

Article for Craft Victoria

What is a “work of artistic craftsmanship”?

Jane FitzGerald, Australian Copyright Council, September 1997

What is a “work of artistic craftsmanship”?

The Copyright Act defines an artistic work as follows:

- a painting, sculpture, drawing, engraving or photograph, whether the work is of artistic quality or not;
- a building or a model of a building, whether the building or model is of artistic quality or not; and
- a work of artistic craftsmanship to which neither of the last two preceding paragraphs applies.

“Works of artistic craftsmanship” refers to works in the nature of handicrafts such as ceramics, embroidery, fibre arts, metal smithing, woodworking, crafted glass, jewellery making and enamelling.

This category of works is somewhat anomalous, since there must be some artistic quality inherent in the work before it will be protected by copyright. Other artistic works are generally protected whether they display any artistic merit or not, provided that they are sufficiently “original”. (The threshold of originality for copyright purposes is very low – logos and stylised letters have been held sufficiently original.) For works of artistic craftsmanship, there are two other requirements for copyright protection:

- a) the word “craftsmanship” assumes a certain degree of manual skill on the part of the maker or designer. This would seem to deny protection for factory or machine-made products, although the hand made prototypes of such products will generally be protected; and
- b) the works must be “artistic”. This requirement would suggest that an item of craft work which is purely functional, such as a pottery ashtray of a nondescript design without decoration, may not be protected.

While the law apparently treats craft workers harshly, in practice an “artistic” element is not difficult to prove. The courts generally first assess the craft work for some objective degree of “artistic” content. They then look at the intention of the maker of the work. The first step is problematic since it assumes shared notions of what is “artistic” and what is not. However the second step, taking into account the intention of the maker, tones down the first approach. In other words, if the maker intended the work to be something more than merely functional, it will generally attract protection regardless of the court's opinion of its merit.

The best way to make sure you get copyright protection for your work, and to avoid having to prove the artistic quality of a work, is to make a drawing of your work before making the actual article. By doing so, you will have created an artistic work (the drawing) and you will escape the need to review the artistic merits of the work and your intentions at the time of creating the work. A person who makes a copy of your article may infringe copyright in the design drawing, even if the article itself is not a work of artistic craftsmanship. Although it will not always be the case that three dimensional versions infringe copyright in the underlying design drawings

and plans, it is advisable, for copyright purposes, to make sketch plans first, rather than begin with prototypes.

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