

Do the Right Thing!

Copyright, Ethics, and You **Marlene Blessing**

While imitation is the sincerest form of flattery, it can be the bane of many a beadworker's life. If you've just taught your original design for a right-angle weave bracelet to an eager group of beadworkers, the closer your students' final results are to your master project, the happier you'll be. However, if instead you see that someone else is teaching a class at a bead show with a project that mimics yours in every detail, your response is probably anything but joyous.

Most of us can agree that very similar designs might be created at the same time by two designers working with no knowledge of one another's efforts. However, the more distinctive, complex, and individualistic your bead design is, the less likely that someone else just happened to create the same work. In such a case, you can't write it off to the "Great minds think alike" principle. What follows is a brief discussion of what is protected by copyright law, and what is instead a matter of ethics.

First, There Is the Law

Legal protections exist to help you be the sole person to profit from your original beading designs—whether you're selling what you make, teaching how to make it, and/or licensing it. First, there is the U.S. Copyright Law, which automatically protects your work the moment the idea you have—for instance, a square-stitched cuff with embellishment—becomes a finished piece of jewelry or a drawing of the piece. To be protected by copyright, your beadwork or drawing does not need to be published or displayed to the public. What's more, this protection is free.

However, if you plan to duplicate and sell and/or teach what you've created over a period of time, you should consider filing for copyright protection. The application can be downloaded from the Copyright Office's website, www.copyright.gov, and the filing fee is \$30. If your design is copied and you decide to sue for infringement, the process will go much faster if your registration is on record. A caveat: It is very challenging to prove infringement. You must be able to show the court that the work of the other person is substantially similar to yours as well as that he/she had access to your work and copied it. Which brings us to a special form of copyright protection that may be important for you to consider.

If you are a career bead artist who has, say, developed a design so unique and exciting that you are sure it will become a best seller, you

might want to consider applying for a *design patent* from the U.S. Patent Office (USPTO). This is a slow and expensive process and usually requires the help of an experienced patent attorney. So it's not for those who want to get their latest innovation to market right away and/or who don't have the \$1,500 it will cost (this is the approximate cost for attorney and filing fee; costs could run even higher). Because design patents protect ornamentation on useful objects, such as jewelry or individual beads, items regarded as "art for art's sake" do not qualify for this patent. One more thing: You have only one year from the time your work is first publicly available in which to apply for a design patent (this includes display on your website).

The advantage of securing this patent is that should you sue for infringement, the court requires only that you prove one thing: that the offending work is substantially similar to yours. To determine if filing for design patent protection is worth doing, weigh the time and money it will cost you to do so against how much you anticipate you'll profit from what you have designed—and the likelihood that someone will copy your original creation. There's a lot of guesstimating involved in that equation. The more experience in the bead marketplace you have, the less your decision will be based on guesswork. And, of course, you should seek the counsel of a patent attorney if you are seriously interested in pursuing this course.

Then, There Are Ethics

In *Merriam-Webster's Collegiate Dictionary* (Eleventh Edition), one of the definitions of ethics is "the principles of conduct governing an individual or a group." Yes, cooked down, this is about morality, about what is good and bad. While ethics can seem like murky territory (it's not covered by written codes of law, but rather by often unwritten codes of conduct), ethics regarding bead artistry can easily be boiled down to a Golden Rule philosophy. Don't do anything to a fellow beader that you

wouldn't want done to you. In truth, this self-policing behavior is the most important of all, since many of us don't have the resources or inclination to seek justice through the courts in a copycatting incident. We have no national "Beader's Union" or trade organization, although bead societies throughout the country routinely discuss these issues.

We must really look to ourselves to understand what constitutes infringement of another's work. Recently, I met with editors Mindy Brooks of *Bead & Button* magazine and her colleague at *BeadStyle*, Cathryn Jakicic. We talked at length about how disappointing (and aggravating) it can be for a beader to discover that someone has copied her design to sell or teach. We agreed that as editors of beading magazines, we wanted to offer our readers a short, concise statement that could provide guidance. Here are four easy-to-understand statements that encompass the most basic ethical issues for beaders. Mindy Brooks drafted these for all to read and share:

A Beader's Code of Ethics

It is unethical to copy an artist's work without that artist's permission.

It is unethical to copy any work that has appeared in a magazine, book, or website and represent it in any venue as an original design.

It is unethical to teach a beading project that has appeared in a magazine, book, or website without the artist's permission.

It is unethical to teach a beading project learned in another teacher's class.

When in doubt about whether or not you can duplicate someone else's original design to sell, teach to others, or anything else that could be construed as copying (including from websites), ask permission of the artist. If it isn't granted, you know exactly where you stand! Better yet, take our online quiz at www.beadworkmagazine.com/go/ethicsquiz to test your ethics IQ! ♦

Marlene Blessing is the editor in chief of *Beadwork* magazine.

Copyright Protections

What copyright law *does* protect:

Copyright law protects only the original expression found in an artist's work, both visual and verbal.

The more generic your original design is, the harder it is to get copyright protection. Simple geometric forms are hard to protect; the same goes for natural elements, such as leaves or the sun. With such forms, it can be next to impossible to prove uniqueness.

What copyright law *doesn't* protect:

Titles or names: The title for a design cannot be protected by copyright. Trademarks protect titles and names, and the process for obtaining them is complex and relatively costly. Unless you have a product whose name you need to brand in order to sell and distribute it widely, you won't apply for a trademark.

Ideas: Only when an idea is expressed tangibly—by a sketch, computer rendering, or actual creation—is it protected.

Facts: These are absolutely available for use by anyone.

Formulas or recipes: This applies to a list of materials in a beading project and technical steps. The exact wording of your instructions, however, is protected by copyright.

Familiar symbols and designs: Common motifs are not protected.

How long copyright protection lasts: From the moment you create an original work, it has copyright protection. This lasts for the life of the artist plus seventy years.

(For a design patent, the term of protection is much shorter—only fourteen years.)

RESOURCES

Your Crafts Business: A Legal Guide by Attorney Richard Stim (Nolo Press, 2003) is an excellent guide to copyright law as well as other legal issues affecting those who run or intend to run a crafts business (it covers tax rules, licensing, online sales, and more).