

The Art Marketing Project Podcast — Legal Issues for Artists, with Gordon Firemark

Cindy Hohman: I'm Cindy Hohman, and this is the Art Marketing Project podcast, where I empower artists to take the responsibility of marketing and selling their work into their own hands and to make smart, strategic decisions for their art business. Today I'm excited because this episode is my very first interview I've done since launching the podcast. I'm interviewing my friend Gordon Firemark, who's an attorney, specializing in working with creatives.

Cindy Hohman: Today we're going to talk about the most important things that artists need to do from a legal perspective to protect themselves, their work and their legacy. Just as a reminder, links discussed during this episode and show notes are all available on my website at artmarketingproject.com/podcast. So let's started. Hey Gordon, so nice to have you here, thanks so much for joining me. Very happy that you are my first interview on my podcast and so happy to have you here.

Gordon Firemark: It's really my pleasure to be here, Cindy. Thanks for having me.

Cindy Hohman: Yeah, well thank you. So I just wanted to hop into some of the questions. I have a membership and I have members as artists inside my membership and I polled them for some questions on what artists are concerned about and their issues when it relates to the law and protecting themselves. So I have a couple of questions and why don't we just get started with those, sound good?

Gordon Firemark: Sounds good.

Cindy Hohman: All right, so really my first question is, what steps an artist needs to take to copyright their work? And then maybe a secondary question to that is, when do you pursue that? Like a copyright infringement, when is it reasonable for an artist to put the effort into going after somebody for an infringement?

Gordon Firemark: All right, I'm going to ask you prompt me for the second question, after I answer the first one.

Cindy Hohman: Deal.

Gordon Firemark: The good news is that copyright is an easy form of intellectual property to acquire and protect. The basic rule is that when you set pen to paper or brush to canvas or any form of putting it into a tangible form, you own a copyright the moment you do that. If it's an original work fixed in some tangible form, the copyright springs into life at that moment. So you don't have to do anything other than create the work in order to enjoy the benefits of owning the copyright in the work. Now there is a registration mechanism, which is a great idea that you register your work, especially when it's likely to be copied or something and that's because you can't file a lawsuit until and unless you have registered the copyright in the work.

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- Gordon Firemark: The registration process can take seven or eight months from the point submit the work to the copyright office in Washington and then they get you a certificate back. So you want to think ahead about these kinds of things. Registration is expensive when you have lots of works, so it isn't something you necessarily do for every single work. But as you're publishing things, that is putting them out and available to the general public, it makes sense to think hard about is this something that I want to have the fullest protection for? But the protection exists from the moment you create the work, so how do you get a copyright? Go out and make good stuff.
- Cindy Hohman: Make good stuff, yeah, well that's cool. But then the idea is, you have to decide which of your works is more important or worthy of that additional level of protection, right?
- Gordon Firemark: Well again, only at the point when you start to publish the work. So there's two [inaudible 00:03:44] if the work is sitting in your closet and nobody's going to see it and therefore can't copy it, and no need to register it until you're making it public. A gallery show, I don't know that I would call that publication because yes, you have people coming in and seeing the work, but unless you're allowing them to photograph it and those kinds of things, the likelihood of it being copied is pretty small. When it's published in a magazine, published in a catalog of a gallery, I suppose could do it or websites, those kinds of things. That's when you start to run the risk of infringement and so those are the things that I would put on the highest priority of registration.
- Gordon Firemark: Registration as I said, it costs 45 or 50 dollars per work. So if you've created 50 or 60 works in the course of a quarter or something like that, it adds up pretty fast. One of the reasons I talk about when you publish, is that the rule is if you register within three months of the first time you publish the work, then you're entitled to get your attorney's fees and statutory damages. That means you don't have to prove an actual financial loss in order to get the court to award money and then the court has discretion to award anywhere from about \$750 per active infringement, up to \$30,000 or if it's a willful infringement, as much as a \$150,000 per infringement. So that's the difference between being able to hire a lawyer to fight the suit for you and not.
- Cindy Hohman: Yeah, so that's interesting to me because I know a couple of my members have asked recently about, they have licensing or someone who wants to commission a piece of work from them and then have it printed on mugs or note cards or whatever. So it seems like, sounds to me it would be reasonable for an artist if they're keeping that original work that they created for this commission but they're licensing the use of that, that is really an opportunity where they'd want to go through that extra level of copyright protection.

