

# copyright

This resource paper is based on a **making art work** training day, developed and delivered by Wendy Mason. Wendy has a background as a practitioner, working primarily in non-precious jewellery design; you can read more about her practice at [www.artspace.org.uk/artist\\_jewellery\\_w\\_mason.html](http://www.artspace.org.uk/artist_jewellery_w_mason.html)

Based at Yorkshire Artspace in Sheffield, Wendy has also worked as a consultant and trainer for 17 years, setting up projects which further the professional practice of visual artists, including the national Artists Access to Art Colleges (AA2A) project. For more information about AA2A, please visit the website [www.aa2a.org](http://www.aa2a.org)

Her experience covering visual arts officer posts in both the Eastern region and for Yorkshire Arts, has allowed her an overview of the training needs of practitioners in the early years of business and when moving into more specialist areas.

She has devised and presented two- and four-day training programmes for Eastern Arts Board which have been run in five counties. More recently she has developed training packages with 'Art in the City', an artists organisation based in Sheffield.

**Please note that this resource paper is intended as a general guide only to copyright issues, based on information available at the time. Although examples are used to explain different areas of copyright infringement, they should not be taken as definitive and are used for illustrative purposes only.**

**The information is provided in good faith, and no responsibility can be taken for errors and omissions. You are strongly advised to seek independent professional advice when dealing with specific issues.**

This training event was held as part of **making art work**, the professional development scheme for visual artists in Suffolk. For more information about the scheme, please visit the Suffolk County Council web site at [www.suffolkcc.gov.uk](http://www.suffolkcc.gov.uk) and follow the link from Leisure and Culture to the Arts.



**making art work** is a professional development scheme for visual artists in Suffolk, devised and managed by Suffolk County Council and part financed by the European Union European Social Fund and Arts Council England Grants for the Arts.

# Copyright

## Section 1: What isn't relevant

There are many ways of protecting your work, depending on what type of work it is, how it's produced and what it's used for. The following examples are not, in the main, relevant to visual artists.

**Patent:** this applies only to inventions.

**Registered Designs:** this applies to designs that are put into industrial production, i.e. when more than 50 copies are produced (this is why artists often only make 50 copies of any one artwork). Registering a design provides 15 years protection, and is dealt with by the Patents Office.

**Design Right:** this covers utilitarian objects and provides 15 years protection from the time of design, or 10 years protection from the moment of first manufacture, whichever is shorter.

**Trade Marks:** a trade mark is any sign which can distinguish the goods and services of one trader from those of another. A sign includes, for example, words, logos, pictures, or a combination of these; it can also include a signature. Trade marks must be registered to gain protection and this can be expensive.

For more information about any of the above categories, please visit the UK Patents Office website at <http://www.patent.gov.uk>

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## Section 2: What is relevant

### **COPYRIGHT, DESIGNS & PATENTS ACT**

The Act covers artworks and works of artistic craftsmanship. It was substantially updated in 2003. It is important to note that, along with changes to the length of time of protection provided by the Act, there are also exceptions to that protection.

The Act provides for the fact that:

**COPYRIGHT IS AUTOMATICALLY YOURS AND YOU DO NOT HAVE TO REGISTER IT. PROTECTION UNDER THE ACT LAST FOR LIFE + 70 YEARS (it used to be 50 years).**

This protection applies to all aspects of reproduction, e.g. copying and distributing (whether for profit or not) and to exhibiting in public, hiring, lending or adapting your work.

**EXAMPLE:** If you are commissioned to paint a picture of someone's estate/backyard/garden shed, and the commissioner subsequently produces a Christmas card of that picture, they have infringed your copyright – unless, of course, there was a clause in the contract which said they could use it in this way.

**EXAMPLE:** If you supply a gallery with an image for a catalogue, which they subsequently pass on for use by another organisation in a different publication, they have infringed your copyright – unless your contract/letter of agreement stated that they could pass on the image for other publications.

