



## Degree shows & displaying your creative work

by

Dr Janice Denoncourt  
Jane Jarman  
Nick Johnson  
Estelle Paley



**First published June 2016 by Nottingham Trent University  
Publications  
Nottingham Trent University  
Burton Street  
Nottingham  
NG1 4BU  
UK**

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British Library Cataloguing in Publication Data

A catalogue record for this book is available from the  
British Library.

Degree shows & displaying your creative work:  
Intellectual Property Notebook

ISBN 978-0-9931112-4-2 (pbk.)  
ISBN 978-0-9931112-3-5 (ebk.)

Notebook design and concept by Jason Holroyd  
**Jasonholroyd.com**

Printed and bound in Great Britain by Hickling & Squires  
**www.hickling-squires.co.uk**

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We strongly recommend readers seek specialist legal  
advice on the particular issues that concern them.



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**Intellectual Property Notebook**

## About the team

**Dr Janice Denoncourt** (BA McGill, Grad Dip. Bus. Curtin, LLB Western Australia, LLM Murdoch, LLM Bournemouth, PhD Nottingham) is a senior lecturer with the Nottingham Law School with breadth and depth in intellectual property and business law and is internationally published in print, in law journals and online. She is the principal author of *The Nottingham Intellectual Property Guide for Creatives (2015)* which inspired this publication. She also wrote *Q&A Intellectual Property Law 2016*, published by Routledge Cavendish. Janice is a member of the European Intellectual Property Teachers' Network and the Association for Teachers and Researchers in Intellectual Property. In 2015 she was appointed as a member of the UK Intellectual Property Office's Research Expert's Advisory Group (Unregistered Rights).

**Mandy Haberman** is an English inventor, product designer and entrepreneur known for inventing the Haberman Feeder®, the Anywayup Cup® and the Haberman Suckle Feeder®. She was awarded an honorary doctorate from Bournemouth University. Mandy was the British Female Inventor and Innovative Network (BFII) Female Inventor of the Year 2000. In the same year, she also won the Design Effectiveness Award. Mandy is regularly invited to judge design competitions in which NTU students are entered.

**Jane Jarman** was admitted as a solicitor in 1992 and specialised in professional indemnity litigation before joining Nottingham Law School in 2003 and is now a Reader. She has designed a variety of programmes, including the compulsory Risk Management Education Programme for the Law Society of Hong Kong, and the new framework for the final qualification for registered trade mark attorneys. Jane works with trade mark attorneys undertaking their final examinations before qualification. She is co-author of the SRA's CPD Review and is a contributor to the Butterworths Commercial Court & Arbitration Pleadings.

**Jason Holroyd** is a graphic designer and illustrator based in Nottingham. Jason has worked with clients such as 4 Creative, Warner Brothers Music and Arts Council England. His areas of work include illustration, typography, branding, motion graphics and art direction. Jason also teaches part time as visiting lecturer and tutor on the final year Graphic Design (BA Hons) at Nottingham Trent University.

**Nick Johnson** is the Director of Nottingham Law School's Legal Advice Centre, Principal Lecturer and Solicitor. Nick qualified as a solicitor in 1993 with Lewis Silkin, a London commercial practice. He joined Nottingham Law School in 2001 and in 2006, with Stephanie Wright, set up the original NLS Legal Advice Clinic. In practice, Nick specialised in commercial property, planning and development acting for businesses, housing associations and public bodies. His teaching areas include property and public law and supervising cases in the NLS Legal Advice Centre.

**Estelle Paley** is a Business Development Officer. She supports a variety of engagement initiatives and activities to support collaborations between academia and industry. One area of focus is intellectual property in the creative industries. Estelle has a background in innovation and technology transfer in healthcare, biotech and aerospace industries. Previously, she worked for Coventry University Enterprises Ltd connecting innovative organisations with overseas research and industry partners. Estelle completed her Business Studies at IUT Mulhouse, France followed by Bachelor and Masters degrees in Engineering Management at Coventry University.

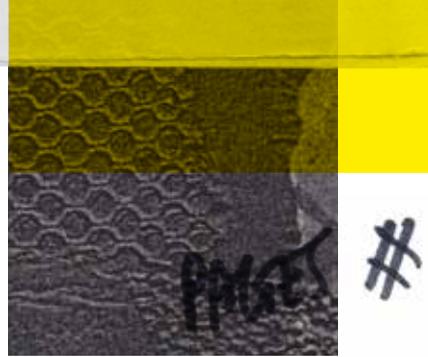
**Julie Pinches** MDes RCA is the Acting Dean for the School of Art & Design. She has extensive experience of art and design education and particular expertise in fashion-related curricula and external project management, including fashion shows, degree shows and trade exhibitions. She has also worked internationally managing the School's collaborative partners in Hong Kong and Singapore and has valuable experience as an international fashion competition judge.

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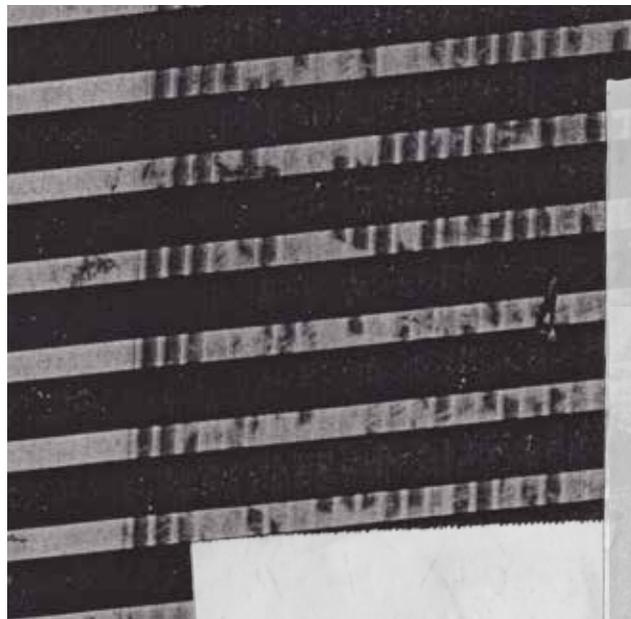


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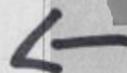
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## Foreword

We've been teaching art and design since 1843, making us one of the UK's most well-established, renowned and respected creative Art Schools. Our students regularly win some of the most prestigious awards and industry competitions and many of our graduates go on to set up highly successful art and design businesses when they leave us.

In the current economic climate, many of our students are following some of their predecessors in looking to set up their own businesses. Technological changes make this much easier; however, becoming self-employed and running your own business creates some challenges and pitfalls. One of the most significant of these is how to protect the intellectual property rights in your creative production. This Notebook, which has been produced by our colleagues in Nottingham Law School in collaboration with members of staff from Art & Design, aims to guide you through some of the issues. It has been designed as a Notebook, something which many of us use on a daily basis. It outlines the key issues you should consider when developing, displaying and selling your creative work and how to make sure you get the most protection and reward from the great work that so many of you do.

**Julie Pinches**

*Acting Dean of School of Art & Design,  
Nottingham Trent University*



## The Nottingham Creative Intellectual Property Project and the StudentIPship Competition

The creative intellectual property (IP) value of talented artists and designers is often underestimated and underexploited. Since 2014, The Nottingham Creative Intellectual Property Project, led by Nottingham Trent University, has helped students and businesses in the creative industries become more 'IP aware' and commercially savvy. In 2015, Nottingham Law School was awarded funding by the UK Intellectual Property Office StudentIPship Competition 2015 to carry out IP health checks for art and design students using the UKIPO's freely available online tool, as well as to put together this publication aimed specifically at students.

To address the lack of IP awareness amongst students of the creative arts, we have drawn together the knowledge and experience of a wide range of industry experts, academics, lawyers, students and creative entrepreneurs to produce the *Degree Shows and Displaying your Creative Work: Intellectual Property Notebook*. This follows on from our earlier successful publication, *The Nottingham Intellectual Property Guide for Creatives* (2015). Although IP protection is not a universal goal amongst creatives, you'll find an awareness of IP rights will help you discover the best path to managing your own rights. Knowledge is a powerful tool that will help propel you to a bright and creative future!

Every spring, graduating creative talent hold exceptional student degree shows in Nottingham and London. These are critical for launching careers and introducing new blood into the creative industry. Famous art and design alumni include Wolfgang Buttress, Susi Henson and Paul Smith, among others.

This *IP Notebook* is not a typical law book; rather, it combines IP law concepts with visual imagery in the form of a typical Notebook used by art and design students. It introduces the key IP law concepts of copyright, design, trade marks, patents and confidential information that you need to be aware of when you display your creative work to the public. Through quotes, practical tips and advice, we demonstrate how to control, legally protect and financially benefit from your creative work.

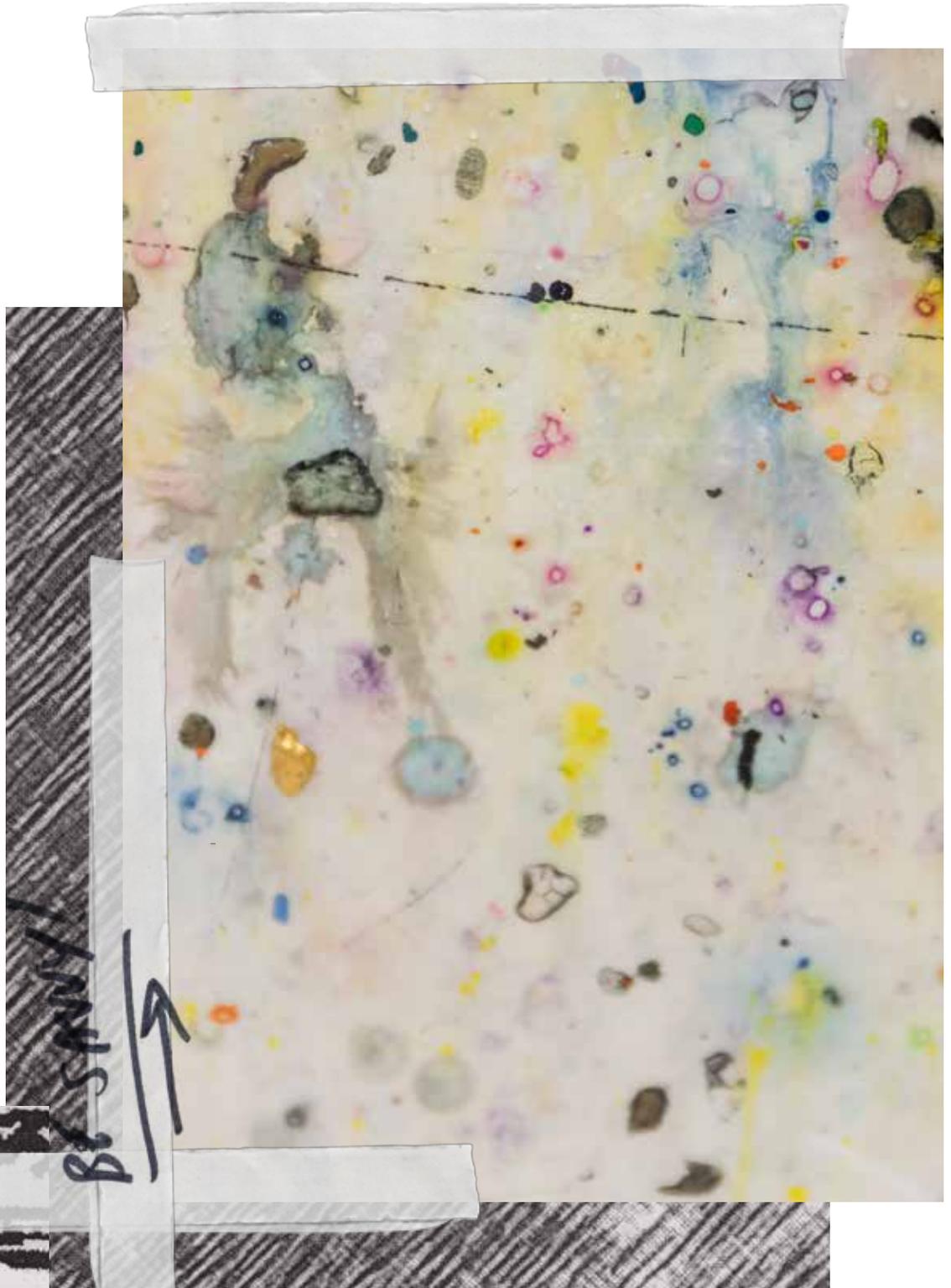


## Introduction: Be IP savvy

A primary goal for art and design scholarship is the creation and development of new art, designs and products. The term intellectual property (IP) describes the various legal rights that protect creative endeavour and innovation. IP rights have a crucial role to play in protecting creators, the people who have the new ideas or who create works of art and design. It's important for you to have at least a basic understanding of how they impact on your creative work.

Degree shows showcase exciting creative activities that may lead to interesting opportunities, commercial and otherwise. Great ideas and concepts will be of interest to, and coveted by, others in the industry. You need to appreciate how IP issues could arise when displaying your work. Unfortunately, students are often vulnerable and unaware of the value of their work due to their inexperience. Positive and negative things can happen really quickly so it is best to be prepared. There are many stories of students who've had their creative work used without permission, but fortunately there are more cases of students who've successfully launched their careers as a result of the exposure and publicity the degree show offers. By taking care of your IP rights, you're looking after your burgeoning professional reputation and your financial wellbeing.

At some point during your degree, you'll want to start exhibiting your work to the public. Your Intellectual Property Notebook contains an introduction to what you need to know about looking after the IP rights in your work. It provides early-stage answers to common IP issues that arise when displaying your work at university degree shows, as well as in a professional setting. It also features straightforward and practical advice, tips and resources for becoming an entrepreneurial creative in the wider art and design sector.



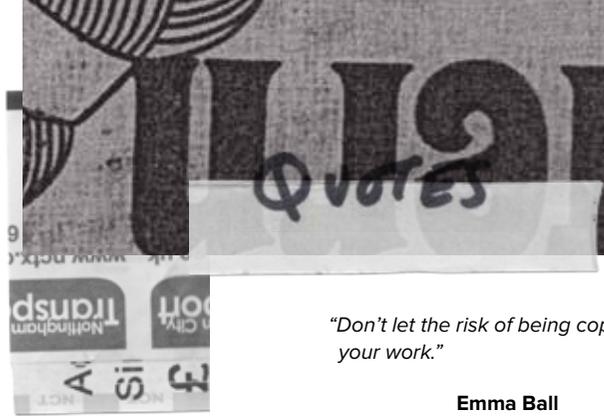
# Degree shows and displaying your creative work

## 1.1 A golden opportunity: degree shows and your IP

A degree show is a pivotal turning point in your career as an emerging artist or designer. On one hand it is a time of academic assessment and on the other it is an amazing opportunity to present your body of work to the wider public. This important 'rite of passage' marks your transition from education to a career as a professional. Your degree show gives you the opportunity to move your creative project forward into professional arenas, locally, nationally and internationally.

However, the run up to a degree show is a busy and stressful time. It is easy to focus on finishing your project and overlook the wider opportunity the show brings. Remember, your work will be exposed to lots of journalists, curators, gallery owners, business people and potential employers who may wish to find out more about you as a potential professional.

Your degree show project constitutes a design development that represents substantial hard work on your part. If you prepare and handle yourself well, your degree show can give a substantial uplift to your future career. Research shows that the first three years after graduation are the most difficult and important for graduate artists and designers to navigate. A degree show entails dealing with IP issues such as ownership, collaboration, branding and possible misuse of your valuable creative work. You may be approached to sell, license, reproduce the work or images or be asked to take on a commission to create new work. As IP rights are at the heart of the creative economy, IP protection issues will continue to be important to your professional life wherever, and in whatever field, you choose to work.