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Gordon Firemark: Yes, definitely, in fact let's also just clarify about ownership when you have that scenario of a commission because oftentimes people think, "Well, I'm paying the artist to create this thing, so I will own it." That's not the case usually. When you commission a piece of art, the artist owns the copyright in the work and therefore, you do have to get a license to reproduce it in whatever forms you intend to do. So yes, that's a scenario where I would say registration is very important because you want to hold that licensee and potential copycats accountable.

Cindy Hohman: Yeah, so I'm going to come back to that, I wrote myself a note here because I have an additional question for you around that. But I did want to remind you of that second piece, which is when is it really reasonable to pursue copyright infringement and how does one artist go about that?

Gordon Firemark: I'd say, I think it depends on the nature of the infringement. If it's something that's appearing on a webpage or something like that, there's an inexpensive and easy mechanism to get that stuff taken down, it's called The Digital Millennium Copyright Act. What it is, is it's a rule or a law that says that hosts of websites and user generated content, companies like Facebook and Google and YouTube and those kinds of places, they are immune from lawsuits for copyright infringement, if they have a mechanism in place to allow you to take down work that is infringing.

Gordon Firemark: So if you are the owner of a copyrighted work and you find it being used online, you can, through... sometimes it's through a web form, sometimes you have to send them a written letter, you tell them where the infringing work is and why it's infringing and please take it down and they do. And then there's a mechanism for the other side to have it put back up if they feel they had the legal right to do so and then you can sue them. But the DMCA take down, it doesn't cost you anything, other than maybe a postage stamp. So I think that's a highly useful tool when it's a website based infringement. Somebody posts your work on Facebook or something, use the take down mechanism.

Cindy Hohman: Yeah, good to know about that.

Gordon Firemark: Yeah, beyond that, I would say it's worth it when it's worth it. When there's a financial loss involved or if somebody's claiming that your work is theirs, that's more than just copyright infringement, there's trademark and unfair competition kind of stuff going on. I think it makes sense to send a letter or contact the infringer and say, "Hey, stop what you're doing." Maybe they've made a mistake and didn't realize, maybe if it's malicious and intentional, you'll find out pretty quickly. Sending that letter, again, not a big expense. You may decide to hire a lawyer to send a cease and desist letter or something like that, which can be an expense but in the scheme of things it's not a lawsuit kind of expense.

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- Gordon Firemark: So a few hundred dollars, is it worth it, if it's going to scare them into compliance? Perhaps, you do have to be mindful sometimes all it does is cause people to circle the wagons and get ready for a big fight. So that's the thing, when the work is being used in a way that is highly commercial and generating a profit for somebody else, where you should be receiving royalties or something like that, then I say, yeah, it's worth at least considering. Talk it over with lawyer, find out how strong your case is and again, there's that possibility of those statutory damages that can make it worthwhile-
- Cindy Hohman: Yeah, absolutely.
- Gordon Firemark: For the lawyer to put on a contingency or something like that. So it's a cost benefit analysis really. What's it going to cost to pursue this? Copyright litigation is expensive, we're talking about six figures and if there's six figures of losses at stake, then it's probably worth it.
- Cindy Hohman: Yeah, all right, well great, that sounds good. So like I said, I just took a note on what you said previously about copyright, especially in kind of licensing situation. So I have a question because a lot of my members are having new opportunities for licensing. Some of them, first opportunities for licensing their work coming up and—
- Gordon Firemark: Congratulations.
- Cindy Hohman: Yeah, which is yeah, super exciting. So they're working with me, they're getting themselves out there, they're more visible and they're having these opportunities come up but, and of course every licensing contract and agreement is different. But I'm kind of curious what you think my audience of artists should be kind of keeping an eye on when they're looking at a licensing contract, agreement or even just a conversation before an agreement shows up.
- Cindy Hohman: And the one thing that I wanted to say is, the note that I had from previously is, I have heard a lot my members say, "Well, this company wants me to sell them the copyright." And it's like, it sounds to me like that is a really slippery slope, especially when they're trying to talk an artist into a licensing agreement for \$600 for a piece of work. So I'm kind of curious about what your thoughts are for them to be the most aware and keep an eye on those things to protect themselves and make the best negotiation and the best contract in their interest.
- Gordon Firemark: Well first of all I want to say, let's not overthink this stuff too much. A licensing agreement is just a contract that grants the licensee certain rights to do certain things. And so what's most important to remember when doing licensing, we'll treat the buyout as a separate discussion in a minute. But when you're granting somebody a license, the scope of that license should be the biggest issue that you