Once the period of life + 70 years is over, the work is considered to be **IN THE PUBLIC DOMAIN**, i.e. out of copyright, and available for general use.

### EXCEPTIONS

*Exception 1:* If you have a **contract of employment**, rather than a **contract for services**, e.g. a freelance contract, then your employer owns the copyright on your work, unless specifically signed over to you in an agreement. For example, Colleges have had running disputes with students, as the Colleges consider that they own the work done by students during their courses.

If you are contracted to deliver a residency, or other, longer term project, make sure that there is a copyright clause in your contract/letter of agreement.

Similarly, if you are engaged on a large Public Art project, be very careful with the copyright clause in the contract. This is particularly relevant where you are receiving a large fee, as Inland Revenue may decide that it constitutes employment, rather than a contract for services, and as such the copyright would reside with the commissioners and not the artist. It also, obviously, has major tax implications.

*Exception 2:* Sound recordings, films, broadcasts and cable programmes and computer generated work are covered for 50 years from creation – not the life + 70 years as applies to other works.

*Exception 3:* If more than 50 copies of an artwork are made commercially, e.g. a limited print run of 200, then protection is for 50 years from the time it is marketed.

The Act also provides for **MORAL RIGHTS** – these include

#### **Right of Paternity**

This gives you the right to be identified as the maker if your work is shown in its own right or through the media. This protection lasts for life + 70 years.

**EXAMPLE:** If a photography of your work is published and you are not credited as the maker, the publishers have infringed your copyright.

**EXAMPLE:** If an image of your work appears in the local paper, and the review says the exhibition was third rate and that your work isn't up to much you have no comeback – they can say that. If, however, they don't credit the image of your work properly, then they have infringed your copyright. AND, if you haven't made that image available to the public, they cannot use it without your permission, so again they may have infringed your copyright.

### **Right of Integrity**

This gives you the right to object to alterations which amount to distortion or mutilation – which could include cropping images.

**EXAMPLE:** If a publication uses your image, but crops it or distorts the image, they have infringed your copyright.

### EXCEPTIONS

The Act allows for changes necessary to comply with other laws, e.g. obscenity or deformation laws.

The BBC can change images to avoid offending taste and decency.

### **False Attribution**

This gives you the right to object to having your name credited on some else's work. The protection lasts for life + 20 years.

**EXAMPLE:** If a gallery exhibits your work, and credits another artist with its creation, then they have infringed your copyright.

### **Can you copyright an idea?**

No. Anyone can claim that they had an idea first, but it can't be proven. You can, however, copyright an individual representation of an idea – known as **intellectual copyright**.

**EXAMPLE:** Artist A makes a sculpture of a man, Artist B paints a picture of a man; this is not infringement. Artist A makes a sculpture of a man, holding a carrot. Artist B paints a picture of a man, holding a carrot. Still no infringement.

Artist A makes a sculpture of a man, holding a carrot. Artist B paints a picture of a man, holding a carrot – in just the same way as the sculpture, thus capturing 'the essential part' of the sculpture. Bingo, that's infringement of the sculptor's intellectual property, as the painter is obviously using the sculptor's idea.

**EXAMPLE:** You photocopy a document that has been written by someone else. That's infringement of their copyright.

**EXAMPLE:** Because you don't want to infringe the writer's copyright, you painstakingly retype the document, rather than copying it. That's an infringement of the writer's intellectual copyright, as you are still reproducing what they wrote, in the way that they wrote it.

### **Educational use of images**

In 2003, it was decided that images could be reproduced without attribution for private study. For example, a student can download an image from the web, or scan in a private view card, reproduce it in an essay and does not even have to credit the work to the maker.

However, an organisation, even a charity, would be expected to acknowledge the copyright owner, even if the use was not for commercial purposes and a commercial organisation should not even reproduce your images for a mock up without your permission.

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### **Section 3: Simple methods of protecting your copyright**

Now you know your rights – ASSERT THEM.

Basically, this means making sure that you control what happens to your work – be that an actual piece, an image of it, a reproduction and /or the use of it.