*"Don't let the risk of being copied put you off showing your work."*

**Emma Ball**

Artist, graphic designer and founder of Emma Ball Ltd  
[www.emma.ball.co.uk](http://www.emma.ball.co.uk)

*"Get out there and show your work in public! This will give you evidence of your creation timeline. Don't be overly protective or worry too much about being copied. A budding professional needs exposure."*

**Angharad McLaren**

Designer and founder of Angharad McLaren Textiles  
[www.angharadmclaren.co.uk](http://www.angharadmclaren.co.uk)  
Grewar, M. et al *Tales from the Drawing Board (2015)*

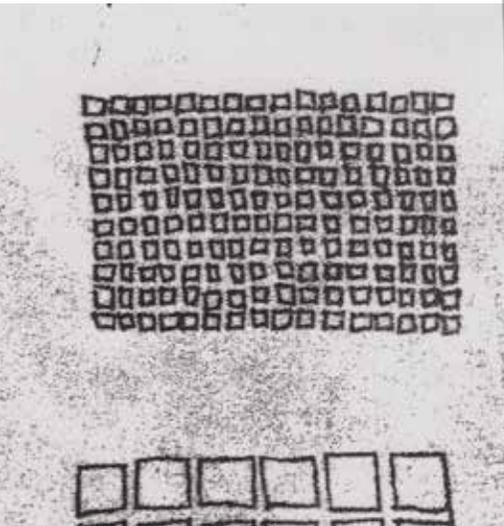
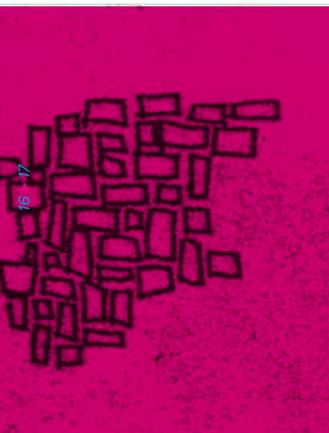


Image: Conor Hurford

## Your Intellectual Property Notebook

Every student artist or designer creates, owns or deals with IP rights when they create work to display at degree shows. The process begins with your sketchbook. As an artist or designer you will rely heavily on IP rights, not only to protect yourself and your creative work, but also to safeguard your artistic integrity. These rights help to solve the problem of the general devaluation of artistic works and you have a role to play in managing your own creative IP as the original creator. In essence, IP rights' owners have monopoly rights which are time limited, enabling them to exert control over access and use of their IP.

A clear understanding of your IP rights helps you protect the creative content in your work, big or small, regardless of medium or merit. To begin with, artists and designers have both specific and well-established legally recognised economic IP and moral rights in their creative work. IP rights are property rights that are intended to reward and encourage artists and designers, discouraging misappropriation. The principal issues surrounding IP involve its:

1. development (checking that you're not infringing someone else's IP);
2. securing appropriate protection for your work; and
3. enforcing your rights when necessary.

Having the right type of IP protection helps you to stop people copying or commercially benefiting from:

- ▶ your designs or look of your products or creative work;
- ▶ the names of your products or brands;
- ▶ your inventions; and
- ▶ things you write, make or produce

What types of IP rights are there?

Copyright, designs, patents and trade marks are all types of IP rights protection.



## IP in a globally famous bottle

A single product usually needs to be protected by a number of different IP rights.

The success of the Coca-Cola® Company depends in large part on its ability to legally protect its intangible creations and intangible assets. Each of those creations is subject to a particular kind of IP law protection: copyright, design, trade marks and confidential information.

The famous Coca-Cola® logo and script design is an original artistic creation protected by copyright law.

The Coca-Cola® Company also owns the design for the distinctive shape of its bottles.

The word mark and instantly recognisable Coca-Cola® logo are registered as trade marks in countries around the world. Trade mark protection gives Coca-Cola® the right to stop competitors from passing off their goods and services as that of Coca-Cola®, and to be compensated for any damage that result from unauthorised use. Trade mark protection also protects consumers by helping to stop confusing trade marks entering the marketplace.

In the UK, the formula for making Coca-Cola® and manufacturing knowhow are protected by confidential information law. The formula is extremely valuable as long as it remains secret; it would much less valuable to the company if it were known to competitors (who would start to copy it). Even within the company, the formula is known only to a select few and special precautions ensure it remains confidential. Secrecy creates value.

The Coca-Cola® Company also owns a patent for a particular method of making 'barrier-coated plastic containers.'

It is more difficult to protect intangibles than tangibles. No single type of IP right can provide all the protection needed for intangible assets. Using all types of IP rights in combination, a company like Coca-Cola® can protect its valuable IP.

Similarly, without IP rights, artists and designers would struggle to license or sell their creative work to develop an income stream.

## Owning intellectual property

You own IP if you:

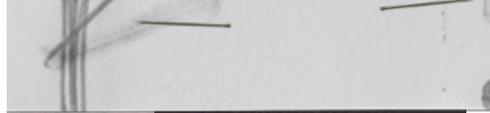
- ▶ created it (and it meets the legal requirements);
- ▶ bought IP rights from the creator or a previous owner;
- ▶ have a brand that could be a trade mark e.g. a well-known product name

Usually you won't own the IP for something you created as part of your work while you were employed by someone else.

IP can:

- ▶ have more than one owner;
- ▶ belong to a person, people or a business; and
- ▶ be sold or transferred

See section 1.5 for more detailed information on each of the specific IP rights.



→ DRAW

## Mandy Haberman's top tips to protect your IP

### Case study:

**Mandy Haberman, Entrepreneurial Product Designer, Inventor of the Anywayup Cup® Female Inventor of the Year 2000**

"Must-have innovation combined with 'wow' factor design is the secret of success, but the serious commercial value lies in your intellectual property."

Mandy invented the commercially successful Anywayup Cup®, which has a special valve which seals after a sip is taken, making it the world's first non-spill cup for children.

"As an inventor, it is important to understand how the patent system works and to do as much as you can to protect your intellectual property before you share information.

I learned a lot when I made my first invention, the Haberman Feeder® and it was a great experience for what came next – the Anywayup Cup®.

I knew the Anywayup Cup® had great commercial potential, so I spent a lot more on intellectual property rights, registering patents in all my strategic markets – but it paid off! I had to take infringing companies to court in the UK, Europe and the USA, but my patents held up.

By protecting my ideas, I was finally able to secure my position in the market and reap the benefit from years of hard work. The Anywayup Cup® technology revolutionised the nursery market. Valved cups are now the standard worldwide.

I would have lost everything if I had allowed people to continue infringing."

[www.mandyhaberman.com](http://www.mandyhaberman.com)

### Mandy's top ten tips for displaying your creative work

1. Check that you're not infringing someone else's IP.
2. Keep a sketchbook and/or records of design drawings or photographs of how your work evolved into a finished work.
3. Sign, date and mark your work.
4. Become a student member of Anti-Copying in Design (ACID) which recommends members display its logo as a deterrent.
5. Carry out an IP Health Check using the UKIPO free online software tool.
6. Secure the appropriate legal protection for your work (apply to register your rights).
7. Showcase your work, but be cautious and include IP symbols and notices to deter potential copyists.
8. Enter art and design competitions, but read the terms and conditions carefully. Does the benefit of the exposure outweigh any term that requires you to sign away your rights in your work?
9. Enforce your IP rights when necessary.
10. Consult your university's Legal Advice Centre if one is available.



DESIGNER  
STRATOR  
SIGNER

## Protect yourself... sign, date and mark your work

As an art and design graduate, it's important to ensure you can establish the origin or 'provenance' of your work.

A full provenance provides a documented history so an artist or designer can prove ownership and establish the work's authenticity.

Documented evidence of provenance is central to establishing authorship, ownership and therefore the value of the artistic copyright and unregistered design right, the IP rights which provide you with important legal protection. It also can help to establish that the artwork hasn't been altered, isn't a forgery, reproduction or stolen and enable people to find you if you are entitled to a payment due to artist's resale right. Provenance is also important for objects, models or prototypes.

To establish copyright, one needs to identify a work and the author.

According to [www.artbusiness.com](http://www.artbusiness.com), signing your artwork, design document or sketch and marking your products is an integral part of the creative process.

As soon as you sign your name to a piece of your artwork or designs, you declare it to be officially finished and ready to be displayed in public.

No matter what form your signature takes or where you put it, no work of art or design is complete without it. Your signature identifies your creative work for all time as having been created, completed and approved by you and your collaborator(s), if any.

When someone sees your work for the first time at your degree show and wants to know more about the artist or designer, your signature helps them find you. When you're not around to identify your work, your signature identifies it for you.

Look at this signature. Can you read it?



Image: Amanda Reagen

Thought not. However, the following signatures have instant recognition factor, are distinctive and legible.

Meer Leonardo

### Don't jeopardise your creative work's identity by not signing

People buy creative work and seldom mention the artist or designer. They misplace their receipts. They move, sell and give away the work. Creative work also loses its identity when it changes hands through divorce, death, inheritance and as gifts. If the work is unidentified, in copyright law it becomes known as an 'orphan work'. It also becomes easier to copy and to forge.

### Tips for signing, dating and marking your work

- ▶ Don't scribble – sign your work with your name legibly so people can read it.
- ▶ Try to have a unique and memorable signature.
- ▶ Preferably use your full name (with middle initial if it is a common name) or a nickname, or a first name and surname combination. Your actual name is preferable to initials or a symbol, which are easier to copy. Whichever you choose, use it consistently.
- ▶ Sign or mark your work on the front, back, side or edges.
- ▶ Sign artwork in the same medium in which you created.
- ▶ Eventually you can register your signature as a trade mark with the UKIPO.
- ▶ Use a special signature for your creative work – not what you usually use to open a bank account (to avoid identity theft).
- ▶ Limited edition prints are usually signed in pencil.
- ▶ Sign all your creative work in the same way. Think about consistency in size, colour, location and style. That way, the creative work you've produced over your entire career will be able to be recognised and identified as belonging to you.
- ▶ Date your creative work. The better known you become, the more important dates are for anyone interested in your evolution as an artist or designer.
- ▶ Begin to keep a database of the title of the work, an inventory number, a comment, a location where the work was made etc.

- ▶ If your creative work is on paper try using an embossing stamp or a fingerprint, which are more difficult to reproduce.
- ▶ Sign as soon as the work is done, preferably while the paint, clay or other material is still pliable.
- ▶ Don't sign on top of a varnished painting or completed sculpture because it may look like it was added later.
- ▶ Your signature should blend with, rather than contrast or interfere with, your work.
- ▶ If a signature is not appropriate for your type of creative work at the degree show, mark, label or identify the work as yours.
- ▶ © lasts for your lifetime plus 70 years. You won't always be there to vouch for it personally!

#### How give notice of the IP rights in your creative work

- ▶ Use the copyright symbol (© Jane Smith 2016)
- ▶ Assert your moral rights in a copyright work (e.g. The right of the artist to be identified as author of this work has been asserted in accordance with sections 77 and 78 of the *Copyright Designs and Patents Act 1988*).
- ▶ Design Right Jane Smith (2016)
- ▶ UK Registered Design 123456
- ▶ Use the ™ symbol after unregistered trade marks or the ® symbol after registered trade marks

Mark or label the work with the patent application number (e.g. Patent Applied for GB 123456 or GB Patent 123456)



Image: Robyn Medlock



“Winning the Design Innovation Plastics 2015 competition has benefitted me in a myriad of ways. It has allowed me to establish an experienced network and gain the contacts I need to develop my product into a business and increase my profile as a designer. I cannot stress how important it is to make the right contacts! You will find that if you wish to take an idea or product further (especially as a student), it really pays to have mentorship of a few experienced professionals behind you. In fact, it is invaluable. In particular, the competition resulted in my work being published in many articles online and in trade magazines. It’s helped me secure internships and further opportunities to exhibit my work. The success of the product and the interest in industry has inevitably led me down the route of protecting the design, which is now patent pending. None of this would have been possible if I had not won the competition.”

**Alexander Bordino**

## 1.4 Applying for commissions or entering competitions

“Competitions are an interesting one in that often designers feel their work may not be good enough to enter, but it’s worth remembering that art and design can be quite subjective, you may not feel it’s your best work but the judges might love it.”

### Jason Holroyd

Art and design competitions are an excellent opportunity to develop your art career by showcasing your creative work and getting it publicly recognised.

Even if your aim is to build your profile and CV, rather than benefit financially, think through the basic IP issues before entering. You may be submitting your best work to win and want to benefit from it personally in the future.

Confirm the copyright and other IP terms of entry in the FAQ. The terms of entry for some competitions amount to a contractual agreement to release ownership and copyright of the creative work by the artist or designer. Will you retain the IP rights in your work? Does the event organiser intend to use your work, images etc in printed or online publications?



### Read the fine print

There is no need to sell your copyright or design at all. Instead you can agree to license the work to the competition organiser/sponsor for specific uses.

You should be paid a fee for any use of your creative work outside the competition exhibition.

If the terms about IP rights are unclear or non-existent, ask the organisers rather than guess.

It’s worth putting time and thought into deciding which competitions and opportunities you pursue and pass on those that amount to an ‘IP rights grab’.

If you do decide to submit an entry, keep track of the work and images you’ve entered.

“In my experience entering student competitions and exhibiting your work is one of the best ways to gain recognition in your field, and boost your profile. It’s a great way to explore your boundaries, expand your horizons and ultimately challenge yourself!”

### Alexander Bordino

“I would personally say competitions are one of the most important things to take part in while you are at university. Taking part does a number of things for your future career, even if you do not win the competition. They prepare you mentally for work life after university and it’s a great way to build your portfolio so brands can gauge your style of design.”

### Rachel Siggee

#### Work placements

If work experience is to be beneficial to both you and an employer, it is vital you are given as much insight into the world of work as possible; so, think ‘tasks not tea’. Basically, it is best to assume that the work you create on work placement will be owned by the employer unless you agree otherwise.

Where a literary, dramatic, musical or artistic work, or a film, is made by an employee, it’s usually the employer who owns any copyright in the work. If you want to retain copyright, or other IP rights, this should either be agreed with the employer first or you could agree to work freelance (under a ‘contract for services’, rather than as an employee).



## 1.5 Crash course in IP: protection tools

Examples of IP protection are:

- ▶ Copyright;
- ▶ Designs (which protect the 'visual appeal' of a product);
- ▶ Trade marks (which denote the origin of goods or services);
- ▶ Moral rights (which help protect the artist's integrity);
- ▶ Artist's Resale Right (which ensure artists get royalty payments from the resale of their works, when they're sold through the art market).

From a legal perspective, IP rights fall into two categories:

### Free automatic IP rights

Copyright

Moral rights

The unregistered design right

Confidential information  
and knowhow

### Registered IP rights (registration fee applies)

Patents\*

Trade marks\*

Registered designs\*

\*must be registered with the UK Intellectual Property Office (UKIPO) to be effective.

### Copyright ©

Copyright is the legal protection of creative expression in any form of media to prevent unlawful use. The copyright owner of an original artistic work has the exclusive right to reproduce it, to decide how it will be published and distributed, to keep it from being modified against his or her wishes, and to profit from it. The copyright owner also has the right to give others a licence to use the work in specific and limited ways.

Copyright is a massively important property right for artists and designers. All of your original works have the potential to be automatically protected for free. You will also have the legal right to stop others using your work without your permission. Copyright protects creative works in tangible form: artwork, 2-D design drawings and other kinds of creative products.

However, copyright protects the form or expression of creativity by artists and designers, rather than the idea underlying the work.

