Know Your Rights:

copyright 101 for MIXED MEDIA ARTISTS

Copyright: Just the Facts

IMPORTANT NOTE: This sheet is a summary of basic principles of copyright law. However, copyright issues usually depend on the specific facts and circumstances, and some of these principles may not apply. This summary does not take the place of consultation with a lawyer.

- In the United States, an original work of authorship (for example, a knitting pattern, a painting, a magazine article, or blog post), once in its fixed and final form, is automatically protected by copyright, whether or not it has been published formally.
- You can't copyright a concept, but the *expression* of that concept may be copyrightable.
  - > Pattern instructions or the words of a recipe may be copyrightable expressions of uncopyrightable concepts. However, purely functional lists of materials or ingredients and standard instructions for assembling the materials or combining ingredients may not be protected by copyright.
- Copyright infringement is a use of a copyrighted work that violates the copyright holder's sole right to benefit from and control the way a work is used. This includes:
  - > Making photocopies of a pattern or article for distribution. For example:
    - : Making a copy of a pattern for your friends
    - : Photocopying a pattern at a store rather than purchasing it
  - > Distributing a digital version of a pattern or article. For example:
    - : Republishing a pattern on a blog or website
    - : Selling digital versions of a print product
- Individual use of published materials is usually allowed. Some examples:
  - > Making a project from published instructions for your own use
  - > Making a project to give as a gift
  - > Making a photocopy for your own use from a book or magazine you own
- Works whose term of copyright has expired and cannot be restored, or works that are published with an explicit forfeiture of copyright, are in the *public domain*. Whether a work is in the public domain depends on the law of each country where the work has been published. A work that is in the public domain in the United States may still be protected by copyright elsewhere in the world.
  - > "Public domain" does *not* mean that the work is available on the Internet, well-known, or out of print.
- Small portions of works may be reproduced for nonprofit, educational, and commentary- or critique-related uses under proper circumstances. This is called *fair use*.
- Teaching a class around copyrighted materials is always okay, as long as students are required to obtain legitimate copies of the materials.
- Reselling a physical product that has been lawfully purchased (book, magazine, or DVD) is always okay. Under most circumstances, however, digital products may not be resold.
- When in doubt about how you're using a published work, check with the author and/or publisher.

For Crafters

Q: What is copyright?

Copyright is the legal protection of an author's rights over his or her works of authorship.

Q: How does copyright work?

Any "original work of authorship" in a fixed, tangible form of expression can be copyrighted. An idea cannot be copyrighted, but the expression of that idea—in words, images, or other forms—can be. For example, the concept of a plain stockinette-stitch cardigan cannot be copyrighted, but specific words describing how to make one can be copyrighted under the proper circumstances.

Copyright is considered a personal-property right. The copyright holder (the author, or someone to whom he or she has transferred exclusive rights) is the only party who has the right to:

- Reproduce the work
- Produce derivative works based on the original
- Control the distribution of copies of the work
- Perform the work publicly (in the case of literary, musical, dramatic, and other audio-visual works)
- Display the work publicly.

Any original piece automatically receives copyright protection, even without formal publishing or registration with a government copyright office.

In most countries that recognize copyright as a personal-property right, copyright expires after a fixed amount of time, often a period measured by the life of the author and 50 or 70 years after the author's death. In the United States, copyright terms for works created after January 1, 1978, currently last for 70 years after the author's death, or 95 years from the date of publication/120 years after the date of creation (whichever is shorter) if the copyright holder is not a recognizable individual (for example, an anonymous author or a corporation). Different terms may apply for works created in the past.

Copyright is honored across international borders in the 164 countries that have signed the Berne Convention. The details in this article pertain specifically to copyright in the United States. Refer to government copyright offices for details about copyright law in other countries.

Q: What is copyright infringement?

Copyright infringement is any use of a work that violates the copyright holder's exclusive right to benefit from and control the work. The issue at the heart of copyright protections is unauthorized *copies*—that is, any duplication, replication, or reproduction of the original work that infringes on the exclusive rights of the copyright holder.

In the craft market, unauthorized copies could range from simple photocopies to digital files to handwritten copies of copyrighted pattern instructions from a magazine or book.

Q: What's the point?

Copyright protections help keep authors, designers, and publishers in business. When the creators of a work can enforce their ability to benefit from a work, they can continue to create new works with the same quality standards.

Q: What if I change a certain percentage of an original copyrighted work? Does it then become mine?

Technically, no specific amount of changes will free an original copyrighted work of its protections. If your new work is a derivative of another copyrighted work, you should obtain permission from its owner before publishing the new work or claiming it as your own.

