

# Ask the Artsperts

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## Commission Conundrum with Copyrights

### Dear Artsperts:

I commissioned a local artist to create a painting for my living room and while I was at the frame shop picking up my new painting, a decorator stopped to compliment me on the painting and asked if I would give her permission to make a giclée print of the painting for her client. Can I give her permission since I commissioned the painting?

Also, a girlfriend of mine commissioned another local painter to do a painting of her four grandchildren playing on the beach last spring. This winter she was walking downtown and saw several paintings of her grandchildren in a store window. Did the artist have the right to use her grandchildren's images for more paintings?

Signed, *The Commissioner*

### Dear Commish,

From your point of view, as someone who paid an artist to create a work of art for you, it may seem like you should have every right to use the work in whatever way you want. After all, without your commission, the artist would not have created the work. But the law favors the artist because every work of art is unique. Creating a work of art, even one that is commissioned, requires unique inspiration, talent, and technique.

For example, let's say you commission an artist to paint a landscape of a forest. It will look vastly different from one artist to the next because every artist has a unique perspective and technique. While the works to the right were not commissioned, the works demonstrate how differently a forest can be rendered from one artist to the next. You can easily see the artistic differences in these paintings of forests. With the work you commissioned, you most likely chose the artist based on his or her particular technique and style. It wouldn't be fair to the artist to reproduce their creative and unique work without their explicit permission. Many artists are likely to object to the reproduction in giclée because of the ramifications it may have on their careers.

Taking the artist's point of view into consideration, you can see why the law favors the artist. Even with commissioned works by private collectors, the artist will retain legal intellectual copyright to the work of art. The artist is the only one who can give permission to the decorator for reproducing the work in a giclée print.

Your friend's situation falls into a gray area in terms of copyrights. Portraits are usually considered a work for hire, in which case the person who hired the artist holds the copyright. But based on what you describe of children playing on the beach, it is possible that the work of art might not technically fall into the category of portrait. If it is not considered a portrait, then it would be a commissioned work and therefore the artist retains the copyright, just like in the case of the work you commissioned. Law aside, what the artist did is morally questionable.

When commissioning a work, it is always best to agree ahead of time and in writing any future uses of the work of art by both the artist and the private collector. And of course, consult a lawyer who best can guide you through the complex world of copyrights.

Sincerely,  
*The Artsperts*



"Splash III" by Robert Kipniss  
oil on canvas, 28" x 22" 2003

These three works were not commissioned but demonstrate how differently something, such as a forest, can be rendered from one artist to the next. Each artist is unique in his or her perspective and technique, which is why it is only fair that copyright remains with the artist even after the sale or a commission of a painting, unless otherwise agreed.



"Tree Forms" by Herman Mari (1908-86)  
oil on canvas, 34"x30", 1956



"Backlight" by John Falato  
oil on panel, 12" x 16", 2014