Copyright Basics
Ask a Pro Webinar

WITH REBECCA BLAKE, GUILD ADVOCACY LIAISON
Moderated by Ed Shems, Illustrator

WWW.GRAPHICARTISTSGUILD.ORG
@GAGUILD | #ASKAPRO | #GUILDWEBINAR
CAVEAT:

This covers the absolute basics of copyright.

For specific questions about registering your copyrights, or protecting your rights, please contact a lawyer specializing in copyrights!

Contact the Graphic Artists Guild if you would like a referral to a lawyer.

www.graphicartistsguild.org
WHAT IS COPYRIGHT?

the right to copy

– The exclusive legal right to reproduce, publish, sell, or distribute the matter and form of something (such as a literary, musical, or artistic work) (Merriam Webster)

Only a copyright holder has the right to distribute, display, copy, license, perform, or create a derivative work
IT’S IN THE CONSTITUTION!

Article 1 I Section 8 | Clause 8
(Patent and Copyright Clause of the Constitution)

“[The Congress shall have power] To promote the progress of science and useful arts, by securing for limited times to authors and inventors the exclusive right to their respective writings and discoveries.”
# INTELLECTUAL PROPERTY RIGHTS

<table>
<thead>
<tr>
<th>The IP right</th>
<th>What it protects</th>
</tr>
</thead>
<tbody>
<tr>
<td><strong>Copyrights:</strong></td>
<td>Original works of authorship that are fixed in tangible form</td>
</tr>
<tr>
<td><strong>Patents:</strong></td>
<td>Inventions and discoveries</td>
</tr>
<tr>
<td><strong>Trademarks:</strong></td>
<td>Symbols, words, designs (and even colors!) that show the source of goods and services (service marks)</td>
</tr>
<tr>
<td><strong>Trade secrets:</strong></td>
<td>Works such as formulas, computer programs, patterns, etc. that are not generally known</td>
</tr>
</tbody>
</table>
WHAT CAN BE COPYRIGHTED?

- Literary works
- Musical works (and any accompanying words)
- Motion pictures and audiovisual works
- Sound recordings
- Pictorial, graphic, and sculptural works
- Dramatic works (and any accompanying music)
- Pantomimes and choreographic works
- Architectural works
- Compilations – ie, periodicals, anthologies, encyclopedias, directories, databases, etc.
- Derivative works – based on preexisting work(s) transformed or modified in some way
WHAT CAN’T BE COPYRIGHTED?

- **Ideas, facts and concepts**
- Titles, slogans and other short phrases
- Works not fixed in a tangible form
- Simple geometrical shapes
- Utilitarian elements of industrial designs, although decorative elements might be copyrightable
- Familiar symbols or designs
- Systems
- Variations of typographic ornamentation, lettering or coloring
- Procedures, processes and methods of operation
- Principles and discoveries
- Lists of ingredients
- Information comprised completely of common property and no original authorship (calendars, height and weight charts, rulers, etc.)
WHAT ABOUT TYPEFACES?

• Typefaces are not copyrightable in the USA

• Typefaces can be patented

• Fonts which qualify as a computer program or software (fonts that run on your computer) are copyrightable

If you’ve licensed a font, you do not have permission to pass it on to anyone else!

Tip: Use free fonts only from credible sources, and read the End User Agreement – many free fonts stipulate non-commercial use only!

HOW LONG DOES COPYRIGHT LAST?

For works created after January 1, 1978:

• If the author* holds the copyright, it lasts for life of the author, plus 70 years

• If a company or person holds the copyright under a “work made for hire” agreement, it lasts for 95 years from publication, or 120 years from creation (whichever comes first)

*In copyright law, any creator (such as an illustrator, writer, musician, choreographer, etc.) is referred to as an author
A TERM YOU SHOULD KNOW: “WORK MADE FOR HIRE”

Under work for hire (wfh), the company or person who hired the creator is considered the work’s “author” and is automatically the copyright holder if:

1) It’s created by an employee (staff designer, etc.)
   or
2) It’s created by a freelancer/contract worker and
   • It was commissioned by the client and
   • It meets one of 9 statutory categories and
   • Both parties signed an agreement that says the work is “work made for hire”
COPYRIGHT MYTH:
"IF SOMEONE BUYS MY PHYSICAL ARTWORK, THEY OWN THE COPYRIGHT"

You retain the copyright to your artwork, even if someone buys the original, physical piece.

