



## **The Art Copyright Coalition (ACC) Plan**

Publishers, artists and other copyright holders have joined together to:

- (i) to protect the rights of artists, art publishers, copyright owners, their licensees and agents in the field of the arts,
- (ii) to educate the public on the issues of copyright law and the rights of copyright owners in the field of the arts,
- (iii) to develop standards of conduct related to respect for intellectual property in the art industry, and
- (iv) to help resolve copyright disputes between members in an amicable manner..

The Art Copyright Coalition is a 501 (c)(6) trade association. Its address is:

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E-Mail: [info@artcc.org](mailto:info@artcc.org)  
Website: [www.artcc.org](http://www.artcc.org)

### **Leadership of the Art Copyright Coalition:**

- Officers: President is: Robert Sher; Vice President is: George Leeson; Secretary-Treasurer: is Peter Iwasaki
- Board of Directors: Robert Sher, George Leeson, Peter Iwasaki, Garry Peters, Hal Kreiger, Curtis Moore, John Chester, Greg Bloch, David Roe, Eric Dannemann
- General Counsel: Joshua Kaufman

*Contact information for these people is at the bottom of this document.*

## **How it works**

### **Members from Around the World Join the ACC**

The ACC welcomes members in the fields of the visual arts, art publishing and art licensing who have standing to bring a copyright infringement claims. Membership is available to artists,

37 publishers, authorized artist agent, artist's estates, exclusive licensee or others who have  
38 contractually obtained the right from the copyright owner to enforce their copyrights.

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#### 40 **Leads on Possible Infringement Cases are Received**

41 The ACC will receive information about possible infringements. This information may come  
42 from:

43 1. Members.

44 2. Informants, who will be encouraged to contact the ACC with any relevant information  
45 concerning infringing activities. Such persons may be disgruntled employees of ex-  
46 employees, retailers reporting unfair competition, investigative firms and agencies, or other  
47 sources. A local and toll free number, as well as an e-mail will be published that will  
48 encourage such calls.

49 3. Surveillance at trade shows throughout the world.

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#### 51 **Leads are Investigated**

52 If the lead comes from a member, they will be asked to submit relevant, detailed information by  
53 filling out a standard packet. If the lead comes from a non-member, the ACC will endeavor to  
54 independently validate the accusation and ascertain the scope of the infringement. The ACC will  
55 underwrite an initial investigation. This first level investigation will include an effort to  
56 determine the extent of infringement on members of the ACC. It will often include surveillance  
57 photos or catalog page scans being posted in the secure section of the ACC website, where  
58 members will be asked to review imagery and determine if they have been infringed.

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60 Note: Companies who are non-members will have no standing with the ACC. If they want a  
61 claim investigated, they must join, then submit their claim. Further, non-members may NOT  
62 gain access to the secure portion of the website to review possible infringement actions, until  
63 they become a member.

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#### 65 **Course of Action**

66 The ACC will determine the most prudent course of action. This may include:

- 67 • Sending the infringer a cease and desist letter, followed up by attempts to come to a  
68 settlement.
- 69 • Approve more spending for further investigations from branch funds.
- 70 • Assemble a team of members (A Joint Enforcement Team ("JET")) whose works been  
71 infringed who will, in cooperation with the ACC, fund further investigative operations.  
72 (Note: Some investigations can cost USD \$50,000 or more).
- 73 • Turn the matter over to JET who will, on behalf of interested members take legal action.
- 74 • Doing nothing, if circumstance warrant.

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#### 76 **How JETs will Proceed**

77 Once the matter is ready for handoff to a Joint Enforcement Team (JET), the following  
78 guidelines apply:

- 79 • JET members decide on the most cost effective and equitable way to fund their anticipated  
80 actions, how to jointly make decisions, and how to select a law firm. They establish an initial  
81 budget, and each member will contribute their share of the expense.
- 82 • JET repays the ACC branch for its investigative costs.

