

Copyright Myths Uncovered Part 1 of 3

“Have you ever violated a copyright law?” This is my favorite question to ask at a seminar. Everyone looks at each other and maybe a few hands go up. I then tell participants that everyone’s hand should go up. Only a rare, rare person can state that he or she has not violated a copyright law.

Traveling around the country speaking to many artists in the arts and crafts industry affords me a unique opportunity to truly keep my ear to the current issues facing our industry. After every one of my seminars I enjoy the opportunity to speak to the attendees and answer questions that they may have. While each seminar is in a different part of the country, I noticed a string of questions that tend to pop up each time I speak.

These questions touch the very foundations of copyright law and how it relates to the hobby and craft industry. Copyright law can be very complicated and, therefore, myths abound. I enjoy the look on participants’ faces when a myth is dispelled. Many participants reveal to me that they operated their business according to these myths for years and that they now realize how unprotected their work is. This article discusses a few of the common copyright myths and the truth behind them.

MYTH: If I send myself a copy of my work via the United States Postal Service, the sealed envelope and postmark will serve as proof of my copyright.

This myth remains one of the most circulated anywhere. However, it couldn’t be further from the truth. The U.S. Copyright Act states that an artist automatically creates a copyright when the artist creates the work. The moment the artist affixes his or her expression to a tangible medium, the artist creates the copyright as well.

If the copyright owner wishes to obtain maximum protection for his or her copyright, the artist needs to register his or her work with the United States Copyright Office (see address at end of article). The registration process remains relatively simple with a one- or

two-page registration form and an approximate \$30 registration fee.

Registration serves many important functions. It permits a copyright owner to seek a federal court action for infringement. Registration also permits a copyright owner to seek attorney fees and statutory damages for infringement. These heightened damages usually outweigh any lost profits and usually far exceed the \$30 registration fee.

MYTH: It is not copying if I change a certain percentage of the original.

There is a general guideline to follow when one creates a work based on the work of another: If another person would look at your work and see the work of the original artist instead, then it could be infringement. A work can contain many different elements. Some of those elements are protectable and others are not. Parts of a work that are copyable are those that are in the public domain and those that cannot be expressed any other way (i.e. a bouquet of flowers). However, the unique and individual artistic expression cannot be copied. If another person can look at your work and see the unique aspects of the work of another, then infringement could be found.

There is no bright line rule regarding a certain percentage or certain number of elements to change in order to make a copy “legal.” Copyrights protect originality and creativity. If your work captures another’s expression of his or her originality and creativity and not your own, then your work could be considered infringement.

MYTH: If the pattern does not have the © copyright symbol, then it is in the public domain and anyone can use it.

Remember from the previous question, a copyright vests in the owner the moment the artist creates his or her work. The copyright symbol puts the world on notice that the owner claims a copyright in the work. However, the Copyright Act of 1989 no longer requires marking on the work in order for the copyright



COMMANDMENT XI

Thou shalt use thy copyright notice formula:

- ©
- +
- Date of Creation and
- Any Subsequent Revisions
- +
- Owner of the Copyright

to be valid. Placing the proper copyright formula on a work helps prevent a claim on “I didn’t know.”

Please remember, the appropriate © copyright notice formula is: © + Date of Creation and Any Subsequent Revisions + Owner of the Copyright

MYTH: An out-of-print publication is free to copy.

Copyright protection generally lasts for the life of the creator plus 70 years. Generally, company copyright owners own a copyright for 95 years from the year of its first publication, or a term of 120 years from the year of its creation, whichever expires first. The U.S. Copyright Act determines the longevity of the copyright based on the life of the author or publication, not whether or not the article is in print.

MYTH: A photocopy of the pattern or line drawing for personal use is acceptable.

A photocopy of a pattern or a line drawing could be considered infringement unless the copyright owner grants the purchaser permission in the copyright statement, usually at the front of the publication.

The right to reproduce a work vests in a copyright owner. A photocopy could be considered a reproduction, even if it is one copy for your personal use. Most artists state in their copyright statement whether or not it is acceptable to photocopy the pattern for personal use or not. Some artists prefer that a purchaser make a hand copy of the pattern instead of a photocopy. Instructions usually state that a purchaser can transfer the pattern to the surface, but that is not the same as making a copy.

If the copyright statement does not address whether or not a purchaser can photocopy or hand copy the pattern, then the purchaser should assume that he or she does not have permission to make the copy.

MYTH: A proud artist can post a picture of his or her work on the Internet based on a pattern or publication of another artist.

A picture of a work created from a pattern or publication should not be posted on the Internet or elsewhere unless the copyright owner grants permission. The picture “posting” could be considered a display or copy. Once again, these are exclusive rights held by the copyright owner. If the copyright statement is silent or is missing altogether from the publication, then a purchaser will need to seek permission from the copyright owner in order to post a picture on the Internet or elsewhere.

MYTH: It is OK to teach a pattern or publication and make copies of the pattern for each student without requiring the student to purchase an original copy of the pattern.

This myth continues to rob the arts and crafts industry of revenue and integrity. Unless the class is being

taught in a public or private school or university, the “exception” to the rule probably does not apply. Most private studios or stores should purchase a pattern for each student unless the copyright statement specifically grants permission for the purchaser to teach and make copies for students.

Teachers using a pattern or publication in a public or private school or university may also want to consider purchasing the pattern or publication for his or her student. The Fair Use Exception to the U.S. Copyright statutes allows portions to be copied for educational purposes in limited amounts.

This portion of the U.S. copyright law is very complicated. However, it is important for teachers to consider purchasing a pattern for each of his or her students if the teacher needs to copy the entire pattern even if the teacher believes the exception applies. Recent court cases found that it is possible to infringe a copyright even in an education setting if the entire portion of the work was copied.

It is amazing how many “urban legends” circulate. However, many of us are learning to check one of the many websites available to see if the myth is actually true. The same should be true for copyright law as it relates to the decorative painting industry. Copyright law does not have to be complicated. I always like to leave my seminar attendees with this statement: “When in doubt, check it out or leave it out.” This serves as an important guide and can help you navigate copyrights and decorative painting. ☼

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To learn about registering your artwork, contact the U.S. Copyright Office at 101 Independence Ave., Washington, D.C. 20559-6000, (202) 707-3000, www.copyright.gov.

Author’s Sketch

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