

Photographing Other People's Art Opinion and Photos by Alan Sisen

An ongoing topic of discussion among photographers is whether photographing "other people's art" is appropriate, either ethically or legally. While some photographs are merely "record shots" of what the photographer saw, most photographs from serious photographers are intended to be the photographer's creative work. But can photographing someone else's artwork ever be considered the work of the photographer?



*Campagna Shepherd Boy by Edward Sheffield Bartholomew,
Peabody Music Conservatory, Baltimore, Maryland*

If you take a straight-on, "fill-the-frame" photograph of the "Mona Lisa," it will be difficult for it to be anything other than a "record" shot of that famous painting. What is the photographer adding by taking a photograph? Is the photographer adding any originality, any new perspective, any new interpretation, any creativity? How about a photograph of a sculpture. What about architecture? What about an art installation? A building is the "art" of the architect. In addition to copyright, many buildings have also been trademarked (NYC's Flatiron Building, the Empire State Building, San Francisco's TransAmerica Building,

etc.) to further limit what might be considered commercial exploitation of the structure.

This blog post won't provide any legal advice, (consult your attorney) but merely points out that in addition to the question of the possible ethics issues of photographing other people's art, there may also be legal issues, especially if the photograph is to be used for commercial purposes. We won't go into the very involved legal discussions about "derivative work," but if you're photographing other people's art be sure you understand the issues!



One very interesting legal case that touches on this topic involved the Korean War Veterans Memorial in Washington, D.C. by sculptor Frank Gaylord (1925-2018). He sued the U.S. Postal Service for copyright infringement when the USPS used a photograph of the memorial on a postage stamp without his permission, without paying Gaylord any compensation. In 2008, the Court of Federal Claims ruled in the USPS's favor, saying the photograph was covered by the doctrine of "fair use," exempting it from copyright infringement. However, in 2010, on appeal, the Court of Appeals reversed that ruling, and the Court of Federal Claims awarded Gaylord a settlement of \$685,000. In addition, the photographer, a retired Marine, whose photograph was the basis for the stamp, agreed to pay Gaylord a 10% royalty on any future sales of the photograph.

You might also remember the court case involving Shepard Fairey, who "created" the Barack Obama "Hope" poster that was widely distributed in the 2008 election. Ultimately, it was determined that the poster was based on freelance photographer Mannie Garcia's photograph. In 2011, the parties settled out of court for a confidential amount.

Legal issues aside, most photographers, when they are taking photographs of

when they are taking photographs of another artist's work, are not doing so for potential profit or for commercial purposes. Not normally interested in taking record shots of other people's art, I have always found it a challenge to try to add some degree of my creativity or to add a different context or perspective than the original artwork possessed on its own.



*Gabriel Dawe-Plexus A1 2015,
Renwick Gallery, Washington, DC*

The photograph above of Gabriel Dawe's amazing 2015 installation at the Renwick Gallery in Washington, D.C., is just a zoomed-in portion of the installation, which was constructed from almost 60 miles of colored thread (see "[Gabriel Dawe](#)"). Notice how, in

the next two photographs I have added additional elements into the photograph to possibly enhance, or put the installation into the context of the architectural aspects of the building.



*Gabriel Dawe - Plexus A1 2015,
Renwick Gallery, Washington, DC*

I have been in a number of museums that actively encourage the taking and sharing of photographs. This helps promote the museum and make many, many more people aware of an exhibit than would otherwise have been aware. Many museums have become extremely active posting on social media and have found that it enhances their presence, reach and attendance. An interesting discussion about this topic can be found in [this](#) article in ARTNews. But if you photograph other people's art for anything other than personal use, be sure you understand the issues!

If you would like to comment on this opinion piece, please write Alan at Alan@AlanSislenPhotography.com.



*Gabriel Dawe - Plexus A1 2015,
Renwick Gallery, Washington, DC*