

Historic Rights Issues in American Illustration

Terrence Brown

During the post American Civil War period, book, newspaper, and magazine publishers successfully used artists' sketches and illustrations to accompany the printed text and advertisements. Creative artists became more and more important to the publisher's success, and the demand for their illustrations grew. Ownership of original art and issues relating to secondary usage rights culminated in the formation of the Society of Illustrators in New York in 1901.

Introduction

They were stars. Their comings and goings were chronicled in the New York gossip columns. Restaurants in Manhattan held their best tables for them, and the ambitious courted their favor. The date was 1900. Who were these celebrities? They were illustrators.

Collier's Magazine had contracted Charles Dana Gibson (1867 – 1944) to create 100 pen and ink drawings at the princely sum of \$1,000 USD apiece.¹ They then trumpeted him in their advertising, saying “*Collier's* has brought you Charles Dana Gibson.” Gibson's crisp depictions of American social climbers and snobby European royalty made *LIFE Magazine* one of the day's leading magazines in the 1890s. The style of dress and hair that he created in his illustrations became the accepted mode. Every woman wanted to look like a “Gibson Girl.” He drew his men clean shaven, thus ending the era of Victorian muttonchops (Figure 1).

An Important Event

However, within the artist community there were already rumblings of abuses, and feelings that publishers were attempting to “Grab the gold without the toil.” Another artist sentiment was



Figure 1. Charles Dana Gibson: “Signs of Spring,” *Collier's Magazine*, 1904.

that, “Publishers are churning out copies of our work without our permission.” It was rancor such as this that peppered the post-dinner conversation among illustrators, and led to the landmark formation of an illustrators group on February 1, 1901 to address abuses by the publishers.²

The period from 1860 to 1900 saw an immense growth in the printed page for books, newspapers, and magazines in the United States. Color was also being used on occasion in mass-market publications. The railroad had made possible the national distribution of magazines printed front cover to back cover with wonderful, insightful illustrations accompanying the text and the advertising.

There was a great demand for talented artists to serve this need, but many artists rejected this opportunity as being too commercial. So then, as now, the business of art for commerce had to address the supply and demand imbalance and issues of who owned what rights.

1. \$1,000 in 1904 was equivalent to about \$22,000 in today's U.S. dollars according to the United States Bureau of Labor Statistics, making Gibson's contract worth about \$2.2 million USD. His drawings were actually referred to as cartoons. He was to deliver them over the next two years but in fact he finished them in six months. Burned out from the effort, he and his family sailed to Europe for a six-month rest. (Computed from the online calculator at the website of Bureau of Labor Statistics, United States Department of Labor.) <http://data.bls.gov/cgi-bin/cpicalc.pl>

2. The Society of Illustrators' early history was documented in 1927 and 1939 by Norman Price. His meticulously hand written notes are held in the Society of Illustrators' archives.

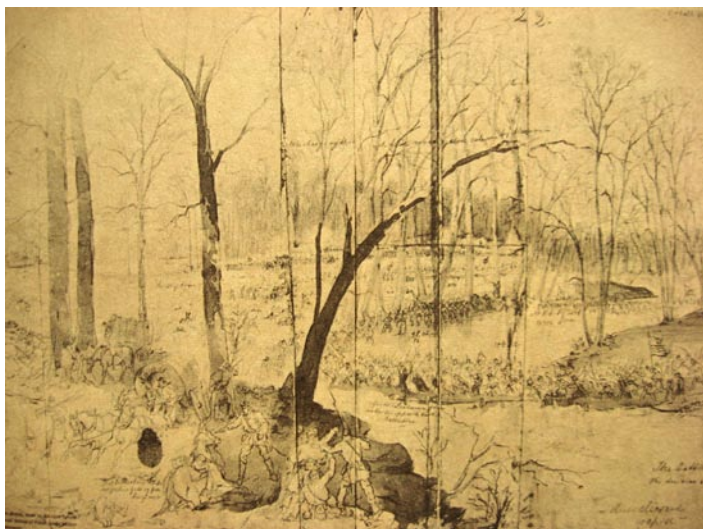


Figure 2. Henri Love: "Ohio and Illinois Regiments splash across Stones River to drive back the final Confederate charge," *American Civil War sketch for an engraving, Frank Leslie's Illustrated Newspaper, 1863.*