Sometimes it is hard to draw a line between what is protected and what is not protected. In the practical crafting world, for example, there is a lot of overlap between works. The expression of those works must be original to each piece—three nearly identical cabled sweaters or peyote-stitch bracelets can peacefully coexist if the patterns are original to each piece. There are only so many different ways to combine knits and purls or beads and thread; the fact that three people came up with similar ways to combine them doesn't necessarily mean that anyone copied from anyone else.

Also, there are only so many different ways to give instructions on how to knit or how to bead, and common words and phrases used in instructions may not be protected under copyright.

Q: Is everything published by Interweave copyrighted?

Yes. In general, any new work is automatically copyrighted, whether it comes out of an established publishing company or not.

At Interweave, and at many publishing companies, copyright to the work *as submitted* to the publisher is kept by the original author subject to the rights that the author grants to the publisher. Copyright to the work *as published* (with alterations and additions that result from editing, i.e., illustrations, charts, technical editing, photography) is held by the publisher. Authors often grant the right to be the exclusive publisher of a work for some period of time to their publishers, preventing authors from publishing their own version of the work until that period expires.

Q: So how come I can make a project from a magazine without infringing copyright?

At the beginning of Interweave magazines and books, you'll see a note about how the patterns within may and may not be used. In most cases, Interweave grants individual consumers a license to make and enjoy the projects from the work for their own personal use. Making photocopies from a magazine or book you own for your own personal use is okay, too.

Q: What's fair use?

Fair use is an exception to the rights granted to copyright holders by copyright law. It's a concept that allows limited use of a copyrighted work without permission from the copyright holders for uses such as criticism and commentary, news reporting, teaching, and scholarship. Fair usage depends on the nature of the use (nonprofit/educational use is likely to be okay, commercial uses are less likely to be okay); the nature of the original work; the amount of the work used in relation to the whole (a short excerpt is usually fine, while republishing a longer excerpt is probably not); and the effect of the usage on the value or potential market for the work.

It's important to remember that fair use is not an affirmative right. Rather, it's a defense to a claim for copyright infringement. You will find out only if your decision to rely on fair use rather than getting permission from the copyright holder was the right decision if the copyright holder later sues, and the court decides that the use was fair use. You may not want to take the risk of defending and losing an infringement claim. When in doubt, or if you are unwilling to take this risk, it's always best to ask for permission from the copyright holder.

Q: Is it fair use to put a picture from a magazine or book on my blog?

This may be okay, particularly if it's used as part of a piece of criticism or commentary, or if it's used to market the original work. On the other hand, if the use is not educational or commentary-related and primarily benefits anyone but the copyright holder, it may fall outside fair use. Even when using something fairly, it's always best to credit/link to the original source when possible. Failure to credit the source may make it impossible to claim fair use. Different copyright holders have different policies around sharing materials online; check with the copyright holder when in doubt.

Q: What about Pinterest, Facebook, and other social media?

Sharing content makes social media fun and inspiring to participate in. Although pinning or sharing photos from books and magazines may or may not be defensible under fair-use guidelines, it's an increasingly common practice, and some copyright holders don't object. Try to pin from/link to/credit the original source whenever possible, avoid linking directly from image search tools, and always respect the copyright holder's guidelines, if any, around pinning and sharing their work. Interweave encourages sharing and circulating our photos, book and DVD covers, and other media, as long as you link back to and credit us as the copyright holders.

Q: Is it fair use to distribute a pattern to a class I am teaching or a bee/swap I'm running?

No. If you're profiting directly from the usage or it devalues the market for the work, it's probably not fair use.

On the other hand, it's fine to teach a class based on someone else's project if the students are required to have their own copies of the pattern, acquired through conventional means—or if the copyright holder gives you permission.

Q: Can I resell a pattern/magazine/book/DVD I own?

Physical products are always transferable from consumer to consumer, in any portion.

Digital products are usually not transferable because they are licensed rather than sold to the consumer, and there is currently no way to confirm that the product was actually transferred and not just copied.

Q: Can I make and sell projects I found in a book or magazine?

The projects instructions we publish at Interweave are intended for personal use and inspiration only – not for commercial purposes.

In the United States, copyright protections do not extend to the utilitarian aspects of "useful articles," such as clothing or other functional items. This means that only the artful authorship that can be identified separately from the functional aspects of such articles may be copyrightable: the specific ornamentation, for example, on a dress, sweater, or quilt, and not design constrained by the item's function as a dress, sweater, or quilt. In general, designs for items that have any intrinsic utilitarian aspects are very difficult to copyright, and copyright infringement claims over similar-looking or even clearly derivative works are not likely to succeed. Be aware, however, that original artwork incorporated into useful articles may be protected, and it may be infringing to reproduce that original artwork for commercial purposes.

