

You are here: [Home](#) / [Articles](#) / Inspiration vs Perspiration – The Basics of Copyright with Sharon Givoni

Inspiration vs Perspiration – The Basics of Copyright with Sharon Givoni

AUGUST 10, 2015 BY MONICA DAVIDSON



Owning It: A Creative's Guide to Copyright, Contracts and the Law – by Sharon Givoni.

What happens when you take a bit too much inspiration and don't invest enough perspiration? This article includes a run down on some basic copyright rules, by [Sharon Givoni](#)*

Creative people are forever building on ideas they absorb from the environment around them. However when it comes to copying others, there is taking a touch of inspiration or too much of someone else's, excuse the term, perspiration. As a copyright lawyer, in my experience there tends to be a great deal of confusion as to what the law allows.

Take the following examples:

- You design a packaging for a client, inspired by an image you sourced online. How close is too close before you might be accused of 'copying' under the law?
- You create a collage using images downloaded from other website, and then display this on your website. Can you legally do this even if you have permission to use those images?
- You created a particular scribble character for a range of children's products and discover someone else seems to have stolen your idea by creating a similar character. What are your rights? Have they crossed the line?

There are many myths surrounding what is and is not affected by copyright law and this can easily trip people up especially in the world of creative businesses.

Moreover the digital world has meant that sometimes people think that they can do things differently from the analog world especially in our right click, copy and paste culture of sharing, remixes, mash ups, collaborations and streams.

This article will explore the fundamentals of copyright law.

What is copyright?

Copyright is an incentive system which encourages people to create and innovate by giving them certain exclusive rights in relation to that work for a certain period of time – usually the life of the author plus an extra 70 years. At its core, it's about owning your work and having control over how it is used and disseminated.

These sorts of rights include the exclusive right to reproduce something such as picture, post it online, publish it and, in the case of written works, translate them into other languages. The list goes on.

Copyright protection springs to life once a work is created and reduced to some sort of tangible form.

In Australia, you are not required to register it nor do you have to use the "©" symbol to be protected. It protects a range of works. These include [maps](#), [performances](#), [paintings](#), [photographs](#), [sound recordings](#), works of artistic craftsmanship (such as hand-crafted pottery), [motion pictures](#) and [computer programs](#) and even buildings.

Some key things to remember about copyright law are:

1. Copyright does not protect ideas but rather protects the expression of ideas.
2. Copyright protects works if they are original (that is, independently created and not copied) but they need to be reduced to some tangible form.
3. Just because you paid someone to create a copyright work will not necessarily mean you own it.
4. There is a myth that you can avoid copyright infringement by changing someone else's work by 10% or more. Not so, the test is all about the quality rather than the quantity of what you take.

Copyright unpacked

For example, if you create an image of a cat made of geometrical shapes, you own copyright in that particular image. However, you do not own the idea of creating an image of a cat using triangles.

So no one can have monopoly over the idea of creating images using vector graphics. However if someone copies the actual image that can amount to a copyright infringement.

So, how much is too much?

Whether or not a work has been copied is not really a numbers game. For example, even if you change a work by a certain percent this will not mean that you will avoid copyright infringement.

Rather, the test is one of **quality** over **quantity**. In other words, if the essential features of another work are copied this will generally breach someone else's copyright. The question a court would ask is whether the work has been **substantially reproduced**.

There are some defences such as if the work is used in the process of criticism or review or for research or study purposes they may not apply to your scenario.

Perhaps the important message to take away from all of this is that you do not have to totally reproduce someone's work to be liable for copyright infringement. It could just be the main feature, the part that people may remember – think quality over quantity.

Copyright infringement

Copyright infringement can happen in a number of ways. These include when someone reproduces something exactly such as photocopying it or posting it online without the permission of the copyright owner, authorising a copyright infringement – so if you tell someone that it's 'OK' to copy a copyright work.

Unconscious copying can also trip you up, for example, if an image was stuck in your head and later copy it even if you do so innocently not realising it. This happened in the case of *My Sweet Lord*. Back in the 1970's the former Beatle band member, George Harrison, was held to have infringed copyright in an earlier song. It was held that when George Harrison created the song *My Sweet Lord*, he unconsciously copied the earlier song 'He's So Fine' by Ronnie Mack.