Your creative work will need to be **original** in the sense that you haven't copied it from elsewhere and it has been **recorded or expressed in some permanent way**, for example a painting on canvas or in a design document.

It is then protected automatically without the need for you to do anything else. In the UK copyright protection is **free and automatic** – there is no official copyright registration process.

Copyright protects any artistic work which requires some effort and artistic judgement to create, but the threshold is quite low, so in the UK even things like doodles or graffiti attract copyright protection. Your creative work may also be protected by copyright laws in other countries through international agreements such as the Berne Convention. Bear in mind that, while the 'originality' threshold in the UK is quite low, it is higher in many EU countries.

Artistic works also include diagrams, drawings, engraving, graphic work, lithographs, maps, models, paintings, photographs (analogue and digital), prints and computer software among other things. There are a few exceptions; sculpture and handmade works of artistic craftsmanship, (e.g. jewellery, stained-glass windows, hand-painted plates) need a degree of artistic merit to be protected by copyright. Mass-produced, identical items will not be protected as artistic works by copyright law, and in this instance design right is the more appropriate form of legal protection.

Copyright will also protect a 2-D design drawing of an artistic work. If someone makes a 3-D object based on your design drawing, you may have a claim for copyright infringement (e.g. if they make a ring from your drawing of the ring design).



In a copyright dispute, you would need to prove that your creative work:

- ▶ is original and not a copy of someone else's work; and
- ▶ required your creative input (skill, labour and judgement).

#### How long does copyright last?

Copyright can become very valuable, precisely because it lasts for a long time. Copyright protection only expires 70 years after the end of the year of the creator's death.

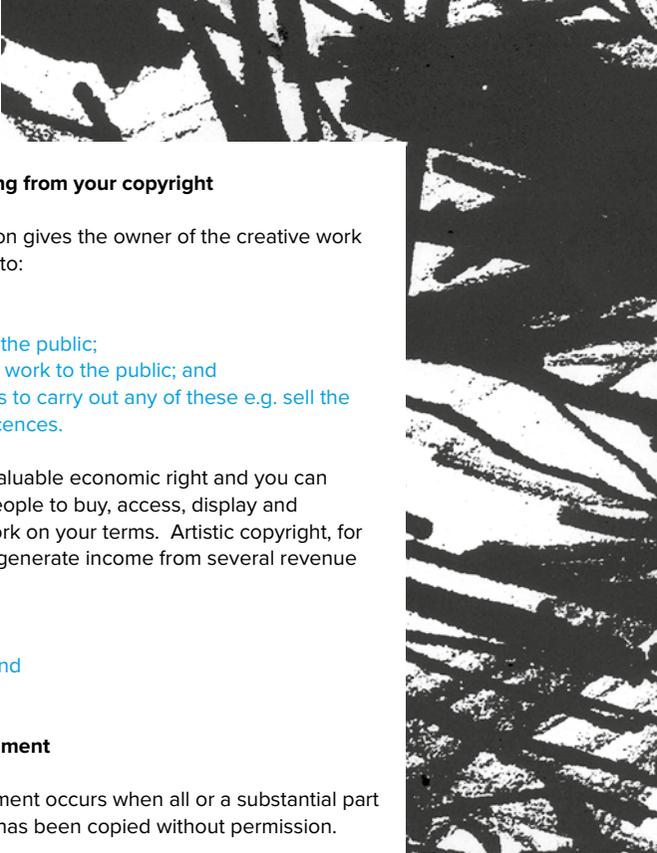
If the creator of an artistic work died more than 70 years ago, copyright will have expired and anyone will be permitted to make a copy of the work.

#### No need to register, but use the © notice

Once you've established that you have copyright protection for your creative work, it's a good idea to display a prominent notice on your work, such as '©2016 Jane Smith Artist + contact details.'

Make sure you keep good records of your artworks and examples of how they have evolved into the finished works.





## How to earn a living from your copyright

Copyright protection gives the owner of the creative work the exclusive right to:

- ▶ reproduce;
- ▶ issue copies to the public;
- ▶ rent or lend the work to the public; and
- ▶ authorise others to carry out any of these e.g. sell the right or grant licences.

So copyright is a valuable economic right and you can charge a fee for people to buy, access, display and reproduce your work on your terms. Artistic copyright, for example, helps to generate income from several revenue streams including:

- ▶ exhibition;
- ▶ reproduction; and
- ▶ merchandising.

## Copyright infringement

Copyright infringement occurs when all or a substantial part of an artistic work has been copied without permission.

However, don't automatically assume that copyright in your artistic work has been infringed as there are many limited exceptions to copyright protection.

## Incidental inclusion

Artistic works can be 'incidentally' featured in another artwork, sound recording, film or broadcast, without seeking the permission of the copyright owner. 'Incidental use' usually means that the work is in the background of another image, or permanently sited in a public place, and not the main feature of the artwork, recording or broadcast. This exemption is not automatic, and it's important that the exact use of the artwork is carefully considered. You may need to seek advice if you are unsure if your work has been incidentally featured or your copyright infringed.

## Fair dealing in copyright works

As creator artist/designer, you have the right to control the copying and re-use of your work.

Copyright is broad but there are limitations. In certain very specific circumstances, other people may use your copyright-protected work and this is known as 'fair dealing'.

There are legal exceptions that may allow parts of certain types of work to be used without your permission if it relates to 'non-economic' activity. This includes private study and non-commercial research, criticism or review, reporting current events, teaching and helping disabled people, caricature and quotation, among others. What is fair depends on the amount used and the way it is used. For example, it would generally not be considered 'fair dealing' to copy the whole work.

## Using inconsequential or insubstantial parts

Unsubstantial parts of copyrighted work may be used without the owner's permission. However, 'substantial part' is not about how much of the work is used, rather whether the copying involves the **significant** parts of a copyright work. On this basis, even small parts of a work could be deemed 'substantial'. The quality and importance of what is being appropriated into the new artwork is visually more important than the quantity. There is also no legally defined limit as to what is 'substantial'.

## Direct and indirect copyright infringement

The copyright in an artistic work may be directly or indirectly infringed.

Direct infringement is:

- ▶ copying the work in any material form (including digital);
- ▶ issuing copies to the public;
- ▶ renting or lending the work;
- ▶ showing the work in public; and
- ▶ making an adaptation of the work (changing form e.g. converting an illustration in a book into a mural).

Indirect infringement is commercially dealing in infringing copies.

## Design protection

In addition to copyright protection, you should consider how design law protects the 3-D aspects of your work, especially if it is to be mass produced.

## Determining what is fair or unfair use

It is sometimes difficult to draw the line between what is fair and unfair. This is often leads to creators enforcing their rights by bringing a case to court for alleged copyright infringement.

## Artists' and designers' moral rights in copyright work

While copyright protects an artist's economic rights, the moral rights protect his or her reputation. This means protection of the artwork or designs as a reflection of the creator and their career.

## In the UK the key types of protection are:

- ▶ attribution – the right of an artist to have 'due acknowledgement' with his or her name cited or attached to artwork whenever it is displayed or reproduced;
- ▶ integrity – protection from altering the artwork in some way which might be regarded as derogatory, potentially undermining the original artwork and the artist's reputation; and
- ▶ the artist's resale right – which ensure artists get royalty payments from the resale of their works when they're sold through the art market.

Creators of artistic works are entitled to receive a small percentage of the sale price each time the work is sold. The right to this royalty lasts for the same period as copyright. Some sales are exempt.

## The calculation of artist's resale right royalties (ARR)

The ARR derives from a European Directive and came into force in the UK in 2006.

The right only applies when the sale price reaches or exceeds the sterling equivalent of €1,000 and is calculated on a sliding scale.

Royalty	Resale price
4%	Up to €50,000
3%	€50,000.01 – €200,000
1%	€200,000.01 – €350,000
0.5%	€350,000.01 – €500,000
0.25%	in excess of €500,000



Image: Hannah Stokes

## Collection of royalties

- ▶ Resale right in the UK is managed by collecting societies who then distribute the royalty to the artists.
- ▶ Individual artists cannot request payments directly from the art market professionals involved in the sale.
- ▶ For more information about the administration of artists' rights you can contact the Design and Artists Copyright Society (DACs) or Artists Collecting Society (ACS).

All artistic works as defined by copyright law are protected against moral rights infringement and it's the creator, not the copyright owner, who has the moral rights. The right to be credited as the creator is especially important in terms of reputation and generating income.

Moral rights are personal to the artist, and cannot be assigned (sold) although they have to be formally asserted to take effect. In other words, you need to publicly claim the moral rights in your artwork or you can't rely on them. This is simple – stating 'John Smith asserts his moral rights in this painting', together with your copyright information or digital watermark – will suffice.

However, if you don't assert your moral rights the artwork may become 'orphaned' (be the work of an unknown artist). You won't be able to access secondary income from reproduction, and will also lose your resale right and possibly any future commissions.

You can also be asked to waive your moral rights but you should only do this if there's good reason.

Even if you have sold or licensed your creative work, moral rights allow you to prevent it being treated in a way would reflect badly on you and harm your reputation as an artist or designer.

Moral rights are particularly important for artists and designers who create copyright works.

The attribution right (being credited as the artist or designer) is probably more valuable to students at the outset of their career than the copyright itself.

Legislation: Copyright Designs and Patents Act 1988



## The unregistered design right

Design law protects the appearance of an article, not its function.

In legal terms, a design refers to the appearance of a part or the whole of a product resulting from the features of, in particular, the lines, contours, colours, shape, texture or materials of a product. The design may subsist both in the shape of a product and in the decoration applied to a product. It is these features, either of appearance or arrangement, that are the subject of the design right. Examples of products that fall into the design sphere include jewellery, textiles, white goods, sunglasses, cars and aircraft.

The UK unregistered design right subsists in original designs that are fixed in some permanent form, just as copyright does in original works. However, protection only lasts for up to 15 years.

Legislation: Copyright Designs and Patents Act 1988

## Registered designs

A registered design granted by the UKIPO lasts for up to 25 years but does not guarantee that the owner can make and sell the product. Rather, design registration gives the owner the right to stop others from making, using or selling a similar product. This is in addition to any unregistered design rights or copyright protection that may exist automatically in the design.

Why should an artist or designer register their designs?

- ▶ A design registration can act as a deterrent to those would copy your design. They may seek another target instead.
- ▶ You can mark the product and product literature with the registered design number.
- ▶ Registered designs last longer than the unregistered design right.

They are valuable assets that may be licensed and sold, making it easier to secure finance and negotiate commercial terms.

- ▶ It is a criminal offence to intentionally copy a registered design.

Legislation: Registered Designs Act 1949 and Intellectual Property Act 2014

## Patents to protect innovations

A patent is a special form of IP registered with the UKIPO that protects inventions for products.

A patent may be granted for a device, substance, method or process that is new, inventive and useful.

A word of warning – your invention must be kept **absolutely confidential** until you apply for a patent or else a patent monopoly will not be granted.

You must also apply to register a patent **BEFORE** you display your work to the public (e.g. at your degree show)

To register a patent, you need to file a detailed patent application at the UK Intellectual Property Office and pay a fee. This can be done online at:

### [www.gov.uk/patent-your-invention](http://www.gov.uk/patent-your-invention)

Only when you've filed your patent application can you disclose how your invention works. You'll then have to follow the procedure that leads to the patent being granted, which can take more than two years.

1. Confirm what you can patent.
2. Prepare your application.
3. Apply for a patent.
4. Request your patent search and examination.
5. Apply for international patents.

You may need the assistance of a patent attorney.

In return for publicly disclosing the invention, as the inventor you will gain the exclusive right to use of the patented device for up to 20 years.

Legislation: Patents Act 1977, Patents Act 2004 and Intellectual Property Act 2014



## Artists and designers: trade marks and branding

As an artist or designer it is important to create a striking visual identity and this may involve a logo, signature or your own name or nickname. Your brand should reflect the ethos and values of your artwork.

A trade mark registered in the UK or another market jurisdiction for specific goods and services will enable you to build your brand with the knowledge that you can stop others from using your brand identity without your permission or payment.

A trade mark is registered with the UKIPO as a mark that distinguishes the source of goods or services. A trade mark is a remarkably broad example of IP. A trade mark can be anything that differentiates a particular enterprise from its competitors, including a:

- ▶ word
- ▶ name or signature
- ▶ numeric device
- ▶ symbol, logo or picture
- ▶ slogan
- ▶ colour combined with any of the above
- ▶ sound
- ▶ silhouette

You can also use a minimum of three letters, or an aspect of packaging.

A trade mark can consist of words or images alone, or any combination of the above signs.

If you have come up with an original name for your creative business and/or range of artistic works, you may be able to register it as a trade mark. A trade mark must be distinctive and non-descriptive, e.g. you can't register 'Paintings' for a painting (otherwise no one else could use the word 'painting'!) but you may be able to register a brand like 'Messy Art' or 'Artress' alone or as logo with a signature colour. You'll find all aspects of applying for a registered trade mark on the UK Intellectual Property Office website [www.ipo.gov.uk](http://www.ipo.gov.uk)

## 1.6 IP and creators, owners, collaborators, freelancers and employees

As a creative artist or small business you may not yet have the money to spend on registering trade marks. However, it is important that any brand or range names you wish to use don't infringe existing registered marks, so you should carry out an online search with the UKIPO trade mark database and seek advice as to what you can and can't use in your branding. If your search is clear, then you can include the ™ symbol after your unregistered mark. If you apply to register your mark and this is granted, then you can use the ® symbol after the mark.

If you want to have a website for your artwork, you will have to register the domain name separately.

As an artist, you may be approached to license your artwork for other uses. If you haven't already done so, immediately register your trade mark to cover the goods and services envisaged. This will protect your right to use the mark and license others to use it as well. You should also consider whether to extend the trade mark registration to other countries.

Trade mark protection may overlap with copyright; for instance, a logo may be copyright protected as an artistic creation and also registered as a trade mark. However, a trade mark may protect words, designs, and other elements that are not considered copyrightable.

Legislation: Trade Marks Act 1994

### Unregistered brands and 'passing off'

In the UK, an unregistered trade mark is protected by the common law of 'passing off'.

The tort of passing off traditionally prevents one person from passing off their goods and services as somebody else's for financial gain. You need to provide three factors to succeed in a legal action for passing off:

1. you or your business's goodwill or reputation;
2. that an untrue statement has been made to the public; and
3. that you have or will likely suffer damage.

The key message is to think about how you will protect your business identity.

### The original artist and ownership

The artist/designer is the person who creates the work and is the original owner. The general rule is that they will own the copyright and design rights in any work they create. However, there are exceptions:

### Works created by students while on a course

There is nothing in the Copyright, Designs and Patents Act 1988 which relates specifically to ownership of copyright in student-created works. The normal rules of ownership will apply as outlined in sections 9-11 of the Act.

A teacher/lecturer should not be able to claim joint ownership in a student's creative work unless they have made a substantial contribution. However, some universities and colleges may ask that the students assign their copyright over to the establishment when enrolling. Alternatively, the establishment might extract a royalty-free licence for any works created as a condition of enrolment. In the absence of any such contract, the copyright would remain with you as the creator.



Image: Fumi Shimomura

## Collaborations

If you have collaborated with another artist/designer in creating the artwork, it may be an artwork of joint authorship with both of you sharing the IP rights (as long as your contributions to the piece are indistinct from each other). It's best to agree this in advance, preferably in writing. As a contributor to an artwork of joint authorship, you will need the other artist/designer's permission to use and exploit the artwork.

