Clarification needed about infringement of copyright issue

I have a query about a fine point to do with copyright law. This query relates, not to my work, but how I can avoid infringing the copyright of another artist, whose work I am referencing in my own. Maybe this isn't something you deal with. I’ll explain the context to make my question clear.

I am contracted to illustrate, and am in the middle of working on, a children’s picture book for Balzer & Bray (Harper Collins) in the US. The subject matter (and this is confidential at present) is about the life story and art of the British artist Leonora Carrington, who only died in 2011. It’s a wonderful project to be involved with. The book arose out of a collaboration between myself and the author Michelle Markel, who lives in the US. The contract was negotiated as an indivisible whole for both of us by the New York-based agent Anna Olswanger. I had already worked on another book written by Michelle, The Fantastic Jungles of Henri Rousseau. That book was commissioned and published by Eerdmans Books for Young Readers – again in the US – in 2012. Eerdmans had approached me originally with the existing text, which is how I came to work with Michelle. I mention this book as it is relevant to my current query.

The contract for the current book about Leonora was finalised last July. The publisher had seen all my initial roughs, as these were part of our collaborative submission. They had some comments, which I have addressed in the final roughs that I have been working hard on since July. I delivered those on the 1st Feb. 2016. I have been waiting for comments about my final roughs since then from the publisher. In the meantime, I have completed the artwork, from my approved roughs, for the preliminary pages – title page, dedications/ rights page and end papers.

The comments for the story pages have been doing the rounds, being looked over by Harper Collin’s copy editor as well as their lawyer. I should explain that, as with the book I illustrated about the life of Rousseau, Michelle’s text for this book refers to both the life and works of Leonora Carrington. One of the illustrations will be a dream image of Leonora’s visit to the first surrealist exhibition in London in 1936, so my rough image shows various works that were in that show, but in my own surreal setting. I am therefore making references to both Leonora Carrington’s work as well as some of the works in the surrealist group show. I have been putting a lot of time into careful research of these paintings and artworks, with the approval of Harper Collins, who have been very keen for me to include the correct images.

Again, as with the Rousseau book, I will be creating the illustrations totally by my own hand in mixed media. In the Rousseau book, I made a lot of references to Rousseau’s own work, as that was what the text was about. However, I didn’t ‘copy’ the work, but played around with my own versions of the images in order to tell Rousseau’s story – please see attached PDF showing two images - Rousseau’s own image of ‘The Sleeping Gypsy’ and my illustrations for the book, making reference to this painting. This is an example of the sort of thing I am proposing to do for the current book.

Harper Collins did mention in December, when I was quite a long way on with my drawings, that the images needed to be in the public domain and I have to admit that I didn’t realise quite what they meant – this was an oversight on my part. When I worked on The Fantastic Jungles of Henri Rousseau, this question never arose, so I didn’t realise that it could be an infringement issue to refer, in one’s own creative way, to an existing work of art that isn’t in the public domain. It could be, as Rousseau died in 1910, that his work was already out of copyright, whereas many of the artists I am dealing with in this book were from a later period of history and their works could therefore still be under copyright.

I have two questions:

First, how do I establish whether certain works of art are in the public domain? Is there an archive online where I could look artworks up under their creator and the title of the work?

Secondly, what kind of reference to an artwork constitutes infringement of copyright? If I have created the new image by my own hand, making significant changes to the original image, is that infringement or not? I would emphasis that at no stage do I copy and paste to create my work, everything is hand drawn and painted and I never attempt to make an exact reproduction.

I’m sorry this is so long, but this is a complicated, grey legal area and my publishers want me to resolve it.

I look forward to hearing your response

Kind regards

Amanda Hall