What is always copyrightable are the specific words, images, diagrams, and other materials published as a part of articles and project instructions. At Interweave, we ask that you respect the intended usage of the materials we publish.

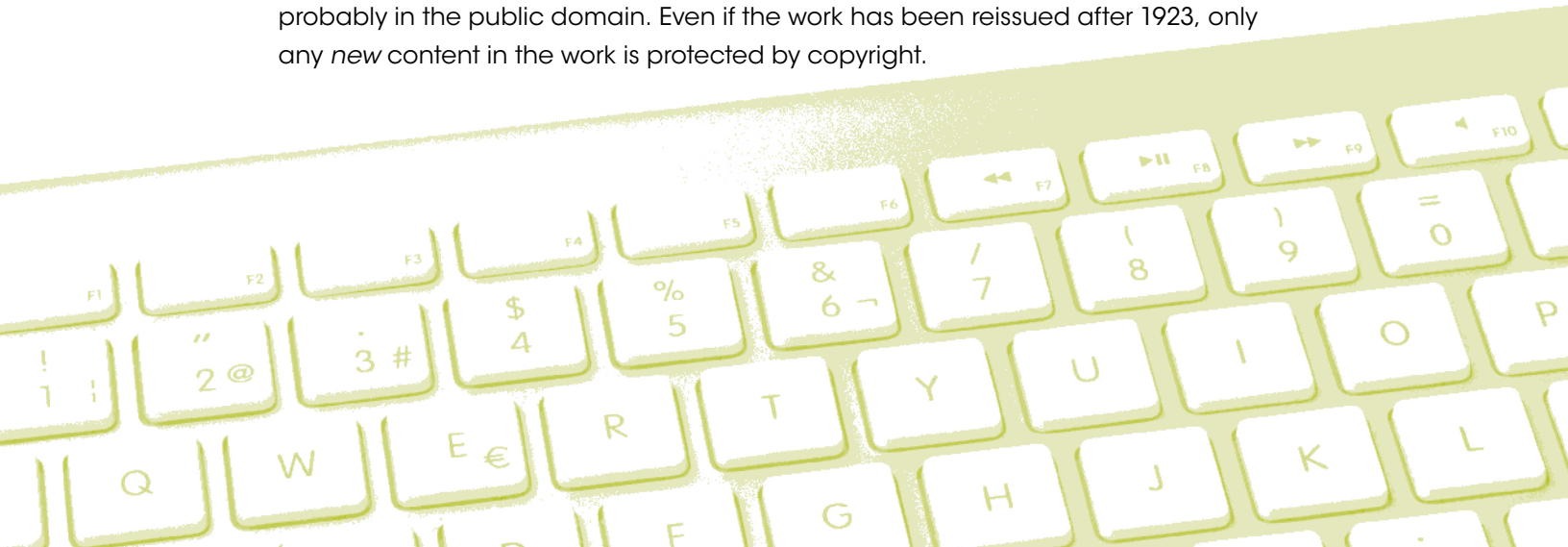
Q: Where can I find more instructions for projects that I can make and sell?

You can look for conventionally published projects that grant this specific kind of usage license; you can ask the copyright holder for permission; or you can look for works that are copyright-free, or in the public domain.

Public domain refers to works that are not protected by copyright, either because copyright has expired or because they are published with an explicit forfeiture of copyright. Examples of works that are in the public domain in the United States include any work first published in the United States prior to 1923, many materials published by the U.S. government, and this document.

Q: How can I tell if a work is in the public domain?

In the United States, any work first published in the United States before 1923 is probably in the public domain. Even if the work has been reissued after 1923, only any *new* content in the work is protected by copyright.



For works first published in the United States in or after 1923, a variety of factors can affect its copyright status, including whether it was published with a valid notice of copyright and whether the copyright was renewed. It's always safest to check with the original publisher or author when in doubt.

However, it's sometimes hard to find the copyright holder for a particular work. Such works are known as "orphan works," but the fact that you can't find the copyright holder doesn't mean you can use an orphan work without permission.

Some common myths about public domain suggest that if a work is well-known, widely available on the Internet (such as in a YouTube video), out of print, or has no obvious copyright notice on it, that it is in the public domain. None of these are true! Only works that have expired copyrights or are published with an explicit forfeiture of copyright are in the public domain.

Q: Does everyone agree about copyright?

