



Copyright Features

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Just what can you use? How (or) can you use previously created materials? What is the doctrine of Fair Use? What are the limits of use and/or modification? These are all important issues to the modern graphic designer, be it for web use, publication and illustration or for private design. There are intricate turns in the current copyright law which must be adhered to. The courts have not been friendly to users who do not follow the rules. Every designer, but especially new persons to the field, must become aware of the regulations to avoid possible legal issues and/or destructive fines and penalties.

If you find a seed catalog at a flea market dating back to 1920, can you use the illustrations within it? Can you make a drawing from a photograph of a tree you find in a magazine?

Who owns the rights in these situations? What are your rights as an artist? Contracts between artists and art buyers present a formidable challenge of legalese and business terminology that are difficult for even the most experienced artists to decipher. Here's what you need to know.

Q: What is a copyright?

According to the dictionary, copyright is "the exclusive legal right to reproduce, publish, and sell a literary, musical or artistic work." Technically, anything you produce is copyrighted as soon as you produce it if it falls under the category of being a literary, musical or artistic work. As the owner of a copyrighted work you own the rights to its reproduction, display, distribution and adaptation to derivative works. Ideas, on the other hand, need to be patented or otherwise protected. You can't copyright an idea for a "Bald Guy" line of apparel, but you can copyright the "Bald Guy" illustration that will appear on it to protect yourself from having another person copy it.

Q: What constitutes copyright infringement?

* Anyone who copies a protected work owned by someone else or exercises an exclusive right without authorization is liable for infringement. The

penalties for copyright infringement are very high, as much as \$100,000 for each act of "willful infringement," meaning that you knew you were copying someone else's work but did it anyway.

Q: What is a copyright notice?

A copyright notice consists of the word "Copyright" or its symbol (c), the year the work was created or first published, and the full name of the copyright owner. It should be placed where it can easily be seen, on the front or back of an illustration or artwork. It's also common practice to place your printed copyright notice on slides or photographs sent to potential clients or galleries by affixing labels to slide mounts or to the back of photographs.

Q: Why should I place a copyright notice on my work?

The symbol © is primarily a warning to potential plagiarizers. Works published before 1989 must carry a copyright notice to be protected under copyright laws. Works published after that time don't need to carry a copyright notice to be protected by copyright laws. Although, according to today's laws, placing the copyright symbol on your work isn't absolutely necessary to claim copyright infringement, it's always in your best interest to have used this symbol as a warning if you do take a plagiarizer to court.

Q: Should I register my copyrighted work with the U.S. Copyright Office?

The moment a piece of work is created, it is copyrighted material. The benefits for registering your work are basically procedural and can give you additional clout if an infringement does occur and you decide to take the offender to court. In fact, without a copyright registration, it may not be economically feasible for you to file suit to protect your copyright. You'd be entitled only to your damages and the infringer's profits. These may not equal the cost of litigating the case. Registering your work before or shortly after publication is important, because you need to register your work before litigation occurs.

Q: How do I apply for a copyright?

To register your work with the U.S. Copyright office, call the Copyright Form Hotline at (202) 707-9100 and ask for package 115 and circulars 40 and 40A. (Cartoonists should ask for package 111 and circular 44.) You can also write to the Copyright Of-

Office, Library of Congress, Washington DC 20559, Attn: Information Publications, Section LM0455. Registering your work will cost \$20. Forms for copyright application are available as PDF files at the copyright office website.

Q: Why do I need to learn about transferring copyright?

Transferring a copyright on a temporary basis is how artists make a living off their work. Savvy artists who understand how this works can reap financial benefits by collecting more than one fee for the art they produce. There are many types of transfer rights that can be negotiated.

When you sign an agreement with a magazine for one-time rights to an illustration, you are transferring part of your copyright to the magazine. In this instance, ownership of some of your exclusive rights are transferred because you've given the magazine the right to use your illustration one time. As evidence that the transfer has taken place and permission has been granted, you sign a contract or other document stating the terms of the transfer agreement.

