

COPYRIGHT LAW FOR HANDWEAVERS

MARISA JAMES

In this era of Napster, iPods, and DVDs, copyright law has suddenly received considerable media attention. Unless you're a weaver, amateur pattern drafter, and copyright lawyer—like me—you have probably never thought about it, but copyright law is also relevant to weavers.

What is COPYRIGHT?

Every time you “fix an original work in tangible form,” the copyright in that work immediately becomes your property. A “work” could be a novel, a painting, a movie, or your grocery list as long as you can hold it in your hands and the object is not “utilitarian”—like clothing, for example. Therefore, you have no copyright in the great idea you had for a complex shadow-weave shawl and you have no copyright in the shawl itself (clothing), but as soon as you write down the instructions to weave that shawl, you own the copyright in that written expression.

Your written design IS COPYRIGHTED

Once a weaver commits original instructions for a project to paper, she or he immediately obtains a bundle of exclusive rights as the copyright owner. Unless she or he gives someone else permission to do so, the copyright owner is the only person with the right to reproduce and distribute those instructions (draft, yarn specs, weaving steps, etc.).

The copyright owner also has the exclusive right to make related, or “derivative” instructions for a similar shawl (on eight shafts instead of four, for example). Finally, the copyright owner has the exclusive right to exploit the pattern for commercial (as opposed to personal) use or to give others permission to do so.

If the copyright owner submits the writ-

ten design for publication in magazines or books, he or she usually keeps the copyright but grants the publisher the right of first publication along with the right to reprint the design in other contexts, such as promotional materials and compilations.

Therefore, when you buy a book or weaving magazine, you may violate the publisher's and the designer's copyright by making a photocopy for a friend, by re-typing and distributing it, by distributing something only slightly different from the original, or by weaving the item from the instructions and selling it.

Entering your work IN SHOWS

The question of copyright frequently arises in the context of competitive weaving shows. Clearly, if the show's entry requirements call for original work, it violates the rules to enter a piece you wove following instructions in *Handwoven*, even if you have permission from the copyright owner. Even if the entry requirements do not explicitly state that you must submit an original design, submitting a design from *Handwoven* without permission would likely violate the designer's copyright because you would be exploiting the design for something other than your personal use. This is true even if you credit the copyright owner.

What if you take a design from *Handwoven*, change the yarn, change the colors, modify the draft? How much do you have to change to avoid violating the copyright? These are some of the trickiest questions in copyright law, because they are entirely dependent on the facts of each case. Since the copyright owner has the exclusive right to make derivative works based on the original design, a piece that merely uses different materials or colors can be considered a derivative work and therefore a copyright vio-


lation. Once you start making changes to the draft as well, the distinction is harder to make, but the safest course is always to start your design from scratch or get permission before using a published design for anything other than personal use.

When can you COPY?

If you get permission from the copyright owner to photocopy a design or use it to make placemats to sell at a craft fair, you can copy and weave with a clear conscience. The identity of the copyright owner is often noted next to the familiar © symbol (for protection, an advisable inclusion in any written instructions).

In the weaving world, there are some designs that are so commonplace that they are not copyrightable. For example, no one owns the copyright in the draft for point twill or basic huck lace. But, if the draft appears in a book or magazine, you still do not have the right to reproduce the actual page out of the book and distribute it or to weave the pattern as written and sell it or show it, because that particular expression of the basic design is still protected by copyright.

Other exceptions, known as “fair use,” allow for limited reproduction and distribution of copyrighted material for certain purposes—criticism, comment, teaching, scholarship, and research—or for making a copy for your personal use, such as enlarging a draft.

This short article merely scratches the surface of copyright law. You don't have time to read dusty old legal treatises—you have weaving to do! However, even these basics can help you honor the rights and livelihood of those who write the instructions that inspire you to weave. 

Marisa James is a weaver, knitter, and an intellectual property attorney at The DuBoff Law Group LLC in Portland, Oregon.