Finally, if someone coincidentally comes up with a similar work independently there will be no copying.

What about the internet?

Generally speaking, unless works are out of copyright or there is a "creative commons licence" attached to the work (which essentially means that you can use the copyright work if you abide by certain terms, such as attributing the author), you can infringe copyright if you reproduce works from the internet. Just because something has posted online doesn't make it ok to copy the works.

Even if you do not use the works for money making purposes, the law does not treat that as an excuse in its own right.

Finally, a word about contractors

There are certain ownership rules relating to copyright and they are set out in the Copyright Act. In Australia, generally contractors retain copyright in their work even if you pay them. This is subject to an agreement to the contrary.

Secondly, the person or business who has commissioned the work will generally have a licence to use that work for the purposes agreed to. It is important to set these purposes out in writing at the outset (could be in a detailed legal agreement or as simple as email correspondence).

Finally, designers that are employed by someone else should bear in mind that there is a general rule that your employer will own copyright in the works you have created in the scope of your employment. Again this basic rule is set out in the Copyright Act and is subject to an agreement to the contrary.

The take away message here is to always:

- read your contracts carefully before signing them;
- ensure that you keep these ownership rules in mind if you are running a creative business 'on the side'; and
- Remember that you may have some bargaining power to change the situation if you need to.

For a business commissioning a work remember that unless you have the copyright assigned to you (i.e. transferred to you in writing) you will have limited rights.

Sum-up

The above only touches on a number of issues of this complex area of law. It is intended as a starting point or, food for thought and readers are encouraged exploring matters in more detail if they think it could impact on their business or them.

Sharon Givoni's new book – [Owning It: A Creative's Guide to Copyright, Contracts and the Law](#) – contains comprehensive chapters on copyright, moral rights, licensing and industry specific areas which relate to the creative industry, graphic designers, architects, photographers and other creatives. It is also visually rich with images from well known Australian creatives and is packed with great stories to bring the law to life.

*** IMPORTANT DISCLAIMER: This article is of a general nature only and must not be relied upon as a substitute for tailored legal advice from a qualified professional. Sharon Givoni owns copyright in this article.**

Like it? Share it:



FILED UNDER: ARTICLES
TAGGED WITH: BUSINESS, COPYRIGHT, CREATIVE BUSINESS, INTELLECTUAL PROPERTY

AD HOC NEWSLETTER

It's the easy way to keep up-to-date with everything you need to know as a creative freelancer, without the hard slog!

About Monica Davidson

Monica Davidson has been freelance since she was sixteen years old, first as an upstart young journalist, and later as a writer and filmmaker. After more than twenty-five years in creative business Monica has become an expert on freelancing and self-employment in the arts.

ABOUT MONICA

My main qualification is that I have never had a so-called 'proper' job – I have been making a living as a freelance writer and filmmaker for over twenty years, and over time have become an expert on creative business and freelancing. I am a professional speaker, published author, working mum and passionate loudmouth about the fusing of art and commerce. I'm also a movie buff, a lover of pink champagne and a karaoke devotee. [\[More...\]](#)

CONTACT

Our Address:
Suite 3, Level 1, 66 Oxford Street
DARLINGHURST NSW 2010 Australia

Email Addresses:

To contact the office – hello@creativeplusbusiness.com

To contact Sarah directly – sarah@creativeplusbusiness.com
To contact Monica directly – monica@creativeplusbusiness.com

Telephone:
The Office number: 02 8091 2082

Monica's Direct Line: 0408 211 318

Mailing Address:
PO Box 37 Broadway NSW 2007 Australia

GET THE ADHOC NEWSLETTER

It's the easy way to keep up-to-date with everything you need to know as a creative business, without the hard slog!

LOOKING FOR SOMETHING?

FREELANCING FOR AUSTRALIANS

Get Monica's book about freelancing...
Freelancing for Australians for Dummies by Monica Davidson and Susan M. Drake (US author)
 Published by John Wiley. Released in bookstores across Australia in August 2008.
Only \$35.00 +p&h

Buy Now

Creative Plus Business
919 likes

[Like Page](#) [Sign Up](#)

Be the first of your friends to like this