• Clients can’t monetize your artwork by selling photographs, putting it on t-shirts, licensing it, etc. without your permission. You can negotiate a licensing agreement.

Tip: In your sales receipt, include a line of text stating you retain the copyright to the work.
A TERM YOU SHOULD KNOW: “FAIR USE”

Fair use means someone can use a copyrighted work without permission for certain uses: news reporting, criticism, comment, teaching, scholarship or research.

In a copyright infringement case, the courts consider four factors to decide if the use is “fair”:

1. The purpose and character of the use
2. The nature of the copyrighted work
3. The amount and substantiality of the portion used
4. The effect of the use upon the potential market for or value of the copyrighted work
Photographer Patrick Cariou sued artist Richard Prince for copyright infringement and won the case.

Prince appealed the decision.

Court ruled in Prince’s favor on most of the images, saying the use was “fair” because it was “transformative.”
COPYRIGHT MYTH:
“‘I’M NOT INFRINGING IF I JUST USE A LITTLE PIECE OF A COPYRIGHTED WORK’”

There are no rules on what percentage of a piece of original work you can use “fairly.”

• Misunderstanding comes from a misreading of the fair use doctrine
• If the tiny portion you are using is the heart of the work, then your use isn’t “fair”
COPYRIGHT MYTH:  
“I CAN USE SOMEONE’S PHOTOGRAPH IF I MAKE IT INTO A PAINTING”

Using a copyrighted photograph as the basis of an artwork is copyright infringement.

- Only the copyright owner has the right to authorize a derivative work
- Photos can be used as reference material but shouldn’t be outright copied

Tip: Ask permission before using someone’s photo, and keep a copy of your correspondence!
• Artist Shephard Fairey used photographer Manny Garcia’s photo to create the Obama “Hope” poster
• AP, who owned the rights, demanded “credit and compensation”
• Fairey sued preemptively for a declaratory judgement, citing “fair use”
• AP issued a counterclaim for copyright infringement
• AP and Fairey settled out of court
A TERM YOU SHOULD KNOW: “PUBLIC DOMAIN”

For a work to be in public domain:

• Copyright has expired*
• Isn’t copyrightable (including government works**) 
• Donated to the public domain by the authors

* Works created before 1923 are public domain in the US but might be protected by trademark

**Postage stamps created after 1971 are not public domain!
COPYRIGHT MYTH:
“ANYTHING PUBLISHED, OR POSTED ONLINE, OR IN THE PUBLIC LIBRARY IS PUBLIC DOMAIN”

Published does NOT equal public domain.

If you must use a public domain image:

• Be sure those sources are credible

• Be leery of ambiguous language about the copyrights (such as “no known copyright”)

• Keep a record of where you got a public domain image (URL, screen shot)
A TERM YOU SHOULD KNOW: “PUBLISHED”

“Published” according to the Copyright Office means:

• Distribution of copies to the public by sale or other transfer of ownership, or by rental, lease, or lending

• Offering to distribute copies to a group of persons for purposes of further distribution, public performance, or public display

Assume that posting work on social media, creating an online portfolio, or enabling sharing of work online constitutes publication.
THE COPYRIGHT NOTICE

Since 1981, it isn’t necessary to include a copyright notice – for example, “© 2018 Jane Doe”. However:

• It makes users aware that copyright is being claimed

• It may prevent an defendant from claiming “innocent infringement” in a copyright infringement lawsuit

• It identifies the copyright owner to potential users

• It helps prevent the work from becoming an orphan work

The correct formulation is the copyright mark, followed by the year of first publication (or creation, if the work wasn’t published), followed by your name.
PROTECTING YOUR WORK

In addition to registering your copyright, there are steps you should take to protect your work:

• Embed your metadata in Photoshop
• Put your copyright notice on the image
• Use a visible watermark
• Use the Digimarc plugin for Photoshop to embed an invisible watermark
• Disable right-click on your portfolio website
BEST PRACTICES: SHARING ONLINE

• Be smart about what you post on Facebook, Twitter, Instagram, etc. Social media platforms will strip out your metadata from your images, and their terms of use state they can sublicense your work.

• Understand that when you post on social media platforms, you lose control of those images.

• Do not repost another artist’s images unless that artist invites social sharing.
COPYRIGHT REGISTRATION: WHEN AND WHERE

• Register your works with the Copyright Office (part of the Library of Congress)

• Register online through the eCo system, or with a paper mail-in application

• For the most benefit, your registration should be timely: within three months of publication, or before a copyright infringement occurs
COPYRIGHT REGISTRATION: WHY?

