Knit 1, Purl 2, License 3:

Knitting Patterns, Copyright,

and License Agreements

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When I purchase a knitting pattern for a sweater from my local yarn store, I must make sure that my use of the pattern does not conflict with the copyright afforded to the designer of the pattern. Since all patterns for sewing, knitting, crochet, and needlework are considered works of visual art by copyright law[1], the designer holds exclusive rights to reproduce the copyrighted pattern, prepare derivative works from the pattern, distribute copies of the pattern to the public, and display the pattern publicly.[2] On the surface, most of these stipulations are quite clear. As a consumer, I am not allowed to photocopy the pattern and sell the copies to my friends. I'm not allowed to post the pattern on my website, email it to anyone, or incorporate it into a book of my own original patterns and call it my own. However, knitting patterns invite an additional level of complexity in to the discussion of copies and derivative works. When I create the sweater outlined in the pattern, am I making a copy of the pattern since that sweater represents the pattern? Is the sweater instead considered a derivative work? Since the sweater is a combination of the creativity and skill of the designer and the creativity and skill of the knitter, what rights does the knitter have to the sweater? If the sweater is indeed either a copy or a derivative work, how is it actually legal for me to make a sweater from the pattern? While derivative works are clearly outlined for things like architectural blueprints[3], how does the law understand derivative works with patterns? This paper will investigate the relationship between knitting patterns, copies and derivative works, and licensing agreements used to extend copyright owner rights.

What does "All Rights Reserved" really mean? Authorship vs. Ownership Rights

Copyright protection attaches to a work of original authorship, and does not get transferred with ownership rights of that work. Thus, when I purchase a knitting pattern, or pick up a free knitting pattern at my yarn store or online, I am the property owner of the pieces of paper or downloadable PDF documents that contain the pattern, but not the copyright owner. By nature of my ownership via the First Sale Doctrine, I may do as I please with this document, including read it several times, lend it to a friend, set it on fire, donate it to charity, or even sell it or give it to someone.[4] However, I am still bound by the limitations of copyright as stated above. My interactions with the acquired pattern in its paper or virtual form are fairly straightforward; however, there is a grey area when we consider the finished knitted item. What relationship does my finished knitted sweater have to the pattern for the sweater and thus to the copyright owner (designer) or the consumer? Is the sweater covered under copyright? Can the copyright owner dictate what I can and cannot do with my new sweater?

Is the sweater a copy or derivative work? And why does it matter?

To begin the discussion of the finished work made from a pattern, it is important to understand the relationship of the sweater to the pattern. In order to do this, we must understand copies and derivative works with regard to knitting patterns to understand how the finished item is treated under the law. To understand copies and derivative works, we can refer to definitions published by the Copyright Act Title 17, Section 101. "Copies" are defined as:

> Material objects […] in which a work is fixed by any method now known or later developed, and from which the work can be perceived, reproduced, or otherwise communicated, either directly or with the aid of a machine or device. The term "copies" includes the material object […] in which the work is first fixed. [5]

If the "work" is the knitting pattern, then a copy of the pattern is anything that is fixed and from which the pattern can be perceived, reproduced, or communicated. A knitted sweater that has been knit from the pattern does not constitute a copy because the pattern cannot be communicated, reproduced, or perceived directly from the sweater or indirectly by a machine or device to someone who owns the sweater. One could argue that someone could reverse engineer the pattern from the sweater, but the end result would not contain the same layout, images, or diagrams that the original pattern possesses. However, photocopied, handwritten/hand drawn, and online reproductions of the pattern do qualify as copies in this case.

