

Copyright Law for Artists

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Introductory Information

- **3 primary intellectual property rights**
 - Patents protect useful ideas.
 - Trademarks protect identity. A trademark is something that signifies that a particular good or service comes from a particular source.
 - When someone looks at a particular object, a trademark will signal where/from whom the product comes but not what the product is.
 - Colors, patterns, noises, smells can be trademarks.
 - You might be concerned with trademarks if:
 - You develop your own brand/market identity.
 - You incorporate other people's marks (e.g. Andy Warhol & Campbell's soup).
 - Copyrights protect the particular way an author expresses him or herself.
 - Copyright does not protect ideas, systems or factual information conveyed in a work. (E.g. you cannot copyright a mathematical formula, but you can copyright an explanation of how to use a mathematical formula.)

10 Basic Rules of Copyright

1. **Your copyright vests in you the author upon the act of authorship.**
 - I.e., the copyright is created when the creation of a work originates with you.
 - You do not need a piece of paper in order to own a copyright.
 - Copyright endures for your life plus 70 years.
 - *EXCEPTION: If you create a work as an employee during the time of employment, the copyright belongs to your employer, not to you. (This applies to W-2 employees, not independent contractors.)
2. **A copyright is a distinct property right or interest that only transfers by written assignment (except for works for hire).**
3. **A copyright is not a monopoly right, meaning it gives you no exclusivity.**
 - A copyright does not have to be novel, it just has to be original to you.

Please note: This handout was created by Visual Art Exchange based on a lecture by Tony Biller on 10.22.2009 at Meredith College as part of VAE's Business of Being an Artist Lecture Series. These notes are intended as guidelines for artists and are not strict legal advice. Please contact a copyright attorney with specific legal questions.

Updated 1.8.10

- Copyright gives you a right against being copied.
 - *Practical Rules of the Internet:
 - Very few plagiarists, when accused of plagiarism, admit to having copied something.
 - As a copyright owner, you don't have to show literal copying but typically have to prove copying by circumstantial evidence.
4. **Don't copy.**
 - You can be inspired by other people's themes and ideas.
 5. **The goal in all copyright content development is to independently create your own work.**
 - If you're asking, "How close may I be?" or, "How much do I have to change before it's my work?", you should rethink it.
 - Exceptions: satire, parody or transformative work.
 6. **If you must copy, do everything you can to get permission from the original author.**
 - E.g. if a patron asks you to paint a portrait from a professional photograph, you should get permission from the photographer.
 - If you cannot get permission, ask the patron to cover your legal costs should you get sued.
 7. **You may use common design elements, themes and layouts.**
 8. **If you authored the design, act like the author.**
 - Explain to clients that their ideas do not make them co-authors.
 - Put notice of copyright on works on the back of your work. Use your full legal name and the year in which the work was authored.
 - When you sell a work, you still own the copyright to the work. The person who purchased your work has no right to replicate it.
 - If you want to give someone permission to replicate your work, put this agreement in writing. This is especially important if you expect to be paid.
 9. **Register your works with the library of congress.**
 - This may be necessary if your work has any potential commercial value.
 - The benefit is that if someone copies your works without your permission, you can recover attorney fees and statutory damages of up to \$150,000 per act of willful infringement.
 - Copyrights can only be enforced in federal court.

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10. Fair use means that a fair, legal copy of a work may exist without the author's permission in a manner that the copyright act says is fair.

- The most common fair use is for educational or instructional purposes and not for profit.

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