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consider. And as the artist, you want to keep that as narrow as possible, so that your work is going to have value in other arenas. So if they want to do t-shirts and coffee mugs and ball caps, then great but maybe not fine art posters or reprints, those kinds of things, that's reproductions. That would be something you reserve for yourself.

Gordon Firemark: What's just as important as what you're giving, is the rights that you're reserving for yourself or for the possibility of licensing to other people, so that's important. Next up is the term, how long is this contract relationship going to last and what happens at the end of the term? If they've got a bunch of inventory, do you get to sell it off or do they have to destroy it or do they give it to you? And if they give it to you, do you buy it from them at cost? There's all kinds of mechanisms you can use there. So we have the scope, we have the term and the territory, that is where in the world will we be allowed to market this material and where not? So it may be valuable separate market, maybe there's a t-shirt maker in the Far East that wants to distribute it Japan, China, Korea, those areas.

Gordon Firemark: Maybe it's better to keep that separate, if the company that is acquiring the rights for t-shirts here in the US, only does business in the US and it should be limited that way. And that will affect of course the amount that they're willing to pay you as an advance against the royalties that would be coming. That's the next point I'll take, is the compensation, what's that structure going to look like? A single, one time payment might be appropriate in some circumstances, especially if it's going to be a limited run of something or a very short window of time or something like that.

Gordon Firemark: But if they're going to be making an unlimited number of whatever the product is that has this artwork on it, for 10 years, you want to make sure that you're getting an appropriate royalty on it per unit or per thousand units kind of basis. It's going to be all of, the amount might be very different depending on the kind of work we're talking about and the kind of goods we're talking about, usually it's some small percentage in the one to five, maybe as high as 10% range of the retail price of the goods. It's sometimes expressed in a dollar figure or pennies figure per unit and the advance is just they should put some money where their mouth is by giving you a check to cover the first X number of units or whatever.

Cindy Hohman: Yeah, and of course right, I think a lot of us, a lot of artists too, think about like, they maybe take the perspective of I'm signing this contract and it's forever. Where like you said, what's the term and what's the scope? And so I know one of the members that I have in the Art Marketing Project, she had a business very interested in working with her and they were kind of interested in kind of longer term, how can we use this piece of work into the future? I think maybe it would have been easier for her to think about how about we write a contract for right now, to see how this goes and it's limited in scope. And then we can write a second contract if it works for you and you want, we could talk about what royalties might

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be for kind of a 10-year duration or a five year duration of you using this piece of work. So that's interesting I think, maybe a lot of us who aren't lawyers or legally minded, we think, "Oh, I'm signing this contract and this is like the contract I get to sign." But the reality is, make the term limited, then come up with a secondary contract to address the next part, right?

Gordon Firemark: Right and really, I would say a three year window is probably sort of the sweet spot for time for people to determine is this a viable business and should we renew or renegotiate? So having a three-year window, maybe it's a second year's automatic extension if they want to or something, by paying another advance, something like that. That's a great way to do it, I'll tell you, years ago, when I was still training as a baby lawyer, I worked at Hanna-Barbera Productions and we had to deal with the Flintstones Vitamins issue, where we had artwork, the Flintstones characters being used on a commercial product. And they paid a royalty every year for... I don't think it was based on the number of bottles sold, but it was a nice figure. And it was a three year window and then it would expire and there would be a new negotiation, so—

Cindy Hohman: Yeah, yeah, and I think just keeping that in mind, that artists have the ability to renegotiate these things as long as they keep an eye on the term and what the end date of the contract is that they're signing. I think that's a really critical piece.

