

Your Rights as an Artist

Written by Marc Spess

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There are some important principals to understand before the business practices make sense. What

The main thing that affects the price is usage. So if you spent 5 hours or 100 hours on a painting, the ma

The other factor is how b



or client. When you are dealing with commercial organizations, nothing i

There is one situation where it is a bit like hammering nails. That is called work for hire. A big studio like Disney does work for hire. The artists get an hourly wage. The idea here is that the employer takes all the risks, they commit to a full time job for you with benefits and they smooth out the bumps in the market & funding etc. In return for that they get all rights and credit. It is as if the boss was the artist. Work for hire is OK in a permanent job situation, but not in freelance where the artists is taking risks.

The interesting thing about copyrights is that it is so flexible. First of all, it is independent of the original art work. A client who buys copyright does not own the original. A collector who buys an original does not own copyright. An artist may sell copy right for one price and also the original for more money. The key work here is the word COPY. If it is not reproduced, there is no copyright issue.

The other thing that is interesting about copyrights is that it's a bundle of rights that can be divided up anyway you want. You can limit by region. (shown only in New York) You can limit by time (all rights for one year) You can limit by media (broadcast TV only, no print, tapes, etc.) You can limit by market (educational only, no advertising, no editorial).

The trick is to offer the client all the rights they need, but no more. The more rights they want, the more they have to pay. Tell them that by limiting their rights, you are saving them money. You can always renegotiate. A animation sequence may be sold at one price for local TV. Then the client gets the opportunity to go nation wide, they have to offer the artist more money to expand beyond the original boundaries of the copyright. There can also be royalties where a percentage of the profit is continuously divided. There is also an agreement on credit, where the artist is listed in the credits. This is entirely separate from copyright. You can reserve moral rights. That means you are the only one who can do modifications to the original art. As you can imagine there are more subtleties.

So as a freelancer what do you do? First, you flat bid everything. No hourly wage. You may guess how long something will take to create your estimate, but that's an internal process. Include your expenses. For you to create this bid, they have to tell you clearly how much it will

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be used. You clearly define what you will deliver and what if any client approval is involved. Usually this includes one round of minor changes. Any changes beyond that are called client alterations, and it costs extra. Have the client sign off on sketches, storyboard, animatic or some other rough version of the work before more complete work is started. They actually initial in the corner of the art.

That way you have proof that they approved the project you are delivering. With that in hand they can't reject the final work as long as you stick rigidly to the rough. Also they can't cancel without paying for all work up to the moment of cancellation. If you figure you have done half the work at the moment of cancellation, then they pay half the total fee. If you completely finish and they decide not to use it, they still pay for it in full. You should ask for money in payments. Usually in thirds. One third at the start of the deal. One third at approval of the animatic, sketches, or some intermediate stage. And the last 3rd after the date you deliver the final art and before it is used. If you are late delivering, it can invalidate the contract. It is best to state specifically what would happen if you were late. But never be late. EVER.

Finally, you state that copyright is only granted with payment. So if they broadcast the work and still haven't given you the last 3rd, then they are broadcasting material they don't own copyright to. You don't do any work without confidence money in hand. This is the first 3rd. If they haven't given you and money, then they have nothing to loose by backing out. That is the basis for negotiating actual animation. There is also proposal work. Story boards and character sheets can be like this. They may use them as originals and have no copying done. Treat these like illustrations. Charge a flat rate for each story board and character sheet as originals. You keep a copy and grant no copyright. Figure out how many hours it will take you at \$25.00 to \$40.00 an hour to arrive at a bid. They give you the money, you give them the art. Then if the deal sails and actual copyright will be involved, you start negotiating.

How do you know how much all this is worth? It's a going rate thing. Whatever other people are getting for the equivalent usage you should get. Here's one way to know: The Graphic Arts Guild in New York City publishes a yearly book called Pricing and Ethical Guidelines. Called PEGs for short. It has prices in it for different size companies and different markets. You can get it at any commercial art store. The prices tend to be a bit high so you may want to drift toward the low end. PEGs has a lot of good reading about markets and copyrights as well as sample business forms. Each market has a standing in the price scale. Advertising is most expensive. Entertainment is next. Editorial & educational is cheapest.

A local / regional 30 second advertising spot will run \$5,000 to \$25,000. (Typically \$12,000.) A national version of the same thing is 10 times as much, \$100,000 to \$250,000. Public television pays about \$200 a second. Regional advertising may be \$350.00 a sec. Calculate your bids on \$10.00 per picture per character. Less for a simple character, more for a complex one. This includes the whole process; roughed, tested, cleaned, painted & composited. Shadows are priced as a whole second character. That comes to about \$150.00 a second for one character. You still have to add all the other things you do. For CD-Rom developers that may be your only basis for billing. A lot of professionals are very cagey about what they charge. But don't be afraid to ask. The more you know about what other people are charging the better your bids will be. You can also call TV stations, talk to advertising salesmen and find out what they charge for

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air time. A legitimate basis for copyright fees is a percentage of media buy. Ask your client the total amount of air time they intend to buy for the spot and base the price as a percentage of that. Advertising agencies usually budget by the quarter.

A big local retail store may spend \$25,000.00 a quarter on air time. 30 second spots are \$600 - \$700 typically going down to \$400 for prime time reruns and up to \$2000 for new programming of the most popular shows. Daytime talk show / soap time is about \$75.00. So local advertisers may spend 25% to 50% of their air time budget on media purchase. The pressure is always down so many of them get doughnuts, 15 seconds to begin & end their otherwise live action commercial with. The tax man WILL KILL YOU if you forget about him. This income WILL be taxed and you should religiously put aside 30% of your income in preparation for paying the taxes on it. At tax time, a pro tax man is cheap and he will know what to do with it. Keep every single little receipt you spend as well as mileage, phone calls etc. You can deduct rental space for your studio as long as it is a dedicated space. You can also write off equipment or at least depreciation on equipment. If you pay anyone else to help you it is easiest for you if they are an independent contractor. They have to pay their own taxes on their income. Don't pay people under the table (unreported) because it's an expense you can't write off.

I've talked tough about protecting your rights, but you don't want an adversarial relationship with your client. The focus is on clarity. Everybody needs to know in writing what to expect in order to avoid assumptions and ambiguities. With inexperienced clients you act as their friendly educator, showing them how the pros do it, so they can feel good about doing things professionally. They love the idea of knowing for sure what they are going to get and learning standard business practices. With experienced clients, it increases your stature to show them you know how it's done. With a small struggling start-up group, you want to work out a deal which will not prevent progress, but will benefit you in the event of success. In a case like that you can ask for right of first refusal. That means if they get their big deal, then they have to offer you the role of art director, or lead animator, or whatever role you want. You can turn it down if you decide to. You also want to be sure that if it doesn't get anywhere, then all copyrights remain in your hands. Some start up groups are simply too under funded to be worth your time.

[Johnny Robinson](#)