

Printmakers and their Prints

This chapter emphasises the need for responsible documentation of all original prints offered for sale. The problem of defining an original print and the problems associated with “limited editions” are illustrative of this need. Specimen documentation is included. Further, this chapter provides suggested guidelines for the negotiation of agreements between print artists and other persons involved in the process.

THE PROBLEMS OF FINE PRINTS

The making and selling of “original prints” has become an important part of the modern art market. It permits the public to enjoy art ownership at a low cost and provides artists with a means of communicating their work to people who would otherwise not be reached.

Because the market is so lucrative it was perhaps inevitable that some people within it would abuse it. It is another example of the dishonesty of a few bringing the honest majority under suspicion, if not disrepute. This is highlighted in two main areas: the description of the print process used, and the representations made as to the limited nature of editions.

1. The Problem of Definition

Arguments as to definition have been a feature of the print world since the 19th century. Even before the Society of French Artists banned colour lithographs from their annual Salon and Andre Mellerio wrote his essay in “L’Estampe et l’affiche” (1898), people have argued the definitional toss. If accurate definition of terms is difficult for the experts, what should a collector understand by the description of an image as an “original print”? Is it different from a fine art print, limited edition print, collectors’ print, investors’ print or edition print? What about signed prints, numbered prints, etched prints and cancelled prints? More technical terms have achieved reasonably specific meanings, but still the collector is likely to be confused as to the significance of the terms artist’s proof print, state print, poster print, lithographic print, offset print, restrike print, engraved print, intaglio print, relief print, collagraph print, computer print, mezzotint print or aquatint print. Are these all works of fine art? How is the purchaser to know?

The language of the print world is ambiguous and sometimes deliberately so. But as experts appear to be unable to agree on the meaning of the some of the above phrases, it is hardly likely that the consumer of such works would comprehend these distinctions. Some of the phrases are bona fide terms of the trade but others are little more than creatures of marketing hype. It is an ambiguity that favours the unscrupulous.

The work of many of Australia’s most famous artists has been the subject of descriptive ambiguity. Examples include the limited edition facsimile Norman Lindsay etchings; numbered and dated Drysdale colour reproductions; the recent release of limited edition reproductions of three Sidney Long etchings (“a magnificent investment and gift”); the Brett Whiteley signed, limited edition reproduction of “The Cat”. It is not in itself of importance that the Whiteley photo-mechanical reproduction costs about \$18 to produce and sells for over \$2,000. One of his original oils might cost even less to create and would sell for considerably more. The profit margin is not crucial, for the monetary value of any work is essentially that which someone will pay for it.

What is important, is that those people paying the prices know what they are buying. Given full information, some might consider that \$2,000 for a signed limited edition poster is too much. Others would buy it, nevertheless, because of its beauty and/or the pencil signature of its famous artist.

Another problem of definition concerns the meaning of the edition number. When an edition is described as being of say, 100, does that imply that 100 impressions were pulled and then the plate was scored or otherwise rendered unusable? Most printmakers believe that the whole edition should be printed at the same time.

Some however treat the edition number merely as descriptive of the maximum number of prints that they will make from the plates, without making any warranty as to when the print was pulled. Thus, they may make 11 prints, describe them as being out of 100, but only print more when those first ones have sold.

Such definitional ambiguity, intentional or otherwise, does nothing to attract would-be purchasers or reassure collectors. The print market is a fragile one, dependent on the maintenance of the highest ethical standards. One only has to consider the harmful effect that such imputations have had on the market for Dali, Chagall and Miro prints to realise that less famous artists are even more vulnerable.

2. The Trade Practices Act

Printmakers and the sellers of prints have a responsibility to describe the process by which the work is produced, in a full and accurate manner. Let alone the ethics of the matter, to do otherwise might well be in breach of the State and federal legislation. For example, s. 52 of the Trade Practices Act 1974 prohibits conduct in trade or commerce that is misleading or deceptive; s. 53(a) prohibits false representations that goods are of a particular standard, quality or grade; and s. 55 states:

“A person shall not, in trade or commerce, engage in conduct that is liable to mislead the public as to the nature, the manufacturing process, the characteristics, the suitability for their purpose or the quantity of any goods.”

The Commission is clearly prepared to use these provisions to curb unscrupulous business practices in the art world. This is evidenced by its use of these powers to eliminate the selling of paintings, described as “original oil paintings”, that were hand-painted multiple copies of formula scenes. They were not “originals” in the sense usually accorded that word in the art trade and so their description as such was deceptive and thus in breach of the Act.

Breach of s. 52 is not a criminal offence but can result in an award of damages and/or the imposition of an injunction. On the other hand, the breach of s. 53 or s. 55 is a criminal offence and upon conviction a person may be fined up to \$10,000 or sentenced to up to six months imprisonment. Companies who breach those sections may be fined up to \$50,000. So if ethics are threatened by the promise of profit, perhaps those inclined to confer upon their products somewhat cavalier descriptions will be restrained by the very real possibility of an expensive court appearance.