MORE COPYRIGHT LAW FOR HANDWEAVERS

MARISA JAMES

My article on copyright law in the March/April 2006 issue of *Handwoven* (page 80) generated intelligent comments and perceptive questions. This is an area of the law that can be confusing and counter-intuitive, so I want to respond to some of your questions.

Is it a copyright violation to use a basic huck or log-cabin draft?

No. To be copyrightable, a work must contain at least a minimum amount of “creative authorship.” Although this concept is difficult to pin down precisely, you can use most basic drafts for pieces to sell or show to your commercial advantage.

What if a design in Handwoven uses a basic huck draft?

Although a design may incorporate a draft that is not copyrightable, the particular expression of the instructions for creating a piece are copyrighted by the author, and the editing, photography, and layout of the project in the magazine is copyrighted by *Handwoven*. Thus, if a huck draft appears in a book or magazine, you would be violating these copyrights by distributing photocopies of it. In addition, if the huck draft is used in a set of instructions for a piece that contains “creative authorship,” you do not have the right to use those written instructions to create the piece to sell or show to your commercial advantage.

Do I have to register my written design with the Copyright Office?

No. A copyright exists and is protectable from the moment you “fix an original work in tangible form” by, for example, putting a draft on paper. Even so, you cannot take legal action to enforce that copyright until it is registered with the U.S. Copyright Office. Furthermore, if you register the copyright within three months after the work is first offered for sale, you are entitled to a broader range of remedies if you succeed in a lawsuit for viola-

tion of your copyright, including the ability to recover your reasonable attorney’s fees. Thus, registering your copyright *before* any problems arise is prudent though not necessary. Registration with the Copyright Office costs \$30 and requires you to deposit one complete copy of the design with the Library of Congress. For more information, visit www.copyright.gov.

How long does a copyright last?

Copyright in a work published after March 1, 1989, lasts for the life of the author plus seventy years. Before 1989, the law was amended several times, so copyright duration for these years varies. However, any work published before 1923 is in the public domain and may be copied.

How do I know when I’ve changed a design enough from the published instructions to avoid a violation?

The copyright owner has the exclusive right to make “derivative works,” so if your design is based on another written design, it could violate the original designer’s copyright. This is an issue that forms the basis for many copyright lawsuits, and it is entirely dependent on the facts of each case. In general, however, simply changing the colors or yarns would probably not be enough, especially because the copyright is in the written instructions, not in the finished product.

Can I show a piece in a county fair woven from project directions in Handwoven?

If you are not making any money or gaining any commercial advantage by showing a piece at a fair, the display of the piece would likely be considered a “fair use,” and therefore would not violate the original designer’s copyright. However, as an ethical matter, you should always credit the original designer and pay attention to the rules of the show, which may require submission of an original design.

How do I get permission from a designer/author?

You simply have to tell the designer what you plan to do and ask for their permission to do it. The designer could give you permission, deny permission, or offer to give you permission in exchange for a fee. It’s wise to get permission in writing to preclude any later misunderstandings.


What if I want to copy a textile from a photo I see in a book?

As long as the item is utilitarian, it is not copyrightable, and many woven pieces fall into that category. Therefore, creating a shawl that looks like one that is merely pictured in a book will probably not violate anyone’s copyright.

My friend wants to pay me (for my time) to weave a project from Handwoven magazine.

Although you are unlikely to be sued, this is technically a copyright violation because you are earning a profit using a copyrighted design. It sounds draconian, but copyright laws were written to protect the integrity of our original works and the profits arising from them. You can give your friend the piece, however, because you’re not gaining any commercial advantage. In fact, your friend could buy the yarn for the project, and it would probably still be a “fair use.”

Most important! Remember, you can weave anything for your personal use!

Many people only learn about copyright law when a problem arises, so it warms a lawyer’s heart to meet weavers interested in copyright issues in the abstract! If you need in-depth answers to specific questions, it’s always a good idea to consult an intellectual property attorney. 

Marisa James is a weaver, knitter, and an intellectual property attorney at The DuBoff Law Group LLC in Portland, Oregon.