Gordon Firemark: Yeah, so you want to watch out for words for in perpetuity, which means forever and ever and ever. Watch for expressions of the territory being the world or the entire universe and those kinds of things, we actually say the universe sometimes. And also, we want to be limiting the media, if you're using it in... that may be in the scope, but if you're licensing it for use in a television show, you probably don't also want to license it for use as record album covers or something like that. So it should be as narrowly tailored to the specific purpose that the buyer or the licensee is looking for, as possible.

Cindy Hohman: Right and not giving them free rein, making sure that it's reined in. I like those recommendations, I think this will be really valuable for my audience. So I think one of the bigger questions that I see is how artists can protect themselves when they're using source material. Whether it is photos that they find online, photos... I think that's especially where people find photos these days. But I also had an artist who, she had a tent at an event and she put a little... write a little note here, write a quick story and drop it in this like a fishbowl kind of thing, right.

Cindy Hohman: And she took those stories and she has this great idea of taking those stories that anonymous people who just came to her and were inspired to engage with her, put into this fishbowl. And she's like, that would be awesome, to turn that into an artist book to reflect my work and these anonymous stories. She didn't ask people for

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their names and yeah, so it's like where do artists need to be careful about that and not get themselves into the situation where they're being—

Gordon Firemark: On the receiving end of that stuff, yeah.

Cindy Hohman: Yeah.

Gordon Firemark: That anonymous stories one is a really tricky one to deal with. I think we should back up a little bit and talk about underlying rights in material generally and how long copyright lasts, just to sort of clarify where we're coming from this and then I will come back to your question, I promise. So copyright lasts for the... the current copyright, anything that was created since 1978, will be under copyright protection for 70 years beyond the death of the author, the creator of that work. So it's a good long time, if it was a company that created it, it's going to be 95 years from the first publication of the work or 120 years if it's never published. So when you use something that you get from out there, anywhere, unless it's about 100 years old, created before 1924, there's a really good chance that the work is still covered by copyright and somebody will claim ownership of it.

Gordon Firemark: Whether that's a piece of music, a piece of film clip, a photograph, a sketch, it could any... a poem or a little story written down on paper or whatever. And so we should get permission, unless the permission's sort of been granted on a blanket basis. If something's been dedicated to the public domain or given... there's a Creative Commons Licensing scheme that some people use, which is still protection, but it just says you can use it for these kinds of things as long as you meet these conditions. But the general rule is, you need to get permission. We have situations with appropriation artists like there's a guy named Richard Prince. I don't know if anybody's familiar with his work, but he has made a career out of taking other people's works and transforming them and making them into something new and selling them as fine art.

Gordon Firemark: Black and white photographs of Jamaican people Rastafarians and folks like that, where he has colorized portions and scribbled things out and made... and turned that into a coffee table book. He took Instagram images from just random Instagram members and blew up the images onto canvases and then put his own captions and comments below them and is selling those for \$10,000 a pop, as fine art. That's been held to be a fair use under copyright law for whatever reason; I don't agree with those decisions. So it is theoretically possible to do that kind of thing, as long as you're really transforming the underlying work. When you're selling paintings for \$10,000 a pop, you can probably afford to hire lawyers to fight and defend your situations. Not so much if you're just starting out or whatever.

Cindy Hohman: Right and so in the situation when you cannot find the source of this material, is the artist's best approach, is to make sure that they put their own spin on it and

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modify that source material enough to where it doesn't, where they kind of cross that boundary?

Gordon Firemark: So I get the question, how much do I have to change it? A lot. It really isn't about how much you change it, it's the question of, in copyright, is whether or not the work appears to be a copy. Is it substantially similar to the other work, to the parent work or whatever you want to call it? So if it's a copy, if it's a derivative work and the jury or the judge can look at it and say, "Yeah, that's a copy." Then you're done, it doesn't matter how much you've changed it, unless you get into this fair use, the nature of... it's a very complicated, four-part test to determine whether something's fair... arises out of the free principles and the first amendment.

