
Copyright Basics

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Copyright Basics:
Creative Commons - BY

Acknowledgements

<http://nicciferguson.com>

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Copyright Basics For Graphic Designers PART 1

Copyright basics for graphic designers - Part 1



PART 1

By Steve Ferguson
IP ATTORNEY

If you are a designer, your bread and butter is your creative work. Unfortunately, the internet and other digital technologies have made it easier for copycats to steal your work or pass it off as their own. The law of copyright is there to protect you. But if you don't know how copyright works or how you can use it to protect your work, it is pretty useless.

In this series of articles, we hope to arm you with some working knowledge on copyright and how you can use it to protect your creative work.

What is copyright?

Without getting into the legalese, copyright is basically the right to stop other people from copying, publishing or adapting your creative work without your permission.

Looking at from the opposite angle, the owner of the copyright in an original work has the exclusive right to copy it, publish it, display it, distribute it, or make new works from it.

What is not copyrightable?

Designers need to take into account that the following items cannot be copyrighted:

- titles, names, short phrases, and slogans;
- familiar symbols or designs;
- mere variations of typographic ornamentation, lettering, or coloring;

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- mere listings of ingredients or contents
 - Ideas, procedures, methods, systems, processes, concepts, principles, discoveries, or devices
 - Common information such as calendars, measurement charts, TV guides
 - Government or legal documents

A number of these things may be protected by trademarks. But it will be the client, and not the designer, who will be entitled to apply for trademark protection.

If you are not sure whether your new logo design would qualify for copyright protection, consult a specialist attorney.

When do I have these rights?

Copyright comes into force as soon as you have transferred a great idea from your head to something written, drawn, doodled or typed on a pad, computer or sandstone tablet.

Do I need to register my copyright?

Registration is not a requirement for enjoying copyright protection. However in the US, registration is necessary if you want to enjoy certain benefits (presumption of copyright ownership, right to claim statutory damages) when suing a copycat in court.

What does the © do and do I need to put it on my work?

Putting a copyright notice on your work is not compulsory (unless you can use it as a new design element). But it does tell people that the work is copyrighted and prevents defendant's from claiming innocent infringement when you sue them (damages are not payable by an innocent infringer).

Does my new creation need to be absolutely original to enjoy protection?

Your work does need to be original if you want to enjoy copyright protection. But the test for originality is not a strict one. Your work doesn't need to be of the "never been seen or done before" kind. It simply needs to originate from you with an ounce of independent skill and effort thrown in.

Can I use someone else's work to create a new one?

Using someone else's work to create a new one may be copyright infringement if you don't have that person's permission. However, the copyright in the new work

(known as a *derivative work*) will then be owned by both of you. You will be able to assert your rights over the new part that you created, even if you have infringed someone else's copyright over the old part.

The distinction also needs to be drawn between copying, which negates originality, and using existing material or knowledge common to you and to other people in your industry. This common knowledge doesn't negate originality.

If I create the work, will I always own the copyright?

The short answer is yes, but there are some exceptions. If you are employed and you design something for your employer, they will usually own the copyright.

If you are not employed but you do work for a client and agree to assign the copyright in the work to the client, you will not be the owner of the copyright.

How long does copyright last?

The term of copyright protection differs from country to country. But the rule of thumb is basically while you are alive and for 50 years after your death (70 years in the US).

Do I need to assign copyright to my clients?

This will depend on the way you offer your services or run your business. If you are designing a number of templates and licensing them to a number of people for a relatively low fee, you would want to retain your copyright. If you are designing customized brands and getting paid a lot of money for it, the client probably should be entitled to the copyright in that work.

However, the way the law is framed at the moment, if your copyright is not *assigned* in writing to the client, you will remain the owner. This is not common knowledge and client's often mistakenly believe that they are automatically the owners of the work you do for them.

It is often a useful tool for getting your money by agreeing with the client that you will assign the copyright to them once they have paid your full fee.

What are the client's rights to the work if I don't assign them the copyright?