Not everyone believes that current copyright laws are fair or flexible enough for the changing information economy. One of the most prominent groups in this emerging "copyleft" movement is Creative Commons, an organization dedicated to developing new and different ways to protect artists and authors and promote collaboration.

Copyright and intellectual property issues are at an interesting crossroads as we enter the digital information age. Interweave defaults to U.S. law on all copyright matters.

For Designers, Authors, and Publishers

Q: How does copyright help protect my work and my business?

Copyright protection allows you to take legal action, if necessary, to protect your ability to benefit from and control a work you created—and prevent others from benefiting from a copy of your work.

Q: Do I need to file for copyright?

No. Copyright in the United States is automatically granted to all new works once in their fixed and final form. Registration with the U.S. Copyright Office can help establish the date of creation of a work and the identity of the copyright holder, but registration is not required to obtain copyright. Registration is required to file a lawsuit for copright infringement, however, and prompt registration of a published work is always in the best interest of the copyright holder.

Q: Do I always retain copyright as the original author of a piece?

The author — or authors — of a work usually own and control the copyright unless and until they have granted some or all rights in the work to someone else. If you have entered into a contract for publication or other use of your work by another party, read your contract carefully to determine what rights you retain and what rights the publisher assumes. With Interweave, designers are often able to republish their versions of a work after a certain period of time; check your contract carefully to understand what rights you have conveyed to the publisher, what rights you have reserved, and what you can do with those reserved rights.

A different situation applies when a work of authorship is a "commissioned work" or a "work for hire." If you create a work of authorship within the course and scope of employment, your employer probably owns the copyright outright even without a contract. If you signed a work-for-hire agreement as an independent contractor, you may have conveyed all rights to the other party to the agreement. Read contracts carefully to determine what you own and what you don't.

Q: How can I be sure I'm not infringing on someone else's copyright?

If you're using common crafting techniques and methods to express an idea that is original with you, and you did not use someone else's work as the inspiration for your work, your work of authorship is probably not infringing.

However, if you used someone else's work as the inspiration for your work, or if you copy some aspect of someone else's work, or if you depict someone's name or image in your work, you need to think about whether you have infringed someone else's copyright, trademark, or other rights.

Interact with and be inspired by other artists, authors, and designers, but execute your vision in your own way. When in doubt, it is always a good idea to check with the person whose work inspired you or whose work you copied to make sure that you are not infringing someone else's rights.

Q: What do I do if someone's violating my copyright?

First, be sure you have really been violated. In the practical crafting world, there is a lot of overlap between works—there are only so many ways to combine knits and purls, or to piece a 9-patch block, or to make a beaded tube.

In many cases, two very similar works may have been developed concurrently and without copyright infringement on the part of either designer. Examine the copyrightable portion of the work—the distinctive words used in the project instructions, the

photography, charts, and illustrations—to look for similarities with your own. Situations where your copyright is being violated include (but aren't limited to):

- sales of unauthorized copies of your work
- free distribution of unauthorized copies of your work
- publication of another work identical to yours

Next, consider approaching the violator to see if you can find a way to resolve the issue by discontinuing the infringement.

Finally, consider escalating the dispute by taking legal action if you feel the violation was severe enough to do real damage to your own rights, income, reputation, or business. This is a lengthy and expensive procedure that will require you to demonstrate proof of your copyright, so only take this route if you cannot find a private solution.

For Shop Owners, Teachers, and Library Administrators and Patrons

Q: Can I make photocopies of a pattern for a customer instead of selling it to him or her?

No. This is a simple, direct copyright violation.

Q: Can I teach a class based on a published pattern?

Of course, as long as the students are required to obtain legal copies of the pattern.

Q: Can I make a photocopy from library materials for a patron?

Libraries perform the important function of archiving knowledge and making it accessible to the library's patrons. In the United States, the Copyright Act at 17 U.S.C. § 108 makes special note of when and how libraries are allowed to furnish reproductions of materials. Libraries must include the copyright notice of the work (or stamp it with a notice that the work may be under copyright if no printed notice exists) in the photocopy, and the copy must not be "used for any purpose other than private study, scholarship, or research."

Important Caution!

These general principles of copyright law do not take the place of consulting an attorney with expertise in intellectual property rights. If you are concerned that you may be infringing someone else's rights, or if you believe that someone has infringed your rights, it is prudent to consult an attorney with the proper skills.

Further Reading

The full text of the U.S. copyright code is available at http://www.copyright.gov/title17.

Information about the Berne Convention is available at http://www.copyrightservice.co.uk/copyright/p08_berne_convention.

A list of copyright terms by country is available at http://en.wikipedia.org/wiki/List_of_countries%27_copyright_length.