3. The Problem of Editions

Most original prints are sold in limited editions. Because its numbers are defined, the value of the print is enhanced. Unfortunately, some unscrupulous printmakers have pulled more than the stated number of copies and blithely accorded them duplicate edition numbers. Others produce, say, an "American edition" and an "Australian edition", without informing the purchaser that the number of images made was in fact double the apparent figure. Others have an edition identified with latin numerals and another using arabic figures. Such practices vary from the disreputable to the fraudulent.

(a) Legislative protection

In Australia there are no laws specifically governing the production and marketing of prints. In the United States, several States have enacted such legislation. These laws require the seller of an art print to disclose to the buyer the following information:

- (a) The name of the artist.
- (b) The title of the work and the year when printed.
- (c) Exclusive of trial proofs, whether the edition is being offered as a limited edition, and if so:
 - (i) The authorised maximum number of signed or numbered impressions, or both, in the edition;
 - (ii) The authorised maximum number of unsigned or unnumbered impressions, or both, in the edition;
 - (iii) The authorised maximum number of artist's, publisher's, printer's or other proofs, if any, outside of the regular edition; and

The total size of the edition.

- (i) Whether the plate has been destroyed, effaced, altered, defaced or cancelled after the current edition.
- (ii) If there were any prior states of the same impression, the total number of states and a designation of the state to which the subject print relates.
- (iii) If there were any prior or later editions from the same plate, the series number of the subject edition and the total size of all other editions.
- (iv) Whether the edition is a posthumous edition or restrike and, if so, whether the plate has been reworked.
- (v) The name of the workshop, if any, where the edition is printed.

This information does not have to be provided if the work is described as a reproduction, unless the piece is described as a numbered limited or signed reproduction. Further, if the seller does not know the information required he or she may specifically disclaim that knowledge and thus be relieved of the responsibility of providing it. At least if this is done the buyer is put on guard. Penalties are provided for misinformation.

Such regulation would assist the honest majority of printmakers by enhancing the ethical reputation of the business, and would protect purchasers from the sharp business practices and dishonesty of the unethical minority.

(b) Proper documentation

Given the unlikelihood of government regulation of the print industry it is suggested that the makers and sellers of prints voluntarily provide their clientele with full documentation. Very few galleries do this -- but there are exceptions.

In the United States, print documentation is more commonplace. This is due to two factors: the increasing demand of consumers for full information and, in some States, the legislative requirement that such information be provided.

GUIDELINES FOR PRINTMAKERS CONTRACTS

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PRINTMAKERS CONTRACTS

(Unanimously adopted by CAA Board of Directors, October 28, 1978.)

These guidelines are designed to assist artist-printmakers in the negotiation of agreements for the publication and distribution of print editions. They are designed to acquaint the artist with the basic business considerations and legal concepts underlying such agreements, but they are no substitute for competent legal advice.

1. Persons involved in the publication and distribution of a print edition. There are four functions, apart from that of the artist, involved in the publication and distribution of a print edition: those of the publisher, the printer, the distributor, and the dealer. The publisher is responsible for publishing the print, i.e., making the arrangements for the artist to work with a given printer. The printer prints the artist's image. The distributor markets the print to dealers, who, in turn, sell to the public. Frequently, one person will perform several functions. An artist may also be a publisher, as may a printer. The publisher is also likely to be the distributor of the edition. Many dealers are also publishers.

2. Initiation of a print project. A project for a print edition is frequently initiated through discussions between an artist and a publisher, generally concerning the nature of the image and the medium. The publisher may arrange for the artist to work with a printer. Before the artist begins work, however, there should be a written understanding covering the cost of the work done by the printer up to the production of the bon-a-tirer. Generally these costs are initially paid by the publisher. The agreement should also deal with the possible cancellation of the project and how the printer's costs are to be paid if the project does not mature into an edition. For example, the agreement may provide an artist with the right to cancel a project for any reason, subject to being responsible for all or a substantial part of the costs if the artist exercises that right.

3. The bon-a-tirer. The bon-a-tirer is a print which, when so marked and signed by the artist, constitutes the artist's approved copy of the print and the standard which is thereafter to be followed in the printing of the edition.