If not a copy, then is the sweater a derivative work? The Copyright Act explains:

> A work based upon one or more preexisting works, such as a translation, musical arrangement, dramatization, fictionalization, motion picture version, sound recording, art reproduction, abridgment, condensation, or any other form in which a work may be recast, transformed, or adapted. A work consisting of editorial revisions, annotations, elaborations, or other modifications which, as a whole, represent an original work of authorship, is a "derivative work". [6]

The sweater is a work based upon a preexisting work (the pattern), and this work (the pattern) has been recast or transformed into another form, in this case, into a sweater. So far, it sounds like a sweater qualifies as a derivative work. However, copyright law also stipulates that "Useful Articles" are not protected under copyright. A useful article is defined as

> [A]n article having an intrinsic utilitarian function that is not merely to portray the appearance of the article or to convey information. Examples are **clothing**, furniture, machinery, dinnerware, and lighting fixtures. An article that is normally part of a useful article may itself be a useful article, for example, an ornamental wheel cover on a vehicle. Copyright does not protect the mechanical or utilitarian aspects of such works of craftsmanship. It may, however, protect any pictorial, graphic, or sculptural authorship that can be identified separately from the utilitarian aspects of an object. **(***Emphasis added)* [7]

If finished clothing is not protected under copyright, this likely means that it cannot be a derivative work either, since a derivative work implies that it remains an original work of authorship and also falls within typical copyright rules. Thus, my sweater is not considered a derivative work of the pattern because of its usefulness. However, as described above,

copyright may extend to certain parts of the useful object as long as it can be identified separately from the useful object itself. So, if my sweater pattern described small decorative felted flowers that were pinned to the finished sweater, these finished items – assuming they do not pass the usefulness test – could be protected as derivative works under copyright. By this logic, finished objects from hat, sweater, purse, mitten, even scarf patterns are not protected under copyright, but finished objects from patterns detailing felted flowers, decorative wall hangings and knitted sculptures may indeed be considered derivative works.

Interestingly, in the case of patterns for useful objects like sweaters, copyright law further elaborates on what is allowed:

> Copyright in a work that portrays a useful article extends only to the artistic expression of the author of the pictorial, graphic, or sculptural work. It does not extend to the design of the article that is portrayed. For example, a drawing or photograph of an automobile or a **dress design may be copyrighted, but that does not give the artist or photographer the exclusive right to make automobiles or dresses of the same design. (***Emphasis added)*[8]

By this logic, a sweater does not fall under the artistic expression of the author, but the pattern itself does. Furthermore, a consumer is then free to make as many finished sweaters as he wants with no restrictions or need for permission from the copyright owner. However for the items that do not pass the test of usefulness, it is unclear if copyright law considers these items the artistic expression of the author. Does the original artist have rights to my finished non-useful object? Assuming that non-useful objects do indeed fall under the category of derivative works, then how is it within my legal rights as a consumer to purchase a knitting pattern for a decorative or artistic knitted object and actually create the end product, when that creating derivative works is expressly prohibited by copyright law?

Implied Nonexclusive Licensing

It is possible that an implied license is agreed to when a customer purchases a pattern. Implied licenses occur when "the conduct of the parties indicates that some license is to be extended between the copyright owner and the licensee, but the parties themselves did not bother to create a license"[9] For example, when someone creates a web page for viewing on the Internet, the creator of this web page has full copyrights to the page under copyright law. However, when a user views this page, a copy of the web page must be copied onto the user's computer to be viewed in a browser. It is clear that the creator of the web page intended her page to be viewed, and so the courts have decided that users have an implied nonexclusive license to download the page for viewing.[10]

Similarly, a knitting pattern is sold with the intention of having a consumer recreate the pattern in physical form with yarn. Thus, one may conclude that there is an implied license to make a derivative work from the pattern. Additionally, because

implied nonexclusive licenses are inferred from the conduct of the parties[11], we can further conclude that an implied license exists, since pattern designers do not claim infringement for the pattern's intended use. It is also safe to say that the implied license does not allow us to create derivative works of the written pattern itself or of the images contained in the pattern, since this is not likely the intention of the pattern designer in selling the pattern.[12]

Enter EULAs

While it appears that copyright owners have no say in what I do with my finished *useful* objects (since they are not considered derivative works), it remains unclear as to the designer's rights to my *non-useful* knitted objects. Furthermore, the implied nonexclusive license does not clearly explain what implied rights consumers have when they purchase a pattern, and so consumers can only guess at what they are able to do with their knitted items. It is for this reason that many pattern designers have taken to imposing *explicit* license agreements upon the consumer when a pattern is sold. This allows the designer to dictate what can happen to the end product.

