

Art World News

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POSTHUMOUS WORKS: KEEPING THE GENIUS ALIVE

by **Joshua Kaufman**

From the beginning of time, we have created artworks, but the tools and methods have changed and evolved. We started by rubbing vegetable pigments onto cave walls and firing mud in primitive ovens. We



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evolved to the use of tools for carving in stone. When metallurgy became available, we started making works in bronze. With the invention of paint we began applying it to canvas, wood, and cloth. As soon as we figured out how, we began mixing paint and plaster to make frescoes. Then, we began creating reproductive artworks through molds, woodcuts, metal plates, and lithographic stones, as well as silkscreens, and offset printing. With the advent of photographs new mediums of art we re-recognize. Now, we have begun using the computer as a tool to create our artworks.

Some artists have worked in solitude while others have collaborated; and many have brought in assistants to help them (even though the collaborators and assis-

stants are often not given any credit or recognized). Throughout history artists have delegated and supervised the creation of their artworks, and have not necessarily participated in the actual creation of their artworks. For example, most sculptors leave the art of transforming their original clay or wax creations into bronze to the experienced hands at a foundry. Even their signatures are applied by the

foundry as part of the mold or by adding a chop. Generations of artists have entrusted the creation of their prints of their works to trusted printers, ateliers, or now to computer artists. Photographers relied on professional darkrooms to transform their negatives into magnificent photographs. These practices have been going on and accepted for hundreds of years. In the end, connoisseurs, critics, and the mar-

ketplace dictate what methods and what techniques are accepted on a long-term basis.

Copyright laws and artist's moral right statutes have provided artists and their heirs with legal protections so only the artist and a generation or two of their heirs have the right to reproduce works, and in Europe for even longer periods, the right to dictate how an artist's works will be created and attributed ("Moral Rights"). Deciding if and how a work of art is to be reproduced has always

Deciding if and how a work of art is to be reproduced has always been the purview of the artist, and those who the artists have designated as being responsible for their legacy.

been the purview of the artist, and those who the artists have designated as being responsible for their legacy. Generally, this responsibility falls on the artist's heirs, other members of their family, or close friends who understand their work and wishes. These trusted individuals are granted control of the artist's copyrights and Moral Rights. It has been the artist and their chosen ones who determined how to protect

and maintain the legacy of the artist. In some countries, the control of an artist's legacy is dictated by statute if the artist dies without specifying his or her choice of an artist's representative in their will.

All of which brings us to the issue at hand: posthumous works. When an artist passes away today, and for the last several hundred years, the ability to continue creating works of the artist using their molds, their lithographic plates, their woodcuts, their etching plates, their silkscreening, and today, their digital files, has been available to us. How, whether, and what type of works are to be created after an artist dies is generally decided by the artist in his or her will, the artist's heirs or those who the artist designated as the protectors of his or her legacy. These decisions are usually based on the expressed wishes or statements made by the artist while they were alive, or what those who are closest to the artist believes the artist would want their legacy to be. The law has generally recognized those individuals as the carrier of the flame and to be entitled to make those decisions. The art world and the marketplace have also generally followed the same path.

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LEGAL ISSUES

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It is not to say that decisions of heirs regarding posthumous works is uniform; quite the opposite is true. There are artists and their heirs who categorically refuse to have any posthumous works created. There are others who decide that only works which have been finished by the artist but not signed or released should be released posthumously. (Example: A partially sold limited edition which was started to be sold by the artist but at the time of death a number of prints or sculptures from the edition remain unsold or not fabricated). Others decide that the posthumous works should only come from pre-existing molds or plates. While still others, in following what they understand to be the wishes or nature of the artist, allow the artwork to continue to reach the public in new or different formats and mediums than those originally created by the artist.

There are no U.S. laws which dictate what can and cannot be done in regard to posthumous works. One should not confuse U.S. Customs regulations created for import tax purposes or the never-ending dispute among those in the art world as to what constitutes an "original" with the creation of the posthumous works as they are totally separate is-

sues. What we do have in the United States are individual state disclosure statutes which govern limited edition print reproductions and limited edition sculptures.

These laws require anyone who is selling a limited edition artwork to provide the potential consumer with full disclosure regarding the artworks, i.e. how many pieces in the total edition, how many in sub editions, where they were created,

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the method used in their creation, when they were created, if they were created posthumously, who signed the works, whether they were actually signed by the artist or mechanically by an autopen or by an estate. If there is disclosure of the salient facts, as required by statute, the creation of posthumous works is perfectly legal.

The limited edition disclosure laws were put into effect because years ago there were abuses in the reproduction marketplace.

Artists or publishers would number limited editions with a denominator which appeared to indicate the size of the edition (e.g. 25/150 to designate the work as number 25 in edition of 150). Then they would create other related editions with slight variations from the original edition and give them different names; they would call them Deluxe Editions, European Editions, Remarqued Editions, Artist Proof Editions, and so on.

However, the consumer going into the gallery would only see the denominator on the print in front of them and believe that that denominator number indicated the full size of the edition (150 in our example) when the actual number of reproductions of the image was much larger.

There was also a lack of disclosure that an edition had not been signed by the artist but rather mechanically signed by an autopen or that a work was a posthumous one. All of these

undisclosed factors could affect the value of a work. So to alleviate this problem "Disclosure Laws" were passed requiring Certificates of Authenticity to accompany each artwork that was marketed as a limited edition. With a proper Certificate of Authenticity, containing all the basic facts surrounding a limited edition being provided, the art consuming public can make an informed decision as to whether or not they want to buy a work and at what price point, knowing full well what they are acquiring.

You will find posthumous works from contemporary artists' estates and from great Masters such as Rodin, Degas, Renoir, and other prominent artists. The posthumous works are created under the supervision of the estates of the deceased artists or by those to whom the artist delegated responsibility for their legacy. Ultimately, the determination of what the artist would have wanted done with their artworks after they pass has been left to those closest to the artist and/or chosen by the artist.

There are, of course, those who claim that no posthumous works should be created, that somehow it is improper and inappropriate to create a posthumous work. These statements are made irregardless of

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whether or not there is full disclosure as to the nature of the works, specifically that they are posthumous and that they were approved and sanctioned by the artist's representative. These individuals seem to believe that the choice of whether copies or new versions of an artist's work should continue to be created after the artist has died should not be left to the artist's representative. Rather, these self-appointed critics believe that they know better what the artist would have wanted than the

artist's family and believe that their opinions should supersede the public right to acquire posthumous versions of an artist's work re-

heirs, and the informed art buying public. The heirs, keeping in mind the artist's wishes, alone should determine what posthumous art-

An artist's legacy should be left to the artist, his heirs, and the informed art buying public.

gardless of the fact that all of the relevant details regarding the artworks have been disclosed to the prospective purchaser at the time of purchase.

An artist's legacy should be left to the artist, his

works are created, how they are created, in what media they are created, and their price points. The art buying and art appreciating public will be the ultimate judge in deciding whether to embrace the works or reject them.

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