



M.C Grosfischerplan , Esq.

From:
The Law Offices of M.C Grosfischerplan
Butch Kills, NY 11101
artlawd@Grosfischerplan.biz

1 December 2014

To:
Robert Hovden
School of Applied and Engineering Physics
Cornell University
[REDACTED]
Ithaca, NY 14853-3501
c. [REDACTED]

Re: Copyright Infringement

Dear Mr. Hovden:

I represent Ms. Joy Garnett, award winning painter and appropriation artist in the above captioned matter.

Ms. Garnett is the copyright owner of all rights under the U.S. Copyright Act of 1976 (17 U.S.C. 101 et seq., hereinafter “the Act”) in and to an image entitled, “Laylah K.” (hereinafter “the Copyrighted Image”). The Copyrighted Image was adapted from a 1969 photograph of the renowned Palestinian Freedom Fighter Laylah Khaled that has been determined to be a public domain image and therefore not protected under U.S. copyright law. Furthermore, Ms. Garnett’s apparent use of a Creative Commons license for the digital reproduction of said Copyrighted Image on her website does not supersede her copyright, nor does it negate Ms. Garnett’s ability to exercise her rights with regard to the Copyrighted Image as enumerated in the Act.

The purpose of this letter is to inform you that your nano-etching entitled “Laylah K.” (hereinafter “the Infringing Image”), which is currently being displayed in the exhibition *When Art Exceeds Perception* hosted by Cornell University’s Jill Stuart Gallery infringes Ms. Garnett’s federal and state intellectual property rights, principally her exclusive rights of display,



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reproduction and right to make derivative works under Section 106 of the Act, despite the fact that the display of the Infringing Image, which is etched on “industry-standard silicon wafers”, is not remotely perceptible to the human eye, even with the use of conventional visual aids, and is, to all intents and purposes, invisible.

Additionally, a portion of the magnified reproduction of the Infringing Image appears on the Cornell Council for the Arts website on the announcement page for Biennial Projects, <http://cca.cornell.edu/?p=projects>, which lists the exhibition as open to the public through the fifteenth day of the month of December of this year. This use is also an infringement of Ms. Garnett’s rights as reserved under the Act.

The Infringing Image, described as a “nano-etching” (or “nano-lithograph”), knowingly infringes and takes as its own the principal figure in the Copyrighted Image, which is referred to in the press material for the exhibition (<http://cacm.acm.org/news/180109-cornell-biennial-celebrates-nanotech-as-art/fulltext>) as “the original image” and also as one of “several famous works of art”. Furthermore, the Infringing Image replicates the entire composition of the Copyrighted Image, though in a scale and format 500 times smaller than the eye can resolve, and five times smaller than the wavelength of light, and therefore invisible to even the conventionally aided eye under normal daily human circumstances. And yet, the Infringing Image takes too much.

It is well recognized that a change in the medium of expression cannot excuse the unauthorized use of a copyrighted image, even if under the circumstances that medium renders the image far from visible, and hence possibly non-existent, except in the mind of the would-be beholder. Where it is reasonable to consider the mind’s eye, (or the “Imagination”) as a “medium”, and memory a recording device, memory can be considered potentially infringing, even where the objects of its attention fly far below the radar of human perception.



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Similarly, the fact that the unauthorized use of the Copyrighted Image cannot be justified as fair use under Section 107 of the Act, is supported by a long line of cases. Without going into great detail, suffice it to say that in no way can Mr. Hovden's (hereinafter referred to as the Infringing Artist) use of the Copyrighted Image be considered a "legal" parody of Ms. Garnett's work. Rather, as the U.S. Supreme Court recently stated in the case of *Campbell v. Acuff Rose*, "This is not, of course, to say that anyone who calls himself a parodist can skim the cream and get away scot free. In parody, as in news reporting... context is everything, and the question of fairness asks what else the parodist did besides go to the heart of the original."

Whilst one recognizes that artists often pay homage to other artists, copying of this kind constitutes copyright infringement. You are simply sailing under the flag of "piracy", taking verbatim, protected artistic expression. Making this pirated copy tiny, even utterly imperceptible, or perhaps not even inscribed as described (since there is really no way to know), does not make it okay.

Under the Act, Ms. Garnett has the right to request that you cease and desist from any further exhibition, display, sale or reproduction of the Infringing Image. Nevertheless, Ms. Garnett is willing, in this one instance, to forgo her right to an injunction, seizure of the Infringing Image and damages, to permit your creation of a derivative work on acceptance by you of the following terms and conditions in writing:

1. In any and every display and exhibition, visible or otherwise, of the work (hereinafter "the nano-etching"), a credit or nano-credit on or next to the invisible derivative object will be provided as follows:

"Based on an original painting by Joy Garnett.
Copyright Joy Garnett, 2003"



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2. All other rights in and to the Copyrighted Image are expressly reserved. They may not be reproduced nor derivative works made, whether barely visible, invisible, or otherwise hardly in existence, without the prior written approval of Ms. Garnett.

3. Two slides of the Nano-etching/lithograph, "Laylah K.", will be provided to Ms. Garnett. If slides cannot be obtained, then miniscule digital files will be acceptable provided that proof is offered to show that these files indeed depict what cannot be seen by ordinary means.

In the interim, please see that references to the work and reproductions of it are removed from the Cornell Council of the Arts website and everywhere else.

Please note that this letter is without prejudice to Ms. Garnett's legal and equitable rights and remedies, all of which are expressly reserved, should you fail to agree to the terms and conditions as stated above.

Sincerely yours,

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