If there is no written assignment agreement relating to copyright ownership between you and your client, the client will generally have a licence to use your work. It will usually be implied that the licence is a non-exclusive, personal, irrevocable and royalty-free licence to use your work for as long as you enjoy copyright protection over the work.

The client does not usually have an automatic right to tamper with or change your work and they cannot sub-licence it to other people.

The best thing to do when offering your services is to present a written document to your clients setting out how you want to deal with the copyright issue. These standard terms can bring a level of certainty to your relationships with your clients and costly disputes can be avoided.

If I put my work on the internet, do I lose my copyright?

No, you will still enjoy full protection if you post your work online. Remember to put your copyright notice on the webpage containing your work just to remind people of this.

How can my copyright be infringed?

Your copyright will be infringed when someone copies or adapts a *substantial* part of your designs without your authority. Tests vary from country to country on what is regarded as *substantial* but the rule of thumb is that the substance of your work is that part that gives it its originality.

Your copyright can also be infringed by someone else who doesn't copy or adapt your work but who distributes or makes infringing copies of your work available for sale or rent when they know that your copyright has been infringed.

What do I need to prove if I want to sue a copycat?

Outside the US where copyright registration is not used, you need to keep records of the works you create and that you created them. This should be independently verified by a third party (like [Myows](#)). Once you can show the court that you are the owner of the copyright in the work, you must then show that there is some connection between your work and the copied version.

If you can prove that the copycat had access to your work before the copied version was created, that is half the battle won. However, the opposite also holds true. If the copycat can show that they didn't have any access to your work and that they came up with the exact same work on their own, you will both have copyright in that work.

What defenses can be raised by the copycat?

Copycats will usually try to disprove that you are the owner of the copyright or that they came up with the work on their own. Getting independent, time-stamped evidence of when you created your work will again be an effective answer to these tactics.

Copycats often argue that, by your own actions, you have abandoned or waived your copyright in your work. It is therefore important that you remain vigilant and crack down on any infringements as soon as you discover them.

What does *fair use* mean?

Most countries allow limited copying, without permission, of protected work for private study, research, criticism, and news reporting. The copying needs to be fair in the sense that it should not deprive you of your rights or your ability to make money from your designs.

Most copying that happens is for commercial gain and the copycats will not be able to rely on the defence of fair use or fair dealing.

What are my legal remedies if someone copies my work?

There are a number of legal remedies you can ask the court for if you find someone has copied your designs without your authority.

1. You can apply for an injunction (also known as an interdict) to prevent further copying or distribution of your work.
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2. You can ask the court to order the copycat to deliver-up all the infringing copies of your work.
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3. You can claim damages OR a reasonable royalty for the copies of your work that has already been made and used by the copycat.
4. If the infringement was flagrant and you can prove that the copycat intentionally stole your design, you can ask the court to award additional punitive damages. _

Can I threaten a copycat with criminal charges?

Yes, copyright infringement is also a criminal offence. Unfortunately, most countries don't have dedicated police and court officials to deal with copyright cases. The case usually takes a while and you have no control over the process. However, criminal action may be welcome relief from the expense of bring a civil suit.

Do I need to appear personally in court to protect my copyright?

The laws of most countries allow you to bring your evidence to court in the form of an affidavit. You will only need to appear personally if the court needs you for further questioning or to provide more clarity on the evidence you presented by affidavit.

Do I have copyright protection in other countries?

You will enjoy copyright protection for your designs in most other countries who are signatories to the Berne Convention for the Protection of Literary and Artistic Works. The Convention guarantees protection of your rights in all countries party to the treaty at the same level as you would enjoy in your own country.

What is digital rights management (DRM)?

DRM is a technology solution to the problem of copyright infringement. Digital watermarks or disabling the right-click save mechanism for online images are two examples. International laws have been introduced to prevent DRM technologies from being hacked or circumvented in an effort to stop copyright infringement at the source.

If you have any queries, leave a comment, contact Steve (steveatniccifergusondotcodotza) or post your question on the [Myows Forums](#).