Q: Why is it important to negotiate rights?

Negotiating the rights for an assignment is just as important as negotiating the fee. If you fail to do this, you could be throwing away future opportunities to promote and profit from your work as well as jeopardize your relationship with your client through misunderstandings.

Q: What happens when I agree to a contract that allows my client "one-time rights" to my work? How does this differ from "first rights" or "exclusive rights"?

"One-time rights" means the artwork is "leased" for one use. The buyer has no guarantee he is the first to use the art. If your client wants "first rights" he should expect to pay slightly more for the privilege of being the first to use the art. "Exclusive rights" means the buyer can use the art exclusively in his particular market. With an agreement of this type, your art may be used exclusively by the buyer in the greeting card industry, but you would retain the rights to sell the art to a magazine because it would be used in a noncompeting market. In all of these instances, the rights revert back to you after use.

Q: What are reprint rights, subsidiary rights and promotion rights?

Reprint or serial rights give a publication the right to print your work after it has already appeared in another publication. Subsidiary rights cover additional rights purchased such as including an illustration

in the second printing or paperback edition of a book. Granting promotion rights allows your client to use your work for promotional purposes. In the case of an editorial illustration, this would apply if the article where the illustration appears is subsequently reprinted and used as a subscription premium. Artists granting reprint, subsidiary or promotion rights should check their contract to see if they will be paid a percentage of the original price when a reprint is made. Industry standards range from 25-50%.

Q: A client has asked me to illustrate a series of cartoon characters for animation as "work for hire." Will I lose my claim to future use of these characters?

Be careful when agreeing to this contract. It means you won't own your copyrighted work-your client will. As an artist, you would be surrendering all rights to use these character illustrations in the future, plus any claims to additional compensation through royalties if the animation becomes a big success. "Work for hire" contracts are often used if the work involved is a contribution to a collective work such as a motion picture or animated cartoon. "Work for hire" also refers to artwork produced as part of your employment, but as a free-lancer, you won't be entitled to any type of employment benefits if you agree to these terms-you're just missing out on the opportunity to realize additional income you deserve.

Q: What's an "all rights" contract?

This involves selling or assigning all rights to a piece of artwork for a specified period of time. The buyer has no limitations placed upon use of the art during an agreed-upon time period, but when that time period has ended, rights revert back to the artist.

*** Q: Can anybody use a copyrighted work after the artist who created it dies?**

* Copyright protection lasts for the life of the artist plus 70 years. For works created by 2 or more people, protection lasts for the life of the last survivor plus 70 years. For works created anonymously or under a pseudonym, protection lasts for 100 years after the work is completed or 75 years after publication, whichever comes first. Older artistic creations which are no longer protected by copyright fall into a category called public domain, and can be used by anyone without permission. This means that uncredited illustrations and photographs found in printed materials published prior to 1925 can be used without copyright restrictions. Other work in the public domain and not protected by copyright is work created by the U.S. Government.

Q: I want to do some drawings of Frank Sinatra and sell copies. What are the rules when it comes to illustrating celebrities?

First of all, if you're not working from your own photographs or memory, you need to obtain permission from the photographer who created the photo you will be using as reference material. (You do not need to get permission from photographers if you create portraits or caricatures based on dozens of photographs from different sources and you are careful to not to include elements that would make it obvious you copied from a particular photograph.) Secondly, under the rights of publicity, Frank Sinatra had exclusive right during his lifetime to control the use of his image in prints, poster, etc. The rights of publicity aren't covered under copyright law, but are covered by state law and may vary from state to state. In most states, these rights pass to the heirs after the individual's death, so you're likely to run into legal problems if the distribution of your Frank Sinatra drawing is on a national level. In this case, you would be wise to obtain permission from his heirs.

