



JOHNETTA PAYE ESQUIRE

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Imitated but not flattering: Online stores, social media hurting artists' bank accounts



JPAYE

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HOW 2 SOLOPRENEURS
LEARNED TO MESH AS A
TEAM



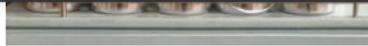
Selling work online can be a convenient and economical way to do business. No brick and mortar payments. Minimal office equipment. Less jobs to apply for. The client income comes directly to the artist with the opportunity for far more exposure. However, with that exposure, artists must be aware of what they should do before releasing their work to the public.

For example, let's say an arts and crafts specialist paints a bunch of ceramics and uploads them to a handmade selling site for potential sales. Other crafty artists see the item, decide they'd like to paint and sell them as well, and use the images from the first artist's work to create their own. The original artist may have a claim for copyright infringement against the copycat artist.



The same thing can happen to graphic artists, web designers and photographers. Exposing work on a public platform gives users more opportunities to utilize it for their own purposes. Of course honest online users will reach out to the original artist for commercial rights. And other online users may visit search engine sites to try to find the originator. But after a product has been shared so often without proper credit, sometimes it's difficult to figure out who owns the original.

Credit: www.but.studio.com/Photo



Creativity can pay, but at what cost? (Photo credit: Pixabay)

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Social media sites such as Instagram and Pinterest give users the option of sharing images with or without making sure the original artist gets credit in the caption. Some social media users will go as far as cropping out the photo credit or graphic artist's name, and

of course the next person who shares the image probably won't know that. This is one of many reasons that artists use watermarks on their products to at least attempt to get people to contact them directly.

But what happens when a graphic designer, artist or web designer creates a product and another company profits from it without them knowing? Imagine being a graphic artist who sees companies using mirror images that were originally designed for another company. Or, a painter who suddenly sees her images for sale on clothing apparel and mugs — while she's not receiving a dime of profit.

Recommended Reading: ["Picture this: Learning the rights to sharing photos"](#)

How artistic licensing went wrong

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Instagram does not claim ownership of any Content that you post on or through the Service. Instead, you hereby grant to Instagram a non-exclusive, fully paid and royalty-free, transferable, sub-licensable, worldwide license to use the Content that you post on or through the Service."



Give credit where credit is due. (Photo credit: CreateHerStock)

Instagram does not claim any ownership rights to content that you post on the site. You do grant them a non-exclusive, royalty free and transferable license to use any picture posted on Instagram. A non-exclusive license means that you can allow others to use the images you post on Instagram. Royalty-free means that Instagram does not have to pay you if they use a photo you posted on the site in an ad campaign or Instagram merchandise. Transferable means that Instagram can grant another individual or business the right to use photos you posted on IG without your permission. For example, photos you post on Instagram could be used by Facebook in their ad campaigns.

If an artist has reservations about broad licensing terms on a social media site, then the artist may want to just post the artistic work on a business/personal website of

If an artist has reservations about broad licensing terms on a social media site, then the artist may want to just post the artistic work on a business/personal website of his/her own to maintain more control over the use of the artwork.

What the artist should do to fix it

What can an artist do if the work is being used without permission on T-shirts, mugs and other merchandise?

1. **Copyright your work.** It is advisable for the artist to obtain a copyright registration for the work. A copyright registration is evidence that the artist is the owner of the work. The cost to register a single copyright is \$35, and a collective copyright is \$55. An artist can register a copyright by visiting <https://www.copyright.gov/>.
2. **Negotiate a license:** If the artist is OK with the third-party using his or her work on merchandise, then the artist may want to attempt to negotiate a license with the third party. A license would enable the artist to get paid a percentage of the profits from the merchandise bearing the artist's work. In order to protect the legal rights, the artist should send a cease and desist letter that contains the proposed licensing terms.
3. **Send a cease and desist letter.** As a follow-up to step 2, when the artist notices that his or her work is being sold online without permission, the artist can send a cease and desist letter advising that the artist owns the copyright to the work and the infringer is using the work without permission. The letter should also instruct the infringer to cease using the work.
4. **Initiate a copyright infringement lawsuit.** If trying to negotiate a license and sending a cease and

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4. **Initiate a copyright infringement lawsuit.** If trying to negotiate a license and sending a cease and desist letter fails, then the artist may want to explore filing a copyright infringement lawsuit. If the artist is successful in a copyright infringement action, the artist can elect to be awarded the copyright owner's actual damages and any additional profits of the infringer or statutory damages. In order to be eligible for damages, the artist must register the artwork with the U.S. Copyright office.

Have more questions about copyright infringement? Contact [J. Paye & Associates](#) today.

Shamontiel L. Vaughn contributed to this blog. Find out more about her at [Shamontiel.com](#).

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