

PICTORIGHT

APPROPRIATION ART GUIDELINE

EFFECTIVE DATE: 1 JANUARY 2021

BACKGROUND

Pictoright represents the copyright of a diverse group of visual artists. In some cases these artists have copyright disputes amongst each other. These disputes often concern the use of one artist's work in a new work of art. This is generally not permitted on the basis of the Dutch Copyright Act, unless an exception such as the parody exception or the quotation exception applies.

However, the limits of such exceptions are not always clear. As a result, a visual artist may legally be not allowed to create a particular work because it incorporates copyright infringements. In some cases Pictoright considers this undesirable, because for many artists, referring to and incorporating the work of others is a part of the creative process. Pictoright finds it important that the enforcement of copyright takes place in such a way that the artistic freedom of artists is limited as little as possible. On the other hand, Pictoright also wants to protect artists against the unlimited use of their work under the guise of artistic freedom. Pictoright tries to navigate between these two interests (enforcement of copyright on the one hand and freedom of expression on the other) as reasonably as possible.

That is why this Appropriation Art policy guideline was developed. With this guideline Pictoright assesses whether the use of 'work in work', in Pictoright's opinion, is reasonably and acceptable. In that case Pictoright will, as a rule, not take enforcement action, although in some cases it, strictly, might have been possible on the basis of the Dutch Copyright Act. It is, of course, difficult, if not impossible, to precisely define the boundaries of Appropriation Art versus 'pure' copyright infringement. That is therefore not the purpose of this guideline. This guideline is used by Pictoright only in the context of its (internal) assessment of whether or not to take enforcement action. To this extent, no rights can be derived from it.

GUIDELINE

Pictoright reserves the right not to take action against the use of works of its member visual artists in works of other artists to the extent such use deems justified under this guideline. In the context of this consideration, Pictoright in any case takes the following into account:

- **The extent to which there is a new artistic meaning compared to the used work. An important question in this context is whether the work was deliberately used in a different, new context.**
- **Whether the use of the existing work is justified in view of the artistic objective of the new work and the nature and extent of the use of the existing work. Pictoright assumes that an artist who chooses to use work of another artist, is willing and able to provide an explanation of these elements upon request.**
- **The extent to which the artist of the new work has made it clear that the incorporated elements are not original to them.**
- **The extent to which the source, including the name of the artist of the work used, is mentioned with regard to the new work.**

Please note that even if Pictoright believes that the use of 'work in work' is acceptable under this guideline, Pictoright may demand that the use of (reproductions of) the new work is subject to the condition of compensation for the maker of the existing work. Furthermore, with respect to any (resale) right revenues, Pictoright may require a distribution between the makers concerned (of the new and existing work).