Gordon Firemark: We don't want to take things completely out of the lexicon by giving people these exclusive rights for 100 years or whatever. For example, when an art review magazine publishes a review of a piece of art and an image of that artwork, to illustrate the point that they're talking about, that's probably fair use because their magazine review is commentary, it's different in its character. And there's a first amendment, free speech interest in doing that kind of thing. So back to the question, I'm going to go back to the fishbowl stories—

Cindy Hohman: Oh, that would be great.

Gordon Firemark: In that scenario because she has asked them to do it and they voluntarily submitted these things anonymously, there's an argument to be made that they've given her some kind of an implied license. It's not ideal, especially if she didn't specifically tell them, "I'm going to put it together in a book." Or something like that. But I think you could make an argument that she was within her rights to do that. The better situation would be to have everybody who attends this event, sign something at the beginning, saying, "I understand that I may participate in exercises where I submit material that may be used in other media and I won't be compensated for that and I won't receive credit for that." The problem is when somebody submitted that thing, not knowing it was going to be in a book and then says, "Wait a minute, that's my work. I want at least to be given attribution and better yet, a portion of the money."

Cindy Hohman: Yeah, but it's just, there's a line but I think this conversation that you and I are having will help a lot of artists understand where they feel that, that line is for them in these situations and be able to make informed decision about whether they feel comfortable continuing with the project or the source work. And I want to tell you, as you're talking about this and the longevity of copyright, I don't know how many of my audience members know this, but I worked in a major art museum. And we dealt with that every single day, I worked in marketing for an art

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museum and it's funny, when you have works of art that the copyright has expired, like a van Gogh piece.

Cindy Hohman: The only limitation on what you can do with that piece, is in the art museum world, comes down to what the art museum feels is appropriate for that piece. There's kind of a judgment call, but when we were working with pieces like a Georgia O'Keeffe exhibit that we had, it was so funny. My experience was, "Okay, we're going to promote this Georgia O'Keeffe show, we're have this beautiful work of art and I'm going to create some billboards to promote this." And because of the copyright, we could not crop, we always had to put a white border around the image.

Cindy Hohman: So imagine the creative people in marketing and advertising, trying to take a Georgia O'Keeffe image and add it to a billboard, but make sure it has a white key line around it. Some people said, "Well that billboard looks kind of funny." And it's like, "Well, yeah it's because we always had to comply with those copyright and that question of, has the copyright expired?" And so yeah, it was really an interesting experience working in an art museum, and working with both works that copyright had not expired and those that had. It was just something that I never expected to deal with.

Gordon Firemark: And I confess that, that is not something I would have thought about necessarily. Hopefully, I would have spotted the issue before the ad went live, but just the idea that you're doing an exhibit of a particular artist's work, that you would need sort of separate permission from that artist to market the exhibition using photographs of those works or something like that and that they wouldn't post those. It makes perfect sense, the white key line is to say, this is the work, we're not adulterating it or changing it [crosstalk 00:23:52] yeah.

Cindy Hohman: Yeah, so it was just always really, really interesting in that context to... all the communication and the negotiation with the artist rights. Like Georgia O'Keeffe, her works are managed by an Artist Rights Association or some kind of outside entity and they're very strict. And then there's other ones that were not very strict. It was always really interesting like every time we had a marketing campaign featuring an artist's work, the question was always, "Okay, what can and can't we do with this image?" And so from that experience, I am very, very hyper focused on not cropping artist's work without asking them and very focused on credit lines for artist work. And it's interesting, that experience really has defined a lot of how I approach artist's work regardless or whether they're a Georgia O'Keeffe or just selling their first work. So yeah—

Gordon Firemark: Well, this is a really interesting discussion that gets us to the topic of artists having to think like business owners in a way because when you create art, you're creating assets. And yet, it's not as much fun as just making good stuff that satisfies you and

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an audience. But in order to protect yourself and protect what you're creating, you have to come at this from a business approach and so that's important. Is thinking about these issues of how am I going to make sure I get the right attribution and that nobody else is claiming authorship of my work and vice versa. That I'm not claiming authorship of something that isn't mine. How am I going to protect my copyrights as we talked about?

