

What designers need to know about copyright ownership

What do you say when a client asks you to own the intellectual property in the design work you create for them? Do you take a step back aghast at their audacity? Are you confused or suspicious as to what they are after and why? Do you flat out refuse? Or do you agree but don't really understand what you have agreed to?

In six easy steps this article will unravel some of the misconceptions surrounding copyright ownership in the design industry and assist in developing a sound copyright ownership policy for designers.

1. You own the Copyright you create

Being the author of your creative works, you (or your studio if you are an employee designer**) own the copyright that subsists in those works. The works could include artwork, promotional material, packaging, product design, photographs, audio visual material, websites, software and apps.

2. If the client pays, you still own the Copyright

You still own the copyright in your works even if you are being paid to create or develop them. This is not commonly understood by either designers or clients. The payment of fees does not transfer your IP rights to the client. There is no doubt that the majority of your clients will think otherwise. How do you go about balancing that expectation? It is important to have upfront discussions with your clients about this as it could impact on the price you quote for the jobs and your clients will appreciate the information if they are not IP aware. For copyright to be transferred it must be in writing. Two common ways this happens is in your standard T&Cs or a simple document called an assignment deed.

3. Are there any rights you should retain?

You need to be clear about what rights the client will own and what you will retain. It may be important for you to retain ownership of all drafts, work product, all unsuccessful concepts pitch, everything other than the finished art. This ensures that any brilliance not part of the finished art can be used for future projects. Even more important is to retain the ability to promote your work for the benefit of your business/studio including in your portfolio. To avoid any uncertainty, confusion or possible arguments down the track, the rights you want to retain should be part of your initial engagement terms.

4. Do you need to own your Copyright?

Ownership considerations can be complex and rights can be conceptually difficult to give up. To assist in deciding whether to retain ownership of the copyright you create for your clients, you need to examine why you might want or need it. My experience is that it can often come down to price. I have seen and heard enough stories of freelancers not charging the full value of their work, particularly to help launch start-up businesses. In those situations, it may be appropriate to retain ownership until future agreed payments are made once the business gets on its feet. Similarly, photographers may take a shot for a particular client or purpose and limit the use to that particular purpose so that the photograph can be used again. These kinds of limitations need to be communicated clearly to your clients, particularly if the use of the work by the client will not be exclusive.

5 Limits to your ownership rights

There are also limits to your ownership rights should you choose to retain them. Your rights cannot be used as a stick to prevent your clients from moving their work to a new studio. If your client has paid the agreed price for the work, then they have the right to use the work for the purpose of its creation regardless of your ownership rights. My suggestion is to work with your client in relation to these issues as you are likely to get a better outcome.

6. Does your client need to own the Copyright?

There are many reasons why your client may need to own the copyright in the works created and none may involve taking the work to another studio. The main reason is that copyright is a business asset that can be valuable. If a business does not own the copyright in its assets including its corporate identity, it poses many risks and limitations including if the client wanted to sell its business or if the client needed to enforce its rights in the case of an infringement by a competitor.

So if a client raises the issue of copyright and ownership, don't be offended or suspicious, there is likely to be a legitimate business reason for it. Have an open discussion. Better still, don't wait for your client to raise the issue. Your working relationship with your client will benefit from it.

** provided your designs are created in the course of your employment and as part of your job description.

For more information or to discuss any issues around copyright, please contact:

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