• If the work is registered within 5 years of publication, it establishes “prima facie” evidence of the validity of your copyright

• Creates a public record

• Work must be registered before you sue an infringer

• If the registration is timely, you may be awarded statutory damages, attorney’s fees, and costs in an infringement lawsuit

• Satisfies the “mandatory deposit requirement” for published work
IF YOUR WORK IS INFRINGED AND YOU...

Didn’t register your copyright:
• Can’t bring an infringement lawsuit until the copyright is registered
• If you register your work in order to bring a lawsuit, the registration isn’t considered “timely”
• You will only be eligible to be awarded actual damages and profits if you prevail

Did register your copyright:
• Can bring an infringement lawsuit
• Registration is considered timely since it was done before the infringement occurred
• You could be awarded statutory damages, attorney’s fees, and costs if you win
STATUTORY DAMAGES

If your registration was timely and you’ve sued an infringer, you can elect between being awarded actual damages or statutory damages plus attorney’s fees.

Statutory damages are often the better choice:

• You don’t have to prove actual damages or loss of profits
• You could be awarded $750 to $30,000 per infringement
• If the infringement was willful, you could also be awarded up to $150,000 per infringement
COPYRIGHT MYTH:
“I CAN PROVE MY COPYRIGHT BY MAILING A COPY OF MY WORK TO MYSELF”

Mailing your work to yourself doesn’t give you any additional legal protection.

- Copyright is already established the moment a work is created and fixed in tangible form
COPYRIGHT REGISTRATION: HOW!

Several categories of registration:
• Single application: must meet strict requirements
• Standard application
• Contributions to Periodicals (ie, comic book series)
• Group of published photographs (limited to 750)
• Group of unpublished photographs (limited to 750)

We recommend getting a lawyer’s advice for complicated registrations.
SINGLE APPLICATION

Requirements:

• Only one work can be registered (ie, one poem, one song, one illustration, etc.)

• The work was created by one author

• All of the material within the work must be created by the same person

• The author and copyright claimant must be the same person, and own all the copyrights

• The work wasn’t created as a work made for hire
UNPUBLISHED COLLECTION

Unpublished collections can be registered under the standard application.

Requirements:

• All works must be unpublished
• Must be assembled in an orderly form
• Single title for the collection as a whole
• Same author, or if multiple authors, at least one must have made a copyrightable contribution to each work
• Copyright claimant must be the same person or organization
CONTRIBUTIONS TO PERIODICALS

Contribution to a periodical are registered online through the “Register Certain Groups of Works” option.

• Same author (an individual, not a company) and same claimant for all the works

• No work-for-hire agreement

• All the works must be published, and first published as a contribution to a periodical

• Each contribution was published over a 12-month period

*A periodical is a collective work issued on an established schedule in successive issues, intended to be continued indefinitely.
REGISTERING WEBSITES AND WEBPAGES

Artists sometimes try to register their websites as a short cut to getting an entire portfolio of images registered in one application. This is not advised.

• Websites are not explicitly recognized as a type of copyrightable subject matter under the Copyright Act

• You may be able to register a website or a specific page if it satisfies the statutory requirements for a compilation or collective work

Consult a lawyer!
COPYRIGHT REGISTRATION: HOW!

Paper registration: https://copyright.gov/forms/formva.pdf

1. Download, print, and fill out the registration form

2. Mail the form, check or money order, and deposit material to Library of Congress (address is on the form)
COPYRIGHT REGISTRATION: HOW!

Online registration: https://www.copyright.gov/registration

1. Click onto “Visual Arts,” then onto “Register a Visual Arts Work” (lower right sidebar)

2. Create a user account

3. Log in, and select the registration option you want

4. Fill out the online form, screen by screen. You’ll be able to save your work and come back to it.

5. Pay the registration fee

6. Submit or send a deposit of the work
At copyright.gov/registration, click onto “Visual Arts”
The link to the online registration form is on the lower right.

Visual Arts

Works of the visual arts include a wide variety of pictorial, graphic, and sculptural works, as well as architectural works. Examples of visual arts works include paintings, sculptures, photographs, and other types of works.