4. Publication of the edition. At or about the time the bon-a-tirer is signed, the artist should enter into a written agreement dealing with the publication and distribution of the edition. The following matters pertaining to publication should be covered in the agreement.

a. Cost of production. The cost of production may be paid by the publisher, by the artist, or jointly. Frequently, the publisher will advance the cost of production and provide for the repayment of those costs from the sale of the edition. Travelling expenses of the artist and shipping costs of plates are regarded as production costs.

b. Edition size. The edition size should be agreed upon between the publisher and the artist prior to printing and should be incorporated in their contract.

c. Artist's proofs. The contract should provide for the number of artist's proofs and how they are to be signed and numbered and whether the publisher is to acquire any artist's proofs for sale. Artist's proofs should not normally exceed 12 per cent of the total edition.

d. Publisher's proofs. The contract should also provide for a specified number of publisher's proofs for use as documentation and for promotion and exhibition purposes. The publisher normally agrees not to market these proofs, but there is a question about the practical enforceability of such provision. Publisher's proofs can be stamped on the reverse side in large letters to identify them as such.

e. Trial proofs. The contract should provide that all trial proofs, to the extent that they are not destroyed, should be in the property of the artist and should be delivered to the artist at or before the date of publication of the edition.

f. Cancellation proofs. The contract should provide for the delivery to the artist of a cancellation proof or other proof that the plate or stone has been destroyed or otherwise rendered unusable for further printing.

g. Printer's proof. The contract should provide, in accordance with custom, for one printer's proof to become the property of the printer pulling the edition.

h. Preservation and retention of plates. Unless practically unfeasible, it is recommended that all plates be preserved in their cancelled states for art historical purposes. The contract should specify whether such plates are to be the property of the artist or the publisher.

i. The publisher and documentation. The contract should provide for documentation in an appropriate manner of the title, date, size of paper and image, size of the edition, the process and type of material, number and type of proofs and other material facts. The documentation should accompany all sales of the work by the publisher and should be kept on permanent file by the publisher and the artist.

5. Distribution. The artist's agreement with the publisher will also normally cover distribution of the edition since the publisher is also usually a distributor. The provisions on distribution should include the following:

a. Distribution expenses. All costs of distribution, including selling, advertising and promotional expenses are normally paid entirely by the publisher or the distributor.

b. Artist's income. The artist's income from the sale of an edition may come either (i) from an outright purchase of the edition by the publisher or another distributor for a set price or (ii) from a percentage of the sales of the edition, which the artist consigns to the publisher or a distributor for sale. The agreement should make clear whether the artist is selling or consigning the edition and who has title to it.

c. Consignment. When an artist consigns an edition for sale, the edition remains the property of the artist, and the consignment agreement should so state. The publisher, or distributor, acts as the artist's selling agent, with sales made at prices set by the artist, in consultation with the publisher or distributor. The agreement should provide for the rate of commission to be paid to the publisher or distributor and for periodic accounting and payment to the artist of all amounts due, at least twice each year. The publisher may recover the direct cost of production from the income due to the artist from the sale of the edition. For example, an agreement between an artist and a publisher may provide for the publisher to receive all the proceeds of sale up to the amount of the direct cost of production, with the publisher and the artist to share the remaining income, usually equally. In such a case the agreement should provide for the artist to receive and verify proof of those production costs. Alternatively, the artist and publisher may elect to consider the artist's creative work to constitute the artist's share of production costs. The artist and publisher may then divide ownership of the edition with each assuming 50 per cent, or they may share equally in the proceeds of the sale. Any arrangement between artist and publisher or distributor should be in writing.

1. Editioning Contract

The details of the business conducted between printmaker and a studio printer vary considerably, but the basics of the transaction are fairly consistent. The following document is inserted, not because it is a high powered precedent contract; just the opposite. It is an example of how parties can write out a simple memo of the major deal points of their business relationship. (It is reproduced with permission.)

STUDIO ONE EDITIONING CONTRACT

ARTIST'S NAME

..... of

1. Printing rate: \$ per hour.

2. Preparation and aftercare rate: \$..... per hour.

An estimate of printing, preparation and aftercare cost will be given to the Artist after the first successful proof is pulled.

3. The Artist will not be charged for unsuccessful proofs pulled by the workshop Printer/s.

4. The Artist will be charged for inks and paper used in the editioning of their plate/s. The Artist will be given an itemised list of materials used and the cost of those materials.

- 5. The Artist will pay the replacement cost of editioning blanket/s if damage incurred is a direct result of plate peculiarities.
 - (a) The Artist's plate/s and prints will be insured by the Studio against loss and damage while on Studio One premises. Insured value \$..... or
 - (b) The Studio will not be responsible for loss or damage to plates and prints while on Studio One premises.
- 6. The Artist will approve the "printer's proofs" before the edition can be printed.
- 7. Placement of the Studio's chopmark on editions printed in the Studio is negotiable between the workshop and the Artist.
- 8. Studio One and the printer/s are to be acknowledged in publications and exhibition catalogues.
- 9. Studio One reserves the right to hold two prints from each edition or series printed on the premises. These works are to be available for display or exhibition at the discretion of the workshop.

Amendments to the above conditions must be in writing, signed and dated by the artist and co-directors of Studio One, and attached to this contract.

Date

Signatures

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