During the American Civil War (1861-1865), two publishing giants presented the events, the personalities, and carnage of that period in pictures. These publishers of *Harper's Weekly* and *Frank Leslie's Illustrated Newspaper*, truly created a public thirst for images of the Civil War in their weekly newspapers (Figure 2). The dailies would similarly follow. Photographers in the field, like Matthew Brady, supplied portraits of generals, panoramas of the Virginia countryside, and after-action views of the major battles. However, it was the artist reporter who saw the war first hand, and drew the only "live" reporting of the encounters. These war-related drawings were often mere outlines with text notes to complete the visual. Back in the offices of *Harper's Weekly* and *Frank Leslie's Illustrated Newspaper*, artists would complete these drawings on hardwood, wood engravers would then create the printer's plate, and 100% rag paper would make this eyewitness record permanent.

The publishers knew that their ownership of all rights in those drawings by these freelance artists was essential. To that end, the publishers supplied the actual paper pads on which Winslow Homer (1836 – 1910), Thomas Nast (1840 – 1902), and other illustrators of that period created their drawings.³ Preprinted on the sketchpads of *Frank Leslie's Illustrated Newspaper* was the assertion "An actual sketch, made on the spot by one of the Special Artists of *Frank Leslie's Illustrated Newspaper*. Mr. Leslie holds the copyright and reserves the exclusive right of publication" (Figure 3).

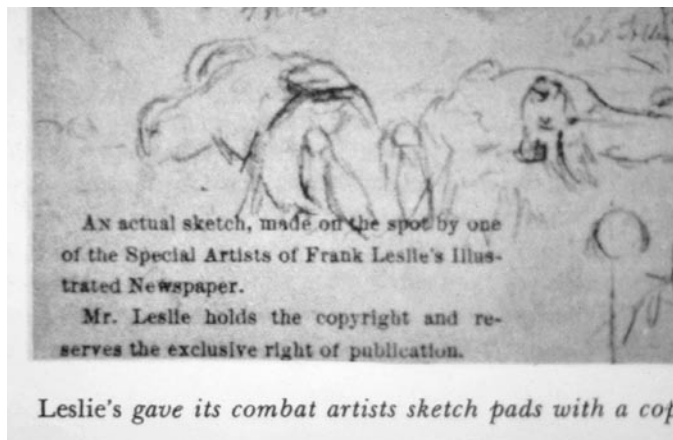


Figure 3. Frank Leslie's *Illustrated Newspaper* preprinted copyright notice.

From 1880 to 1900 Howard Pyle created hundreds of drawings for the publishing giant Harper & Brothers. This New York book and magazine publishing firm published *Harper's New Monthly Magazine*, and for younger readers, *St. Nicholas Magazine*. Howard Pyle was a superstar and *Harper's* paid him dearly. Scenes in American History, pirates, and fantasy were among the subjects Pyle painted, as seen in Pyle's "He suddenly began an uncouth, grotesque dance" (Figure 4). Pyle was one of the first to be commissioned to paint in color, as that new printing technology became economically available in the book publishing business. Pyle would become known as the "Father of American Illustration," not only for his own art, but also for his teaching at Drexel Institute in Philadelphia and his privately taught classes in art and illustration at his own Howard Pyle School of Illustration Art in Wilmington, Delaware. N.C. Wyeth, Maxfield Parrish, and the three female artists who later became known as The Red Rose Girls were all students of Howard Pyle. Most of the major illustrators who would later fill the pages of magazines and books in the first decades of the 20th century reflected the teachings of Howard Pyle.⁴

Sadly, even Howard Pyle held no sway in the artists' rights debate. He, too, used paper supplied by Harper & Brothers with the preprinted copyright notice. Howard Pyle would just fill in the appropriate year, as seen in the Harper & Brothers 1891 copyright notice located beneath Pyle's letter P signature (Figure 5).

By 1901 the publishing industry was maturing. Publishers knew their audience and the power of the pictures. Printing was becoming cheaper, better, and more colorful. Distribution methods advanced constantly, as railroads spread further across the United States and international travel grew. Artists were well paid for their services, but little thought was given to any secondary uses. That was about to change dramatically.