Mark everything (photos, slides, drawings etc.) with your name and the date it was made – e.g. Wendy Mason August 2005. But this does not always deter people from misappropriating your work, so you should also mark work with the universal symbol ©. (PC users, using Word, click on Insert, choose symbol, select © and click insert).

You can also protect your copyright by posting a copy of your work by recorded delivery to yourself or – preferably – a reputable/trusted third party. Then, if you ever need to prove your work has been ripped off, you will have the evidence that you were the originator of it – and threaten to open the letter in court.

We are not advocating leaping into litigation – it's lengthy, it's very expensive and frankly, if the big boys are lined up against you, your chances of success are slim.

However, if you have proof that your copyright has been infringed, you can often negotiate an acceptable result long before the courts get involved.

State what might be obvious to you but not to others. Have a standard statement that you send out with images, such as

“Copyright reminder. All images are protected by copyright and should not be reproduced without the permission of the artist.”

OR you could be more generous and say something like: -

“Copyright reminder. All images are protected by copyright. You are welcome to copy them or submit them to other publications, as long as the artist is notified and credited.”

### **Standard copyright agreement sheet**

These can state what you will allow to happen to your work, e.g. cropping backgrounds and images, use in montages, waiving attribution, printing colour images in black and white.

Organisations that regularly reproduce images will often present you with such a sheet with tick boxes, but you could produce your own or you can use a **letter of agreement**, stating what you believe has been agreed.

**EXAMPLE:** “I am happy for you to use the colour image supplied for one reproduction in your August leaflet. I understand that it will be reproduced as a monochrome as part of a montage but that the image will not be cropped. Please can you ensure that the image is credited and that the credit appears on the same page as the image. I will invoice you for the standard fee as agreed. If there is any problem with this, please let me know so we can discuss it before going to print.”

You may also consider joining DACS (see pages 9 and 10) and state that you are a member in your CV. It's professional, it's creditable – and it lets others know that if they do infringe your copyright you've got an organisation behind you that will take up the case.

### **Contracts**

Always have a copyright section in your contracts, even if they simply remind people of the law as it stands. Never assume any organisation, however august, knows the law or intends to abide by it. Think about what you actually want from a situation, e.g. credit, money or just the widest use of the image.

### **Joint copyright**

Not just Lennon and McCartney, but artist and commissioner. Wording of an agreement could be

“Work can be reproduced by the commissioner or artist on a not-for-profit basis, providing the other party is notified.”

### **Licensing**

Do not give up your copyright without very good reason. It's better to grant a commissioner or client a licence, e.g. giving the right to reproduce your work over a number of specified areas for a limited period of time, for specified forms of reproduction and merchandising, in limited countries.

This can be for a flat fee or, even better if use could be high, a royalty, depending on the amount of reproductions.

**EXAMPLE:** A textile artist licensed a pattern to a (very) well-known high street store, to be reproduced exclusively on textiles. She later discovered they were using the pattern on notepads and other small, non-textile items.

This was an infringement of her copyright. Unfortunately, the store ignored the first solicitor's letter completely. The artist could not afford to initiate proceedings and so was unable to take the (very) well-known high street store to court.

## Commissions

Even when some of the work is directed by the commissioner, the copyright still rests with the artist.

But the commissioner may argue that they need to own the copyright, and ask you to transfer rights to them, so they can take legal steps to prevent infringements of copyright or to get compensation.

This is no longer an issue, and there is no real reason to sign away your rights, as you can grant them a **non-exclusive copyright licence** which gives them the right to take legal action. This needs to be in writing and signed by you. If you grant this type of licence, they would still need to let you know before taking action against someone, so you could take part if you wanted to.

## Public art – work in public

Like architecture, public art is not covered by some aspects of copyright, e.g. sculpture and works of artistic craftsmanship (i.e. NOT paintings or photographs) in a publicly accessible space on permanent show (e.g. exhibition, shopping centre or park, etc).