Gordon Firemark: How am I going to be compensated when my work is used? The art museum is an interesting world, isn't it? But when it's a more commercially use, these issues become even bigger. And it's very easy for artists to get taken advantage of because... I'm making a generalization of course, but artists tend to be about the art and not the business of it. And so having that agent, I mean that's why Georgia O'Keeffe uses or her use this agency, this management group. So that they don't have to constantly think about that. They've got people whose job it is to think about the business for them and so I think it's worth considering as you start to have a career as an artist, that maybe there are people out there you can add to your team. Yes, at some expense, but who can maximize value for you as well.

Cindy Hohman: So that leads us into another one of my questions, which is, at what point does an artist, should they really move from kind of doing the DIY, the do it yourself review of these things and listening to my free podcast and downloading free templates, when is the opportunity, when does an artist need to take that step and really go out and find someone like you, who has experience with intellectual property and protecting those things? Where's that line?

Gordon Firemark: Well, that's a great question and I'm not sure I have a clean answer for it. I'll say that it doesn't always have to be a lawyer. There may be a more experienced artist, who's been around the block a bit, who can advise you in your early stages. So mentors is a great way to go, folks like yourself, Cindy, are a valuable resource. Courses and those kinds of things can help you learn some of this stuff.

Gordon Firemark: So you don't have to always hire a lawyer for every little deal because let's face it, paying someone hourly rates in the hundreds of dollars to look at this contract that's going to get you \$100 just doesn't make financial sense. So you're going to end up doing some of this on your own in the early days. What I would say though, is make sure you understand what you're reading and that you understand the global context of the whole deal and not just individual paragraph because oftentimes in contracts, the left hand gives and the right hand takes away. So we have to make sure that paragraph four and paragraph 12 don't undo each other.

Cindy Hohman: Yeah, that you're not canceling out.

Gordon Firemark: Exactly, so—

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Cindy Hohman: A benefit, yeah.

Gordon Firemark: So step one is read things critically, if you don't understand a provision, ask someone. It may be a lawyer, it may be an agent or a gallery owner, it depends who you're dealing with also. That's why having a big network of folks in the community can be really valuable. I'd say it becomes time to bring a lawyer into the equation when these are situations that are going to have a long term, career influencing impact on your business. So maybe you're publishing your first book of your work or some kind of a folio of things, do you need a lawyer? As long as you're retaining ownership of the book, probably not. But when the publisher is giving you a 10, 20, 30 page contract to review, first of all, do you want to read a 30 page contract? Get someone who knows how and actually if not enjoys it, at least is good at it.

Cindy Hohman: Or at least won't fall asleep reading through it.

Gordon Firemark: I didn't say that, don't [inaudible 00:28:27] fall asleep or start to get drowsy anyway.

Cindy Hohman: Not often.

Gordon Firemark: But we all have our zone of genius and the zone of excellence, the things that we do really, really well. And if you think of nothing else, if you take nothing else away from this conversation, think about your work as an artist, your career as an artist, as a business and every business has departments, right. Marketing, sales, legal, operations and all that. Well, as the artist, you are not just the owner, CEO, visionary of the business, you're probably wearing a lot of these hats.

Gordon Firemark: But at some point and it's going to be different for everybody, you have to decide, this isn't something I do well, it's worth it for me to have someone else handle it. In some cases that's the marketing and you hire a virtual assistant or a marketing associate or someone, or an agent to administer that part of the business. And just like that, when you encounter the legal stuff more and more, that's where it starts to make sense to have lawyers or a lawyer looking at things and advising you. The good news is, it doesn't have to be as expensive as you fear. It's going to be more than you think it's going to be, but it's not going to be as expensive as we often fear.

Cindy Hohman: Think, but it's not as frightening as a—

Gordon Firemark: It's not as painful as it could be—

Cindy Hohman: Most people might imagine, yeah.