3. Winslow Homer is often referred to as America's greatest artist. During the American Civil War, he also created oils from his battlefield sketches. Thomas Nast was also in his 20s at this time, and he had already begun to create several indelible icons: Uncle Sam, the donkey and elephant to represent the political parties, and the enduring interpretation of Santa Claus (Figure 10).

4. "The Red Rose Girls: An Uncommon Story of Art and Love," by Alice A. Carter (Abrams). This brilliant read tells the story of Elizabeth Shippen Green, Violet Oakley, and Jessie Willcox Smith. They were very successful illustrators, who lived together in suburban Philadelphia, and were leading socialites of the time.



Figure 4. Howard Pyle: "He suddenly began an uncouth, grotesque dance." *Harper's New Monthly Magazine*, 1891. Collection of the Society of Illustrators Museum of American Illustration.

On February 15, 1898, the U.S. battleship *Maine* exploded in Havana, Cuba. Spain and the U.S. were already at odds, and war ensued. From April to July of 1898, and for years later in the Philippines, American forces were engaged in the country's first foreign military encounter. Publishers could not assign writers, artists, and photographers fast enough to satisfy the public's demand to see these images of war. Among the artists recruited to help visually record the Spanish-American War was Frederick Coffay Yohn (1875 – 1933) (Figure 6). Yohn was only 23 years old and yet already a "star" in the commercial art world. He created many illustrations for *Scribner's Magazine*, a popular monthly, and they were published from July to December of 1898. Subsequently, *Scribner's* reused Yohn's art in deluxe books and other compendiums about the Spanish-American War and earned great profits. Yohn received no further compensation for his work. Other publishers also repackaged text and images about the conflict to a public heady over America's international success on the battlefield (Figure 7).

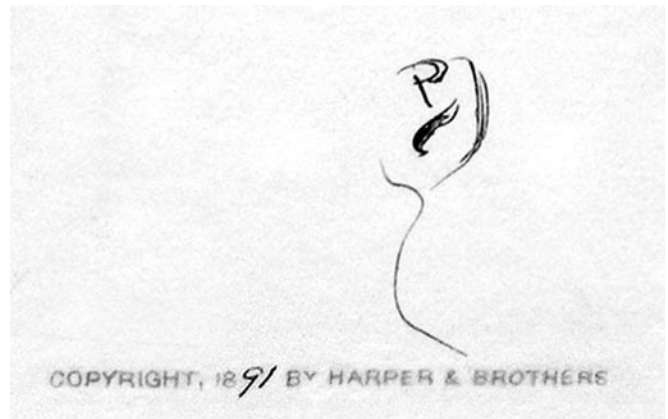


Figure 5. Harper & Brothers' copyright notice.

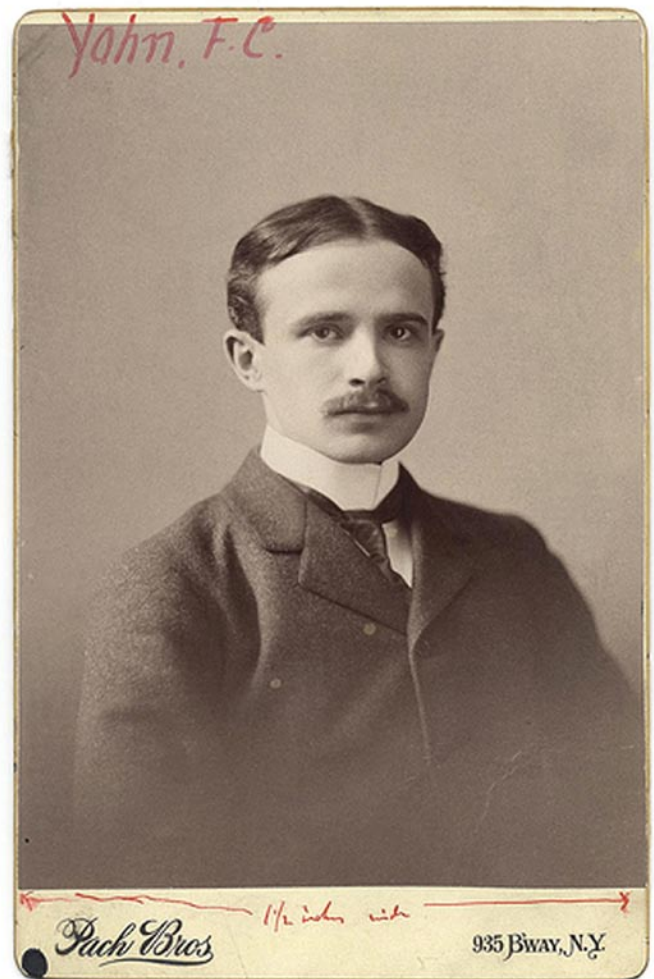


Figure 6. Portrait of Frederick Coffay Yohn: Photographer unknown, 1904.