<table>
<thead>
<tr>
<th>Works Commonly Registered In This Category</th>
<th></th>
</tr>
</thead>
<tbody>
<tr>
<td>Advertisements (visual / photography)</td>
<td>Architectural Works</td>
</tr>
<tr>
<td>Blueprints</td>
<td>Board Games (visual aspects)</td>
</tr>
<tr>
<td>Carpeting</td>
<td>Cartography (maps / globes)</td>
</tr>
<tr>
<td>Catalogs (visual aspects)</td>
<td>Craft Kits</td>
</tr>
<tr>
<td>Fabric Designs</td>
<td>Flooring Designs</td>
</tr>
<tr>
<td>Jewelry Designs</td>
<td>Logos</td>
</tr>
<tr>
<td>Geologic Charts</td>
<td>Graphic Designs</td>
</tr>
<tr>
<td>Labels (visual aspects)</td>
<td>Maps</td>
</tr>
<tr>
<td>Models</td>
<td>Paintings</td>
</tr>
<tr>
<td>Prints / Reproductions</td>
<td>Product Packaging</td>
</tr>
</tbody>
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Statutory Definitions

The Copyright Act states that “pictorial, graphic, and sculptural works include two-dimensional and three-dimensional works of fine, graphic, and applied art, photographs, prints and art reproductions, maps, globes, charts, diagrams, models, and technical drawings, including architectural plans.” 17 U.S.C. § 101

The Copyright Act defines “Architectural Works” as “the design of a building as embodied in any tangible medium of expression, including a building, architectural plans, or drawings. The work includes the overall form as well as the arrangement and composition of spaces and elements in the design, but does not include individual standard features.” 17 U.S.C. § 101

General FAQs about Copyright
Preguntas frecuentes sobre derechos de autor

Electronic Copyright Office (eCO) Registration System

Register a Visual Arts Work
Preview the Standard Application for a Visual Arts Work

eCO Release Notes
eCO Acceptable File Types | eCO Tips | eCO FAQs
SUBMITTING A DEPOSIT

Unpublished work:

• Send one complete copy of the copyrightable content or ID material by mail, or submit it electronically

Published work:

• **Mandatory deposit:** Copyright law requires authors to send two copies of the “best edition” of works published in the USA to the Library of Congress.

• Requirements for visual arts work vary depending on the work
DEPOSIT REQUIREMENTS VARY

For example:

• If the work is applied to a physical object, 3-D, or oversized (over 96"), send in identifying material (photographs, drawings, etc.)

• Some visual arts materials require a deposit of one copy (ie, greeting cards, limited edition prints, brochures, and others)

• Illustrations, paintings, drawings, and artwork require a deposit of two high quality prints

Check the Copyright Office’s “Deposit Requirements for Registration of Claims to Copyright in Visual Arts Material” https://www.copyright.gov/circs/circ40a.pdf
ELECTRONIC DEPOSIT

You may be able submit an electronic deposit if:

• Work is unpublished

• Work is published only electronically

• Published work for which the deposit requirement is “identifying material” (i.e., a photographs)

• Published work for which there are special agreements requiring a hard-copy deposit to be sent separately to the Library of Congress

eCo REGISTRATION

Login Screen

Welcome to the Electronic Copyright Office (eCO)
You may now use this website to:
* Register your work
* Preregister your work if you fulfill the requirements.
* Submit electronic works to comply with a Notice for Mandatory Deposit

NOTE: The eCO System has been confirmed for use with the Firefox browser on the Microsoft Windows 7 Operating system. Other browsers such as Internet Explorer, Chrome, Safari and Netscape (as well as out-of-date browsers) may work but potentially could show less than optimal behavior when used with the eCO System.

To view and print documents you will need the Adobe Acrobat Reader installed on your system. (click here to download).

*eCO information*

The eCO Registration System will be offline every weekend from 10:00 PM Saturday until 6:00 AM Sunday (Eastern Time) for scheduled maintenance.

For electronic Copyright Office (eCO) system availability and updates, go to www.copyright.gov, click on {Subscribe} at the bottom of the page, create an account, then choose Copyright eService Maintenance and Updates.
**eCo REGISTRATION**

Form Selection

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**Electronic Copyright Office (eCO)**

Welcome, Tom!