This means that others can photograph, draw or film and reproduce those images.

Exhibition premises can deter infringements by restricting photographing and you often see signs saying 'no photography'.

Although under these circumstances the artist does not have copyright cover, his/her **moral rights** still apply, and so if images of their work are reproduced they should be credited as the artist and those images should not **mutilate** the work, e.g. reproduce and distort the image.

In reality, there is little you can do, other than assert your basic rights and make sure that the publicly-sited work is credited to you – and that the name appears next to the work and not on some photocopied document on the park ranger's desk.

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## Section 4: Work on the web

When sending images of your work electronically, send low resolution jpegs (a screen quality image which will not print out clearly) to guard yourself against having the work reproduced without your permission.

Images should be produced at 72 dpi (dots per inch) and as jpegs, not TIFF or GIFF. You should only ever submit images at 300 dpi (which is high-quality print resolution) if you trust the recipient, and/or you send them a statement of how the images can be used, details of attribution, etc.

And anyway, downloading an image at 300 dpi takes a long time, ties up peoples' computers for ages and, unless specifically requested, is more of a hassle than it's worth. It may also make you unpopular if the recipient isn't on Broadband.

## Digital watermarking

Don't bother. These are specialist programmes, designed to protect digital images by burying secret numbers in the image which show up as a faint watermark when printed. But it's really easy to get rid of the watermark and if someone wants to rip off your work, this will not stop them.

So, decide what you want to achieve by emailing images, work out how you will control the use of those images – and, as ever, assert your rights.

## EXAMPLES

Instead of getting too hung up on stopping reproductions, you could choose to make images and invite people to copy them, giving them instructions on attribution, etc.

Invite them to add to the image, credit you as the originator, and pass on to other artists, adding their name in turn. This has been a digital art practice in its own right.

You might also make and circulate a screensaver and incorporate your website address into the image, like a modern version of the signature in the corner of a painting.

## Digital libraries

Again, make sure you know how the library will protect your copyright. So you need to know the resolution quality of the image in the library, if the library tells viewers that copying downloaded images is not permitted, how the credits will be seen and if there is an 'audit trail', so you know who has seen your work.

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## Section 5: Photographs of your work

Two copyrights exist here; the photographers copyright of the photographic image, which you cannot reproduce without permission, and yours of the piece itself.

There is a very large grey area here, as in some cases photographs have been deemed as 'slavish copies' of the work, i.e. requiring technical expertise but no artistic/creative originality and as such do not carry separate copyright cover for the photographer. But this is open to interpretation; there is of course a real difference between flat 2D work and the type of artistic interpretation of photos, which is often more likely in 3D work.

So, it's back to managing the situation, and agreeing the copyright position with the photographer first. You could ask for the negatives/originals and to retain copyright of them, or you could make a licence agreement with the photographer.

And if you think that's taking things a bit far – just imagine if you paid a photographer to produce 6 images of a piece of work, for you to use in catalogues, promotional material etc, and then later discovered postcards of the photograph (i.e. your work) retailing in a (very) large high street store – or even a small seaside café.

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## Section 6: Respecting other peoples' copyright

While asserting your own rights, it's really important that you understand and respect the rights of others – even when they are multi-national conglomerates like MacDonalds and Coca-Cola (both of whom are just a tad sensitive about infringement).

If your use of their logo, product or whatever is incidental, then there shouldn't be a problem. So, if you make a picture of the inside of a café where there's a Coca-Cola sign displayed, that's OK.

But if the sign is used to make a point, either positive or negative, then you could be in big trouble. So maybe making a collage using MacDonald hamburger wrappers, that depicts overweight young people holding Coca-Cola bottles would not be a good idea.

And it's not just the big boys' rights that you should respect. Try nearer home.

Imagine you contract a photographer to produce 6 images for you. And then you need a 7<sup>th</sup>, but haven't time to ask the photographer for another print, so you scan in the photo and use that – you've infringed the photographer's copyright.

