

Copy Kites: Advice From An Attorney

There is so much mis-information and confusion about copyrights and patents that I called on Carl Crowell for a few answers. Carl was the first chairman of the AKA Kite Art Committee and is a partner in Crowell - Ing LLP, a law firm specializing in international intellectual property law. He had these observations on US Law:

Q: Can I copy an established design for my own use as long as I don't plan to sell it?

A: No. Copyrights attach to a fixed work as soon as it is created. In general, the author or original artist retains all rights to make copies of an original work for a long time. There is no "non-commercial" exception to the copyright rules.

Q: How much change is needed from an established design before I can make something similar?

A: This is not really a fair question. It is a common one, but there is no real answer. When does the setting sun go from day to night? The timing of dusk is up to differing views and interpretations. And so is whether or not something is similar or a copy of something else. If an original is used as a model, template, or even inspiration you may infringe the copyrights of the original author. But at the same time we are all inspired and influenced by all of our surroundings and experiences and this is acknowledged. As a general rule, you cannot copy another work even with some change. The more the difference the more the new work becomes your own, but there is no bright line. Again, in the end, if there is a dispute this will be decided by the lawyers and the courts.

Q: What's my liability if I do copy something?

A: The simple answer is: "more than you want to pay." The current penalty for infringing the copyright of another is \$30,000.00. In some situations this can be increased to \$150,000.00. But the real damage for most people will be the costs and fees associated with defending or pursuing a claim whether you win or lose. Most cases cost hundreds of thousands in legal fees. So what can you do? The easiest answer is: Don't copy. Be creative and create your own works. The second thing you can do is to get permission. Many artists will, if politely asked, allow others to create derivative works. Contact the copyright owner be clear about what you would like to do and keep a written record of any agreement or permission.

Q: Can I really be sued for buying an unauthorized copy?

A: Absolutely! End users, retailers, events where infringing designs are flown, and even Associations that promote or recognize them can be liable. Absent widespread recognition and efforts to control the problem eventually the economics will warrant more aggressive prosecution of violations. Or, as happens from time to time, someone with sufficient resources will defend their rights and force this lesson on the community independent of the economics. And like happened with those that stole music on the internet, a handful people will cry unfair innocence when they find that they are saddled with tens of thousands in legal fees and penalties for what they thought was a harmless and victimless crime. But through such acts, everyone will take notice.

Here is the full text of the open letter from a group of kitemakers to all kitefliers....

We are kite designers and builders.

Some of us develop our new designs professionally to support our income, and some of us make kites for fun. All of us love what we do and to share creations with our friends in the kite world. We are proud of our designs and work very hard to make them.

We are surprised, disappointed, and offended that the German manufacturer, KEWO, has copied our work and is selling them commercially. They do this without our permission, without compensation, and without even giving us credit for the many hours needed to make a new kite fly.

For many of us, this issue is not about money, but about the simple idea that stealing our designs for commercial gain is wrong and should not be tolerated by the kite community. And of course, the copies are often inferior which makes the problem worse.

We have asked KEWO to stop and they simply ignore our letters and emails. Some of us only asked that our names be noted as the inventor of a design and didn't ask for money. KEWO even denied this simple request!

This problem affects all kites. If we are copied now, you may be copied in the future. And of course, there is less encouragement for any of us to work on new designs knowing that a manufacturer with no sense of honesty or honor can simply steal them.

It is impossibly expensive to patent each new kite design and lawyers take time and money with uncertain results, especially when dealing on a global basis.

We prefer to address this in the Court of Kites rather than a Court of Law.

To ask you not to buy our kites from KEWO is against German law. But we hope that you will understand our irritation, frustration and incomprehension.

Please share this news with your kite friends. Tell kite storeowners, club officers, and event organizers. Please join us in objecting to KEWO Copies!

Stealing from one of us is stealing from all of us!

*Robert VanWeers, New Zealand
Ludovico Bertozzi, Italy
Geoff Cambell, New Zealand
Franchesca Caton, United Kingdom*

*Peter Lynn, New Zealand
Martin Lester, United Kingdom
Charlie Watson, New Zealand
Frank Schwiemann, Germany*