With the widespread reach of the Internet and the ease of selling products on eBay and even craft-specific marketplaces like Etsy.com, pattern designers are wizening up to their rights under copyright and with license agreements. It is not surprising that many of the knitting patterns you find online or in your knitting have terms and conditions of use at the bottom of the pattern. Many designers attempt to restrict your use and behavior regarding both useful objects not considered derivative works as well as objects that are decorative only. Many licenses indicate that finished products are not for commercial use, may not be sold, or even may not be donated to charity. Some even have restrictions on how many items you may make from a given pattern (see Appendix 1 for license examples). As with EULAs on software or other goods, the consumer agrees to the stated license when they purchase and use the pattern. If consumers would like expanded licenses, some patternmakers offer these for a fixed or monthly charge. One common type of license seen in this area is the Cottage Industry license, which is often extremely restrictive (see Appendix 2).

Issues

Many knitters disagree with the control that patternmakers have over the finished product of a knitter's work. The complex nature of the authorship vs. ownership with respect to the finished product is a difficult one to understand and accept. While the pattern designer surely has a hand in the creation of the finished product by providing a pattern, a knitter feels that her individual effort, style choices, and hard work make her the actual author of the finished product and should afford her the rights to do whatever she wants with the item. However, because the finished item is sometimes considered a

derivative work (as explored above), and many times is restricted by licensing agreements, the designer maintains control over the items knitters work so hard to create. Many knitters feel that this is unfair. Furthermore, while the consumer has a choice to not purchase a pattern that has undesirable licensing terms, these licenses are becoming so widespread that it is nearly impossible to find quality patterns that do not impose some sort of restrictions on the end knitter and the final works. Knitters resent the lack of true ownership over the items they work hard to knit.

One might also wonder how enforceable these licensing agreements are. The agreements are rarely placed front and center on the pattern, and are relegated to the back of a complex, multi-page pattern in small text at the bottom. Is it realistic to think that people will see and read these agreements before purchasing or using the pattern? While ignorance of the law is no excuse, it is clear from my research of this subject matter that there is significant confusion among knitters as to what their rights are with knitting patterns and finished items. Additionally, if useful objects like sweaters are not considered derivative works, then doesn't a license restricting my use of this finished sweater overreach the rights of the patternmaker and conflict with my Constitutional rights of ownership of this useful object? In the course of my research, I have not found any court decisions that clarify these questions with regards to craft or design patterns.

Additionally, how are international patterns treated? If I purchase a pattern on the Internet from Japan, who's IP laws prevail? While this is outside of the scope of this paper, this is an interesting area to research. Finally, I feel that to better understand the rights of consumers, it would be important to fully understand what constitutes usefulness and how this truly impacts the rights of the consumer and designer. Even the U.S. Copyright Office admits that the line between uncopyrightable works of industrial design and copyrightable works of applied art is not always clear.[13]

Conclusions

Every day, more and more people rely on the institution of contract to protect their wares beyond the inherent protections awarded them by copyright. Software makers are now known for their restrictive - sometimes questionably legal - licenses applied to their products.[14] The popular iTunes Music Store has many restrictions on how you can use your purchased music.[15] As explored here, even the centuries-old tradition of knitting now has restrictions on many aspects of the craft due to licenses applied to patterns. It is clear that our rights as consumers are ever increasingly imposed upon by overzealous licensing agreements on the most basic items. More and more, people are resenting the reach that product manufacturers have over our personal choices with our purchased products. Are we moving towards a time when even the simplest, most basic age-old craft can no longer be our own?