Copyright Basics for Graphi designers PART 2

Copyright Basics for Graphic Designers : Part 2



PART II MAKING MONEY WITH YOUR CREATIVITY

By Steve Ferguson
IP ATTORNEY

In [Part 1](#) of our series of articles on copyright for graphic designers, I introduced you to the basics of copyright - what it is, how it can be infringed and how to protect it.

In Part 2, I will look at the traditional ways you can make money from your creativity.

Copyright is like a picnic basket with different goodies inside. You may not want everyone to share everything in your basket, and instead you want to limit what they can and cannot do with your copyright. For example: you may allow one person to publish your work as is, while allowing another to adapt it and publish a new version.

You can also grant the same rights to people in different countries or geographical areas where you have copyright or give all of your rights away to one person who enjoys your copyright throughout the world.

Finally, you can limit the time period in which people can enjoy your rights. Think of the software you use and the annual subscription fees you pay to renew your licence rights.

There are 2 recognised legal ways you can grant rights in your work to others:

1. By assignment; or
2. By license.

Assignment

Assignments are basically like the sale of your copyright to someone else. For as long as the

person you assigned your rights to (the assignee) enjoys your rights, you cannot exercise them. The assignee is the new holder of the copyright and they, in turn, can assign or licence the rights onto someone else. If someone unlawfully infringes the copyright, it is the assignee who must enforce it.

Assignments can be limited to a particular country. For example, you can assign your copyright in the UK, but still enjoy it in the US. Assignments can also be limited to a particular period of time. Once the time period ends, the copyright reverts back to you as the original holder.

A valid assignment can only be carried out if there is an underlying agreement to assign your copyright and the assignment itself is reduced to writing and signed by you. It is always a good idea to draw up a contract setting out exactly what is being assigned and specifying if there are any limitations.

You can assign your future copyright in a work still to be designed. However the assignment will only be effective once the work has been born and is vested with copyright.

If you are assigning your copyright, you will usually be able to charge a higher price because you are limiting your ability to earn money from it in other ways.

Licensing

A license is basically a promise from you, the copyright holder, not to sue the person holding the license (the licensee) when they exercise some or all of your copyright. Unlike with an assignment, you remain the owner and merely allow the licensee to exercise the right.

Copyright licensing is a bit like the design process itself - there are an infinite number of licence variations limited only by the creativity of the drafter.

Licenses can be exclusive, i.e. no-one but the licensee is allowed to enjoy the same rights for the period of the license; or non-exclusive where the same rights can be granted to various people.

Non-exclusive licenses don't have to be in writing, and can be given verbally or even by conduct (E.g. if someone is using your work without your permission but you don't object). Unless the license is specifically agreed to be non-revocable, you can take it away at any time. However if the terms of the license are that it is perpetual, then it cannot be terminated unless further agreement is reached or the licensee commits a breach of the license.

An exclusive license must be in writing and signed by you. If an exclusive license is not reduced to writing and signed, it becomes a non-exclusive license. The exclusive licensee has the right to take action against third parties for copyright infringement in his or her own name. Their right of action exists concurrently with your own right of action.

In Part 3 we will look at new forms of licensing which have been introduced to accommodate new ways of sharing content on the internet and across other digital platforms.

If you have any queries, leave a comment, contact Steve (steveatniccifergusondotcodotza) or post your question on the [Myows Forums](#).

Copyright Basics for Graphic designers PART 3

Copyright Basics for Graphic Designers : Part 3



PART III

**TAKING THE PLUNGE,
PUTTING YOUR WORK ONLINE**

By Steve Ferguson
IP ATTORNEY

In Part 3 of the series on Copyright Basics for Graphic Designers, I will look at some of the main issues that arise when you take your work online and how you can continue to protect your copyright while exploring new ways of sharing your work with a wider audience.

The internet is not public domain

One of the first myths about content on the internet is that it is free for everyone to use, copy and share. This is a dangerous misconception which can lead to some messy disputes.

Take a [recent example](#) of a photographer who found that a mainstream UK newspaper had used one of his photos on the popular photo-sharing website, Flickr, without his permission. Although the photographer had clearly posted a notice on his Flickr page that “all rights were reserved”; the newspaper still assumed that because Flickr was a free-to-use website, it hosted public domain content which was free for anyone to use.

