

Copyright And You: Have You Tried Creative Commons?

Copyright is as old as printing and as new as today. As freelancers, whether writing, designing for print or the Internet, broadcasting, filming, or creating music, you should be aware of your rights as well as the down side of selling your work for a living.

Basic copyright law as of 1976 and its various amendments, up to and including the Digital Millennium Copyright Act (DMCA) of 1998, is a broad-based legal statement that gives you the right to profit off your work. Ironically, American copyright legislation was created by our founding fathers to further creativity. As we move deeper into the 21st century, the resulting lockup of creative materials by more and more stringent rules for usage as well as the lengthening of time a work is protected has had the opposite affect of stifling innovation and creativity because “there is nothing new under the sun.” (Ecclesiastes 1:2–11)

I like to use a wonderful short story called “Melancholy Elephants” by Spider Robinson who postulates in this Hugo-award winning piece that in the future every single creative work in the world will be copyrighted and that copyright lasts forever, thus new creations or innovations in this dystopia dry up. It is a chilling and wonderful way to explain the straightjacket of standard copyright. You can read the story on Spider’s website at <http://www.spiderrobinson.com/melancholyelephants.html>.

This article explains what has happened and how to use a new type of Open Source copyright legal marking and statement to open up your work in a controlled way so that you and others might benefit by sharing without compromising your income.

What Is A Copyright?

When you post the following statement:

Copyright © year Your Company Name. All rights reserved.

you are stating that you own all the rights and privileges to your work, period. You are protecting yourself from anyone who tries to “make and sell copies of the work, publicly show the work, import or export the work and assign these rights to others.” Notice that you are protecting your work, but not the ideas behind the work.

The following types of work are protected by copyright.

1. Original literary works (novels, instruction manuals, computer programs, lyrics for songs, articles in newspapers, some types of databases, but not names or titles)
2. Original dramatic works, including works of dance or mime
3. Original musical works
4. Original artistic works, e.g. paintings, engravings, photographs, sculptures, collages, works of architecture, technical drawings, diagrams, maps, logos
5. Published editions of works, i.e. the typographical arrangement of a publication
6. Sound recordings, which may be recordings on any medium, e.g. tape or compact disc, and may be recordings of other copyright works, e.g. musical or literary
7. Films, including videos
8. Broadcasts.

The moment you commit a creative endeavor to paper or web, CD or computer file, it is copyrighted. The mark shown above is a warning to your viewers that the work is protected.

Copyright law provides a limited use clause called “fair use.” This is a loophole through which free libraries, educators, universities, commentators, bloggers, critics, and journalists may quote with proper attribution, from a

copyrighted work. The definition of what exactly constitutes fair use is a murky topic that is still being debated in courts.

Freelance and Copyright — An Uncomfortable Arrangement

When Congress last amended copyright law in 1976, they added a clause that causes problems for freelance artists, writers, and designers. Basically, the law gave copyright ownership to the "author" of a creative work as long as it was not a "work made for hire," in which case the copyright belonged to the organization for whom the project was executed.

Corporations such as publishers of newspapers and magazines went to court to protect their rights to withhold royalties from freelancers under an argument that the work was done "for hire" and not that the author loaned the work for publication; and these battles are still being waged.

In 1989, one of these court battles made it all the way to the Supreme Court who ruled in favor of freelance artists on commission. This is a huge win since it stated that freelance artists in most instances can keep the benefits of copyright, which include licensing and reproduction rights and protection against unauthorized copying. The decision also poses practical problems for businesses that rely heavily on freelance work. (<http://www.nytimes.com/1989/06/06/us/court-strengthens-copyright-status-of-freelance-artists-on-commission.html>)

For freelance graphic designers, setting up ownership of work is all in the contract specifications. Be sure you include at least these ownership retention items:

1. Make sure you own the original artwork objects that were used to make the finished product you give to your client. The completed project is typically owned by the client, but the photographs, composites, Photoshop manipulated files, and so forth should be clearly stipulated as belonging to you as the creator. If your client wants all the original art that went into their commissioned piece, make sure you set a price at which you will sell them these assets.
2. Make sure you are clear in the contract that the designer retains ownership of all preliminary designs. This is a protection for you in case the client cancels the commission and you've worked hours on your designs. You can then charge a fee if the client does not return the designs in a timely fashion stipulated in the contract.
3. Make sure to include a statement in your contract that you have the right to use what you deliver as promotional pieces or in your portfolio.

There is a movement to make such contract clauses as suggested above replace copyright as the legal statement of ownership. Check out the article on www.copysense.com about the importance of Preemption, Contracts, Licenses, and Consumer's Choice (http://www.copysense.com/2009/08/is_creative_commons_good_for_copyright.html). This article dovetails nicely with the next section since Copysense feels that Creative Commons, a legal method of opening up copyright so that remixing, additions, sampling, and other sharing and creative borrowing can take place over and above basic copyrights.