***Q: Can I use someone else's photograph as reference material for a painting I'm creating?**

If you're copying a photograph, you must get the photographer's permission. Photographs are protected by copyright laws just as illustrations are. Even though it's in a different medium, you're violating the photographer's copyright if you copy a photograph in your painting. If a photographer grants permission to use one of his photos as a reference, he may also require that you credit him when your painting is completed. However, if it's not in your agreement, you aren't under legal obligation to do this.

Q: Can I draw a sculpture I recently saw in a gallery and use it as an illustration subject?

You can't draw the sculpture without contacting the artist and getting written permission. A sculpture, like a photograph, is a copyrighted piece of art.

Q: The photograph I want to use as a reference is from a stock photo I've paid for as a "one-time" use situation. Can't I create an illustration from it if I've paid for these rights?

Your "one-time rights" in this situation apply to using the photograph in a piece of published material-not recreating it as an illustration for which you

could ultimately claim exclusive rights. The stock agency is strictly a licensing agent in this agreement. You still need to obtain permission from the photographer before using a stock photo as the basis for your own illustration.

Q: If I see a photo of Mount Fuji in National Geographic, can I develop an illustration from this?

Photographs that appear in magazines are usually copyrighted by the magazine or by the photographer or sometimes by both. Under copyright law, the owner of the photo's copyright has the exclusive right to this image. Again, you would need to get permission from the magazine and/or photographer in order to use it as the basis for your own illustration.

Q: When I do an illustration, I draw and paint images from variety of published photographs and combine them with backgrounds I've drawn from other published photos. To protect myself, do I still need to get permission from the photographers or publishers involved?

To constitute a copyright infringement, a "copy" must be "substantially similar" to the original work. If your finished illustration looks different from any of the originals you used as a reference material, you shouldn't need to obtain permission.

Q: How does licensing work?

When you grant a license for a copyrighted piece of artwork you're giving permission for an individual or company to make a derivative work-a work derived from the original that produces a second-generation image or product for a specific time period for a specific use. The derivative work can take many forms; companies could feature your art on apparel, notecards or products. Because derivative works are based on an original and are usually created as products for sale, it's not unusual for the creator of the original to receive royalty compensation.

Q: What are royalty fees?

Royalty fees are the percentage of the sales that an artist receives every time a derivative work is sold, typically around 5-7% of the wholesale price. Not all licensing agreements involve royalties, but it's always in an artist's best interest to seek compensation of this type. Other things to look for in an agreement are a say in quality control and product distribution.

Q: How do stock agencies work when they license the use of stock illustration? What kind of compensation can I expect if I grant licensing rights of my illustration to a stock agency?

Stock agencies grant a license for one-time use of an image to a user for an agreed-upon fee. Stock illustration agencies generally have a contractual arrangement with their artists that involves royalty compensation every time the illustration is used. In most cases, this percentage will range from 30-50%. Stock agencies will often take work originally commissioned for another job, giving artists a way to generate additional income from work that has appeared elsewhere.

Q: Can I create a duplicate of a painting I've just sold if another buyer wants to buy it as well?

This depends on your arrangement with the art buyer. If you do not sell the copyright to your painting and express this in writing, you can create a duplicate of it. However, many art collectors purchase an original with the belief that the work is unique and will remain so. The best way to avoid trouble is to make clear in writing that you are free to produce the same or similar piece for someone or have the buyer acknowledge in writing that the piece was purchased with no express or implied warranties.

Q: Can I sell reproductions of a drawing after I've sold the original?

Selling a work of art is separate and distinct from selling your copyright to it. Unless you sign a document to the contrary, your copyright isn't transferred when you sell the drawing, meaning that because you own the copyright to the original, you can legally sell reproductions of it.

For More Information Any more questions?

Lots of information on copyright is available just for the asking. Visit the official site for the United States Copyright Office at <http://lcweb.loc.gov/copyright> or contact the U.S. Copyright Office, Library of Congress, 101 Independence Ave., S.E., Washington DC 20559-6000, or call the Copyright Office information line at (202) 707-3000.
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