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## Questions and Answers about Copyright

The following material is copyright by Stephen E. Feldman of [Stephen E. Feldman, P.C.](#), and was presented by Caroline Stanley of [Redjewel, Inc.](#) at a Designer Day seminar in March of 2002. It is a product of the work of the [Jewelers Vigilance Committee](#), a resource that every designer should be aware of.

### 1. What is a copyright?

A copyright is the protection the United States Government grants for original jewelry designs. It can cover both the actual piece and the drawings for the piece, but cannot cover a mere idea or concept. The design must be reduced to a tangible form.

### 2. How do I know if I need a copyright?

If your design is original. Your design is copyrighted when the drawing or piece is made. If you want to protect the design you should apply for copyright registration.

### 3. What happens if I don't have one?

You can apply and obtain registration at any time however, you must have a registration to bring a lawsuit against an infringer. If you file for registration before any infringement or within three (3) months of the time when you first publish the piece (or the drawings), you are entitled to reimbursement of your lawyer's fees if you win. You are also entitled to statutory damages, which are a set amount of damages from \$750 to \$30,000 for infringement and up to \$150,000 for willful infringement without any need to prove your lost profits or the infringer's profits. If you do not register promptly you will be limited in damages to the amount you can prove as lost profits and/or the infringer's profits.

### 4. At what point do I copyright - when the design is on paper (rendering) or already made? Which time is better?

The copyright registration can be filed before or after publication. However, as we mentioned above, filing the application promptly is important.

### 5. What is copyrightable in jewelry designs?

The drawings and the design of the piece itself.

### 6. Would my copyright still be in effect if I made EXACTLY the same piece but with diamonds instead of rubies and I had only copyrighted the rubies?

Your registration will probably cover a mere change in color of a stone. However, if the change alters the appearance than you should file a new registration mentioning the difference in Section 6, in the back of the application for registration.

**7. What about copyrighting my jewelry collection? I see it can be done in one application, but what does that cover?** Registering a collection permits the protection of all of the pieces in the collection in one registration (to be a collection, the pieces have to have some relation to each other and be published for the first time together). If some are published for the first time earlier they would not be part of the collection.

**8. What is a copyright registration?**

It is a document that the United States Government grants which confirms your ownership in the copyright of the jewelry design. The exclusive rights you receive are the exclusive right to reproduce, prepare derivative works and distribute copies of the work.

**9. How long does it last and can I make changes to it if my design changes?**

If the author is an individual the work will last for the life of the author plus seventy (70) years. Whereas if it is a work-for-hire, that is a work done by an employee or a closely supervised non-employee, than the author is the employer and the copyright will last for ninety-five (95) years. You cannot make changes to the registration. You have to file a new application for the changes. In the application, list the changes at space 6 in the back of the application (the amended work is called a derivative work. Only the author of the original copyright can make a derivative work).

**10. Why is copyright registration important?**

(See No. 3 above).

**11. How do I apply for copyright registration?**

A copyright application (forms are supplied by the Copyright Office) needs to be completed and filed in the Copyright Office with the appropriate filing fee and pictures of the piece. You will need the name of the piece, the date of first publication, the date the piece was completed, the owner, pictures or drawings of the piece, among other things.

**12. Is there a separate form for jewelry designers?**

Form VA (Visual Arts)

**13. How can I find out what is already copyrighted in jewelry?**

Since an author owns the copyright, even though she has not filed for registration there is no way to conduct a thorough search as to what is copyrighted. It is also extremely difficult to search copyright registrations since they are filed by title, not by name of author or owner. If you want to search on-line the Copyright Office's website is at [www.loc.gov](http://www.loc.gov).

**14. How long does it take to obtain the registration?**

It usually takes 8-9 months to obtain the registration.

However, if there is an infringer, you can pay the Copyright Office an extra fee of \$500.00 to expedite the application, and they will respond within ten days to three weeks. ( At present because the Copyright Office mail has not been received by the Office since October, 2001, the delay is much greater. They are, however, receiving Federal Express and other courier services).

**15. What is the procedure in the copyright office?**

If accepted, the Copyright Office will issue the registration for the piece and send you the certificate in about 8-9 months. This process may take longer if they have questions, some of which may address mistakes or errors in completion of the application or in the pictures or drawings that are submitted with the application. The Copyright Office will also often reject jewelry designs for lacking authorship because they consist of common or usual shapes and forms. If that occurs, you should present a well reasoned argument as to why the Copyright Office is incorrect; you may have to appeal to do so.

**16. When is a copy an infringement?**

The standard for infringement is that the piece is substantially similar and, of course, that the infringer copied the piece. There is no hard and fast standard of substantial similarity, but if the piece looks the same, even though it is not identical, it probably infringes (the rumors that it has to be 10% different are wrong: if the Mona Lisa were copyrighted, and you copied only the eyes and smile, it probably would still be infringement). A copyright lawyer should be consulted before any charges of infringement are made.

**17. If I wanted to pursue someone who has infringed upon my copyright, I need a lawyer who specializes in copyright for that, right?**

Generally, it is best to engage an attorney who is knowledgeable in copyright infringement litigation to handle your lawsuit.

**18. Can a jeweler remake my design if someone takes a picture of my copyrighted piece?**

No that would be an infringement, it would be a reproduction of your jewelry design.

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