

# Council could be sued for Bucks!!

One issue not traversed in the hot civic debate over the controversial Art & Industry 'Bunny-SCAPE' sculptures (Urban Arts Festival 1 September - 30 November) proposed for Cathedral Square, is that of artistic copyright and intellectual property.

While the fibreglass 'rabbits' of Auckland sculptor Michael Parekowhai have raised Christchurch hackles as well as a vigorous debate over their artistic merit, no-one has discussed how the artworks breach copyright or invade someone else's intellectual property rights. It is an issue of concern, for the city council (as core funder), the artist, and Art & Industry, could be exposed to a legal suit. They may be confronted by a vigorous plaintiff; The Walt Disney Co. Inc. is notorious for pursuing 'small fry' to protect and control the use of their images internationally.

The Parekowhai artworks are less "rabbits" (as drawn on the cover of *Watership Down*) as Walt Disney 'bunny wabbits,' particularly Thumper from *Bambi*, and therein lies a dilemma.

Disney Inc.'s *Office of Counsel* on Park Avenue is diligent to the point of pedantry. Several years ago, a small New Zealand town was forced to overpaint an obscure toilet block featuring an amateur mural of Donald Duck and Mickey

Artists were shown in vivid illustrated colour, several celebrated cases in Australia that have proved the expensive point. The appropriation of even the *composition* of another work (such as an advert imitating an artwork) can be deemed to be a breach of the original copyright. There are exceptions, such as reproducing for review and critique [section 5.41], educational or library purposes, for private research, or when reporting the news [section 5.42].

In May at CoCA artist Rudolf Boelee's exhibition "Runaway" fell foul when it was revealed he had appropriated images from the National Film Archive without permission. Galleries around the country thereafter shied away from mounting the exhibition.

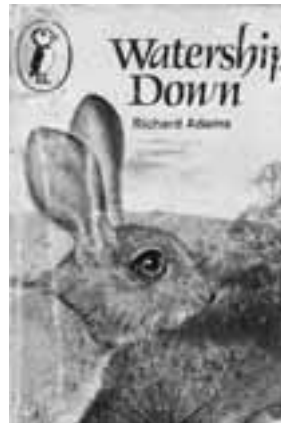
Boelee is a post-modern pop artist, working in a genre hallmarked by the appropriation of others' images (*Warhol*-Monroe and the Campbells soup can, *Frizzell*-Mickey Mouse and the Phantom, *Lichtenstein*-comic panels). Tim Bollinger writes in *Gruesome! The Influence of Comics on Contemporary NZ Artists*, "Painters took panels and characters out of their original context and used them to 'comment' on popular culture, as a form of 'irony', or to 'challenge' orthodox academia and the so-called definition of art." The difficulty is such actions, while a recognised

Left to right:

Artist impression of one of the Parekowhai 'bunnies';

1974 cover edition *Watership Down* drawn by Pauline Baynes © Rex Collings Ltd 1972;

Thumper the bunny from *Bambi*  
© 1975 Walt Disney Productions  
(world rights reserved)  
based on the Walt Disney motion picture of  
Felix Slaten's original story  
*Bambi, A Life in the Woods*.



Mouse. Centralised Disney Inc. legal beavers even return unsolicited creative material sent to daughter companies UNOPENED "as a matter of long-standing policy" to "prevent any confusion over the ownership of ideas that the Company is working on or considering" (July 2002).

Copyright law is designed to protect income, to secure control and economic exploitation, essentially the *right to reproduce an image* ("copy-right"). At a packed seminar earlier this year at "The Physics Room" gallery (indicative of the interest by Canterbury artists and arts advocates in this issue) the Arts Law Centre of Australia (which specialises in Art/copyright law) informed our arts community the appropriation of the imagery of artworks for other uses, can be a breach of a creator's copyright.

artform, also challenge the law. The appropriation of others' images simply because it is an artistic movement does not excuse artists from the consequences of a breach of copyright. Artists may want to 'throw a urinal in the face of art dealers'<sup>2</sup> (as Parekowhai appears to be doing to the settler establishment of Canterbury in the thematic of his 'bunnies') but that does not mean he is exempt from being sued!

The law of intellectual property expressly protects, in a bundle of exclusive rights, the right of any creator to reproduce, copy or use the original 'iconography' of their images. That the 'Bunny-SCAPE' works are cast in fibreglass will not exempt them, if it is ruled the idea and form have been appropriated. What is more, international copyright conventions allow the aggrieved party to sue in the country of offence,

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as if they were a citizen. That means Walt Disney Co. Inc can sue the Council, Art & Industry and the artist under NZ copyright law.