Appendix 1 - Example of various knitting pattern licenses

"When you purchase a Little Turtle Knits™ pattern, it is licensed for personal and home use only. You may make an unlimited quantity of the item, but you may not sell or make a profit in any way from the item. The only exception to this is items knit for charity, and you must first email Little Turtle Knits™ and inform us of your charitable use of our patterns."

From http://www.littleturtleknits.com/pages/licensepolicy.php

"Copyright 2004 Pick Up Sticks! All rights reserved. Hats created using this pattern are not for resale."

From Pick Up Sticks Wavy Flower hat pattern http://www.pickupsticksonline.com

"Knitty All rights reserved. Reproduction prohibited."

From http://www.knitty.com

"Copyright 2004 Bonne Marie Burns All Rights Reserved. This pattern is for your personal, non-commercial use only. You are not allowed to make garments from this pattern then sell them anywhere. You are not allowed to mass produce this pattern or garments made from it."

From http://www.chicknits.com

"Our company, or third parties granting rights to us hold all right, title, and interest in and to the materials on http://www.purplekittyyarns.com, which are our copyrighted work. We grant you a limited, personal, non-exclusive and non-transferable license to use and display the materials only on your personal computer only for purposes associated with your interaction with this website. Except as stated herein, you have no right to copy, download, display, perform, reproduce, distribute, modify, edit, alter or enhance any of the materials on http://www.purplekittyyarns.com in any manner."

From http://www.purplekittyyarns.com/purpc.html

"Everything you see on this website is protected by copyright, and all rights are reserved. This includes the patterns and charts available on this website, or from *the girl from auntie*, whether they're free or not. It also includes my knitted creations. The free knitting patterns on this site are for your own personal, non-commercial use. Any further use requires my express permission. You may not distribute (for free, or for compensation) copies of the free patterns in printed, electronic, or any other format. […]You must contact ***the girl from auntie*** to negotiate a licence if you wish to produce garments or items under commission or for sale.

(below is from licensing agreement)

You personally may make and sell up to two garments or items per licence, total, as long as you provide acknowledgement. For example, this means that if the pattern contains instructions for making a hat and coat, you may make one hat and one coat, or two hats and no coats, and sell them for however much you want, as long as you acknowledge that the items were designed by "*the girl from auntie* at girlfromauntie.com" either at the point of sale or on a label attached to the item. You must also e-mail me to tell me what you're doing, because I'm quite curious.

13. You may make up to two garments or items per licence, total, under commission or other compensation for your labour and materials as long as you provide acknowledgement. For example, this means that if the pattern contains instructions for making a hat and coat, you may make one hat and one coat, or two hats and no coats, and be compensated for however much you want, as long as you acknowledge that the items were designed by "*the girl from auntie* at girlfromauntie.com" either upon accepting the commission or delivery of the finished garment or item. Again, you must also e-mail me to tell me what you're doing, because I'm still quite curious."

From http://www.girlfromauntie.com/legal/

Appendix 2 - Cottage Industry Licenses

Excerpted from the Little Turtle Knits license agreement:

> If you are working out of your home you may purchase a "Cottage Industry License" which will give you the right to use Little Turtle Knits™ Pattern in your **for-profit-home-business**. We offer two distinct licenses, which can be purchased individually, or in combo at a reduced rate.
>
> The "LTKnitters™ Soaker License" will cover unlimited use of the original soaker, longies, ribby wrap, hybrid rib, picky pants, flirty skirty & undersoaker patterns for **a single individual or up to two people in business together** (which is defined as individuals selling from one website under a single business name and sharing equally in the business profits.) The pattens must be purchased seperately from the license. The license is $250 annually.
>
> The "LTKnitters™ Single Pattern License" is for those who are interested in only licensing one of our patterns. **You can use this to sell at local craft fairs, bazaars, or to compliment your own pattern line**, say the felted mocs to go with your own wool pants, or the moc booties to go with your sweaters. This license is $50 per pattern, annually. The babywearer, the original soaker, longies, ribby wrap, hybrid rib, picky pants, flirty skirty & undersoaker patterns are not available through this license.
>
> **To qualify for one of Little Turtle Knits™'s cottage industry licenses, you must do the knitting and all finishing work by hand yourself with absolutely no additional help.** (Those in partnership can each do individual pieces or work in tandem.)
>
> **These licenses are designed to help mothers knit for profit while staying home to care for their children and/or running their own home business. This is not a license for any type of commercial or factory setting production**. The licenses are only valid for Little Turtle Knits™ authorized patterns.

