINES

The Contribution shall conform to the *Art Journal* Style Guidelines published at http://artjournal.collegeart.org/?page_id=4585.

5. CHOICE OF LAW, FORUM AND MISCELLANEOUS

This agreement shall be governed by and construed in accordance with the laws of the State of New York applicable to agreements made entirely within the state. The parties hereby consent to the jurisdiction and venue in any federal or state court of competent jurisdiction located in the State of New York for the adjudication of any disputes under this agreement. This agreement contains the complete agreement and understanding between the parties and supersedes all prior or contemporaneous discussions or agreements between CAA and you regarding the submission of the Contribution. It may not be modified either orally or in writing by any employee of CAA.

By signing this agreement, you certify that you have complied with the requirements of Paragraph 3(a) with respect to determining that your use of third-party works in the Contribution is a fair use under U.S. copyright law.

Accepted and agreed to:

Signature of Author

Date

Addendum: Invoking Fair Use for Third-Party Materials—Making Art

CAA will not require that you obtain permissions for the use of images and other third-party works in your Contribution if you determine, in good faith, that your use of such third-party works is a fair use under US copyright law. In making that determination, you should review the PDF of CAA's *Code of Best Practices in Fair Use for the Visual Arts*, which was sent to you when your Contribution was accepted for publication. You can also read and download the Code online at www.collegeart.org/fair-use/best-practices. For discussion of the fair use doctrine of US copyright law, please see pp. 14–17 of the Code. A useful list of Frequently Asked Questions regarding the Code and the fair use doctrine can be found at www.collegeart.org/fair-use/faq.

Fair use can be applied only to images and other third-party materials to which the user has access. Sometimes, however, permission must be sought because a sole source controls an object or image of it, even when the underlying work itself is in the public domain. Because demands for permission fees in this context are not based on copyright, fair use cannot be invoked to avoid paying such fees.

Works in the public domain may be used without obtaining permissions. Even if the work itself is in the public domain, however, photographers of three-dimensional artworks (such as sculpture, architecture, or performance) or the organizations that employ them may hold rights in their photographs, independently of whether the artwork itself is in copyright.

The Code provides that artists may invoke fair use to incorporate copyrighted material into new artworks in any medium, subject to certain limitations. For a summary of the limitations, see p.11 of the Code.

To aid you in making a determination as to whether your use of third-party works is a fair use, CAA is suggesting that you consider the following questions. These are not, however, a substitute for the requirement that you review the Code and the Frequently Asked Questions.

Does your use of existing copyrighted material generate new artistic meaning? A change of medium, without more, may not meet this standard.

Does the artistic objective of your work justify your use of the third-party work, whether in part or whole? Can you articulate your rationale for repurposing copyrighted material?

Do you suggest that the elements of the third-party work incorporated into your work are original to you? If so, is this integral to the meaning of the new work?

Do you cite the source of the copied work, whether in the new work or elsewhere (by means such as labeling or embedding)? If not, can you articulate an aesthetic basis for not citing the source?