## Freelancers

A freelancer will own the copyright in the artistic work, not the person paying for the artwork. The only way to change ownership of the copyright in the artwork or design is to make a written signed agreement for you as the artist/designer to sell (assign) the copyright to the client. However, the commissioner will have a limited permission (a licence) to use the artwork for the purpose for which it was commissioned, without infringing your copyright.

The IP rights in an artwork can be bought and sold, so you are free to enter into contracts to change ownership. However, this is not the case with moral rights, which protect your reputation. These cannot be bought or sold, though you can waive them.

### Does a freelance designer have rights in my design?

If you want to own all the intellectual property rights, the best strategy is to agree with the freelance designer to assign these rights to you in a written agreement, preferably before they begin any work.

"I entered the YCN competition at Uni and got to go and meet Bear Nibbles and see how they work. I ended up getting an amazing work opportunity from them which really helped get my career going and I have worked with them on a freelance basis several times since."

**Katie Abey**



Image: Chloe Tooth

"Even after leaving university I am still building on my collection and constantly sending my collection off to different magazines for editorial shoots. Again, really good for design and industry exposure!"

**Rachel Siggee**

"My work has always come through word of mouth. So, by hopefully keeping clients happy and trying to push the boundaries a little with each job, you get recommended and it goes from there, so it's quite an organic way of sourcing work I guess."

**Jason Holroyd**



## 1.7

### Questions, questions, questions:

We've put together some commonly asked questions about IP for artists and designers here...

#### **I have an idea for an artistic work but I haven't started working on it yet, is it protected by copyright?**

No. You can't copyright an idea for an artistic work, but once it is in a permanent or fixed form it will attract copyright protection automatically (it is your expression of the ideas in the artistic work that are protected).

#### **How do I check if someone has already created a similar piece of art or design to avoid infringing others' IP rights?**

An Internet search is the best way to start, as there's no central global database of copyright-protected artwork or designs.

However, you can find registered designs at the UK Intellectual Property Office Registered Design database or OHIM for European design registrations. Alternatively, you could ask a lawyer or patent attorney firm to carry out a search, but this will cost you.

#### **How can I search for a UK registered design?**

Visit [www.gov.uk/search-registered-design](http://www.gov.uk/search-registered-design)

You can filter your design search by:

- ▶ [product type](#)
- ▶ [design classification](#)
- ▶ [owner](#)
- ▶ [design number](#)

#### **What is the difference between plagiarism and IP infringement?**

Plagiarism is about the failure to properly attribute the authorship of copied material (whether copies of ideas or of text or images) and involves a breach of academic regulations but is not unlawful. Copyright infringement is a breach of the copyright owner's rights where there has been 'substantial taking' without permission (or payment) and is unlawful.

Avoiding plagiarism is about properly apportioning intellectual credit, whereas copyright is concerned with economic rights.



### Inspiration vs infringement: what if I'm inspired by the style or designs of others – is this acceptable?

Many pieces of design are influenced by what came before and many designers cite others as inspiration for their work. However, if your design is too similar to another the owner may challenge this. If you have intentionally copied a registered design criminal sanctions may apply.

First, check if the copyright has expired. If not, find out who owns the artistic work that is the source of your inspiration. If your work is substantially similar and you don't receive permission to reproduce it, you expose yourself to the risk of copyright infringement. This would have consequences for your artistic work and what you can do with it.

### How do I get the owner's permission to use their copyright work?

The best way is to write to the copyright owners explaining:

- ▶ what the new artwork will be;
- ▶ the appropriateness of the new artwork;
- ▶ what you intend to do with the new artwork; and
- ▶ whether this will generate income.

You can request a licence to make the new work incorporating the copyright material. If the use will be non-profit making, the owner may grant the licence for free. A licence will set out how the new artwork can be shown, where and for how long.

### How much does it cost to register a design?

Visit [www.gov.uk/government/publications/design-forms-and-fees/design-forms-and-fees](http://www.gov.uk/government/publications/design-forms-and-fees/design-forms-and-fees) for the latest information, including an online registration system.

### Is my artistic work protected by both copyright and design right?

Occasionally the rights do overlap. An artistic work could be protected by UK design right for its shape and copyright for its surface patterns or decoration if they can exist independently from their application to the 3-D shape.

### Do both copyright and design right protect the same product?

A product could be protected by UK design right for its shape and by copyright for its surface patterns or decoration if they can exist independently from their application to the 3-D shape.

### What are the advantages of copyright protection over registered design protection?

You don't need to register for copyright protection and it lasts longer. Moral rights will also apply to the artistic/aesthetic work. These rights are not concerned with morality, rather with non-monetary interests such as receiving credit for your work and the right to object to derogatory treatment of the work by a third party.

### Should I register my design to protect how it works?

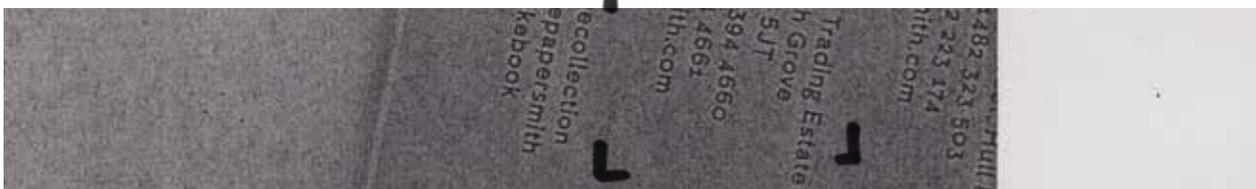
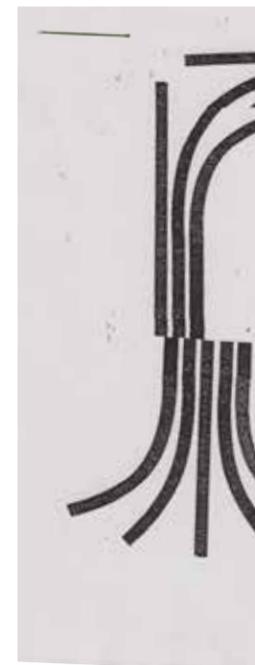
No, this isn't possible. You can apply for a patent – however, you'll have to demonstrate that the way that your design works is new (anywhere in the world) and inventive.

### Will posting a copy of my drawings to myself help to prove I am the artist/designer?

It's too easy to fake or manipulate a record of posting for this to be a safe method. The best thing to do is collate all your work, including sketches and drafts, then file it with a solicitor or independent organisation such as Anti-Copying in Design (ACID).

### Do students own the IP in their creative works displayed in the degree shows?

A student is the first author and owner of their creative work. However, each university will have its own IP policy which affects who owns copyright work created on campus. Some universities allow students to own the IP they created, others will own student-created IP, while many have a joint ownership policy. Check your programme handbook for details of the University or School's IP policy.



### **What if I am approached at the degree show by someone who wants to use my work?**

You may manage your IP rights in any way you see fit. To gain exposure you may wish to let them use it for free by publishing it under a Creative Commons Licence, which enables the free distribution of a copyrighted work. As the copyright owner you still retain some control over your work and can create terms and conditions that others must adhere to, such as attributing the work to you.

### **Charging a fee to use your creative work**

As a copyright owner you can provide others with permission to use your work using a licence. You may decide to charge a fee, along with other specific terms and conditions. Some copyright owners enlist the help of collecting societies who grant permissions and licences and collect royalties on the owner's behalf.

### **What if someone asks to collaborate with me?**

Working collaboratively can be a wonderful experience with many people bringing different skills to a project. However, it can also make defining who owns the IP difficult. Before the project begins, agree and document who will own any IP created.

### **What if I want to incorporate someone else's work into my work for the degree show?**

Usually you need to obtain permission from the copyright owner if you want to use all, or a substantial part, of their work.

Finding a copyright owner can be challenging, but there is help available. If you are still unable to locate the copyright owner, then the work is referred to as an orphan work.

### **What is an orphan work?**

Orphan works are creative works that are protected by copyright but one or more of the copyright owners is either unknown or cannot be found. There are millions of orphaned creative works. If a rights holder cannot be found, the work cannot be used lawfully unless you apply for a UK orphan works' licence.



### **If I change a few creative or design elements is it acceptable to copy?**

This is a common myth in the art and design field. The test for copyright infringement is whether the alleged infringing piece reproduces the whole, or a substantial part, of the artistic work. In other words, what is copied may only be a small amount of the artistic work, but it may nevertheless be a visually striking or substantial part of the creator's creative skill, labour and artistic judgement.

### **Another artist/designer alleges I've copied their artistic work, but this is coincidental. How do I prove I created my own unique work?**

In order to prove copyright infringement of an artistic work there has to be evidence of copying. Similarities between the two artistic works aren't necessarily enough to prove this. Keep evidence of your creative process, including sources of inspiration, sketches, photos of the work in progress etc.

### **What is meant by the term public domain?**

This refers to content in which copyright protection has expired.

### **I have registered my design in the UK. Do I also need to register it in the People's Republic of China (PRC) where it will be manufactured?**

The UK registration is territorially limited to infringing acts that take place within the UK so won't cover any infringing copies made in China. You can register a design there, but enforcing your rights can be costly. It could make more sense to have a strict agreement in place with the manufacturer in the PRC and obtain an EU registration which would cover all of the EU. This would mean if any copies were made in China and then brought into anywhere in the EU, you could take action closer to home.

## Additional resources

Anti-Copying in Design (ACID) [www.acid.uk.com](http://www.acid.uk.com)

Business Guidance on changes to the law on designs (June 2014) UK Intellectual Property Office at: [www.gov.uk/government/uploads/system/uploads/attachment\\_data/file/323145/changes-to-designs-law.pdf](http://www.gov.uk/government/uploads/system/uploads/attachment_data/file/323145/changes-to-designs-law.pdf)

Branagan, A. *A Pocket Business Guide for Artists & Designers* (2011) A & C Black Publishers

Burke, Sandra, *Fashion Entrepreneur: Starting Your Own Fashion Business* (2012, 2nd Revised ed.) Burke Publishing, Oxford

Denoncourt, J. et al (2015) *Nottingham Creative IP Guide, Nottingham Trent University Publications*, ISBN 978-0-9931112-2 2-8 (pbk), ISBN 978-0-9931112-1-1 (ebk)

Design and Artists Copyright Society [www.dacs.org.uk](http://www.dacs.org.uk)

Design Council [www.designcouncil.org](http://www.designcouncil.org)

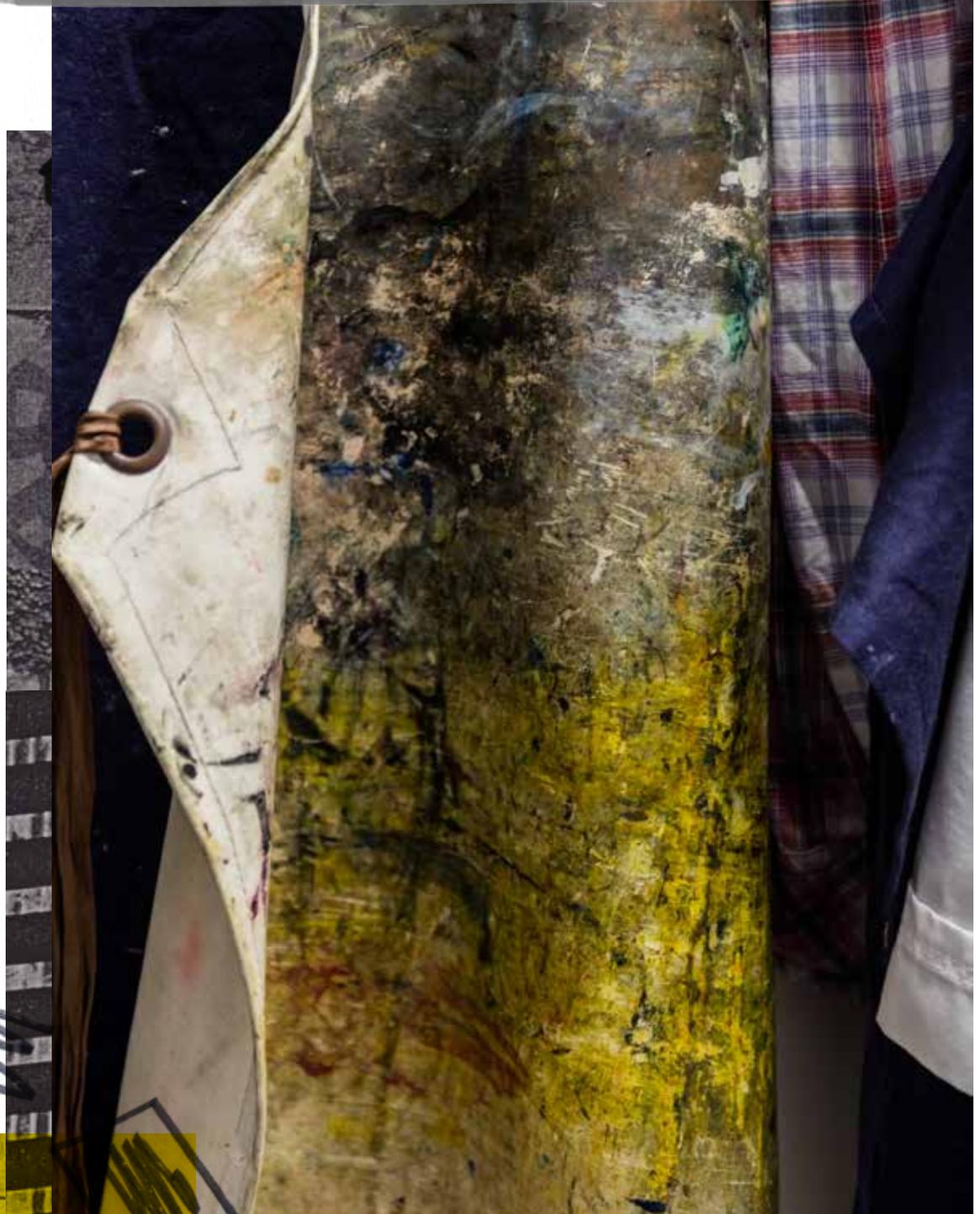
Design Week [www.designweek.co.uk](http://www.designweek.co.uk)

IP Health Check Tool, UK Intellectual Property Office [www.ipo.gov.uk/iphealthcheck.htm](http://www.ipo.gov.uk/iphealthcheck.htm)

Kleon, A. *Show Your Work!: 10 Ways to Share Your Creativity and Get Discovered* (2014) Workman Publishing Company

*Marketing Crafts and Visual Arts: The Role of Intellectual Property A Practical Guide* (2003) International Trade Centre UNCTAC /WTO and World Intellectual Property Organization IPO ISBN 92-9137-264-1, [http://www.wipo.int/export/sites/www/sme/en/documents/pdf/marketing\\_crafts.pdf](http://www.wipo.int/export/sites/www/sme/en/documents/pdf/marketing_crafts.pdf)

Your Creative Future [www.yourcreativefuture.org](http://www.yourcreativefuture.org)



## 2.1

# Protecting your IP at trade fairs and exhibitions - be proactive!

### Fashion shows

"Fashion is art, designers are the gods."  
Jimmy James, Fashionista 2006

An exhibition can be organised by an artist or designer alone, sharing a show space with other artists, or in collaboration with exhibition agencies or galleries. Preparing for an exhibition requires planning many differing activities, so it's essential to prepare well in advance, with checklists of activities and strict deadlines for completing the various stages.

### Tricks of the trade

It is important to display your work at public exhibitions and in galleries to give your work exposure and generate commissions.

However, it pays to be cautious. Globalisation, the Internet and technology have increased the propensity for, and speed of, IP theft. Creative copyright work, product designs, features, components and trade marks photographed at one show can appear as a knock-off or look-a-like at another show or on a competitor's website soon after.