Decisions on copyright infringement hinge on whether or not there exists an objective similarity in a substantial reproduction of the work. The image by Pauline Baynes on the 1974 cover of *Watership Down* is a rabbit, any rabbit; the Parekowhai sculptures look like Thumper from *Bambi*. Parekowhai would have us believe they are symbols of colonial oppression epitomised by the introduction of rabbits by European settlers or perhaps the incursion of Disney cartoons into our western tradition of cinema, comics, books and videos. Either way, they appear appropriated from a Disney source not a nature book.

Public artworks can be exempt from copyright law in special circumstances (such as appearing in the background of a film for example) but again, are NOT exempt if they are a substantial presence, which is clearly the case in the proposed 'Bunny-SCAPE' installation.

Furthermore, the law provides that some works are not copyrightable. These include typeface designs and works in the public domain. This means that anything for which copyright protection was not acquired, or works in which protection has expired (in different categories it is generally 50 years, sometimes for a lifetime) and certain works created by or for governments, are not copyrightable and anyone can use them. These would include images such as the Mona Lisa, Classical statuary, the text of the Bible, etc. Toward the end of the copyright periods of A. A. Milne's *Winnie the Pooh* (1926) and Beatrix Potter's *Peter Rabbit* (1902), books

and merchandising were rushed out before others took commercial advantage of the lifting of copyright. Pooh was then sold to Disney and transformed (with new copyright protection).

It can be possible to copyright the embellishments, illustrative characteristics, or pictorial elements which are sometimes added to typefaces, slogans and phrases, or to works in the public domain. In the case of 'Bunny-SCAPE' it is difficult to understand where any embellishments are. They appear to be an appropriation, moulded in monumental fibreglass and dumped into a public space.' (One has to ask: if an artist simply sculpted a common cartoon character from TV and plonked it into Cathedral Square, how would that differ from what is intended? Are we paying several hundred thousand dollars for some 'emperor's new clothes'?)

It is perhaps fortuitous that Art & Industry failed to raise the \$80,000 necessary to erect the 'Bunny-SCAPE' art, although the scale models intended for public display in Worcester Boulevard may still breach copyright. I do not agree with Wellington city gallery art curator Lara Strongman that the works are "magical." The only magical effect they will have, is making large amounts of arts-money 'disappear' in a potential copyright suit. The struggling artists of Christchurch have a right for the currency of their industry (the funding, images and creative integrity of art generally, particularly as represented in public spaces in their city) to be better managed than that.

**John Stringer**

## Trustee comment

The work of Colin McCahon and James K. Baxter, two key figures in our recent folklore, are reappearing in Christchurch this year; McCahon paintings at CoCA, and 'The prophet of Jerusalem' in John Weir's seminars planned for the first weekend in November (more in the next issue) [and see p. 6 -Ed.].

The place of McCahon and Baxter in mainstream Kiwi culture shows that Jesus is relevant not only to the development of the arts in Aotearoa, but indeed to their experimental edge. We hope to nurture an environment and resources to encourage and reveal artists of faith in today's arts context who will be as significant and experimental as these figures from the past. We want to be a catalyst in the process of affirming significant artists to continue their journeys of discovery, without having to experience the depths of rejection and despair which surface through McCahon's work and life.

The past two months have featured both our most significant poetry effort (*With Our Eyes Open*) being distributed and the first stage of planning for our group show next year. The next two months will continue the process with both

events, underlining our involvement in both mediums. Our Resource Centre has material on both. Books and journals will be more accessible with the opening of our new library space on 18th October.

On 6th September we complete the formal promotion of the anthology in an evening graced with several literary figures; on the 2nd of October our next SevenPlus meeting will continue the process of exploring ideas and work in progress for our group show next Easter. At the last SevenPlus meeting Tim Brown and Kees Bruin unwrapped their ideas for the 2003 show ('12'). As poets we'll be considering practical options for future poetry involvement alongside a strong exhibitions programme - any feedback most welcome.

Part of being relevant is interacting with what's going on in the arts today. In the next few months John Stringer as editor is writing a series of articles which aim at responding to current issues in the visual arts community. This continues the seam that was started by Bridget Underhill with Peter Biggs' article on the place of the arts in transforming society.

**Peter and Jessica (directors)**

<sup>1</sup>. *Gruesome! The Influence of Comics on Contemporary NZ Artists*, exhibition catalogue (curator, Warren Feeney) McDougal Art Annex (1999)

<sup>2</sup>. P.51 *Postmodernism for Beginners*, Appignanesi and Grant, Icon Books, 1995.