Figure 7. Frederick Coffay Yohn: "Skirmish in the Philippines," *Scribner's Magazine*, 1902(?) Collection of the Society of Illustrators Museum of American Illustration.

New York Illustrators Form Society

On February 1, 1901, nine artists, all illustrators, and an "advising businessman" met to discuss forming a Society to address these growing abuses by publishers. During the following month more illustrators joined. Officers were selected, and the Society of Illustrators was born. Some of the prominent Philadelphia area artists exchanged letters suggesting that a "union" was being formed in New York. They expressed concern over what this would mean to the business, but still most joined the Society and maintained their membership in those early years.

The Society's "advising businessman" is, as best the history was known, was a key element of the Society's formation and its early success. The advisor became tired of the ranklings about what the publishers were doing in repackaging existing illustrations in new books and collections. With a background as a "coal importer," the businessman offered his legal staff to the Society in an advisory role.⁵ The correspondence is long gone, however the Society's archives make it clear that F. C. Yohn's "settlement" with book publisher Charles Scribner's Sons provided an end to the reuse of his work and the return of his originals.

Interestingly, there is no record of other such copyright issues being addressed by the Society of Illustrators at that time. World War I put the Society of Illustrators on the map nationally, as its members' paintings and illustrations were used as the centerpiece of the massive War Bond advertising effort. By 1921 the Society had become incorporated (with women now as full Artist members).⁶ In 1939 the Society of Illustrators purchased a carriage house in New York's Upper East Side, their headquarters

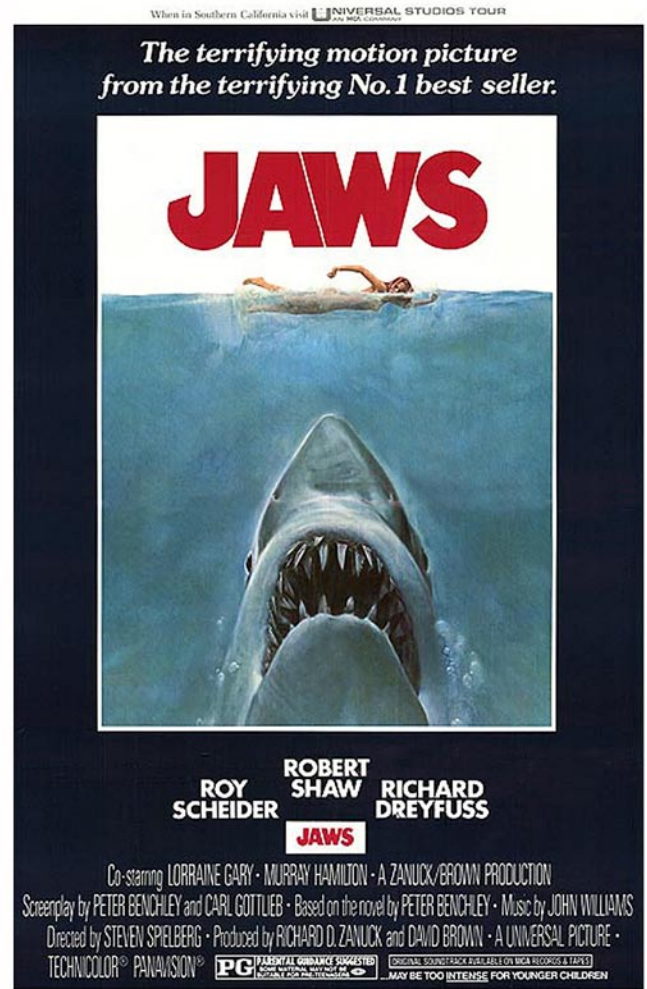


Figure 8. Roger Kastel: "Jaws," Universal Pictures movie poster, 1975. © Universal Pictures.

to this day. And in the 1950s they secured full 501(c)(3) not-for-profit educational status. *New York Magazine* called the Society of Illustrators one of its "hidden gems."

