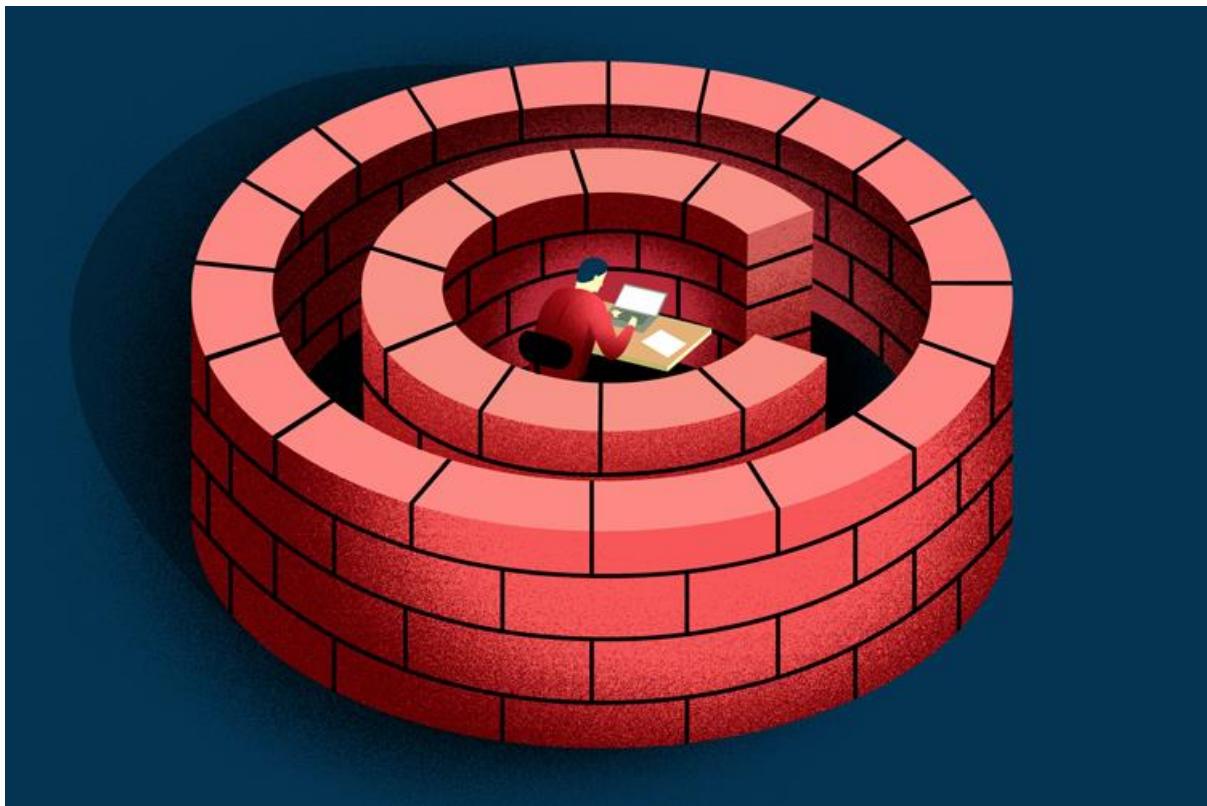


# Copyright and Wrong: A Basic Guide for Designers

December 16, 2015 by [Sharon Givoni](#) – [0 Comments](#)

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*This is Part One in our “Copyright and Wrong” series by Melbourne-based intellectual property lawyer Sharon Givoni. Sharon is the author of [Owning It: A Creative’s Guide to Copyright, Contracts and the Law](#).*

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Imagine the following scenarios:

You create a logo for your client, inspired by an image you sourced online. You were merely inspired and you've changed it by more than 10 per cent, so it's okay to use, right? Wrong.

You create a mood board to promote your brand using images from the internet and then put it on your website. Is this a breach of copyright law? Unless you have permission to use those images, the answer could be yes.

