

Know Your Rights

Taking the Mystery Out of Copyright

Are you confused about copyright? Most artists are, but the idea is really based on one simple premise: As creator of your artwork, you have certain inherent rights over your work and can control how each one of your artworks is used, until you sell your rights to someone else.

The legal term for these rights is called copyright. Technically, any original artwork you produce is automatically copyrighted as soon as you put it in tangible form.

To be automatically copyrighted, your artwork must fall within these guidelines:

- **It must be your *original* creation.** It cannot be a *copy* of somebody else's work.
- **It must be "pictorial, graphic, or sculptural."** Utilitarian objects, such as lamps or toasters, are not covered, although you can copyright an illustration featured on a lamp or toaster.
- **It must be fixed in "any tangible medium, now known or later developed."** Your work, or at least a representation of a planned work, must be created in or on a medium you can see or touch, such as paper, canvas, clay, a sketch pad or even a website. It can't just be an idea in your head. An idea cannot be copyrighted.

Copyright lasts for your lifetime plus seventy years

Copyright is *exclusive*. When you create a work, the rights automatically belong to you and nobody else but you until you sell those rights to someone else.

In October 1998, Congress passed the Sonny Bono Copyright Term Extension Act, which extended the term of U.S. copyright protection. Works of art created on or after January 1978 are protected for your lifetime plus 70 years.

The artist's bundle of rights

One of the most important things you need to know about copyright is that it is not just a *singular* right. It is a *bundle* of rights you enjoy as creator of your artwork. Let's take a look at the five major categories in your bundle of rights and examine them individually:

- **Reproduction right.** You have the right to make copies of the original work.
- **Modification right.** You have the right to create derivative works based on the original work.
- **Distribution rights.** You have the right to sell, rent or lease copies of your work.
- **Public performance right.** The right to play, recite or otherwise perform a work. (This right is more applicable to written or musical art forms than visual art.)
- **Public display right.** You have the right to display your work in a public place.

How to register 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 Office, Library of Congress, 101 Independence Ave. SE, Washington DC 20559, Attn: Information Publications, Section LM0455.

You can also download forms from the Copyright Office website at www.copyright.gov. Whether you call or write, they will send you a package containing Form VA (for visual artists). Registering your work costs \$30.

After you fill out the form, return it to the Copyright Office with a check or money order for \$30, a deposit copy or copies of the work and a cover letter explaining your request. For almost all artistic work, deposits consist of transparencies (35mm or 2¹/₄X2¹/₄) or photographic prints (preferably S'/zX10). Send one copy for unpublished works; two copies for published works.

You can register an entire collection of your work rather than one work at a time. That way you will only have to pay one \$30 fee for an unlimited number of works. For example if you have created a hundred works between 2003 and 2004, you can send a copyright form VA to register "the collected work of Jane Smith, 2003-2004." But you will have to send either slides or photocopies of each of those works.

Why register?

It seems like a lot of time and trouble to send in the paperwork to register copyrights for all your artworks. It may not be necessary or worth it to you to register every artwork you create. After all, a work is copyrighted the moment it's created anyway, right?

The benefits of registering are basically to give you additional clout in case an infringement occurs and you decide to take the offender to court. Without a copyright registration, it probably wouldn't be economically feasible to file suit, because you'd be only entitled to your damages and the infringer's profits, which might not equal the cost of litigating the case. Had the works been registered with the U.S. Copyright office, it would be easier to prove your case and get reimbursed for your court costs.

Likewise, the big advantage of using the copyright © also comes when and if you ever have to take an infringer to court. Since the copyright © is the most clear warning to potential plagiarizers, it is easier to collect damages if the © is in plain sight.

Register with the U.S. Copyright Office those works you fear are likely to be plagiarized before or shortly after they have been exhibited or published. That way, if anyone uses your work without permission, you can take action.

Deal swiftly with plagiarists

If you suspect your work has been plagiarized and you have not already registered it with the Copyright Office, register it immediately. You have to wait until it is registered before you can take legal action against the infringer.

Before taking the matter to court, however, your first course of action might be a well-phrased letter from your lawyer telling the offender to "cease and desist" using your work, because you have a registered copyright. Such a warning (especially if printed on your lawyer's letterhead) is often enough to get the offender to stop using your work.

