

# Copyright Survival Course

Courtesy of Chris Pondelick

Contracts between artists and art buyers present formidable challenges of legal and business terminology that are difficult for even the most experienced artists to decipher. So just what are your rights as an artist?

**Q: What is a copyright?** According to the dictionary, copyright is “the exclusive legal rights to reproduce publish and sell a literary, musical or artistic work.” Technically anything you produce is copyrighted as soon as it’s produced if it falls under this definition. You own the rights to its reproduction, display, distribution and adaptation. Ideas, on the other hand, need to be patented or otherwise protected.

**Q: What is copyright infringement?** Anyone who copies a protected work owned by someone else is liable for infringement. The penalties can be as much as \$100,000 for each act of “willful infringement,” meaning that they knew they were copying someone else’s work but did it anyway.

**Q: What is copyright notice?** A copyright notice is the word “Copyright” or its symbol, ©, plus the year the work was created, and the full name of the owner. It should be placed where it can be easily seen, on the front or back of an illustration or artwork. It should also be displayed on slides and photos you send out.

**Q: Why should I use a copyright notice on my work?** The symbol © is primarily a warning to potential plagiarizers. Works created before 1989 must carry a copyright notice to be protected, but works created after those times don’t need the notice to be protected. Although it’s always in your best interest to have used this symbol as a warning if you ever have to go to court.

**Q: Should I register my copyright?** The moment a work is created, it is copyrighted material. But without registration, it might cost more to go to court than you could sue for—only your damages and the infringer’s profits. And you need to have registered your work before any litigation occurs.

**Q: How do I apply for a copyright:** Call the Copyright Form Hotline (202) 707-9100 and ask for Package 115 and Circulars 40 and 40A (cartoonists should ask for Package 111 and Circular 44), or write to the Copyright Office, Library of Congress, Washington, DC 20559. Registering your work will cost \$20.

**Q: What about transferring copyright?** Transferring a copyright on a temporary basis is how artists make a living. It allows you to collect more than one fee for the work of art. There are many types of transfer rights that can be negotiated.

**Q: Why should I negotiate rights?** If you don't negotiate the rights, you could be throwing away future opportunities to promote and profit from your own work, as well as jeopardizing your relationship with your client through misunderstandings.

**Q: How do "one-time rights" differ from "first rights" or "exclusive rights?"** One-time rights means the artwork is leased for one use only. First rights means you could charge for the privilege of being the first to use the art. Exclusive rights means the buyer can use the art exclusively in one particular market. For example, your art may be used exclusively in the greeting card industry, but you would retain the rights to sell the art to a magazine because it would be used in a noncompeting market.

**Q: What are "reprint rights," "subsidiary rights" and "promotion rights?"** Reprint or serial rights give a publication the right to print your work after it has already appeared in another publication. Subsidiary rights cover additional rights purchased such as including illustration in a second printing. Promotion rights allow your client to use your work for promotional purposes. If you grant any of these rights check the contract to see if you will be paid a percentage of the original price.

**Q: What is a "work for hire" contract?** Be careful here. This means you won't own your own work—your client will. As an artist, you would be surrendering all rights to use in the future, plus any claims to additional compensation through royalties if it becomes a big success. Work for hire also refers to artwork produced as part of your employment, but as a freelancer you won't be entitled to any type of employment benefits if you agree to these terms—you're just missing out on the opportunity to realize any additional income from your work.

**Q: What's an "all rights" contract?** This involves selling or assigning all rights to a piece of artwork for a specified length of time, and at the end of that period, rights revert back to you.

**Q: Can anyone use a copyrighted work after the artist dies?** Copyright protection lasts for the life of the artist plus 70 years. For works created by two or more people, protection lasts for the life of the last survivor plus 70 years. For works created anonymously or under a pseudonym, protection lasts for 100 years after the work is completed or 75 years after publication, whichever comes first. Older artistic creations no longer protected by copyright fall into a category called "public domain" and can be used by anyone without permission. **For more information, contact the U.S. Copyright Office, Library of Congress, Washington, DC 20559, Attn: Section LM0455. ♦**

## How do I create the symbol for copyright © ?

(Press 0169 on your **NUMPAD** while holding down the alt key)

- Don't forget to make sure your number pad is enabled

Alt + 0169