Use Creative Commons As Your Copyright

Creative Commons, a non-profit organization founded in 2001 by Lawrence Lessig to address the wide divide between Public Domain and strict copyright; creates a special extension of copyright that has been euphemistically called the "some rights reserved" copyright. The organization has created a fully legal mark and language that stands up in court and provides the ability to share some of the rights of ownership. Such sharing language takes copyright into the computer age, since the Internet and computer networks are basically the "Wild West" when it comes to your ability to protect your work. Creative Commons licenses were created with the help of computer scientists,

cyberlaw experts, artists, and entrepreneurs and stands up under not only American jurisprudence, but International copyright courts as well.

The benefit of using the Creative Commons copyright along side your contract to protect your ownership of your creative work is that it acknowledges that you have provided a client with part of the rights commercially while retaining other rights.

A Creative Commons license lets you stipulate how much ownership you wish to share and to whom through a simple form. The result of completing this online form, located here: <http://creativecommons.org/choose/>, is a graphic button and accompanying HTML code that can be embedded on web pages, PDFs, music CDs, video DVDs, and other original media. The actual license is registered and stored on the Creative Commons' servers.

There are five different clearances you can provide in your license:

- **Commercial Use:** You grant permission for others to copy, distribute, display, and perform the work, including for commercial purposes.
- **Non-Commercial Use:** You grant permission for others to copy, distribute, display, and perform the work only for non-commercial purposes .
- **Allow Derivative Works:** You grant permission for others to copy, distribute, display and perform the work, as well as make derivative works based on it.
- **No Derivative Works:** You grant permission for others to copy, distribute and transmit only unaltered copies of the work — not derivative works based on it.
- **Share Alike:** You grant permission for others to distribute derivative works only under the same copyright permissions that you have granted.

An example of the broadest allocation of rights through a Creative Commons license is used on Wikipedia:



*This file has been (or is hereby) released into the [public domain](#) by its author, **Haras nationaux**. This applies worldwide. In case this is not legally possible, Haras nationaux grants anyone the right to use this work **for any purpose**, without any conditions, unless such conditions are required by law.*

Creative Commons asks for several pieces of information:

1. **The owner of the material that is to be copyrighted.** This is the important attribution clause that sets up the legality of the copyright. If you do not know who originated the work, you will need to do some research to come up with all of the owners of the pieces that make up the piece.
2. **How you wish to share the work.** Once you state the owner of the work, you define how you will allow it to be used. There are three types of sharing you can allow either together or individually: full commercial

use (this is a good selection for freelancers), permissions for modifications by one person, and/or permissions of modifications if those modified works are also shared.

3. **Who, what, where, and how.** Creative Commons collects additional attribution information that identifies the name of the work, it's author, a website address or email link for the author (if it has been posted on a website), and if the work is sharable, then provide a web address that the user can link to in their attribution. You can also stipulate a web address where you have posted instructions on how to get other clearances not stated in the basic creative commons copyright.

To Learn More About Copyrights and Creative Commons

Legal Guide for Bloggers, Electronic Frontier Foundation (<http://www.eff.org/issues/bloggers/legal>)

Why Should You Care About Copyright - LoveToKnow Freelance Writing (http://freelance-writing.lovetoknow.com/Why_Should_You_Care_About_Copyright)

10 Big Myths about copyright explained (<http://www.templetons.com/brad/copymyths.html>)

Creative Commons Foundation (<http://creativecommons.org>)

Justices Consider Status of Digital Copies of Freelance Work - The New York Times (March 29, 2001)
<http://www.nytimes.com/2001/03/29/technology/29WRIT.html>

Court Strengthens Copyright Status Of Freelance Artists on Commission - The New York Times (by Linda Greenhouse, June 6, 1989) <http://www.nytimes.com/1989/06/06/us/court-strengthens-copyright-status-of-freelance-artists-on-commission.html>

Freelance And Copyright, About.com Desktop Publishing
(http://desktoppub.about.com/cs/freelance/a/contracts_4.htm)

Copycense » Your Copyright Responsibility As a Citizen (August 7, 2009)
http://www.copycense.com/2009/08/your_copyright_responsibility_as_a_citizen.html

Is Creative Commons Bad For Copyright? | Techdirt
(<http://www.techdirt.com/articles/20090901/0140596065.shtml>)

The Copyright Website (<http://www.benedict.com/>)

The Copyright Clearance Center (<http://www.copyright.com/>)

The Digital Millenium Copyright Act of 1989, UCLA Online Institute for Cyberspace Law and Policy
(<http://www.gseis.ucla.edu/iclp/dmca1.htm>)