While the Society has a storied history, it has a robust operation today and a secure future. However, it took artists addressing issues of copyright over cocktails to fuel the fire to organize.

Since we are on the subject of rights and copyright, let's roll back the calendar some 35 years or so. The Copyright Act of 1976 went into effect on January 1, 1978. For the first time, U.S. law held that copyright vests with the artist at the moment of creation.

However, during the early 1900's, most illustration was commissioned with a handshake. Few artists gave any thought

5. The "advising businessman" was Henry Fleming, who served as the Society of Illustrators' Secretary and Treasurer for many years. The nine artists, who with Fleming founded the Society are: Otto Bacher, Frank Vincent DuMond, Henry Hutt, Albert Wenzell, Albert Sterner, B. West Clinedinst, F. C. Yohn, Louis Loeb, and Reginald Birch. C. D. Gibson served as the Society President from 1904-1905, and again from 1909-1920.

6. Several of the Society's earliest members were women, who were all classified as Associate Members. Women were prominent illustrators in that day and could not be denied. The Society's first exhibition was of its "Associate Members." In 1921 upon incorporation they were granted full "Artist" status.

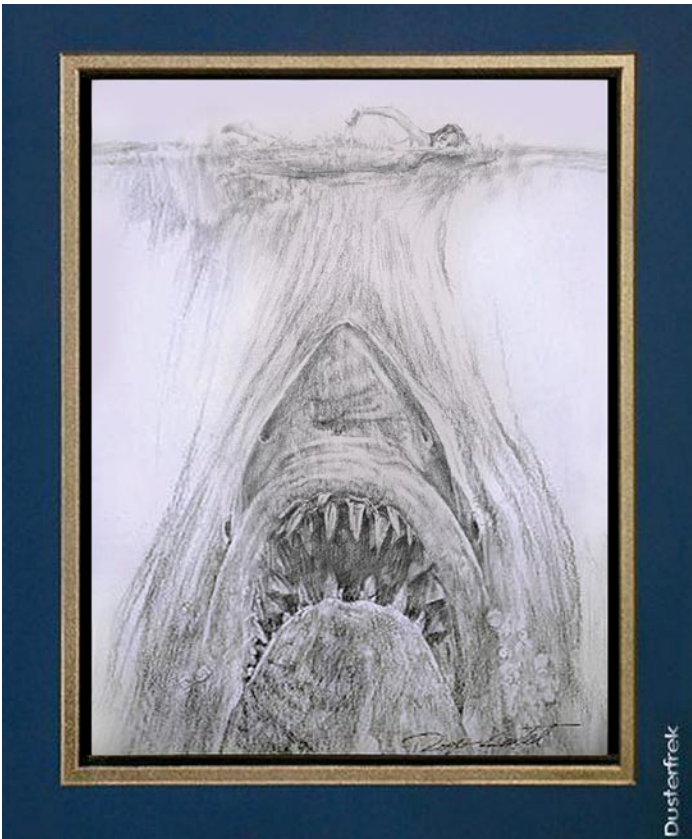


Figure 9. Roger Kastel: "Jaws," unpublished sketch, 2009. © Roger Kastel.

to secondary rights or even the whereabouts of their originals. Sometimes, artists would simply give away their work. Norman Rockwell would gladly roll up a canvas and mail it to a fan, who would write to indicate that the woman in his last cover looked like her mother. We now know what prices those precious paintings command today.⁷

"Jaws" the Book and Movie

As 1976 and the new playing field of copyright dawned, one image on everyone's consciousness that year was that of a lone, swimming woman very unaware that a massive shark with teeth to match was poised to ruin her moonlit skinny dip. *Jaws*, the book by American author Peter Benchley, was released in hardback in February 1974, and book sales totaled \$1 million USD. The paperback followed from Bantam Books in January 1975 and sold almost 10,000,000 copies. That summer Steven Spielberg's film of the same title was released by Universal Pictures setting box office records. It was the first major movie release to use



Figure 10. Thomas Nast: "Merry Old Santa Claus," *Harper's Weekly*, January 1, 1881.

mass marketing to promote a motion picture. The centerpiece of that mass marketing was the aforementioned "shark" image, created by Roger Kastel (Figure 8).

