COMMERCIALIZING YOUR ARTWORK

An Arts Counsel Texas Presentation
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Making money is art and working is art and good business is the best art.

- Andy Warhol
OUR GOALS

What is the Point of Today, Tom?
OUR GOALS

➤ **Goal #1** - Learn some of the avenues you have to make your passion also pay your rent.
  ➤ From Art -> Money -> Repeat

➤ **Goal #2** - What details you need to worry about.
  ➤ Contracts, copyright, and so much more

➤ **Goal #3** - What to do when it all goes wrong...
WHAT WE ARE NOT COVERING
WHAT IS COMMERCIAL ART ANYWAY?

It’s all going to be O.K. Deep Breath.
THE BASICS

➤ You create art… Now what?

➤ Traditional Methods of Sale
  ➤ Sell it direct to consumer
  ➤ Sell it on consignment to gallery

➤ Other Options
  ➤ License work to individual or company
  ➤ Create multiples in different formats
  ➤ Allow work to be modified and sold
  ➤ Lots and lots more…
IT’S ALL ABOUT THE LICENSE

➤ When you own something that someone else wants, you can sell it outright, or you can license it.

➤ YOU GENERALLY WANT TO LICENSE IT!

➤ Licenses have multiple components:

➤ Descriptions

➤ Terms

➤ Duration

➤ Geography

➤ etc.
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Why Licenses Matter

Can you understand that I think licenses matter?
In the last few months, I have worked on a few interesting cases that involved licenses:

- Warhol Foundation v. Goldsmith (Case 1:17-cv-02532-JGK)
- Navarro v. Proctor & Gamble (1:17-cv-00406-TSB)
- Jacobus Rentmeester v. Nike, Inc. (No. 15-35509, 9th Cir.)
Photographer Lynn Goldsmith took picture of Prince for Vanity Fair

Image was used by Warhol as basis for artwork.
- Appropriation Art
- Lots of maneuvering...

After Prince’s death, the Warhol Foundation licenses the artwork to Conde Nast
- Left out Goldsmith
- What now?
Better the sexual depictions of Prince than the sexual deprivations of Michael Jackson, declares TRISTAN ANON.

Plus a special portrait for Purple Love by ANNY WARDOL.

A few days after Mary Lou Retton won a gold medal at the Los Angeles Olympics, she appeared on The Tonight Show with Johnny Carson, who seem embarrassed to call her the "youngest Olympic gold medalist." She later said in an interview with New York Magazine, "I was bound to get on the show because I'm a guy. The media loves that kind of thing." She then went on to say, "I think people are more interested in my sex life than my achievements." This type of celebrity culture is increasingly prevalent in today's society, where even the smallest achievements are scrutinized and celebrated. But what does it mean to be a celebrity? Is it about the success or the fame? How do we define success in this age of instant gratification and endless distraction?

In the age of social media, the line between celebrity and ordinary person has blurred. Everyone has the potential to become a celebrity if they create enough buzz. Whether it's a viral video, a meme, or even just a well-timed tweet, anyone can become a social media sensation. But what does it mean to be a celebrity? Is it about the success or the fame? How do we define success in this age of instant gratification and endless distraction?

For many, the allure of fame is too great to resist. But what happens when the glamour fades? When the spotlight moves on to the next big thing? Will you still be happy, or will you long for the spotlight and the adoration that comes with it? Is fame a curse or a blessing? These are questions that many celebrities grapple with on a daily basis.

In the end, it's up to each individual to decide what they want their lives to be like. Are they willing to give up the fame and the spotlight for a simpler life? Or are they content with the constant attention and the endless possibilities that fame brings? It's a question that many celebrities struggle with, and one that we as society must continue to explore.

But for now, let's enjoy the spectacle and the drama. After all, it's all about the show.
Photographer Navarro shot product images for P&G.
Licensed them for a set duration on a set number of products.
Later found that P&G was using images on product boxes around the world.
Potentially huge recovery based on facts that might tend towards willful infringement.
JACOBUS V. NIKE

➤ Photographer took image of Michael Jordan while still in college.
➤ Licensed it to Nike.
➤ Nike re-shot photograph.
➤ Used their own reshoot upon which they based their iconic “Air Jordan” logo.
➤ Photographer suing Nike for infringement.
OTHER
RECENT
EXAMPLES

More Reasons to Care
Street artist Revok contacted retailer H&M to let them know his work was the backdrop for a recent H&M photoshoot.

H&M responded by suing artist (p.s. bad idea)

- Facing boycott, etc.
- Argument: Graffiti is vandalism

1:17-cv-01490-ENV-PK
KOSSE V. KIESZA

➤ Kiesza is a musician who filmed a music video in an area where artist Kosse had his work (legally) on buildings.

➤ Video has garnered 300 million views on YouTube.

➤ No attempt was made to license artwork.

➤ (Also, this would have likely worked at the outset.)
HELP!
EVERYTHING HAS GONE WRONG

No, seriously, help.
Don’t Panic.

- Douglas Adams
1) DON’T jump to a lawsuit, but DO get some advice from professionals.

2) Start gathering all communications - wait, you have been getting those contemporaneous writings, right??

3) If polite, reasonable talk doesn’t work, give me a call…

4) If a lawyer tells you to stop talking and just file a lawsuit, get away from that lawyer…

5) Unless you need to file a lawsuit :)

RESOLVING CONFLICTS
AUGUST 7, 21, 28, 2018
THREE WEEK INTENSIVE WORKSHOP
PRESENTED BY MADDREY PLLC
AT THE CEDARS UNION
THANK YOU

Tom Maddrey
Maddrey PLLC