



Owning It: A Creative's Guide to Copyright, Contracts and the Law

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Understanding intellectual property law can help you protect yourself, and avoid breaching the rights of other creatives.



Image: www.pexels.com (<http://www.pexels.com/search/art/>)

'Nothing in life is to be feared. It is only to be understood.' – Marie Curie

If you ask a child whether black and white are colours, they might say yes. However, if you ask a scientist the same question, the answer might be different. In fact, neither is technically incorrect. It's just a matter of interpretation.

The laws that relate to intellectual property are not dissimilar, in that the answer to whether you own something or whether someone is infringing your rights must be decided on a case-by-case basis. The law is not cut and dry. This is repeatedly demonstrated by the fact that cases can go to court and receive one decision, only for that decision to be re-examined or reversed altogether on appeal to a higher court.

If you are creative and sell your 'creativity' in whatever shape or form, you need some level of understanding about the law so that you can not only protect yourself, but also

avoid breaching the rights of others.

What is intellectual property?

'Intellectual property is the oil of the 21st century.' – Mark Getty, Chairman of Getty Images

As opposed to 'real property', which refers to land and anything attached to land such as a house or a building, 'intellectual property' (often referred to simply as IP) is a kind of personal property. Unlike other forms of personal property, such as cars and books, IP is intangible in nature and refers to property in the form of creative and intellectual effort.

There are seven main forms of intellectual property recognised in Australia:

1. copyright (for works)
2. trade marks (for brands)
3. designs (for the appearance of products)
4. patents (for inventions)
5. confidential information (to protect trade secrets and information not in the public domain)
6. plant breeder's rights (to protect new varieties of plants)
7. circuit layout rights (to protect original layout designs for integrated circuits and computer chips).

The subject matter that can be protected by intellectual property law is vast, but can include: architectural plans; artworks; books; articles; blogs; manuscripts; literature and poetry; brands; compilations (e.g. anthologies, compendiums or databases); computer software; confidential information; craft works; fashion designs; films; illustrations and drawings; inventions; literature and poetry; music; performances; photographs; theatrical scripts; product designs; sculptures; trade secrets; customer lists and more.

In Australia, intellectual property is administered by a government agency called IP Australia. Its role is to grant rights pursuant to legislation relating to trade marks, patents, designs and plant breeder's rights. Copyright, however, stands apart from these other rights. In Australia copyright protection arises automatically upon the creation of the work, so there is no need to register or 'administer' copyright.

The core idea behind these intellectual property rights is to ensure we have a greater incentive to create and innovate in a secure environment, without fear that our creative work will be used or abused by a competing party.

Why protect your intellectual property?

'Private property, including intellectual property, is essential to our way of life. It provides an incentive for investment and innovation; it stimulates the flourishing of our culture; it protects the moral entitlements of people to the fruits of their labours.' – Alex Konzinski, Judge of the Ninth Circuit Court of Appeals (United States)

As Konzinski suggests, across the world intellectual property is valued to the point where it is treated by the law as a form of private property that can be bought, licensed, sold and perhaps most importantly, protected. In a copyright case concerning music sampling heard in the United States, one judge went as far as opening his judgment with an admonition taken straight from the Bible: 'Thou shalt not steal'.

While not everyone sees the use of someone else's creative output without

permission as stealing, the fact of the matter is that intellectual property can be the most valuable part of your business. Copying can rob you of your right to be remunerated and recognised for your creative efforts. Nevertheless, the intangible nature of intellectual property means that it can be a challenge to 'untangle' the question of who owns it and how to protect it.

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Some background about the law

There are two main sources of law in Australia. The first is legislation: written laws known as statutes, acts and regulations drafted by parliament. The second is common law, also referred to as case law: the legal principles developed by judges from previous court cases and decisions.

Legislation (such as the Copyright Act, Trade Marks Act and Designs Act) expressly sets out the rules that determine what people can and can't do and, further stipulates the fines, penalties or other consequences that may apply in the event of a breach of the law. The wording of legislation is often quite complex and difficult to understand (in some cases, even for lawyers!).

As mentioned, the application of the law will often depend on the facts of a particular case. For this reason, it is difficult to predict how the law may apply in different situations. Over the years, courts have played a vital role in interpreting the law. Each time a case goes to court, judges are called upon to interpret the legislation, test how it works in practice and essentially fill any gaps in the written law. Lawyers are then required to apply these interpretations to similar cases, a process which is commonly referred to as 'precedent'. The two sources of law are therefore linked and interdependent.

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As in most areas of life, being proactive is far better than being reactive. I have upheld this philosophy when advising clients in my legal practice. In a competitive creative industry, a basic understanding of how the law works can be extremely valuable when it comes to protecting your work, enforcing your rights and safeguarding your livelihood.

Knowledge is power, and an empowered creative can do wonderful things.



This is an extract from the introduction of *Owning It: A Creative's Guide to Copyright, Contracts and the Law* (<http://creativemindshq.us2.list-manage1.com/track/click?u=8d80eae259419e1d062de00e1&id=b4cd106605&e=5ceee67d9c>) written by Sharon Givoni and published by Creative Minds ([http://www.creativemindshq.com/store/p14/Owning It%3A A Creative%27s Guide to Copyright%2C Contracts and the Law.html](http://www.creativemindshq.com/store/p14/Owning+It%3A+A+Creative%27s+Guide+to+Copyright%2C+Contracts+and+the+Law.html)).

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