

copyright

frequently asked questions

Many clients are shocked to realise that copyright remains with the designer, irrespective of a completed financial transaction.

Imagine yourself in the situation where you have started an exciting new business venture. Of course, you need a logo and stationery, possibly some brochures and signage. You employ the services of a young and enthusiastic designer, who completes the job to your total satisfaction. You pay their account, and then embark on building your dream.

After 15 years worth of 80 hour weeks, your business grows into a multi-million dollar company. You've done the hard yards, you've paid your dues, and now its time to spend time with the family. You decide to sell, and sell you do. In a seller's market, you negotiate a rewarding settlement of 12 million dollars. It's time to enjoy life on your own terms.

So, what has this got to do with copyright? Well, imagine this situation. Six months after selling the business, you receive a summons from a lawyer. To your surprise, the lawyer represents the designer that created your logo some 15 and a half years ago. The designer has made a claim against you to the tune of \$500,000 dollars. Why? As your company was growing, so too was the value of your corporate logo. In fact, the value placed on your logo today is about \$500,000 dollars. The designer claims that he still owns copyright and, therefore, any attached financial return from the sale of the logo, rightfully belongs to him. How? Copyright Law. Irrespective of a completed business or financial transaction surrounding the service 15 years ago, copyright was never passed to the client in writing, and therefore remains with the designer.

Ethical? Not particularly.

Can it happen? Absolutely.

Now, we want to make it perfectly clear that we don't condone this act. It is barbaric in business terms. However, you have to be aware that it can happen and you need to be prepared when employing the services of a designer. Pose the copyright question and ensure that a written contract is prepared to transfer copyright on designs.

Zynke's Client Agreement states that copyright on designs and parts of designs is automatically transferred on payment, unless otherwise stated.

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Probably the best analogy of the designer and his/her designs is that of a photographer and his/her photographs. For example, a wedding photographer takes a number of photographs and will retain the negatives, selling the finished pieces as prints for a set cost per print. Similarly, designers may retain copyright on designs, licensing the client to a specific usage of the design based on quantities, values geographical areas, sizes etc.

Rules of Thumb

Firstly, copyright does not protect an idea, only the representation of an idea. In fact, the design needn't even be novel. It simply must not be a direct copy or a substantial reproduction of another artistic work. For example, a design which uses a "tick" is not protected against another design which uses a "tick". It comes down to how the "tick" is represented.

It is also important to note that copyright comes into existence as soon as the protected work is created. There is no registration system or any other formality.

The basic rule of thumb is that the author of an artistic work retains the exclusive right to reproduce or publish that work from the time that the work is produced to the end of the 50th year following the author's death. There are some exceptions to this rule, such as employee situations and government departments (of course), but this is the basic guide.

Finally, copyright can only be transferred to another party by written and signed authority from the current owner of the protected work.

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Designer's Protection

You may have seen on recent broadcasts of *Today, Tonight* the unscrupulous acts of Adelaide's biggest conman. I too have been "screwed" by this particular individual with respect to copyright. Live and learn. We now take great care in protecting our initial design works. A great tip for anyone with a potentially valuable work is to place a copy in an envelope, seal it and send it to yourself. Providing the envelope remains unopened and is postmarked, it acts as formal proof of when the work was first created.

Another important copyright note is with respect to scanning. If a photograph, illustration or other artistic work is scanned, it will almost certainly constitute an infringement of copyright. Even if the final computer-modified image bears no resemblance to the original image, the breach still occurred at the time the original work was scanned.

To finalise, simply remember that copyright is there to protect both designer and client. If you would like to know more about design copyright issues, please phone us on 08 8431 7800 or email us on FQ001@zynke.com.au.