Don't sell your rights too cheaply

Recently a controversy has been raging about whether or not artists should sell the rights to their work to stock illustration agencies. Many illustrators strongly believe selling rights to stock agencies hurts the illustration profession. They say artists who deal with stock agencies, you can live with. At the very least, arrange for the contract to expire after a specified date. Terms for all rights—including time period for usage and compensation—should be confirmed in a written agreement with the client.

Since legally your artwork is your property, when you create an illustration for a magazine you are, in effect, temporarily "leasing" your work to the client for publication. Chances are you'll never hear an art director ask to lease or license your illustration, and he may not even realize he is leasing, not buying, your work. But most art directors know that once the magazine is published, the art director has no further claims to your work and the rights revert back to you. If the art director wants to use your work a second or third time, he must ask permission and negotiate with you to determine any additional fees you want to charge. You are free to take that same artwork and sell it to another buyer.

However, had the art director bought "all rights," you could not legally offer that same image to another client. If you agreed to create the artwork as "work for hire," you relinquished your rights entirely.

What licensing agents know

The practice of leasing parts or groups of an artist's bundle of rights is often referred to as "licensing," because (legally) the artist is granting someone a "license" to use his work for a limited time for a specific reason. As licensing agents have come to realize, it is the exclusivity of the rights and the ability to divide and sell them that make them valuable. Knowing exactly what rights you own, which you can sell, and in what combinations will help you negotiate with your clients.

Don't sell conflicting rights to different clients

You also have to make sure the rights you sell to one client don't conflict with any of the rights sold to other clients. For example, you can't sell the exclusive right to use your image on greeting cards to two separate greeting card companies. You *can* sell the exclusive greeting card rights to one card company and the exclusive rights to use your artwork on mugs to a separate gift company. It's always good to get such agreements in writing and to let both companies know your work will appear on other products.

When to use the Copyright © and credit lines

A copyright notice consists of the word "Copyright" or its symbol ©, 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 to print your copyright notice on slide mounts or onto labels on the back of photographs.

Under today's laws, placing the copyright symbol on your work isn't absolutely necessary to claim copyright infringement and take a plagiarist to court if he steals your work. If you browse through magazines, you will often see the illustrator's name in small print near the illustration, *without* the Copyright ©. This is common practice in the magazine industry. Even though the © is not printed, the illustrator still owns the copyright unless the magazine purchased all rights to the work. Just make sure the art director gives you a credit line near the illustration.

Usually you will not see the artist's name or credit line alongside advertisements for products. Advertising agencies often purchase all rights to the work for a specified time. They usually pay the artist generously for this privilege and spell out the terms clearly in the artist's contract, especially those who sell royalty-free art, are giving up the rights to their work too cheaply. Another pressing copyright concern is the issue of electronic rights. As technology makes it easier to download images, it is more important than ever for artists to protect their work against infringement. Log on to www.theispot.com and discuss copyright issues with your fellow artists. Join organizations that crusade for artists' rights, such as the Graphic Artist's Guild (www.w.gag.org) or The American Institute of Graphic Arts (www.aiga.org). Volunteer Lawyers for the Arts (www.vlany.org) is a national network of lawyers who volunteer free legal services to artists who can't afford legal advice. A quick search of the Web will help you locate a branch in your state. Most branches offer workshops and consultations

Copyright resources

The U.S. Copyright Website (www.copyright.gov), the official site of the U.S. Copyright Office, is very helpful and will answer just about any question you can think of. Information is also available by phone at (202)707-3000. Another great site, called The Copyright Website, is located at <http://benedict.com>.

A few great books on the subject are *Legal Guide for the Visual Artist*, by Tad Crawford (Allworth Press); *The Rights of Authors, Artists, and other Creative People*, by Kenneth P. Norwick and Jerry Simon Chasen (Southern Illinois University Press); *Electronic Highway Robbery: An Artist's Guide to Copyrights in the Digital Era*, by Mary E. Carter (Peachpit Press). *The Business of Being an Artist*, by Daniel Grant (Allworth Press), contains a section on obtaining copyright/trademark protection on the Internet.