

## Know Your Rights!

*What does a copyright do and what does it not do? What would you be asked to prove if someone were seen to be copying your design?*

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### HOW TO PROVE INFRINGEMENT:

- Someone INFRINGES your copyright when they copy your design. Just having a *similar* design as yours is not enough – you must show they *copied* you.
- To prove infringement you must show two things: **access** and **substantial similarity**.
- **Access:** This shows that the copier had an opportunity to see your work and ample ability to copy it. If they never had access, they probably did not copy. If you have sold or marketed your work extensively, access can be inferred, and you don't need to prove it specifically. If a copier would have "a reasonable opportunity" to see your work in catalogs, stores, or galleries, access is satisfied. Access can also be inferred if the similarity between your design and the copier's is so striking and substantial that it seems very likely they copied you. Always keep business cards and maintain accurate records of former employees, clients, and anyone you show your work to at a trade show.
- **Substantial Similarity:** This shows that because a copier's design is so similar to yours, they probably copied you. You generally prove this by an objective test: would the average person think these two designs look substantially similar?

### WHAT CAN BE COPYRIGHTED:

- **Expressions:** You are copyrighting your original *expression*. It must be in a "fixed, tangible medium." Therefore, ideas cannot be copyrighted, *only the expression of those ideas in a physical form* – like a sculpture, glasswork, or painting.
- **Originality:** You must have created the design yourself, without copying someone else.
- **Utilitarian Objects:** These usually fall in the realm of patents. You cannot copyright a new lamp or chair you've just made. However, any original design elements you incorporate in the work can be protected. The question is whether the design (your original expression) can be separated from the utilitarian object (the chair or lamp itself): for example, original patterns, color schemes, or shapes used to decorate the lamp are your copyrightable designs.
- **Public Domain:** Generally images or designs taken from "the public domain" cannot be copyrighted. This means elements having to do with nature or historical and cultural icons. You can't prevent other people from making "fish" designs in glass just because you did first, and you can't copyright the American Flag. You might be able to stop them, however, from copying the exact patterns, designs, and shapes you use to make a fish.

## Protect Your Work

← Fresh designs are a hot commodity and, like it or not, craftspeople are an easy target. Take steps now to prepare for design infringement. **Don't get caught with your back turned!**

### CREATE A PAPER TRAIL

You never know when a simple conversation will later become crucial information for your lawyer. In most cases, those with well organized documentation will win. *Remember these tips:*

- Save all documents related to your copyright.
- Keep records of everyone you sell your work to, especially at a trade show.
- Most importantly, save cards and contact information for anyone who entered your booth at a show and/or asked questions about your work.
- Take notes of phone conversations with potential buyers and those you talk with about your work.
- Be sure to record the *when* as well as the *who*, *what*, *where*, and *why*.
- If you are ever knocked-off you may have to prove the copycat's access to your work – be prepared in advance!

### WHO ARE YOU DEALING WITH?

It's sad, but true... Many artists are copied by clients or prospective buyers at trade shows. While you can't get a full bio on everyone who views your work, you can be aware of your trade show's policy for attendance and badging. Who receives a qualified 'buyer' badge and how much proof must they supply that they resell merchandise? Use this as a spring board to build a relationship with clients. If your show has weaker entry standards, strengthen your in-booth line of questioning. Don't be so at the mercy of *any* sale that you give away your trade secrets.

### DEFENSE 101:

- Copyright your work and record your copyright with Customs.
- Consider getting a trademark, which protects your work's name, 'identity,' and even your marketing scheme.
- Always **indelibly** sign, date, and number your work.
- Know a lawyer you can turn to in case you have a problem. Consider the Volunteer Lawyers for the Arts Association in your area, which often has a phone consultation line for quick advice.
- Before you sign ANYTHING with a prospective buyer, make sure there is a clear understanding of terms of sale and that you know where and under what conditions your work will be sold.
- Have anyone who buys your work sign an agreement stating they will not copy it, especially if you license your design to others for manufacture.

### WORK THE WEB

In your search for basic information, use these web sites as a place to start:

[www.starvingartistslaw.com](http://www.starvingartistslaw.com)  
[www.businesslaw.gov](http://www.businesslaw.gov)  
[www.copyright.gov](http://www.copyright.gov)  
[www.nolo.com](http://www.nolo.com)

The *Rosen* Group

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410.889.2933 • [legal@rosengrp.com](mailto:legal@rosengrp.com) • [www.americancraft.com](http://www.americancraft.com)

*This document is not intended to take the place of the advice of an attorney. Always consult your lawyer if you have a legal problem.*

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