### **Dual copyright**

Mark all photographs with the photographers details, so that they can be properly credited.

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## **Section 6: Infringement**

Everyone seems capable of copyright infringement. This is often due to ignorance, e.g. a City Arts Gallery, which used a cropped image of a Matisse in their promotional material. This was spotted by DACS, who represent Matisse's estate, and recompense had to be paid to his heirs.

Sometimes the infringement is deliberate, and the perpetrators attempt to get round it by making small changes to the original. These changes can invalidate a claim, and because it's such an expensive and lengthy process to go through the courts, artists are put off making a claim.

### **What to do if infringement occurs**

If someone uses your work without your permission – ask them to stop. This is called **putting them on notice**.

Ask them what they intend to do to recompense you – this may be payment or damages. N.B. DACS stipulates a standard amount for one-off payments and will be able to advise you - if you are a member.

If you don't receive a prompt reply, then get legal advice. In effect, you can accurately point out the infringement and send them a bill – which could be a standard amount (e.g. in 1987 this was £50). You should send a copy of the image along with the invoice, together with all the details of when it was misused, reference to original letter asking them to stop, etc.

If they don't pay you can then use the small claims court for civil proceedings; in this case you would have to prove that, in **balance of probability**, your copyright had been infringed.

You could even go to a jury trial in a Crown Court, where they can hand out criminal records and a fine, plus compensation and costs and/or up to 2 years imprisonment for infringing someone's copyright; here you would have to prove **beyond reasonable doubt** that infringement had occurred

### **DACS – the Design and Artists Copyright Society**

This is a non-profit organisation, set up by artists to advise and collect copyright payments for 36,000 members and their heirs – as copyright normally transfers to the artists' heirs or beneficiaries for the 70 year period after death.

It costs £25 to become a life member of DACS and their services include negotiating licence agreements for artists and dealing with copyright infringements on their behalf, for which they take approximately 20% commission.

## **Payback**

DACS operates the Payback scheme, which distributes money to artists and visual creators (and their heirs) whose works have appeared in UK books, magazines and TV programmes. The money - £2 million this year - is available for secondary uses of the work, and is to cover unintentional infringements, like the work being photocopied or used in TV slots.

## **Droite de suite/resale royalty**

These are secondary rights, and should become law in January 2006.

Arguably the most important new right for artists in recent history, this will ensure that artists whose work is protected by copyright receive a percentage share of the price, each time the work is resold.

The EU will give countries 5 years to set this up – but it will only apply to work sold through salerooms, NOT galleries or privately.

The UK has been delaying implementation, as they fear that the art markets will move to unregulated US or Swiss markets.

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## **Section 7: Websites**

### **ACID**

ACID (Anti Copying In Design) is a membership trade organisation, set up as a round table action group in 1996, by designers for designers – now a hard-hitting "not for profit" trade organisation created to combat the growing threats of plagiarism in the design and creative industries. By helping its members to understand and protect their rights, ACID is intent on stamping out intellectual property rights abuse. ACID provides an accessible, practical framework for those who believe that their IP rights have been infringed.

[www.acid.uk.com](http://www.acid.uk.com)

### **A-N**

The a-n website publishes a variety of guides on copyright, commission and gallery agreements. Most of these are available to subscribers only.

[www.a-n.co.uk](http://www.a-n.co.uk)

### **ARTQUEST**

Although billed as 'providing advice, information and support to London's visual artists and craftspeople', this website does not require artists to subscribe, so the information is available to anyone who wants it.

They maintain the ARTLAW ARCHIVE, a collection of articles dealing with contemporary legal and associated issues that have been published in Art Monthly since 2002.

Artists can submit specific questions via email and should receive an initial response from a member of their legal team within a few days.

[www.artquest.org.uk](http://www.artquest.org.uk)

### **DACS**

The Design and Artists Copyright Society promotes and protects the copyright and related rights of artists and visual creators in the UK and worldwide.

[www.dacs.org.uk](http://www.dacs.org.uk)