- 83 • JET runs its own investigation or case, keeping the ACC informed as is appropriate.  
84 • Upon conclusion, the JET reports results to the ACC, and if there is any positive net cash  
85 from actions, will pay to the ACC agreed upon amounts for building the investigative fund  
86 for its branch, and to build a reward fund.  
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88 **Venable's Role and Remuneration**

89 Joshua Kaufman of Venable was selected as counsel for the ACC, due to Mr. Kaufman's deep  
90 experience in the field of intellectual property law as it relates to art. He is the pre-eminent  
91 authority in our industry, and represents a long list of publishers and artists. The ACC has  
92 committed to retain his services for a one-year term, subject to renewals on mutually agreeable  
93 terms.  
94

95 He has agreed to facilitate the formation of the ACC without hourly charges, and has agreed to a  
96 fixed fee arrangement for infringement leads brought to him as follows:  
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- 98 • Handle an infringement report, including a review of the situation, some simple data  
99 collection of information, posting images/data on the web and sending an alert e-mail, a  
100 conference calls with the infringed members and follow-up conversations (if appropriate):  
101 \$500  
102 • When Joshua Kaufman is the lawyer chosen by JET, or when Mr. Kaufman is authorized to  
103 do hourly legal work for the ACC in general, his hourly rate will be \$ 300, which is 20% off  
104 his standard rate. All out of pocket expenses will be additional to the rates and fixed fees  
105 noted above.  
106

107 **Developing the Flow of Information**

108 Many infringements are never detected. A goal of the ACC is to reward informants for advising  
109 ACC of infringing activities. Each member would commit to making available some amount of  
110 their products to the ACC to give to informants to reward valid tips. Furthermore, a small  
111 percentage of the "net awards" from cases that were litigated or settled would be contributed to a  
112 rewards fund to reward those informants that benefit more from cash than from products. Key  
113 informants are expected to be disgruntled employees, ex-employees, and retailers who see  
114 bootleg or illicit product being bought and sold by another firm allowing them to unfairly  
115 compete.  
116

117 Trade shows, in the United States, Europe, and in particular, China, Taiwan and other less  
118 developed regions of the world are hotbeds of infringement, and key venues to collect  
119 information on infringers. The ACC would employ uniformed investigators to walk the trade  
120 show floor, photographing displays in exhibitors' booths. These photographs would be posted  
121 on the web immediately, and members would be encouraged to review them before the close of  
122 the trade show, and hopefully in time to allow for the proper paperwork and authority to enable a  
123 highly publicized raid and enforcement during trade show hours. At the very least, the  
124 surveillance photos could be reviewed after the trade show, and appropriate action taken in due  
125 course.  
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127 **Publicity**

128 Primary goals of the ACC are to educate the public of art publishers' and artist's rights, take  
129 steps to curtail infringement, as well as to create fear and apprehension in the hearts of infringers,  
130 thus resulting in a deterrent against infringement.

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- 132 • The ACC's actions must be publicized in relevant trade magazines through PR and  
133 advertising.
  - 134 • ACC members must put in their advertisements a symbol showing ACC membership.
  - 135 • Trade show actions must be in public, and publicized.
  - 136 • All ACC related legal actions should be publicized.
  - 137 • ACC members must communicate to customers their critical role in being informants, and  
138 how the ACC can help them level the playing field.
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### 140 **Education**

141 Another important aspect to a successful campaign is education. There are many "old wives"  
142 tales that lead people astray (i.e. "Its ok if you change 10%..."). People simply do not  
143 understand what is permitted or authorized activity and what is infringement/counterfeiting.  
144 This is especially troublesome and true with all the new technologies available to expedite and  
145 facilitate unauthorized copying. A series of simple handouts can be developed, with each one  
146 identifying specific issues. They can be organized on a topical basis and accessed through the  
147 ACC's website and can also be put together in booklet format.

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149 Once the education process takes hold, a great deal of misunderstanding and problems can  
150 perhaps be alleviated. As new issues arise and technology advances, these postings can and  
151 should be updated. There are also a number of gray areas in the law regarding new technological  
152 advances and formats and whether these new forms are infringing or not. These issues can be  
153 addressed with a unified ACC policy and approach. Also, in the future, the ACC can lobby for  
154 legislative reform where necessary and in order to have everyone hopefully working within the  
155 same frame work.

### 156 **Legal Exposure of Members due to Actions of the ACC**

157 It is important that a lawyer review each case at key steps, so that the ACC and its members  
158 avoid any legal risks resulting from false accusations or "tortious interference claims." If the  
159 actions are properly instituted with screening and care, the likelihood of a counter suit against the  
160 ACC or its members is extremely low. If a suit was filed by ACC members and a counter claim  
161 was made against the members of the ACC, the cost of defending against the counter claim  
162 would most likely add only a small amount of costs to the overall expense of the law suit.