Although the dispute was ultimately resolved with an apology and payment of the necessary usage fee, it highlights that even a national newspaper that works with copyright law everyday was misinformed about what they could or could not do with online content.

Despite the photographer’s copyright notice being overlooked in this case, placing clear notification next to your work and/or on every webpage that it appears on is still recommended good practice. Doing so prevents others from arguing that they didn’t know the material was copyrighted (like the newspaper in the example above).

It is also important that you assert your copyright clearly in the terms and conditions on your website, stating what can and cannot be done with your content. Include a non-waiver clause too which basically states that nothing you do should be construed as a waiver of your

copyright.

Search using thumbnails

There have been a number of cases since the advent of the internet on whether using thumbnail versions of protected images without permission for web search purposes constitutes copyright infringement.

If you remember from [Part 1](#) that copyright is only infringed when a *substantial* portion of a work has been copied, the question is then whether a thumbnail is regarded as a substantial copy of the original work? In the case of [Perfect 10 vs Google](#), the search giant was providing thumbnail images of Perfect 10's models amongst its image search results. Perfect 10 claimed that its copyright in the images was being infringed.

Perfect 10's claim was upheld in the lower courts but rejected on appeal. The appeal court stated that a thumbnail on its own was not a substantial copy. However, the court did add that if the thumbnail linked to a full-size copy of the same image, there would be copyright infringement.

Creative Commons licensing

Copyright holders have traditionally shared their work with others in very restrictive ways, i.e. either by assignment or proprietary licensing (see [Part 2](#)). However, with the digital revolution and, in particular, the explosion of the social media phenomenon, content users want more freedom to adapt and share content with each other.

If you want others to freely share your work online, whether as a form of marketing or simply because you are being magnanimous, there are a number of new, more "open" licensing models you can use to distribute your work. The best known and most widely used of these new licenses is the [Creative Commons licenses](#).

Again, many people think that work published under a Creative Commons license is essentially a waiver of copyright. This is incorrect. The licensor still asserts copyright over the licensed work, but grants further freedoms to others to share, adapt and redistribute the work under the license.

The distinction can be drawn between licensed content and content which is or has been placed in the **public domain**. Public domain content is available to everyone and no copyright vests in the work. This is the mistake that was made by the newspaper in the example above.

Creative Commons (CC) has [six main license types](#), each type with its own level of restrictiveness. The restrictions (or lack thereof) are based on 4 concepts: **attribution** (crediting the original creator); **share-alike** (sharing derivative works under identical licence terms); **non-commercial purposes** (allow rights but not to make money) and **no-derivative works** (redistribute and use actual work but don't make changes).

The six main license types are:

1. Attribution



This license lets others basically do what they want with your work (including make money from it): provided they credit you for the original work in a way that suits you.

2. Attribution Share-Alike



This license again grants all the same rights (including commercial use): provided the user credits you and licences any new works under the identical terms.

3. Attribution No Derivatives



This license allows your work to be redistributed (including commercially), but it cannot be changed and it must be credited to you.

4. Attribution Non-Commercial



This license lets others do what they want with your work provided it is not for commercial purposes and you are properly credited.

5. Attribution Non-Commercial Share Alike



This license grants all rights to others, provided they enjoy them for non-commercial purposes only, they licence any derivative works under identical terms, and you are properly credited for the original work.

6. Attribution Non-Commercial No Derivatives



This license only allows others to download your works and share them, provided proper credit is given to you. The original work cannot be changed or used commercially.

Lauded for their user friendliness and the welcome absence of legalese, Creative Commons licenses are very *en vogue* at the moment - used in over 180 million web pages on the internet. However designers who want to try them out should read the actual license terms carefully to make sure they choose the one best suited for them.

Creative Commons has done a lot of work to make sure that their licenses can be adapted for most jurisdictions. Although there have only been a small number of cases around the world involving these licenses, there should be no problem with enforcing the license terms as you

would any other contract.

There is no doubt that the internet and other digital platforms offer new and exciting ways to get your work out there. But remember to look before you leap!