Excerpted from the Elizabeth Lee Cottage Industry Agreement:

- LICENSEE agrees that all clothing must be sewn in her own home without doing any type of commercial production. By commercial, we mean factory type large scale production sewing. We are offering this license to encourage and help mothers earn extra money while working at home. While we do no plan on doing it at this time, the LICENSOR reserves the rights to commercially produce her own designs and does not grant any type of commercial sewing license at this time.
- With this cottage industry license, Elizabeth Lee Designs grants the LICENSEE permission to use all the catalogs, photos and newsletter information provided by Elizabeth Lee Designs to promote her sewing business.
- The LICENSEE may either sew garments directly from patterns she has purchased herself or she may sew from patterns the customer has already purchased directly from Elizabeth Lee Designs. The LICENSEE may also purchase patterns directly from Elizabeth Lee Designs and sell them directly to her client.
- The LICENSEE is an independent contractor and is no way an employee of Elizabeth Lee Designs. Elizabeth Lee Designs is in no way liable for any outcome of a sewing project. Licensee must take responsibility to measure and fit the customer to the best of his/her ability. We suggest you work to perfect your sewing skills and become very familiar with our patterns so you can provide your clients with the very best service possible.

http://www.elizabethlee.com/contractors/agreement.htm

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[1] 17 U.S.C. § 101 http://www.copyright.gov/circs/circ40.html#works

[2] Bitlaw. "Rights Granted Under Copyright Law." http://www.bitlaw.com/copyright/scope.html

[3] "Copyright Claims in Architectural Works – Circular 41" http://www.copyright.gov/circs/circ41.html

[4] 17 U.S.C. § 109 First Sale Doctrine “Limitations on exclusive rights: Effect of transfer of particular copy or phonorecord” http://www.copyright.gov/title17/92chap1.html#109

[5] 17 U.S.C. § 101 Definitions http://www.law.cornell.edu/uscode/html/uscode17/usc_sec_17_00000101----000-.html

[6] 17 U.S.C. § 101 Definitions http://www.law.cornell.edu/uscode/html/uscode17/usc_sec_17_00000101----000-.html

[7] 17 U.S.C. § 101 Copyright Registration for Works of the Visual Arts http://www.copyright.gov/circs/circ40.html#useful

[8] Ibid.

[9] Bitlaw. “Copyright Licenses and Assignments” http://www.bitlaw.com/copyright/license.html

[10] Ibid.

[11] Francis, David W. “The Problem of the Implied Nonexclusive License - Practical Advice for Design Professionals on Protecting Their Designs” http://www.rhoads-sinon.com/archives/Francis03.aspx

[12] Bitlaw. “Copyright Licenses and Assignments” http://www.bitlaw.com/copyright/license.html

“The purpose of an implied license is to allow the licensee (the party who licenses the work from the copyright owner) some right to use the copyrighted work, but only to the extent that the copyright owner would have allowed had the parties negotiated an agreement. Generally, the custom and practice of the community are used to determine the scope of the implied license.”

[13] Useful Articles http://www.copyright.gov/fls/fl103.html

[14] Newitz, Annalee. “Dangerous Terms: A User’s Guide To EULAs.” http://www.eff.org/wp/eula.php

[15] iTunes Store Terms of Service: http://www.apple.com/legal/itunes/us/service.html