Public exhibitions don't cause IP theft but they can help prevent it. There are steps you can take when displaying your work in the UK or abroad to protect your creative IP.

"In 2011 I was voted NME Professional Music Photographer of the year. This gave a great boost to my profile and alongside an exhibition in London it gained attention from the press which was a great talking point with prospective clients. Regularly exhibiting your work also helps you focus on projects."

### David Baird

#### Preparing to exhibit: stop fakes

There is a lot of IP on display at exhibition-type events. Make sure you register, mark and bring evidence of ownership of your IP, registering in advance if necessary (designs, patents, trade marks).

Registration in one country DOES NOT provide protection in the rest of the world. Register in the country where you are based, but also in the country where you will be exhibiting or other markets. Remember registered IP rights are territorial. This means that a design, patent or trade mark registered in the UK only protects you in the UK – although registration in one EU country will protect you in all.



There are a couple of filing treaties which allow you to register in other countries: the Patent Cooperation Treaty and the Madrid Protocol for trade marks that allow you to file one application with the UK Intellectual Property Office, which is farmed out to the other patent and trade marks office in the world that you designate you wish to have protection. There is no such thing as a global patent, design or trade mark.

Copyright works are protected internationally thanks to the Berne Convention and do not need to be registered.

Mark creative work and products with registration numbers where applicable with IP symbols.

Register with customs if you believe that another exhibitor will be infringing your IP.

Bring certified copies of your IP rights with you to demonstrate ownership.

Displays are expensive marketing investments, you should consider insuring your creative work in case of loss or damage. While the likelihood of a significant loss is remote, it is possible. Exhibit organisers are unlikely to insure your display.

#### **Ways to protect your work from being copied**

Try to prevent any unauthorised photos being taken of your work as these will be owned by the photographer.

One tip is to commission a professional photographer yourself. Make sure you have a written agreement with them to retain the copyright so you can use the photos for promotional purposes and online.

It is important to give visitors appropriate information to take away so that they remember your work and get in touch. A postcard could have your own digital image of your work with copyright information, the title and date of the work, a short bio and your contact details. Providing this information is also evidence of provenance.

Ask people you speak with to sign, date and leave contact details and comments in your visitor book. This can be useful not only to develop a mailing list, but evidence that a person or organisation visited your work.

#### **Your knowhow, confidential information and trade secrets**

Don't be flattered by people admiring your work and make inadvertent disclosures involving your confidential information, knowhow or trade secrets. Ask those who are interested in your creative work to contact you after the show so you can firstly check them out and get any advice before negotiating a deal.

Have a 'need to know' policy, so you limit your knowhow and trade secrets. Make this information inaccessible to anybody who doesn't need to know.

Ensure confidentiality. If someone needs to access your information, arrange for them to sign a confidentiality (non-disclosure agreement) BEFORE you disclose the information. This is perhaps the most important element of confidential information policy, at least as far as the courts are concerned. A lawyer will help you draft one.

Prepare these agreements before attending the trade show.

#### **Gathering evidence of possible infringement of your IP**

Public exhibitions and trade shows in particular provide the perfect environment for copyists. Sometimes, people interested in your work come up and give themselves away by being too clever with the detailed questions about your work, how it is made, product features etc, questions the average person wouldn't ask.

- ▶ Learn to distinguish those from people with a genuine interest.
- ▶ Brief people manning your display to be alert to anything suspicious.
- ▶ Check out exhibitors you suspect of copyright theft. Gather evidence of possible infringement.
- ▶ Photograph or buy an infringing copy or product as evidence.
- ▶ Some large fairs have a legal advice desk on site who can be asked to remind others to respect IPR. Use the onsite system as necessary.

## 2.2

### Up-and-coming talent: exhibiting at galleries

#### Initiatives to stop IP theft

There are various worldwide initiatives in place:

Messe Frankfurt, a German trade fair organiser, has set up a scheme to make sure exhibitors and visitors are fully informed and advised about the registration and assertion of IP rights. [www.messefrankfurt.com/](http://www.messefrankfurt.com/)

STOP! (Strategy Targeting Organized Piracy) is a US initiative aimed at supporting American exhibitors in overseas shows. See <http://www.stopfakes.gov/>

The World Customs Organization (WCO) aids the national economic wealth and social protection of its members by promoting an honest, transparent and predictable Customs environment. [www.wcoomd.org](http://www.wcoomd.org)

INTERPOL's Turn Back Crime Campaign is a global initiative to raise the awareness of organised crime and part of its work involves preventing organised piracy.

[www.interpol.int](http://www.interpol.int)

The EU SME IPR Helpdesk covers trade fair IP protection in publications, online FAQ, case studies, videos and e-learning modules. It provides free business tools to manage your IP in Mainland China, Hong Kong, Macau and Taiwan and to deal with counterfeiting.

[www.iprhelpdesk.eu](http://www.iprhelpdesk.eu)

Many galleries are on the lookout for up-and-coming talent.

Don't send unsolicited material to galleries and dealers in a blanket fashion. You don't want your precious and expensively prepared portfolio to go astray, into a bin or your creative work be copied without permission.

Confirm that the gallery is happy to be included on your mailing list, and email them invitations to your degree show, including images, your bio, contact and copyright information.

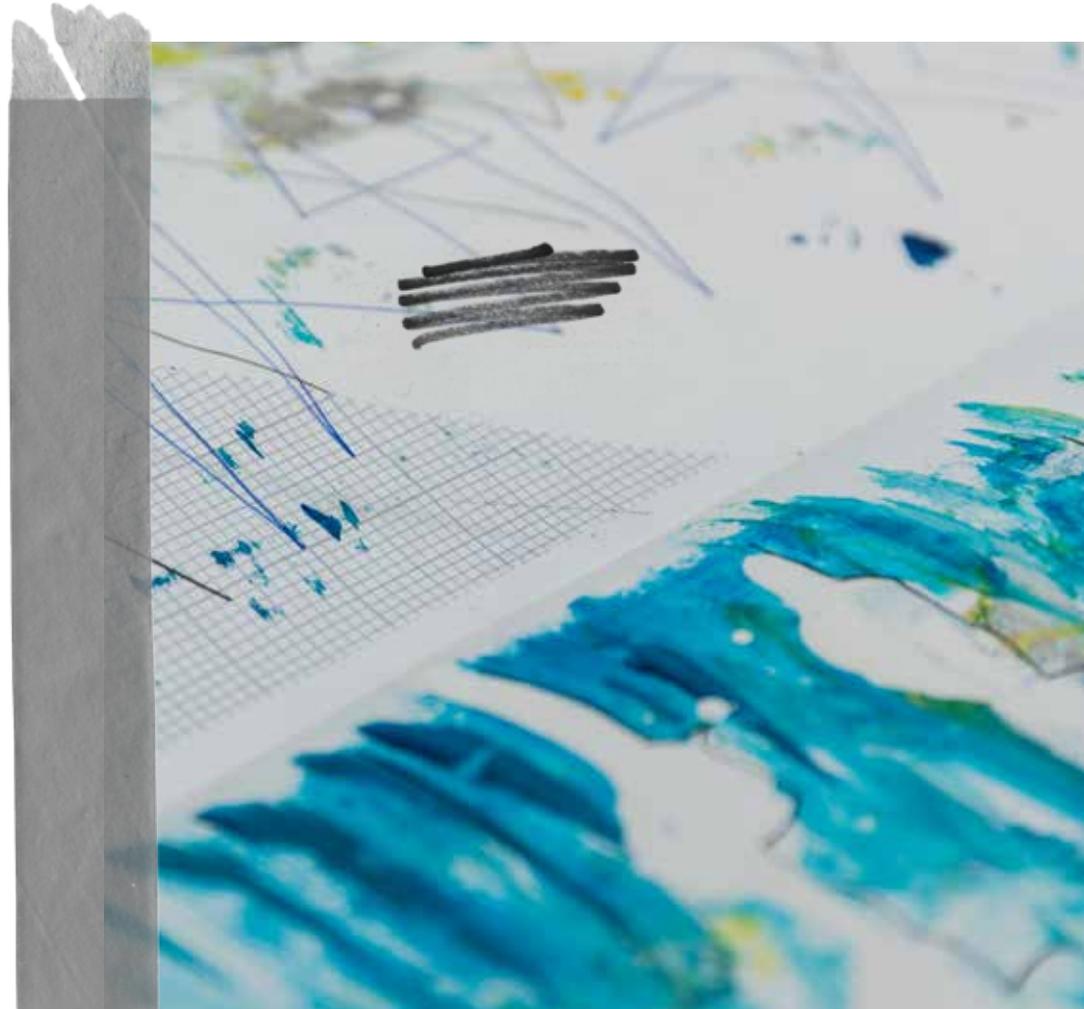


Image: Hannah Stokes

## 2.3

### Displaying your creative work as a professional

Public art beautifies our cities, parks, streets and shopping malls and is enjoyed by tens of thousands of people daily.

#### Sculpture and copyright

Creators of sculptures or works of artistic craftsmanship on permanent public display or in premises which are open to the public will find that their work may be reproduced without their permission in certain formats without infringing their copyright.

These type of works can be reproduced in 2-D, filmed, broadcast or transmitted without the copyright owner's consent. This means that 2-D images of a sculpture or a building can be used commercially without consent.

However, this exception to copyright protection does not extend to all forms of public art. Artwork such as original paintings (e.g. murals), drawings, engravings or photographs which are exhibited in public places or in premises open to the public are not excluded from copyright protection.

However, the sculpture or work of artistic craftsmanship must be permanently situated in a public place or in premises open to the public.

The term 'permanent' excludes temporary displays or any relevant work which may be removed from time to time. A public place covers parks, streets and the like. However, a public place could still be private land or privately owned, such as a shopping centre.

What about displaying public art overseas? The exception to copyright is UK specific and does not apply to all countries. In some countries, the creator is able to stop the distribution of copies of the public art. See legal advice about the country concerned.

## 2.4

### Having an online presence

#### Protecting digital images of your creative work online

Over the last few decades the world has changed hugely with the advent of the Internet and social media, such as Facebook, Twitter, Pinterest and others. Each day more than 500 million photos are shared, which means you need to get the right balance between making sure your images get visibility while keeping control of your IP. When you post to Facebook, you're granting them a royalty-free licence to use your photos, for example.

Having a website connected with your creative work will be an integral part of your career. First you will need to choose an available domain name and license its use from an Internet Service Provider. Make sure you own the right to all the content on your website.

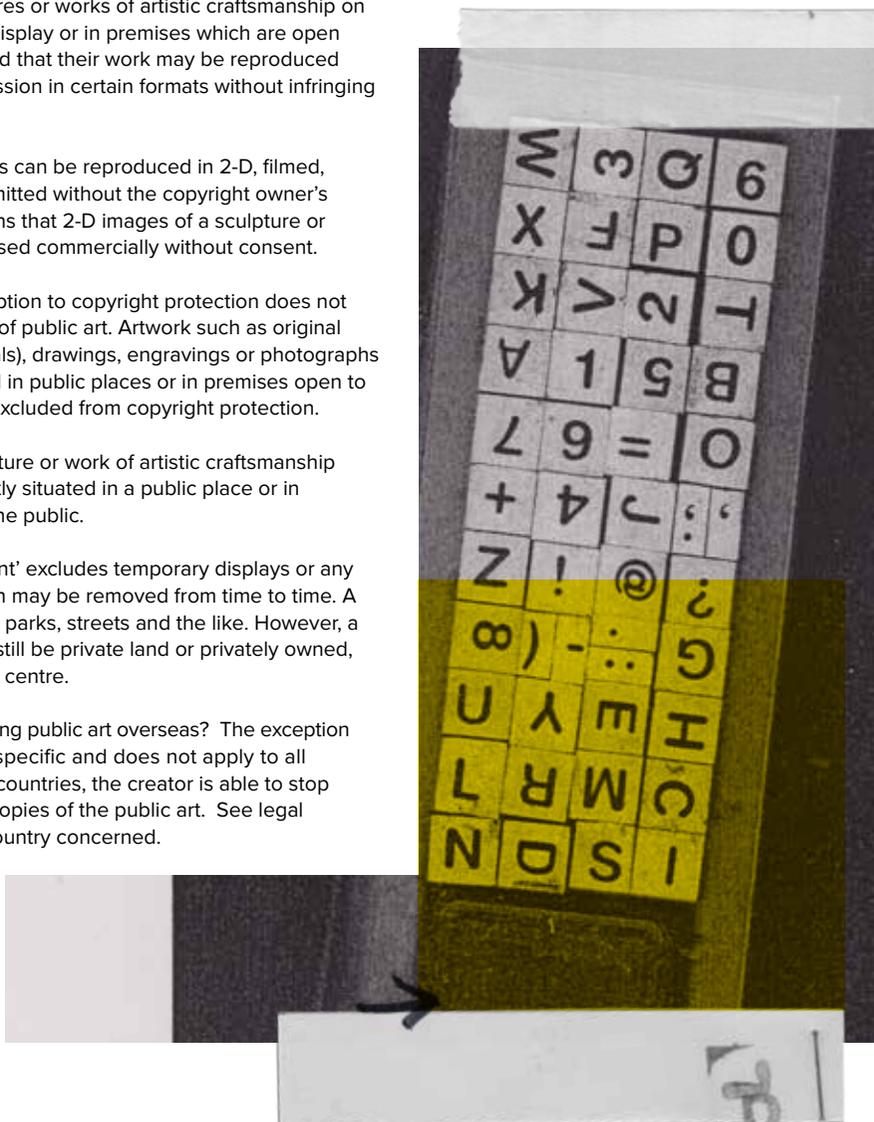
You have the right to control what is made available to the public, and the law refers specifically to communication via the Internet and the digital environment.

Social media represents not just a medium to display creative work but an opportunity to engage in a heightened level of interaction with audiences and experts, bringing their voices and observations forward and thereby creating greater opportunity and understanding of the subject matter. It is the greatest opportunity to date to leverage your creative IP assets.

Your work will mostly be displayed using digital images uploaded to your website. Photographs are classed as an artistic copyright work that lasts for the life of the photographer plus 70 years.

For photos you want to share, use Creative Commons licensing ([www.creativecommons.org](http://www.creativecommons.org)) specifically the CC BY-NC-ND licence which says anyone can use the photo, provide it is properly attributed, not changed and not used for commercial purposes. This means you can display images of your creative work seen and used, but you still maintain control of the IP and can license them for a fee if someone wants to use them commercially.

Digitally watermark your photos with a link to your website or social media account. Periodically use online tools like Google and TinEye to check the web to see how your images are being used.



## 2.5 Protecting your brand

One practical safeguard is to keep images of your work on the Internet in low resolution, as this makes them unsuitable for printed reproduction. If you need to send out high-resolution images, check that these will be stored securely and not available generally on the Internet. If images of your artwork are to be used on a website, resize them to a low resolution and request that they be clearly captioned with your copyright information e.g. © Jane Smith 2015 All rights reserved.

How you react to a potential infringement of your copyright will depend on the severity, ranging from ignoring occasional use in social media through to asking for an image to be removed within 24 hours, or even negotiating financial compensation (e.g. the licence fee that should have been paid the first place).

When you supply photographs to magazines, newspapers and periodicals the usual terms of the arrangement are that you agree to waive your moral rights, as editors need to crop the photos to suit or fit the text and, of course, advertisements will take priority. Always check the terms before you agree to supply the photo.

### **Need help managing the reproduction of your digital images?**

Managing requests to use your work is time consuming. If you are a visual artist, the Design and Artists Copyright Society (DACS) can help you receive the money owed to you every time someone uses your work. They employ a team of in-house copyright experts to set the price charged to the rights that you grant, and belong to an international network of societies in 30 countries, which means they can represent you globally.