Roger Kastel had studied with the legendary Frank Reilly at the Art Students League in New York. He created his first paperback cover in 1962, and over his career he has created well over a thousand such covers for all of the paperback houses. In the early 1970s he signed a contract with Bantam Books. The contract made no mention of secondary rights such as reprintings or theatrical uses. The 1976 law made that question moot by vesting all of those rights with the artist. Publishers have of necessity created massive contracts to lock up "technologies as yet not invented"... "in perpetuity or forever"... "throughout the universe." Roger's contract was only about exclusivity. He was to work only for

7. Rockwell's "Breaking Home Ties" was voted the public's second favorite of all of his works. It was owned for years by his neighbor in Arlington, VT who was the cartoonist who drew "Henry." His estate put it up for auction and the gavel went down at \$14.2 million USD (Figure 11). In 1943, David O. Selznick commissioned Rockwell to create the poster art for "The Song of Bernadette," starring Jennifer Jones as the Maid of Lourdes. Years later, Rockwell was quoted by author Arthur Guptill in his monograph, "Norman Rockwell, Illustrator," as saying: "Nothing else I ever painted was reproduced in so many ways. In addition to its being run in magazines, newspapers, and on theatre posters, I was told that it covered the entire wall of one eight-story building." (Figure 12) In 2005 the original was put up for auction with an estimate of \$200,000 USD. The buyer paid \$473,000 USD.



Figure 11. Norman Rockwell: "Breaking Home Ties," *The Saturday Evening Post* cover, September 25, 1954. © The Curtis Publishing Company.

Bantam, and they worked him hard. Kastel indicated that he did 50 or more covers for Bantam every year. "Jaws," he has said, "was just another job." He added that he tried, but rarely received any of his originals back. He later would discover that most had been discarded as Bantam had moved offices.

So how did Roger fare as Bantam, its parent company Doubleday, and Universal Pictures parlayed his *Jaws* art into an iconic brand still alive today? His rights were respected. He did receive additional fees for the massive reprints, and Bantam negotiated a fair fee from Mr. Spielberg to use the art for the movie's marketing.⁸ Today, Universal holds the rights to the *Jaws* movie poster with its retouched woman, typography, and design. In fact, and to his credit, Mr. Spielberg offered Mr. Kastel additional compensation after the movie became so successful.

To this day, Roger owns the rights to his original painting. He sells prints and has created new sketches from it (Figure 9). Amazingly, after the art went to Hollywood for production, all Roger was left with was a 35mm slide. As for the original *Jaws* painting, sadly it is lost somewhere in Hollywood. For some idea about where the painting might be, just think of that last warehouse scene from *Raiders of the Lost Ark*.

8. In the heyday of the paperback business (1960-1980), Bantam Books was civilized in their treatment of artists. They respected the creatives that made them look good. Among Bantam's executives were Len Leone, Art Director, who offered good fees, artistic freedom, and insulation from the editorial side of the business. Oscar Dystel, Senior Editor, negotiated with Universal on Roger's behalf.



Figure 12. Norman Rockwell: "The Song of Bernadette," 20th Century Fox Pictures, 1943. © 20th Century Fox.

Author

Terrence Brown was the Director of the Society of Illustrators in New York for 24 years. He stepped down in 2007 and served through 2008 as Director Emeritus. He had served previously as Curator of the Society's Museum. During his tenure, the Society has significantly advanced its programs of scholarships, publications, traveling exhibitions, and endowment. Mr. Brown has served on the Boards of the National Art Museum of Sport and the National Museum of American Illustration. He currently serves on the Board of Artists Fellowship and the Advisory Council of the Norman Rockwell Museum. He taught the "History of American Illustration" at the School of Visual Arts in New York. He has also taught in the Masters program at Syracuse University and continues teaching at The Illustration Academy/The Art Department. He has also contributed to several publications and documentaries on the history of applied art in America. In recent years he has been a leading advocate for reprographic royalty issues and in the creation of a collecting society in the U.S. Terry currently serves as Executive Director of the American Society of Illustrators Partnership. terrencecbrown@gmail.com, terry@asip-repro.org