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Gordon Firemark: Look, and frankly getting ripped off is always going to be more expensive than getting taken care of in advance and protected. So you probably don't need a lawyer to register your copyrights, you might need a lawyer to register trademarks for example. For brands, if you have a distinctive style that becomes your calling card for your work. Forming a company is something you probably want a little help with just to get it done right, but that's a one time thing. It's set up and then it goes on for ages. You need accountants for handling financial and tax stuff at some point. Again, as you get big enough, it will become obvious.

Cindy Hohman: Yeah, it will all make sense, yeah. When you have your first licensing contact and you look at the first contract and you say, "oh, I think it's a simple contract and it's understandable and I can... this makes sense to me." That seems reasonable but then when you have three more and they're 10 pages long and they ask for longer terms and I think like you said, when considering the terms and if you're agreeing to something that's a 10-year long contract, it's like that's tying you to something that if you're not really paying attention to or you don't know what to look for, you could be tying yourself into an agreement that doesn't work for you.

Gordon Firemark: And particularly important is when you're starting to get into situations where you have multiple deals, dealing with the same property and they're interacting or not. You want to make sure that they're not stepping on each other's toes and that's where having somebody who comes at it with the, I don't remember... whichever side of the brain it is that [crosstalk 00:31:06] that use best. You want someone to come at it with that perspective, so they can really see all the moving parts and make sure that I'm not granting someone to party A that I also grant to party B and they're going to end up rubbing against each other in an uncomfortable way. So we want to make sure those kinds of things are interacting properly. So I'd say, yeah, as business grows and as your career takes off, you're going to want to bring lawyers in. And of course, if somebody's infringing your stuff, you may want to be talking about litigation side stuff as well.

Cindy Hohman: Yeah, all right, that makes sense to me. I mean this whole conversation, it completely makes sense, all the things that you say. But then of course, those of us who don't practice law and aren't really involved in this world, when you say it, it makes complete sense, but then when you're trying to figure it out yourself, you're like, I have no idea what these answers are. So I so appreciate you joining me and humoring me with all these questions that I pepper you with because it's interesting when somebody like you, who is an expert at what you do, this stuff to you is... you could do it with your eyes closed. And those of us who are not used to this kind of work, these questions are just huge in many artists' minds and almost I think feel, they almost feel afraid to grow. And almost feel afraid to be bigger and have bigger visibility and have these opportunities because they have this fear of making the wrong decision and making the wrong moves, so...

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Gordon Firemark: Yeah, and as you and I know, when people have that fear, when they think they don't have a particular kind of a temperament, they will come at things with that fear or from that place of fear. And one of the things I try to do is empower creative people to move past that fear because most of the time they've got what it takes, really or they've got the intuition that will tell them, "Hey, this is something to talk to the lawyer about." And one thing artists are good at is hearing and listening to their intuition. So trust the intuition, trust yourself and the process of everything you do and you'll know when it's time to pick up the phone.

Cindy Hohman: Yeah, yeah, that's awesome. So is there anything else that you have in your mind that you'd like to share with my audience, that I haven't asked you about?

Gordon Firemark: We did have that one question about exposure and if you don't mind because this is a soap box for me.

Cindy Hohman: Yeah and I did have this extra question. So yeah, and I hadn't asked it, so tell me what you think. I want to hear because... so everyone out there listening, I had this additional question of, an artist asking what's the legality of people who offer visibility to artists as 'payment' and is there any... do artists have any means for managing that and requiring people to actually give them the visibility they promise?

Gordon Firemark: Okay, first off, a contract is another word for agreement. So if you agree to do something for free, for exposure, for less than it really feels like it's worth, then you've agreed, that's a contract, your sort of stuck with that outcome. My point about... and we hear a lot, especially in the performing arts, but in all forms of art, people are asking you to do it because it will be great exposure for you. I know you wanted to get your career off the ground, so you should do this. Let us use this piece of art, come and perform at our even for free, whatever it is., we'll get you lots of exposure.

Gordon Firemark: Well, my soapbox is, I haven't been able, ever, to take exposure to the grocery store and buy food for my family. My bank doesn't accept it as payment for my mortgage. So exposure is nice, but it should be adjunct to a proper compensation or deal. Now maybe because of the kind of exposure that the situation offers, you're willing to take less money or slightly less favorable dollar value or something or give a longer period of time or those kinds of things. But it should be a part of the negotiation and not a sort take it... this is the way it's going to be.