### **Using Pinterest or other social networking sites to promote your art**

Pinterest ([www.pinterest.com](http://www.pinterest.com)) is one of the fastest-growing social networks with over 70 million users. The gist of Pinterest is collecting pictures (known as 'pins') by themes in folders ('boards'). You can upload pictures from a PC or save pictures from any site using a browser app. This will keep the link to the original image. Also you can look in other people's collections and save their pictures.

As there is no global trademark registration system, your brand protection strategy depends on where you intend to use the brand or sell your artistic works. There are three options. You can register your mark using the national UK registration system, the Community Trade Mark (CTM) system to cover specific EU member states, or the International (Madrid Protocol) system to register overseas.

### **Should you build a personal brand or a business brand?**

A personal brand is built around you personally. This means you use our own name to brand your enterprise. A business brand is centred on the identity you wish create for your business. These are both viable options, but there are pros and cons to consider.

#### **Personal brands**

Check if anyone is already using your name online and if it's already registered as a company and a trade mark. Think about your own name, as it is not automatically legally protected.

Some countries will not register a trade mark if it is nothing more than a name or surname, unless you can prove that your goods or services have become well known under that name.

Nevertheless, creating a personal brand is inexpensive and easy using social media and website accounts and result in the association between your name with your area of expertise. It is great for a 'one person' artist or designer enterprise. You can adapt your creative work without the need to change the name of your business.

#### **Business brands**

It takes effort to build a business brand. You have to create a brand name at a time when you may still be trying to decide your future career goals.

In the long term, you should be aware that it is more difficult to sell a personally branded business. Business brands take longer to create but are separate to you and have a life cycle (e.g. change of interest, location, retirement etc.) It is easier to sell a business if you've built something that isn't associated with your name.

COPYRIGHT

## 2.6

### Questions, questions, questions

We've put together some commonly asked questions about IP for artists and designers here:

**I agreed to paint a portrait, was paid a fee and delivered the painting to the client on completion. We have no formal written agreement, but I want to use the painting in an exhibition and make some prints. What should I do?**

It would have been easier to agree these issues before handing over the portrait. As no contract terms were agreed it could be argued that the fee paid by the client is only for the original artwork and does not include copyright or reproduction rights which remain with you, the artist. You should also have the right to photograph the artwork for publicity or reproduction purposes or on your website. You maintain all reproduction rights to the artwork and the client shall not reproduce the artwork without your permission. However, you will need to negotiate the right to exhibit the commissioned portrait as this was not agreed before the artwork was delivered and is now in the possession of the client.

**I have discovered a 'lookalike' piece of artwork, what should I do?**

Establish what you want to achieve if you take legal action (this doesn't necessarily mean going all the way to court). You can often settle the dispute through effective correspondence. Any compensation should reflect loss and include an admission of liability and your enforcement costs paid.



## 2.7

### Additional resources

Denoncourt, J. et al (2015) *Nottingham Creative IP Guide*, Nottingham Trent University Publications, ISBN 978-0-9931112-2 2-8 (pbk), ISBN 978-0-9931112-1-1 (ebk)

Alexis Exhibits for Trade Shows [www.alexisexhibits.com](http://www.alexisexhibits.com)

Design and Artists Copyright Society [www.dacs.org.uk](http://www.dacs.org.uk)

INTERPOL [www.interpol.int](http://www.interpol.int)

Messe Frankfurt Against Copying [www.messefrankfurt.com](http://www.messefrankfurt.com)

Pantalony, Rine Ester. *Managing Intellectual Property for Museums* (2013) World Intellectual Property Organization. See [http://www.wipo.int/edocs/pubdocs/en/copyright/1001/wipo\\_pub\\_1001.pdf](http://www.wipo.int/edocs/pubdocs/en/copyright/1001/wipo_pub_1001.pdf)

Grewar, M., Townley, B. and Youbng, E. *Tales from the Drawing Board: IP wisdom and woes from Scotland's creative industries* (2015) Institute for Capitalising on Creativity, University of St Andrews.

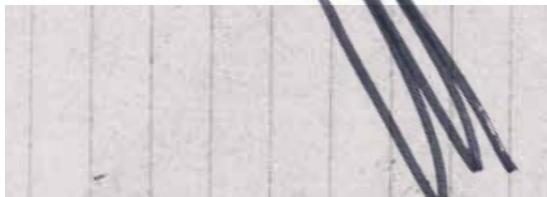
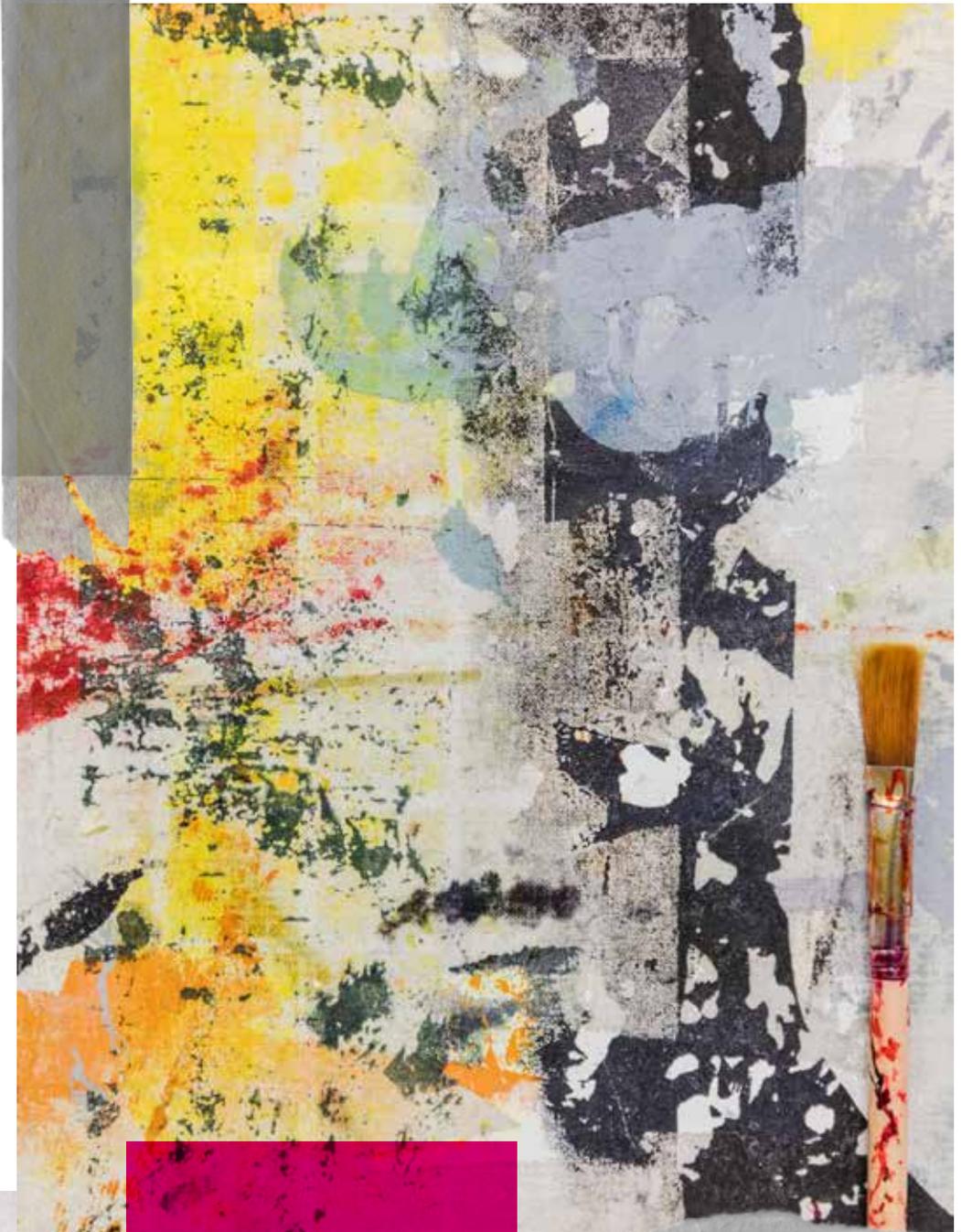
Horejs, J.J. *Starving to Successful: The Fine Artist's Guide to Getting Into Galleries and Selling More Art* (2009) 1st ed. Red dot Press

Red Dot Blog: Art Marketing News for Artists  
[www.reddotblog.com](http://www.reddotblog.com)

UK Intellectual Property Office [www.ukipo.gov.uk](http://www.ukipo.gov.uk)

US Government Initiative [www.stopfakes.gov](http://www.stopfakes.gov)

World Customs Organization [www.wcoomd.org](http://www.wcoomd.org)



# Becoming an Entrepreneurial Creative

## 3.1

### Commercial matters

#### Realising that you are a business

Sometimes the idea that you have created a business can come as a bit of a surprise. Initially, you are engaged in a creative endeavour, and many successful individuals tend to slide into business arrangements, and may regret in time some of their initial decisions. There are many advantages to running your own business, not least that you get to control your business decisions, and, with a little planning, your development as a creative person.

#### This is not a 'business' or 'art' decision

If you go in to the marketplace knowing how to make money from your creativity, it can pay dividends in the future and give you the financial security and freedom to invest in your future work.

There is a slight catch, though. You need to get the legal and accounting side in order so you can concentrate on what matters most to you.

With a little planning and investment up front, you can save yourself time and money in the long run. Creative arts as a business – the planning phase

First, think about the type of work you do. It's useful to have a look at similar businesses to see how they have marketed themselves, who they work with and their pricing structures. Secondly, think about putting together a business plan. This will help you to see your idea on paper. Banks are usually a good source of advice at the business planning phase. A number of banks have business plan apps which will help you to structure your thoughts. They will usually ask you for information such as:

- ▶ What is your idea/product?
- ▶ Why do you think that there is a market?
- ▶ How are you going to finance your ideas?
- ▶ Do you need any specialist kit?
- ▶ Are you going to work on your own or in collaboration with others?

There are a number of good sources of information such as the Government website [www.gov.uk/write-business-plan](http://www.gov.uk/write-business-plan) and The Prince's Trust <https://www.princes-trust.org.uk/help-for-young-people/support-starting-business>.

#### Running a business – the legal bit

There are a few legal issues to check before starting a business, but if you start off on the right foot, you won't have to spend too much of your time dealing with the boring bits.

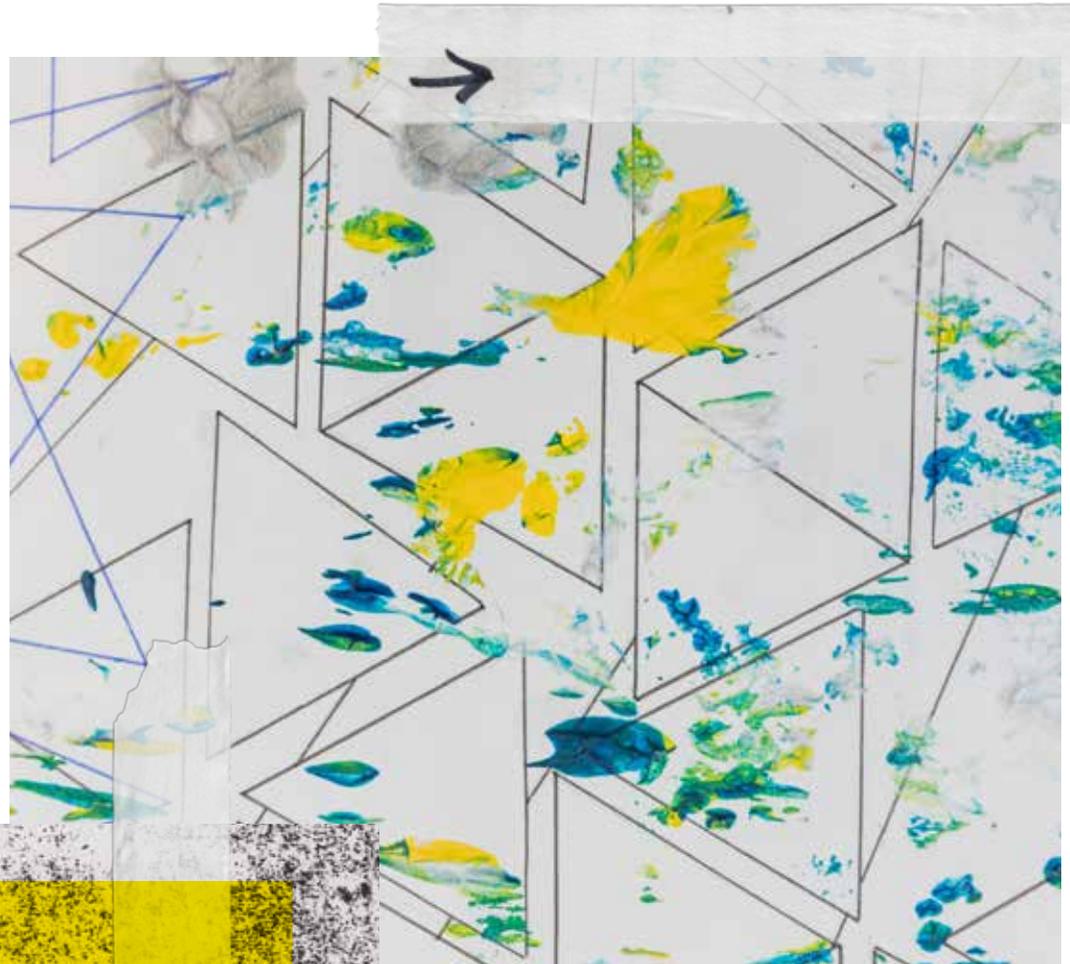


Image: Hannah Stokes

## 3.2

### Insurance to protect your artwork

As an artist you take many risks, and it's important to minimise these wherever possible.

If your artwork is particularly valuable to the success of your career or business you should get expert advice about keeping it secure from theft.

#### Get the right cover – a specialist business/art insurance policy

To start with, you need to make sure you have the right amount of insurance cover for your artwork, your equipment, your premises and visitors, for yourself in case of injury or inability to work and complete commissions, and for any employees. There are affordable, tailored insurance policies specifically for visual and applied artists that cover:

- ▶ artwork (completed work is insured for the artist's net selling price, work in progress cover, storage, transit and exhibition risks);
- ▶ studio insurance (contents, tools and equipment, buildings);
- ▶ business interruption (loss of profit, exhibition venues and contract sites);
- ▶ employers' liability; and
- ▶ public liability (visitors, students, the public).

## 3.3

### Business structures and business plans

What type of business structure is right for you?

- ▶ **Sole trader:** most people who are self employed start out with 'sole trader' status. It is simple and the start-up costs may be minimal. If you are working on your projects while at art school and selling face to face or via a Facebook page or similar, you are a sole trader and can set up an account with the bank and run your business quite happily. Remember that sole trader status means in this legal structure you can keep all the profits of the business, after tax. A sole trader may employ staff full time or freelancers. The only downside is that you are liable as an individual for the debts and other liabilities that are incurred as a business.
- ▶ **Partnerships:** these can sometimes arise without anyone really realising that it's happened. Essentially, a partnership is created when one or more people run an enterprise, and share all of the attendant costs, liabilities and profits on an agreed basis. They should also share the decision-making process, although this is where most of the disputes arise and the business-based honeymoon ends. If you are going into partnership it is important to get a Partnership Agreement drawn up. It should deal with decision making, partner drawings, working capital and dissolution. It is always important to know how you are going to 'get out of the room'. However, each partner is effectively self-employed but is liable, without limit, for the liabilities and debts of the partnership as a whole. Trust and solvency are the watchwords of this model.
- ▶ **Limited liability status:** a limited company has what lawyers call its own 'legal personality' and exists as a separate entity from you. You will be a shareholder in the company and the company may pay you a salary and a share of the profits by way of a dividend on your shares. The main selling point of limited liability status is that if the business fails (or a liability threatens the solvency of the business), if you are a Director and a shareholder, your personal wealth and assets are not at risk. **If you are a sole trader or in a partnership, your assets are at risk.** If you are a Director of a limited company you are not personally at risk, except in some exceptional circumstances.



