



Are you confused about copyright?

Most artists are, but the idea is really based on one simple premise: As creator of your artwork, you have certain inherent rights over your work and can control how each one of your artworks is used, until you sell your rights to someone else.

The legal term for these rights is called copyright. Technically, any original artwork you produce is automatically copyrighted as soon as you put it in tangible form. To be automatically copyrighted, your artwork must fall within these guidelines:

- **It must be your original creation.** It cannot be a copy of somebody else's work.
- **It must be "pictorial, graphic, or sculptural."** Utilitarian objects, such as lamps or toasters, are not covered, although you can copyright an illustration featured on a lamp or toaster.
- **It must be fixed in "any tangible medium,"** now known or later developed. Your work, or at least a representation of a planned work, must be created in or on a medium you can see or touch, such as paper, canvas, clay, a sketch pad or even a website. It can't just be an idea in your head.
- **An idea cannot be copyrighted.**
- **Copyright lasts for your lifetime plus seventy years**
- **Copyright is exclusive.**

When you create a work, the rights automatically belong to you and nobody else but you until you sell those rights to someone else. In October 1998, Congress passed the Sonny Bono Copyright Term Extension Act, which extended the term of U.S. copyright protection. Works of art created on or after January 1978 are protected for your lifetime plus 70 years.

The artist's bundle of rights

One of the most important things you need to know about copyright is that it is not just a singular right. It is a bundle of rights you enjoy as creator of your artwork. Let's take a look at the five major categories in your bundle of rights and examine them individually:

- **Reproduction right.**
You have the right to make copies of the original work.
- **Modification right.**
You have the right to create derivative works based on the original work.
- **Distribution rights.**
You have the right to sell, rent or lease copies of your work.
- **Public performance right.**
The right to play, recite or otherwise perform a work.
(This right is more applicable to written or musical art forms than visual art.)
- **Public display right.**
You have the right to display your work in a public place.

This bundle of rights can be divided up in a number of ways, so that you can sell all or part of any of those exclusive rights to one or more parties. The system of selling parts of your copyright bundle is sometimes referred to as "divisible" copyright. Just as a land owner could divide up his property and sell it to many different people, the artist can divide up his rights to an artwork and sell portions of those rights to different buyers.

Divisible copyright: Divide and conquer

Why is this so important? Because dividing up your bundle and selling parts of it to different buyers will help you get the most payment from each of your artworks. For any one of your artworks, you can sell your entire bundle of rights at one time [not advisable!] or divide and sell each bundle pertaining to that work into smaller portions and make more money as a result. You can grant one party the right to use your work on a greeting card and sell another party the right to print that same work on T-shirts.

Clients tend to use legal jargon to specify the rights they want to buy. The terms below are commonly used in contracts to specify portions of your bundle of rights. Some terms are vague or general, such as “all rights”; others are more specific, such as “first North American rights.” Make sure you know what each term means.

- **One-time rights.** Your client buys the right to use or publish your artwork or illustration on a one-time basis. One fee is paid for one use. Most magazine and bookcover assignments fall under this category.
- **First rights.** This is almost the same as purchase of one-time rights, except that the buyer is also paying for the privilege of being the first to use your image. He may use it only once unless the other rights are negotiated. Sometimes first rights can be further broken down geographically when a contract is drawn up. The buyer might ask to buy first North American rights, meaning he would have the right to be the first to publish the work in North America.
- **Exclusive rights.** This guarantees the buyer’s exclusive right to use the artwork in his particular market or for a particular product. Exclusive rights are frequently negotiated by greeting card and gift companies. One company might purchase the exclusive right to use your work as a greeting card, leaving you free to sell the exclusive rights to produce the image on a mug to another company.

- **Promotion rights.** These rights allow a publisher to use an artwork for promotion of a publication in which the artwork appeared. For example, if The New Yorker bought promotional rights to your cartoon, they could also use it in a direct mail promotion.

- **Electronic rights.** These rights allow a buyer to place your work on electronic media such as websites. Often these rights are requested with print rights.

- **Work for hire.** Under the Copyright Act of 1976, section 101, a “work for hire” is defined as “(1) a work prepared by an employee within the scope of his or her employment; or (2) a work . . . specially ordered or commissioned for use as a contribution to a collective, as part of a motion picture or audiovisual work or as a supplementary work ... if the parties expressly agree in a written instrument signed by them that the work shall be considered a work made for hire.” When the agreement is “work for hire,” you surrender all rights to the image and can never resell that particular image again. If you agree to the terms, make sure the money you receive makes it well worth the arrangement.

- **All rights.** Again, be very aware that this phrase means you will relinquish your right to a specific artwork. Before agreeing to the terms, make sure this is an arrangement you can live with. At the very least, arrange for the contract to expire after a specified date. Terms for all rights-including time period for usage and compensation-should be confirmed in a written agreement with the client.

Since legally your artwork is your property, when you create an illustration for a magazine you are, in effect, temporarily “leasing” your work to the client for publication. Chances are you’ll never hear an art director ask to lease or license your illustration, and he may not even realize he is leasing, not buying, your work. But most art directors know that once the magazine is published, the art director has no further claims to your work and the rights revert back to you. If the art director wants to use your work a second or third time, he must ask permission and nego-

tiate with you to determine any additional fees you want to charge. You are free to take that same artwork and sell it to another buyer. However, had the art director bought “all rights,” you could not legally offer that same image to another client. If you agreed to create the artwork as “work for hire,” you relinquished your rights entirely.

What licensing agents know

The practice of leasing parts or groups of an artist’s bundle of rights is often referred to as “licensing,” because (legally) the artist is granting someone a “license” to use his work for a limited time for a specific reason. As licensing agents have come to realize, it is the exclusivity of the rights and the ability to divide and sell them that make them valuable. Knowing exactly what rights you own, which you can sell, and in what combinations will help you negotiate with your clients.

Don’t sell conflicting rights to different clients

You also have to make sure the rights you sell to one client don’t conflict with any of the rights sold to other clients. For example, you can’t sell the exclusive right to use your image on greeting cards to two separate greeting card companies. You can sell the exclusive greeting card rights to one card company and the exclusive rights to use your artwork on mugs to a separate gift company. It’s always good to get such agreements in writing and to let both companies know your work will appear on other products.

When to use the Copyright © and credit lines

A copyright notice consists of the word “Copyright” or its symbol ©, the year the work was created or first published and the full name of the copyright owner. It should be placed where it can easily be seen, on the front or back of an illustration or artwork. It’s also common to print your copyright notice on slide mounts or onto labels on the back of photographs.

Under today’s laws, placing the copyright symbol on your work isn’t absolutely necessary to claim copyright infringement and take a plagiarist to court if he steals your work. If you browse through magazines, you will often see the illustrator’s name in small print near the illustration, without the Copyright ©. This is common practice in the magazine industry. Even though the © is not printed, the illustrator still owns the copyright unless the magazine purchased all rights to the work. Just make sure the art director gives you a credit line near the illustration. Usually you will not see the artist’s name or credit line alongside advertisements for products. Advertising agencies often purchase all rights to the work for a specified time. They usually pay the artist generously for this privilege and spell out the terms clearly in the artist’s contract.

For more information, these are some sites that you can go to:

www.copyright.gov

www.benedict.com

or go to the Library of Congress site - you can find that through any browser search, and search copyright information.