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165 The ACC is a non-profit organization, and has retained Errors and Omissions insurance  
166 protecting the ACC and its Board. It will be relying on legal counsel in all actions, and most, if  
167 not all lawsuits, will be commenced by individual members. The ACC will not be a party to the  
168 litigation.

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170 As in any organization of competitors, each member must take care to avoid discussion of any  
171 topics that violate anti-trust law. The ACC has a very specific and clear purpose, and given  
172 members' mandate and focus relates to discussions of issues surrounding the protection of  
173 intellectual property rights in our industry, there is no risk of running afoul of anti-trust law.

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**Conflicts of Interest**

There exists the possibility of conflicts of interests in the positions and roles of members and of counsel.

In the event that Joshua Kaufman or the ACC determines that he is in a conflict of interest in any given situation, he will withdraw as counsel from one or both sides. Further, he agrees not to represent any then current member in a copyright infringement conflict arising between members.

In the event two members come into a conflict involving copyright or related intellectual property matters, they will agree first to a mediation by the ACC or an appointed mediator, and failing resolution, they will agree to binding arbitration by a mutually agreeable arbitration organization, or the American Arbitration Association (North America) or a comparable arbitration institute in Europe (if the parties are in/near Europe).

**Member Admission Process and Qualifications**

1. A new member must be sponsored by an existing member, and the membership application must be seconded by another member.
2. By a vote of 2/3rds or more of the Board, or an appointed membership committee, any company or individual may be barred from membership. Grounds for rejection of a prospective member are primarily that the prospective member is not a copyright owner or licensee in respect of the commercial manufacture, distribution or sale of copyrighted works, or that the prospective member has knowingly or willfully infringed copyright.
3. The prospective member must agree to all the obligations of membership, as listed below.

**Membership Dues**

Generally, dues will be assessed once per year. However, in the early years, the ACC will not have the requisite experience accurately assess to the overall costs of running the ACC, nor of the worldwide demand for its services, nor the worldwide level of membership expected. In the event that the ACC runs out of/low on investigative funds, the ACC, at the discretion of the Board, may assess dues more than once per year, upon approval by a simple majority of board members.

Dues for full membership are \$1,500 (USD). An associate membership is available for very small firms (typically artists or firms with annual revenues under \$500,000 USD). Associate membership dues are \$250.

The ACC will track to which members services are rendered, and those members that use or benefit from the ACC's activities the most may have to pay additional dues. The Board has decided that those that use the ACC heavily should pay more, and those who use the ACC infrequently should receive some level of benefit, which are covered by the initial dues. Heavy use members benefit from lower legal costs negotiated by the ACC, and from the sharing of legal costs when several members are infringed upon. The system for this is as follows:

219 75% of full members dues will be credited to that member's account, with the other 25% being  
220 allocated toward overhead costs of the ACC. 100% of associate dues will be allocated for ACC  
221 overhead costs.

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223 Each time the ACC works on an incident where a member's rights are possibly being infringed,  
224 the member's account will be debited for the services rendered by Venable, and for hard costs  
225 incurred. If the incident involves several publishers, the costs will be divided equally among all  
226 infringed members and debited to their accounts. This system only applies to the basic steps the  
227 ACC will take to ascertain the nature and scope of an infringement, and will not typically exceed  
228 \$1000 in total per incident. In the event that a larger investigation is needed, a JET will be  
229 formed, with each member being free to choose whether to join the JET, and how to allocate  
230 costs.

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232 Associate members, or full members whose account has a zero balance must send in a check for  
233 \$675 when requesting any services from the ACC. 75% of this check will be credited to their  
234 account, and will offset services rendered to them by the ACC. Members with zero balances will  
235 still be notified of infringement activities, but no legal activities will be undertaken on their  
236 behalf until the \$675 supplemental dues are received. Any members who have a debit (negative)  
237 balance will be required to pay the ACC to bring their account to at least a zero balance. A  
238 negative balance will likely only happen when a member has a positive balance when an action  
239 is undertaken, but the allocated cost of the action exceeds the balance on their account.

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241 **Some of the issues to Address:**

- 242 • Canvas transfers.
- 243 • Internet
- 244 • Cheap imported originals -when copies of copyrighted work.
- 245 • Poster knock offs -- renegade printers, and their customers
- 246 • Scan and digital print outfits. Renegade small retailers doing scanning and printing.
- 247 • Work "inspired" by another artist's works that crosses the legal line.