## 3.4 Business finance and funding

### Important considerations for all types of business

- ▶ Do you need any permissions and licences in order to be able to work? Make sure they are up to date.
- ▶ If you are going to be working from your own home, notify your insurers.
- ▶ Think about investing in insurance products to protect you and your business over time. If you are going to be employing others, some types of insurance are compulsory such as Employers' Liability Insurance and Public Liability Insurance.
- ▶ You will need to pay tax and National Insurance (NI) contributions so make sure you register with those authorities. Again, this is something that your accountant may be able to help you to do. Her Majesty's Revenue and Customs (HMRC) can be a source of help to new businesses and there are often tax breaks and other allowances for new businesses in their first years of trading and below a particular financial limit. It is better, in the long run, to register with them. If they 'find' you later on, things are not so cordial and you could find yourself paying interest and penalties on unpaid tax.

### Do not be a 'busy fool' – your IP has value

You need to be paid for your work. It may seem obvious but it is a sad fact, that in pursuing your creative endeavours you will come across your fair share of time wasters and worse. In time you will develop a nose for those who turn out to be non-payers. More to the point, there may well be occasions that you find yourself paying for the privilege of not being paid because you have incurred substantial liabilities.

### How do you protect yourself?

- ▶ Don't be shy about asking for payment on account if you haven't worked with someone in the past.
- ▶ Make sure you use a suitable contract or agreement for your work, as having something in writing is much better than word of mouth. Work out a scheme of payment with your clients and don't be embarrassed about doing so. If a client falls behind with payment, be courteous but firm and make sure that you keep a record of your dealings.
- ▶ Are you being asked to pitch for work? If so, check that you retain rights to your own work if you are not selected for the job.

### Keep your finances in order

This is one of the most critical aspects of your life as an entrepreneurial creative. Initially, money from your business and your personal money can become enmeshed and it can be very difficult to untangle them. Think about opening a business account with a bank and discussing your business needs with them. Try investing in some basic accounting software such as Kashflow, or similar, to keep a track of your money and expenses.

## Protecting, exploiting and enforcing your intellectual property rights

Now that you have an idea about your business structure, how do you go about protecting the intellectual property that you have created?

The law seeks to protect those working in the creative industries who develop identifiable works of art or new products or processes as a result. Intellectual property rights (IPR) can often seem to be separate to your business. The concept of IP protection can appear to be a 'bolt on' to your work. In fact, properly managed, they are a pivotal part of your creative business. You can prevent other people from using your work without consent but equally you can sell it, license or mortgage it to provide financial support for your growing business.

### What have you got? Conducting an IP audit

Try to work out what IPR assets you actually own. You may be pleasantly surprised!

Many rights arise automatically, such as copyright or unregistered design rights. They can be easy to overlook because they often hide in plain sight. You may think that only the innovative closure mechanism of the new coffee beaker is worth protecting by patent. Think again. Those drawings are protected by copyright. The shape may be protected by unregistered design rights. Its name may be building up recognition in the market to such an extent that it is a distinctive brand in a short amount of time.

Unregistered rights are fine but you may also want to invest in registered rights. These perform a double duty. First of all, it is easier to prove infringement of a registered right – its parameters are clearer.

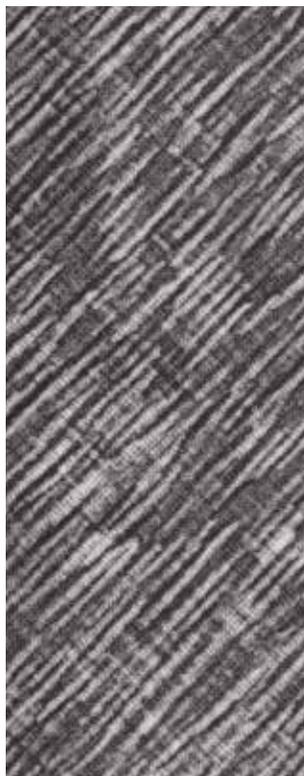
Secondly, the fact of the registration is like a neon sign indicating that you know and value your IPR and are willing to defend those rights.

### What do you need to protect?

Once you become more aware of IP rights there is a temptation to believe that everything should be protected. However, there are costs associated and if you believe that a particular product is likely to be short lived than it may not be cost effective to secure protection. You may decide that it is easier to rely on confidentiality agreements rather than registration.

It is ironic that the main asset value of many businesses resides not in physical assets but intellectual property rights:

- ▶ Do you own all of the rights that you need in your business or have you worked in the past on a collaborative basis are the ownership rights clear?
- ▶ Consider all of the unregistered rights you may have, perhaps in drawings and artwork where rights may have arisen automatically.
- ▶ Can you put a value on IPR? It has an asset value so speak with your accountant as to how this aspect of your work should be valued in your accounts.
- ▶ Who is involved in the creative process with you? Consider not just collaborators but also support and administrative staff and distributors. You may wish to consider some form of non-disclosure or confidentiality agreement as part of the contract.
- ▶ Where do you want to be in the short, medium and long term? Have you considered the value of your intellectual property rights to the overall value of your business?



### 3.6

## Earning money while you sleep – licensing and revenue streams

**What kind of contracts do artists regularly need to enter into?**

Artists and designers need to make contracts for:

- ▶ consignment of goods to galleries and shops;
- ▶ exhibitions of artwork;
- ▶ commissioning of artwork;
- ▶ artist, craftspeople / gallery relationship; and
- ▶ artist model releases.

Consignment with galleries, museums, offices, restaurants

When leaving your artwork on consignment, always make sure you receive a receipt. A simple written agreement should be drafted and a copy given to each party.

**Unintimidating contracts: where do I sign?**

Before you do anything, get it in writing! It may seem to be an unfriendly method of doing business but clarity does win out in the end. There are lots of contract templates out there but here are some pointers that you can keep in mind:

- ▶ Who are the parties – are you satisfied that you are dealing with the right person?
- ▶ What are you doing (selling/loaning/licensing) with the creative work?
- ▶ How long will the contract last?
- ▶ How much are you going to be paid, and when?
- ▶ What are your obligations? (Think about transportation, insurance etc)
- ▶ What are their obligations? (Payments? Return of the work on demand, where and how the work is to be stored?)
- ▶ What happens if either party is in breach of the agreement – what are the consequences?

Finally, do what lawyers sometimes call a ‘cold read’ once you have the agreement. Think up a scenario and then look at the agreement and work out what would happen.

### 3.7

## Raising finance and exploiting your IP rights

Intellectual property rights are as capable of being monetised as any other asset. It is possible to raise finance against a variety of IPR portfolios. For instance, the famous ‘Bowie Bonds’ were issued in 1997 by the late rock star David Bowie when he bundled up the publishing royalties in his pre-1990s albums and offered them as security, against which he borrowed over \$50 million. While this did not set a trend in the music industry, this kind of leveraging of IPR assets is well known in other sectors. Your rights do have an asset value, and depending on the valuation, it is possible to leverage them in the same way as a mortgage on a house.

It goes without saying that obtaining finance is dependent on the IPR ownership being beyond question.

By far the most popular way of leveraging IP rights, outside of outright sale, is through licensing.

It is useful to periodically Google your competitors and others in your area of work to check that your work is not being copied.



Image: Emma Cain

## Enforcing your IP rights

If your copyright or moral rights have been infringed, the first thing to do is try to negotiate a settlement with the infringer. There are both civil and criminal offences related to dealing with illicit copies and certain other unauthorised uses of copies of images, broadcasts or films.

### Is IP protection and enforcement affordable?

It really is important to allocate part of your budget to registering your designs and to enforce your IP rights. In the UK and EU, protecting your designs is fairly cost effective. You can file applications covering more than one design. Each design in the multiple application is a separate piece of property and can be licensed and assigned separately. At renewal, not all the designs have to be renewed. You can claim different priorities for each design and defer the registration and publication of only some of the designs.

Many companies pay a small additional fee and defer publication (see [www.oami.europa.eu](http://www.oami.europa.eu)) so that competitors can't see their new designs before they are launched and marketed.

You can apply to the Intellectual Property Enterprise Court. It's fairly quick and inexpensive, the trial is usually relatively short and legal costs are capped at £50,000.

### Legal remedies for infringement of my IP rights

Remedies for breach of copyright include damages (monetary compensation), an account of the profits the infringer made from using your work, and an injunction to stop the use of your work.

### Alternative dispute resolution

Bringing court action is stressful and potentially very expensive. You may feel hurt and upset about the fact that someone has used your work. However, using the law courts is not a very good way of doing this.

If possible, it's almost always better to try and negotiate a settlement with the other side; even when you have started legal action, you can always go to mediation.

This is one of a number of forms of alternative dispute resolution and can be a very useful way of resolving a difficult dispute. It may not always work; but in most cases, it is worth trying to avoid the expense of all-out litigation.



### Keep calm – coping with infringement and when it all goes horribly wrong!

This may seem odd. However, it is better, in the cold light of day, to work out how you will react to the infringement of your rights. The moment that you realise your work has been copied is not likely to be the most rational day of your life! You need to have a system in place that is activated when you become aware or someone infringing your rights. It may be something as straightforward as a cease-and-desist letter or an IP professional to whom you refer such matters.

The most difficult decision is whether to enforce your rights. It takes time, money, stamina and supportive evidence. Each case is different but it is worth remembering that there are mechanisms short of trial which may assist. It is also important to ensure that your target is 'good for the money' otherwise you will have a hollow and expensive victory.

It is possible to buy insurance against inadvertent infringement of another's IPR, although the premiums can be prohibitive in some high-risk areas such as design but some form of business insurance may well assist you, especially as some banks and insurers have legal helplines as part of their products and policies. This can be supportive in the early years of your business when you may well need your money for other projects.

### Insurance for creatives?

This is a difficult area. Insurance is expensive and there are sometimes many exclusions which means that claiming against a policy is not without its challenges. It is also really hard to put a value on your creative work in your early years but this is why keeping good records is such an important aspect of running your business. Over time, it will become much easier for an underwriter to advise you on coverage and policy limits. What is clear is that disputes do arise in the creative sector and you really do need someone in your corner. Lawyers and their advice is expensive, without some form of cover, you may be thrown back on your own resources.



## Licensing your work

### Earning money while you sleep – licensing and revenue streams

This is probably the most cost-effective way to leverage your IP rights. A licence provides the licensee with permission to use but not to own the copyright, design or trade mark. Licensing can be a good way to earn money from your creative work. You may be looking to the future but do not ignore the value in past works. The value of the licence and any associated royalties payable is a matter of negotiation and the relative strengths of each party. You may, for instance, lack the financial muscle or other resources to develop your products and a licence can be a useful way to raise money from your work that can be invested elsewhere in your business.

You can negotiate a Licence Agreement yourself but you may want to use an agent if you don't feel confident. Even if you do have an agent, you should make sure that you understand the nature of any licence because, if it is too wide, you could lose the right to use, or draw on, your own work.

- ▶ **Who (and what) are you?** This is important as you need to keep some control of the process. If you are licensing a specific artwork, textile or other creative artefact, consider whether you want to grant an exclusive licence to the licensee or whether it should simply be the sole licence. If you want to retain your right to use your work say so and there is clarity about who can do what, when, where and for how long.
- ▶ **How long is the licence for and in what circumstances can it be brought to an end?** It is likely that a licence will last for a reasonable amount of time. However, you may also wish to specify a short lease in the first instance, to metaphorically dip your toe in the water before committing to a long-term agreement.
- ▶ **What are your obligations?** You may need to assist and indeed may wish to insert some quality control mechanisms into the licence agreement. Who is to arrange any relevant insurance?
- ▶ **Quality control?** It is possible that the methods of production, or materials used, may be important to you. So set out any particular requirements clearly. For instance, a licensee may wish to use cheaper materials than you wish during production and, depending on the agreement, this could have an effect on your brand image.



- ▶ **Hold you harmless** – a strange term, but you should seek something called an ‘indemnity’ from the licence. Basically, if something goes wrong, you want the buck to stop with them and not you!
- ▶ **In which geographical region are you going to licence your particular product?** You may, for instance, wish to sell your rights abroad but retain them in the United Kingdom.
- ▶ **How are you going to be paid?** You may require some form of upfront payment together with ongoing royalties on a monthly or quarterly basis. There are endless permutations here. You could ask for an advance on royalties in the first instance with an upfront payment, or opt for a royalty payment over time without an advance. Avoid annual royalties as it is better to have money in your bank, rather than that of the licensee.
- ▶ **Get out of the room.** In any agreement, work out your exit strategy. If everything goes horribly wrong, are you able to exit the agreements with the minimum amount of fuss and without penalty?

### 3.10 Using an agent

#### What's involved with selling my copyright?

Buyers are often concerned about originality, size of edition and reproduction rights.

Artists are often concerned about the care of the work by the buyer, restoration of damage, borrowing work back for exhibition purposes, where and how work is exhibited by the buyer, and re-sale royalty rights.

Both are often concerned about responsibility for deterioration of the work.

You can assign (sell or give away) copyright by signing a written agreement. It is better to license your copyright:

- ▶ to maintain your statutory moral rights to prevent the artwork from being physically altered in some derogatory way or when reproduced; and
- ▶ so that you and your heirs continue to participate in the economic success of reproductions and merchandising of your artwork while the period of copyright protection lasts.

You can grant a copyright licence for a limited period of time, for specified forms of reproduction and merchandising, and in limited countries for a specified one-off upfront fee, royalty or both. This way you can keep the copyright and control how your work is used (e.g. merchandising) while continuing to generate an income. Basically, if someone wants to reproduce your artwork you should be paid a fee and this includes in art gallery catalogues. There is no fixed fee so you'll need to negotiate this. A new artist could decide to waive this fee for the opportunity of your work appearing in the catalogue.



This is a difficult issue. There's a good chance you'll receive a lot of business cards from agents after your degree show. You may feel flattered and heartened by all the attention, but don't feel pressured. If you decide that you'd like to engage an agent, again you need some clarity about the relationship. Any agent worth engaging is not going to push you to sign on the dotted line unless and until you are ready. Here are some questions that may help you to decide if this is the best option for you and your work:

- ▶ Who is going to represent you? Is the agent an individual or part of a company?
- ▶ What type of work are they going to do for you – are they going to arrange commissions, or licences or reproduction rights?
- ▶ How long are they going to represent you? Is there to be a break clause in the agreement allowing either side to bring it to an end?
- ▶ Do they have the rights to sell your work on the basis of their own valuation?
- ▶ Are you to retain your IP rights?
- ▶ How is the agent to be paid – via a commission on a deal-by-deal basis or is it via a retainer or fee?

[www.nationalenterprisenetwork.org/www.greatbusiness.gov.uk/](http://www.nationalenterprisenetwork.org/www.greatbusiness.gov.uk/)

<http://www.artquest.org.uk/> is a really useful source of advice for Fine Art students but also those engaged in many different types of creative work

"Shows are also an excellent thing to do, it was at New Designers that I found my illustration agency."