You post some lettering you created for a client on Instagram. You're surprised when your client requests you take it down. “But I created it, so I own it, right?” Not always. It would generally depend on what was agreed to and whether you transferred copyright to your client.

There are many myths surrounding what's affected by copyright law and the issues that can inadvertently trip up creatives in their everyday business dealings, so let's start by covering the creative copyright basics.

### **What is copyright?**

Copyright is an incentive system that encourages people to create and innovate by rewarding the author with certain exclusive rights for that work for a period of time.

In Australia, copyright protection arises automatically – as soon as a work is created and reduced to a tangible form. In other words, you are not required to register or use the “©” symbol for your work 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.

Some key things to remember are:

1. Copyright does not protect ideas but can protect the expression of ideas.
2. Copyright protects works if they are original (that is, not copied) and expressed in some material form.
3. There needs to be an author, so an automatically-generated database, such as a telephone directory, would not be protected.
4. Just because you paid someone to create a work will not necessarily mean you own it.
5. Just because you created a work does not mean you can post it to your website or social media feed.
6. There is a common myth that you can avoid copyright infringement by changing someone else's work by 10 per cent or more. In fact, the test is all about the quality of what you take, not the quantity.

### **Copyright in action**

While copyright protects tangible work, it does not protect thoughts, concepts or ideas. For example, if you draw a picture of a boy holding a balloon, you own copyright in this particular drawing. However, you don't own the idea of a drawing of a boy holding a balloon. This makes sense. After all, no one individual can have a monopoly over an idea.

### **Substantial reproduction**

But just to complicate things, copyright law prohibits people from making an exact copy of your work and from copying a substantial part of your drawing.

“So, just the boy without the balloon is not a substantial reproduction? Or what if the boy was holding two balloons?! Now I'm confused.”

Don't worry, you're not alone. This is one of the trickiest parts of copyright law and is known as the idea/expression dichotomy. There's a fine line between whether an idea or the actual expression of that idea has been copied.

### **Numbers, numbers...**

Whether or not a work has been copied is not a numbers game or an exact science. There is no such rule that if you change a work by 10 per cent, you will avoid copyright infringement. As mentioned, 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, the important message is that you do not have to copy all of someone's work to be liable for copyright infringement – it could just be the main feature. Conversely, if you believe someone has copied your work, even if they have "tweaked" it, you may have legal remedies against them.

### **Copyright infringement**

Copyright infringement can happen in a number of ways, and while this blog post simplifies the details, you might be surprised to know that it does extend beyond pulling out some tracing paper.

Direct infringement: Essentially, if you reproduce someone else's work – in any form – without their permission, you may be liable for copyright infringement. Something as simple as photographing a painting in a gallery and posting it on Instagram can amount to copyright infringement.

Authorising infringement: A client asks you to create a new logo for them based on something conspicuously similar to another business's 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.

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 you have probably seen before, a court could infer that your moment of creativity was not so inspired after all.

### **Style and technique**

"So, I pretty much have to have lived in a cave in order to ensure that I am not copying anyone else's work, consciously, subconsciously or unconsciously?"

Well, the law is not that harsh. However, it does not give protection to ideas, styles and techniques, regardless of how signature they may be to a particular creator. In the Australian case of *Vella v Cummins* (2002), Queensland artist Dean Vella was unsuccessful in trying to prevent another artist, Greg Cummins, from using 'impasto' technique and painting themes inspired by Vella's work and style. The court reiterated that Vella could not own the ideas, styles or the technique he used in his works.

The law seeks to address the delicate balance between allowing creators to freely use concepts, styles and techniques and giving creators enough protection to prevent someone from copying their works.

## **The internet**

"This doesn't really apply to me because I only use images from the internet without the "©" symbol, so that's fine...right?"

Some people fall into the trap of thinking that just because works are on the internet or they cannot find the owner of the image, they are free to pin it, share it, tweet it, add it to your mood board, print it, photocopy it, etc. But the reality is that works on the internet may own the same rights as any other copyright works. If in doubt, ignorance is not an excuse.

## **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.

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*Image by [Symon McVilly](#)*