- Please disable your browser's pop-up blocker
- What's new in eCO?
- For copyright registration information, instructions, helpful tips and FAQs, click here
- If you received a Notice for Mandatory Deposit for an electronic work and need more information or help, click here

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Privacy Act Notice: Sections 408-410 of Title 17 of the United States Code authorize the Copyright Office to collect the personally identifying information requested on this form in order to process the application for copyright registration. By providing this information you are agreeing to routine uses of the information that include publication to give legal notice of your copyright claim as required by 17 U.S.C. § 705. It will appear in the Office's online catalog. If you do not provide the information requested, registration may be refused or delayed, and you may not be entitled to certain relief, remedies, or benefits under the copyright law.
eCo REGISTRATION

Eligibility Criteria

Eligibility Criteria

1. You are registering one work (such as one poem, one song, or one photograph). This application cannot be used to register multiple works, such as a book of poetry, a CD of songs, or a portfolio of photographs. Likewise, it cannot be used to register a collective work, a compilation, a database, or a website.

2. This work was created by one individual. This application cannot be used if this work – or any part of this work – was created or co-created by two or more people.

3. All of the material contained within the work must be created by the same individual. This application cannot be used if this work contains any material that was created or co-created by two or more people – even if you do not intend to register that material and even if you intend to exclude that material from this claim.

4. The author and the owner/claimant of this work must be the same person, and that person must own all of the rights in this work. This application cannot be used if the author who created this work is not the owner. This application cannot be used if the copyright is co-owned by two or more people. Likewise, this application cannot be used if the work was created by someone who is deceased.

5. This work is not a "work made for hire". This application cannot be used if this work was created by or on behalf of a company, an organization, or any other legal entity. Likewise, this application cannot be used if this was created as a "work made for hire".

A "work made for hire" is either (i) a work prepared by an employee within the scope of his or her employment, or (ii) one of several specific types of works specially ordered or commissioned pursuant to a signed written contract where the parties agree that the work is a work made for hire. Click here for additional information on works made for hire. If you are unsure if this work was created as a "work made for hire", please return to the "Home" screen and select the "Standard Application".

To Complete the Application for Registration you must:

1) Provide all required information on the application form
2) Pay the required fee
3) Upload or mail-in a copy of your work

If your work meets all of the eligibility criteria, click the "Start Registration" button.
Filling Out the Form

Select the entry from the dropdown list that best describes the "Type of Work" you seek to register. Read the description below and then click the box below to confirm your selection. Click "Continue" to begin the application.

Type of Work cannot be changed after you click "Continue". Click here for more information.

- **Type of Work**
  - Literary Work

**Examples of works that may be registered** with the Single Application include:
  - one poem
  - one article
  - one essay
  - one short story
  - one novel
  - one nonfiction work

**Examples of works that cannot be registered** with the Single Application include a collection of stories, a group of manuscripts, an assortment of poetry, a set of advertising copies, a book with an introduction and an afterword by different authors, a translation, a database, a website, or any collective work.

A work may be registered with the Single Application only if the following requirements have been met:

1. The registration covers one work.
2. The work must be created by one individual.
3. All of the material contained within the work must be created by the same individual.
4. The author and the owner of the work must be the same person, and that person must own all of the rights in the work.
5. The work cannot be a work made for hire.

Click the box to confirm that you have read the description above and selected the entry that best describes the "type of work" you are registering.
Reviewing the Application
eCo REGISTRATION

Submitting the Deposit

https://www.copyright.gov/eco/single.mp4
COPYRIGHT OFFICE VIDEO TUTORIALS

Registration

Standard Registration video: https://www.copyright.gov/eco/standard.mp4

Single Registration (one work, one author) video: https://www.copyright.gov/eco/single.mp4

Group Registration Option for Contributions to Periodicals https://www.copyright.gov/eco/grcp.mp4
GETTING YOUR CERTIFICATE

How long does it take?

Web claims:
• Approx. 6 months (2-10 months)
• With correspondence, approx. 9 months (2-15 months)

Mail claims:
• Approx. 13 months (1-15 months)
• With correspondence, approx. 20 months (3-37 months)

Monitor your email for correspondence!
STAYING INFORMED

Registration processes change as the Copyright Office updates the system, and Congress is considering new legislation on copyrights.

If you hear a rumor about copyright law or regulations, check with a reliable source:

• On the Copyright Office website
• With a copyright lawyer who works with creators
• With an association that advocates on copyright issues

Do not assume that a fellow artist has the correct information, no matter how famous or well-intended they are!
ABOUT THE GRAPHIC ARTISTS GUILD

For 50 years, the Graphic Artists Guild has been fighting to improve the working conditions of graphic artists at all skill levels, while raising standards and advocating to protect our rights.

We’re a member organization led by working graphic artists – designers, illustrators, web developers, and more – who volunteer their time and expertise.

WWW.GRAPHICARTISTSGUILD.ORG