

Copyright or wrong: how to source materials online without getting into strife - Mumbrella

From Pinterest to Instagram - there's content everywhere, but just because it's in the public domain doesn't mean we have the right to use it. Lawyer Sharon Givoni takes us through "unconscious copying", freelance content, the 10% rule and why you don't need to register copyright to own it.

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Imagine the following scenarios:

1. You create a new logo concept for your client, inspired by an image you sourced online. From your perspective, you were merely inspired and you've changed it by more than 10%, so it's ok to use right? Wrong.



1. You create a mood board to promote your brand by reproducing images downloaded from Instagram and upload this on your website. You think that this is fine to do under copyright law. Is it though? Unless you have permission to use those images, the answer could be no.
1. You post on your Instagram profile some intricate lettering you created for a client and then you are surprised when your client requests you take it down. But I created it, so I own it right (you think)? Well, not always. It would generally depend on what was agreed to and whether you transferred copyright to your client.

All of these situations give rise to copyright issues that can trap creative business people inadvertently.

Some basics

Key points you should know are:

1. Copyright does not protect ideas but it can protect the expression of ideas.

2. Copyright protects works if they are original (that is, independently created and not copied) and expressed in some material form.
3. Freelancers own copyright in what they create for you unless they assign it to you in writing – so just because you paid for it won't mean that you own it;
4. There is a common myth that you can avoid copyright infringement by changing someone else's work by 10% or more. In fact, the test is all about the quality of what you take, not the quantity. This is a matter of fact and degree and will change in each case.

What is copyright?

Copyright law really comes down to an incentive system which encourages people to create and innovate, by rewarding the author with certain exclusive rights in relation to that work for a certain period of time.

This includes the right to publish and reproduce a work including putting it online.

Copyright protection arises automatically as soon as a work is created and reduced to some sort of tangible form.

In other words in Australia, you are not required to register it nor do you have to use the "©" symbol to be protected. It protects a wide range of works, including [maps](#), [performances](#), [paintings](#), [photographs](#), [sound recordings](#), [motion pictures](#) and [computer programs](#) and even choreographic dances.



Fake Dictionary, definition of the word Copyright.

Numbers, numbers ...

Further, it is not a numbers game or an exact science. There is no such rule that if you change a work by 10%, you will avoid copyright infringement. Rather, the court looks at the quality of what has been copied, not the quantity. In other words, if the essential features of another work are copied this could breach someone else's copyright.

Although this can be difficult to navigate, let's put it this way: you do not have to copy all of someone's work to be liable for copyright infringement. Conversely, if you believe someone has copied your work, even if they have

“tweaked” it, you may have legal remedies against them.



Copyright infringement

This is a short blog and we need to simplify things but bear in mind that there are all sorts of other rules such as the fact that someone can by accident unconsciously copy and get caught out by the law, but you might be surprised to know that they do extend beyond pulling out some tracing paper:

- Direct infringement– Essentially, if you reproduce someone else’s work without their permission, you may be liable for copyright infringement. Think twice whether that painting hanging in the art gallery is special enough for you to risk photographing and posting it on Instagram which in itself can amount to copyright infringement.
- Authorising infringement– If a client was to ask you to create a new business logo for them and that logo is conspicuously similar to someone else’s business logo. In this scenario, not only could you be liable for copyright infringement but your client may also be liable for authorising the infringement by asking you to copy especially if they said it was “OK” to do so.
- Unconscious copying – You may be liable for copyright infringement even if you had no intention of copying. If your stroke of creative genius does include a work that you had previously access to and have probably seen before, a court could infer that your moment of creativity was not so inspired after all.

The moral of the story?

Copyright can be a creator’s shield as well as their sword if someone else copies their creative work. Having some knowledge and legal advice can get you a long way.

Sharon Givoni is a lawyer, lecturer and author of *Owning It*. She is speaking at the [Life In Style](#) event in Melbourne, Aug 4-7.