

## LAW OFFICE OF PETER IRVINE

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### 11 Things for Creative People to Know about IP Law

- 1) Copyright protection begins upon fixation
- 2) Copyright registration gives you the ability to control your rights: most notably the *threat* of recovering statutory damages and attorneys fees. See [www.copyright.gov](http://www.copyright.gov). You can register multiple works on one form.
- 3) Fair Use is a principle that allows you to incorporate pre-existing materials
  - a. Four factors:
    - i. Purpose and Character of the Use
    - ii. Nature of the Underlying Work
    - iii. Amount and Substantiality of the Portion Used
    - iv. Effect on the Market for the Underlying Work
- 4) Get a license, if feasible, to use the work of others.
- 5) Ownership: author owns it unless it's a "work for hire"
  - a. Meaning either:
    - i. Work done within scope of employment, or
    - ii. Independent contractor commissioned to do work, with a written agreement
- 6) Joint authors should have a written agreement to spell out their rights; otherwise profits are split 50/50, and either owner can do whatever.
- 7) Infringement is enforced by copyright owners, not the government.
- 8) Trademark is a word or symbol that indicates the origin of goods or services. You gain priority in a mark in connection with a class of goods or services by using your mark in commerce.
- 9) Consignment Law: chapter 104A makes gallery a trustee for artist. To invoke protections, artists needs to deliver, with art, a written statement: (1) the name of the artist and/or the owner of the work, (2) title of the work, (3) medium and dimensions of the work (4) date of completion of the work, (5) the delivery date, (6) the anticipated fair market value of the work.
- 10) Visual Rights Acts
  - a. Federal: Visual Artists Rights Act, § 106A of Copyright Act
    - i. Protects moral rights in limited edition fine arts
  - b. State: Massachusetts Arts Protection Act
    - i. Broader protection, broader definition of "fine arts" (any media)
    - ii. Controls mutilation and credit
- 11) Massachusetts Volunteer Lawyers for the Arts, [www.vlma.org](http://www.vlma.org)