*Katie Abey*

"A large majority of my work comes from design agencies or PR companies working on behalf of brands. This mainly comes from word of mouth or by contacting these agencies directly and showing them my portfolio."

*David Baird*



### 3.11

## Your IP after graduation: IP portfolio management

Maintain your valuable IP

You are responsible for maintaining your registered IP rights. Keep track of important renewal dates for any registered IP rights and keep your personal details current in order to receive notices. This is known as IPR portfolio management.

### Building your creative IP inventory/database

- ▶ Maintain good records and a file of images/promotional material/website use
- ▶ Keep copies of all contracts, licenses and IP registrations
- ▶ Monitor frequently for infringers

### Extending your portfolio of IP rights

Does your IP protection cover the designs and products you are currently selling? Your IP monopoly only protects what is covered in your registration.

When you register a design, it is how your design looks that is protected. If this changes from the design originally registered, you should consider registering a new design as your IP right may not protect you if others copy the new version.

### 3.12

## Sample creative work inventory record

Creator's name

Type of work

Date of creation

IP owner and contact information

IP unregistered right expiration date

IP registration and expiration date

Public domain?

Type of licence and terms

Restrictions on use

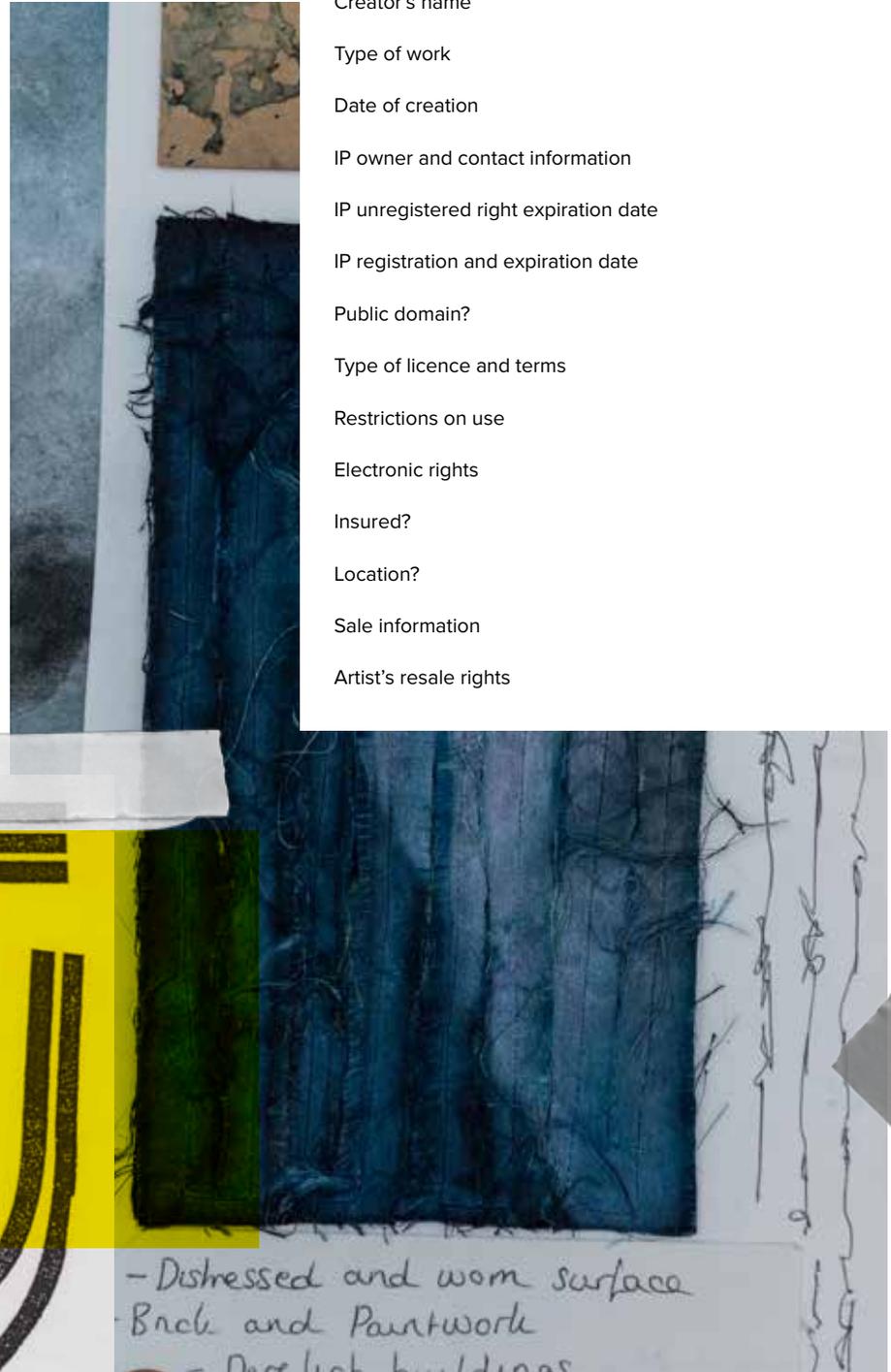
Electronic rights

Insured?

Location?

Sale information

Artist's resale rights



### 3.13

## Questions, questions, questions

We've put together some commonly asked questions about IP for artists and designers here...

### Is it possible to take legal action relying on unregistered rights?

Yes. However if someone has produced a similar-looking product without copying, there is no case to answer. Keep a paper trail of the concept of the design to finished product, making sure all documentation is signed and dated.

### How do I know which countries recognise my unregistered rights?

Not all countries have a separate design law system. However, copyright offers protection due to various international conventions and treaties which most countries in the world have signed which offer reciprocal protection to contracting states.

### How do I protect my design in the USA?

The USA does not have a design registration system as such. You need to apply for a Design Patent to protect 3-D wholly or partly functional designs. The best thing to do is instruct a local American attorney to draft and file your application.

### My artwork has been copied by a manufacturer in the People's Republic of China (PRC). What should I do?

The majority of copies made in the PRC are destined to be imported into the EU and the UK so the best course of action is to target those businesses who are importing them. You could consider notifying Her Majesty's Royal Customs (HMRC) or the EU member state equivalent. HMRC will act for UK traders who suspect their business identity or products are being abused by the import of bogus goods.

### 3.14

## Useful contacts

**Nottingham Law School Legal Advice Centre**  
**Nottingham Law School Nottingham Trent University**  
**Chaucer Building**  
**Goldsmith Street**  
**Nottingham NG1 5LP**

Tel: +44 (0)115 848 4262  
Email: [nls.legaladvicecentre@ntu.ac.uk](mailto:nls.legaladvicecentre@ntu.ac.uk)

The Centre provides reliable, high-quality legal advice and information on a range of legal issues, including intellectual property rights and enforcement and business law issues, most of which is free of charge. It provides practical experience for law students undertaking their professional legal studies at Nottingham Law School and who are supervised by practising legal professionals.

Nottingham Law School IP Research Group was established in 2012 and is led by Dr Janice Denoncourt. It has developed an array of initiatives and resources to support IP law education and research enabling us to connect scholars, policy-makers, alumni, international organisations and other individuals and groups across the world, and to facilitate broad, often genuinely international debate on the implications of the IP education and legal research conducted by its staff.

[http://www.ntu.ac.uk/apps/research/groups/3/home.aspx/group/157798/overview/intellectual\\_property\\_research\\_group](http://www.ntu.ac.uk/apps/research/groups/3/home.aspx/group/157798/overview/intellectual_property_research_group)

### The Hive

Email: [thehive@ntu.ac.uk](mailto:thehive@ntu.ac.uk)  
Tel: +44(0)1158484354

The Hive is Nottingham Trent University's purpose-built centre for entrepreneurship and enterprise, where we offer a supportive and safe environment for aspiring entrepreneurs to plan and test their ideas. We support students, graduates and staff to start-up businesses.



## Top tips - how to gain exposure

"Talk to as many people as you can about your work"

"Don't just give people your contact details, where possible try and take theirs as they may come in useful at a later date."

"Enjoy it and have fun seeing what comes along because as long as you keep working hard it will happen for you!" *Katie Abey*

"Enter as many competitions as it helps you prepare for final year and helps you define your design style."

"Take part in as many shows as possible because you never know who is watching and it's an amazing opportunity to show your skills in garment form."

"Also be aware of whom you send your garments to. Make sure that it benefits yourself and the company when they ask to loan your collection. Not everyone will respect your collection like you do." *Rachel Siggee*

"Find competitions relevant to your field, keep shooting new work, work with other artists/photographers to put on group exhibitions to help reduce costs and increase exposure." *David Baird*

"To get involved in the first place, even if you aren't too confident about your work. People in industry realise you are just beginning your career and don't expect you to be a finished article. Obviously having beautifully crafted work helps, but they are also looking for ideas, elements of risk taking, or strategy evident in your work. So try to get involved in the shows and competitions, they are a small window of great exposure and fun that can benefit you in numerous ways."

"Again try not to hard sell your work or badger people too much when they are exploring your portfolio, let them know you're around if they have any questions but leave them to it - just be nice!"

"Have at least the basic self-promotion elements in place, such as a website and/or give-aways so people can find your work after the shows end. Self-promotion is notoriously one of the most difficult things to tackle and having some considered elements in place could be the difference between maintaining a contact or opportunity and not." *Jason Holroyd*



"The best advice I can give is to apply for every opportunity that you can. You never know who's going to see your work; and the more people that see it, the more chance you have of becoming involved in people's projects. As well as this, don't be too shy to speak to people about what you do and what they're doing. Creative people thrive on the networks they build by meeting people face to face. I've worked on some really exciting projects that have come about by finding common interests with people I've met at private views and other arts events."

"Also, don't be disheartened by not being successful at everything you do, when making work, as well as seeking opportunities. It's in the nature of creative careers that things don't always work out how you'd think, but that's not necessarily always a bad thing."

"Finally, it's really important that you are enjoying what you're doing. If you love your work, and are excited about it, other people will be too." *Kayt Hughes*

### Knowing what you know now, what would you do differently?

"I wish I knew how valuable and worthwhile these events are earlier! I would have entered a lot more." *Alexander Bordino*

"I would definitely tell my past self not to overthink or worry about rejection so much as everything definitely happens for a reason." *Katie Abey*

"I don't really think I would do much differently, but I would strongly urge any student to try and get industry experience because university can't always give you hands on opportunities like you get within the industry." *Rachel Siggee*

"I would apply for even more things than I did while I was a student. It's quite easy to let your confidence be knocked when you're rejected for things you've spent a lot of time applying for. But then, I've also applied for things that I never really thought I had a chance with, and been selected. Being rejected isn't normally about being worse than the other applicants, you're just not what they happened to be looking for this time." *Kayt Hughes*



## Additional IP, art and design resources

AON Fine Art Insurance [www.insurance.aon.co.uk/personal/insurance/art-collections-insurance/fine-art-insurance](http://www.insurance.aon.co.uk/personal/insurance/art-collections-insurance/fine-art-insurance)

Art Monthly [www.artmonthly.co.uk](http://www.artmonthly.co.uk)

Artists & Illustrators Magazine  
[www.artistsillustrators.magazine.co.uk](http://www.artistsillustrators.magazine.co.uk)

Artquest [www.artquest.org.uk](http://www.artquest.org.uk)

Arts Council England [www.artscouncil.org.uk](http://www.artscouncil.org.uk)

Association of Photographers [www.the-aop.org](http://www.the-aop.org)

AXA Art Insurance [www.axa-art.co.uk](http://www.axa-art.co.uk)

British Institute of Professional Photography [www.bipp.com](http://www.bipp.com)

Contemporary Visual Arts Network [www.cvan.org.uk](http://www.cvan.org.uk)  
[www.crackingideas.com](http://www.crackingideas.com)

Creative Commons [www.creativecommons.org](http://www.creativecommons.org)

Denoncourt, J. et al (2015) *Nottingham Creative IP Guide, Nottingham Trent University Publications*, ISBN 978-0-9931112-2 2-8 (pbk), ISBN 978-0-9931112-1-1 (ebk)

Entrepreneurship Summer School for Creatives  
[www.arts.ac.uk/csm](http://www.arts.ac.uk/csm)

Greeting Card Association  
[www.greetingcardassociation.org.uk](http://www.greetingcardassociation.org.uk)

IP Health Check Tool, UK Intellectual Property Office  
[www.ipo.gov.uk/iphealthcheck.htm](http://www.ipo.gov.uk/iphealthcheck.htm)

National Portrait Gallery [www.npg.org.uk](http://www.npg.org.uk)

Nottingham Contemporary  
[www.nottinghamcontemporary.org](http://www.nottinghamcontemporary.org)

Nottingham Society of Artists  
[www.nottinghamartists.org.uk](http://www.nottinghamartists.org.uk)

Own it, University of the Arts London [www.own-it.org](http://www.own-it.org)

Royal Academy of Arts [www.royalacademy.org.uk](http://www.royalacademy.org.uk)

Royal Photographic Society [www.rps.org](http://www.rps.org)

Royal Photographic Society Journal  
[www.rps.org/publications/rps-journal](http://www.rps.org/publications/rps-journal)



Image: Conor Hurford

Royal Society of Portrait Painters [www.therp.co.uk](http://www.therp.co.uk)

School of Art & Design, Nottingham Trent University  
[www.ntu.ac.uk/art](http://www.ntu.ac.uk/art)

Tate Britain [www.tate.org.uk](http://www.tate.org.uk)

Your Creative Future [www.yourcreativefuture.org](http://www.yourcreativefuture.org)

The UKIPO publishes a variety of freely available online tools to help all SMEs maximise the value of their IP. The suite of tools for creatives, businesses and their advisors to enhance awareness of the economic and reputational value in their IP rights includes:

- ▶ IP Basics – a free guide on the different types of IP and how they can be used to add value to a business.
- ▶ IP Equip – a free interactive e-learning tool to help identify assets which may be protected by IP.
- ▶ IP Finance Toolkit – a free 44-page document to help IP owners prepare to raise finance.
- ▶ IP Health Checks – a series of free basic diagnostics to allow businesses to identify potential risks and opportunities.
- ▶ IP Master Class – a more in-depth training package, offered online or in person which covers IP and its use in business, including the topic of IP enforcement.
- ▶ IP Tutor – an IP awareness and education online package aimed at universities.

[www.ipo.gov.uk](http://www.ipo.gov.uk)

## Thanks

The Nottingham Creative StudentIPship Project team wishes to thank those who have supported us from concept development through to book launch. We thank Jason Holroyd for his invaluable expertise through the development of this publication. We have also had brilliant support from award-winning designer and inventor Mandy Haberman, Professor Emerita Ruth Soetendorp, the staff of the Nottingham Law School Legal Advice Centre, the School of Art and Design, Nottingham Trent University, the UKIPO and the local law firms.

We wish to thank particularly the students and alumni for their input in this publication. Emma Cain, Conor Hurford, Rebecca Jordan, Robin Medlock, Grace Ridley, Fumi Shimomura, Hannah Stokes, Chloe Tooth and Katie Webb have kindly allowed us to use images of their work.

Katie Abey - NTU graduate in BA (Hons) Graphic Design 2014, David Baird – NTU graduate in BA (Hons) Photography 2007, Alexander Bordino – NTU student in Product Design, Jason Holroyd – NTU graduate in BA (Hons) Graphic Design 2008, Kayt Hughes NTU graduate in BA (Hons) Fine Art 2015 and Rachel Siggee – NTU graduate in BA (Hons) Fashion Design 2015 enthusiastically provided us with case study material and quotes.

Legally enforceable IPRs encourage artistic expression and innovation in the design industry and are a key building block of the UK's economy. We hope this publication assists graduate artists and designers to earn a living and profit from their creative work.





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