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249 **Administration**

250 We will hire a bookkeeper and an accounting firm to handle financial matters, billing, and bill  
251 paying. Our Secretary Treasurer will supervise this.

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253 **Obligations of Membership**

- 254 • Mediation, then binding arbitration between members in good standing.
- 255 • Neighborhood watch - reasonably respond to member requests to investigate in your region,  
256 where appropriate
- 257 • Reimburse members for hard costs reasonably expended, or expended at your request.
- 258 • Pay dues, supplemental dues, or debit (negative) balances on the member's account timely.
- 259 • Properly fill out forms/infringement packets in suspected cases
- 260 • Not knowingly, willfully infringe the copyrights of others.
- 261 • Not sue the ACC, or hold it liable.
- 262 • Reimburse the ACC for investigative costs upon commencement of independent legal action,  
263 or action by a JET in which you are included, if you have approved action on your behalf.

- 264 • After completion and collection from a successful action, and after all legal fees and out of  
265 pocket costs are deducted, to pay 5% of "net award", or 2X ACC's investigative costs,  
266 whichever is lesser.
- 267 • Contribute 5% of net award or settlements (not to exceed \$3000 per case) to a "rewards" fund  
268 to reward informants for alerting the ACC of infringements.
- 269 • To contribute, upon request of the ACC, some amount of product to reward informants for  
270 valid tips alerting the ACC of infringers.
- 271 • To promote the ACC by including the ACC logo in advertisements, and to encourage all  
272 customers to become informants (through invoice/shipment ride-alongs, and other low cost  
273 measures).
- 274 • If a member chooses to join a JET, then they must agree to follow the rules of conduct as  
275 decided by the majority of that litigation group.
- 276 • To keep the member's password to gain access to the secure section of our web site totally  
277 confidential, restricted to key, authorized individuals in the member's firm and the member's  
278 legal counsel, and to never allow a non-member to borrow, or know the password.
- 279 • To agree to never compromise or expose an ongoing secret investigation or "sting" operation  
280 intentionally, or through unapproved independent action.

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282 **Benefits of membership:**

- 283 • Template cease and desist letters for independent use.
- 284 • Initial review, analysis and discussion of infringement reports rendered on full member's  
285 behalf, up to 75% of dues paid.
- 286 • Be notified of all infringement investigations where the ACC has pictures of infringements,  
287 or suspect that member's imagery may be infringed upon.
- 288 • Be allowed to be a party (in a JET) to any litigation filed against a suspected infringer (when  
289 the member's rights are infringed) by a group of ACC members.
- 290 • Be able to freely exchange information with other members about infringers, or tactics used  
291 to detect infringers, and to get legal results against them.
- 292 • Be allowed to pass suspected cases of infringement to the ACC, who will investigate the  
293 matter to determine if an infringement has happened, and to try and find out if other members  
294 have been infringed as well. If several members' rights have been infringed, the ACC will,  
295 through its counsel, offer legal advice to the group of infringed publishers, and encourage  
296 them to take joint action, sharing in the costs. This benefit is only for members who have a  
297 balance on their account (as noted above).
- 298 • Receive the ACC's booklet -- "Basics of Self Investigation of Copyright Infringements"  
299 which guides the member in collecting the first stage of information, setting the best possible  
300 stage for a deeper investigation or legal action.
- 301 • Receive a data feed of trade show surveillance, if possible before the trade show ends -- so  
302 that members can ascertain if they are being infringed at the trade show, and thus strive to  
303 respond with legal action (such as seizures, trade show expulsion) before the trade show  
304 closes.
- 305 • Access to the secure section of the ACC's website.
- 306 • Benefit from publicity and education of the public by ACC against copyright  
307 infringement/counterfeiting.

- 308 • In the future, benefit from ACC’s development of a coordinated program to work with  
309 Customs officials to prevent unauthorized importation of infringing works into members’  
310 home countries.

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312 **NOTE:**

313 This document was written with the input of all Board members, and represents our best thinking  
314 as to the best, most effective, and most fair manner to run the ACC. However, since the ACC is  
315 new and no-one has any experience to reflect upon, we anticipate a number of changes and  
316 adjustments to this plan. While we have made our best efforts to illustrate the benefits to be  
317 rendered to a member, this plan is not a binding one on the ACC, and is subject to change as the  
318 Board decides over time.

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