Gordon Firemark: If somebody is asking you to do something for free and can't promise you a certain amount of exposure, a certain number of I don't know, visitors to your thing or sign ups to an email list or whatever it is that is valuable to you, don't do it, say no. And I guarantee, exposure doesn't work out the way that the consumer on the buying

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end of that thinks it's going to for you. It may be a valuable thing to you, especially early on in a career. A little bit of exposure can get you some attention, whatever.

Gordon Firemark: If there are going to be lots of art reviewers at an event, then maybe it's worth that because they'll be mentioning your name in the media and that kind of exposure is valuable. But if it's just, "Hey, we want to put your art on the cover of our record album, we can't pay you, but wow, it's going to be great exposure." Well no, they should pay you, they're going to pay someone for the artwork on their album cover, it might as well be you. If they like are work, that's the thing. So I don't care for this idea that exposure is a commodity that should be used as the primary compensation in a deal, that's my thought.

Cindy Hohman: Yeah, and I teach members inside the Art Marketing Project about creating partnerships in the community to help grow your art business and that's one of the things that I say to them, is do not be afraid in these conversations to say, "So are you going to be promoting this in your email? How many people are on your email list? Are you going to be promoting this on social media? Can you tell me how many times and how many people you have as followers?" So at least the artist... don't be afraid to ask those questions. That is being a professional and that is considering the business impact for you and allowing you to make that decision, based on do they even have the audience, an audience big enough to provide me some kind of visibility and at least ask them what they will promise you in as far as sharing what you're doing there, sharing your work.

Gordon Firemark: Exposure is a very vague, general term, if they can be much more specific about it and it makes sense, then great. I'll also just add, if you're dealing with a non-profit organization, you can probably get a tax credit letter or a donation letter in exchange for something that you give for free. So that may be valuable if you've got income coming from somewhere that's worth the offset that, that tax letter gets you, then treat it like a donation, rather than a contract. But again, make sure the value is appropriate and what would they have paid otherwise for this kind of use? So that's—

Cindy Hohman: Yeah, awesome. So thank you so much, Gordon for joining me here. You've done such a great job of answering so many of the questions that I have had and I know that many of the artists that I serve have. So I really, really appreciate your time and thank you so much for being my first podcast interview. This is super exciting for me, so why don't you... can you tell my listeners where they can find out more about you, where they can follow what you're doing? And just so they can check you out and-

Gordon Firemark: Absolutely, I'd love to, thank you for that. And it's been great pleasure for me join you and thank you for honoring me with the coveted position of premier episode, I appreciate that. So you can find me on the internet pretty much everywhere, by

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searching for my name Gordon Firemark, F-I-R-E-M-A-R-K, firemark.com is the law practice website where I blog and post stuff mainly about entertainment and media law, business law. I have a podcast called Entertainment Law Update that you can find wherever you find podcasts. And for everything else that I do, I have some coaching programs and products and services available for creative people in the entertainment and media businesses, but it may also be useful for your audience. That's at gordonfiremark.com and on the social media, Facebook, LinkedIn, all those good ones, GFiremark is the handle and you can find me there.

Cindy Hohman: Yeah, well I would say those of you who are listening here, I would love to see you post on Instagram or tag me, tag Gordon, let us know what you think about this interview and the content and I would appreciate it and I'm sure Gordon would like to see that as well.

Gordon Firemark: Yes, indeed, thanks so much for having me.

Cindy Hohman: Thanks so much for listening, if you're serious about selling your work, I think the most critical piece of the marketing puzzle is knowing your ideal buyer or your target market. To get started on this, download my free Artist Ideal Buyer worksheet at artmarketingproject.com/idealbuyer. If you enjoyed this content and you have a minute, I would love it if you would rate the podcast or leave a review wherever you listen to podcasts. If you have questions, a suggestion for a podcast episode or if you just want to say hi, connect with me on Instagram at [artmarketingproject](https://www.instagram.com/artmarketingproject), send me a message. I'd love to hear from you, thanks.