

Small Business for Creative Types

Growing Your Creative Business

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To become truly immortal, a work of art must escape all human limits: logic and common sense will only interfere. But once these barriers are broken, it will enter the realms of childhood visions and dreams.

– Banksy

Believe it or not, I can actually draw. – Michelangelo

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Quotes for Business Success

On success:

At the point in life where your talents meet the needs of the world is where God wants you to be. — Albert Schweitzer

You either have to be first, best, or different. — Loretta Lynn

I skate to where the puck is going to be, not where it has been. — Wayne Gretzky

A leader is powerful to the degree he empowers other people. — I Ching

It is not the strongest of the species that survive, nor the most intelligent, but the one most responsive to change. — Charles Darwin

To be happy you need: Something to do, someone to love, and something to look forward to. — Unknown

Eighty percent of success is showing up. — Woody Allen

On life and self-confidence:

It's how many things you do right, not how many things you do wrong, that counts. — Sandra Kurtzig,

In walking, just walk. In sitting, just sit. Above all, don't wobble. — Yun-Men

You miss 100% of the shots you never take. — Wayne Gretzky

Twenty years from now you will be more disappointed by the things that you didn't do than by the ones you did. — Mark Twain

By Yogi Berra:

What gets us into trouble is not what we don't know. It's what we know for sure that just ain't so.

When you get to a fork in the road, take it.

If you don't know where you're going, you will wind up somewhere else.

On work:

If you don't paddle your own canoe, you don't move. — Katharine Hepburn

Nothing will work unless you do. — Maya Angelou

The only place where success comes before work is in a dictionary. — Vidal Sassoon

Out of clutter, find simplicity. From discord, find harmony. In the middle of difficulty lies opportunity. — Albert Einstein's three rules of work.

Be not afraid of growing slowly, be afraid only of standing still. — Chinese Proverb

On setbacks:

A really important part of competition is coming back, trying to do it better the second time than you did the first. — Brian Boitano

You may be disappointed if you fail, but you are doomed if you don't try. — Beverly Sills

The way I see it, if you want the rainbow, you gotta put up with the rain. — Dolly Parton

We cannot direct the wind, but we can adjust the sails. — Dolly Parton

Adversity causes some men to break, and others to break records. — Unknown

Not everything that counts can be counted, and not everything that can be counted counts. — Albert Einstein

On moving on:

If you're in a hole, you ought to stop digging. — Anonymous

Every exit is an entry somewhere else. — Tom Stoppard

SMALL BUSINESS DEVELOPMENT FOR CREATIVE-TYPES

Growing your creative business



Presenter:

Miriam Robeson

Attorney

November 2, 2011



MAKING YOUR ART WORK FOR YOU

What We Will Discuss...

- ✦ Business Plans
- ✦ Business Formalities
- ✦ Business Accounting
- ✦ Tax and your business
- ✦ Legal considerations
- ✦ Basics of Copyrights and Trademarks
- ✦ Small Business Development
- ✦ Creative Cooperatives



WHY BE A BUSINESS?



Five Reasons to "Step Up" the Business Side of Your Art

- ✦ *It will help you make money*
- ✦ *It will help you focus*
- ✦ *It will help you comply with legal and tax regulations*
- ✦ *It will give you more credibility*
- ✦ *It will show you weaknesses in your business*



WHEN SHOULD YOU 'BECOME' A BUSINESS?

When Can You Quit Your "Day Job?"

✦ Desire and Determination

- + You enjoy your art and can spend all day (every day) developing products and skills
- + You are willing to treat your art activities "like a business."

✦ Dollars and Sense (Cents)

- + You can create enough art (and sell at a price) to support yourself (and family)
- + You can sell your art for more than it costs (time and supplies)

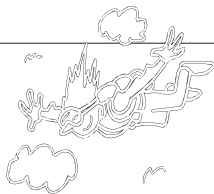
✦ Art Takes Over

- + You spend all your time in search of "more- better-bigger" ways to create and display your art
- + You find public venues for your art (display and sell)



GETTING STARTED

Start-up Basics



✦ Top 10 Start-Up Steps

- ✦ Trial Run, Ease In, or Dive In?
- ✦ 50% of Small Biz fail in the first 5 years.
- ✦ Top 7 Reasons Why Poor Businesses Fail
- ✦ Are you ready to be both Art and Business?

BUSINESS PLAN

What is it, and why do I need one?

✦ A Business Plan is...

+ The important elements of your business

- ✦ Vision Statement (Who You Are)
- ✦ The Players (Customers)
- ✦ Business Concept (What's the Point?)
- ✦ Finances and feasibility (What does it cost to get where I want to go?)



Why Should An Artist Have a Business Plan – Article

BUSINESS PLAN

Why do I need one?



✦ You need a Business Plan if...

- + You are running a business (not a hobby)
- + You are applying for a loan (lenders require it)
- + You are looking for investors (investors want it)
- + You are working with partners (so everyone knows)
- + If you run into trouble (legal, financial, etc.)
- + "Helpful Business Links for Artists" for link to template

Business Plans – Top 10 Do's and Don'ts – Article

BUSINESS FORMALITIES

Paperwork = Credibility

✦ Protect yourself and your business

- + Business Entity (Corp, LLC, formal partnership)
- + Tax ID number (NOT your SS#!!)
- + State and Federal paperwork
 - × Existence, taxes, creative protection
- + Business Relationships Paperwork
 - × Contracts for lease of space, use of equipment, display of art (gallery space), sub-contracted work



BUSINESS FORMALITIES

What Kind of Business Are You?



- ✦ Sole Proprietor – Easiest entity - least protection
- ✦ Corporation – Formal entity - greatest protection
- ✦ Limited Liability Company (LLC) - greatest flexibility, least understood
- ✦ Consult a professional!

SMALL BUSINESS FINANCES

Tracking the \$\$

✦ Keep business income and expenses separate from personal

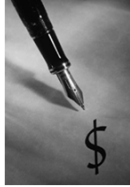
- + Separate checking, credit card account
- + Separate vendor / customer accounts

✦ Keep stuff!

- + Receipts, invoices, contracts (scanner is OK)

✦ Computer Book Keeping program

- + Quicken - Quickbooks - Excel Spreadsheet
- + Enter ALL income and expenses



SMALL BUSINESS AND TAXES

Protecting your business

✦ Type of business formality determines tax return

✦ Things you can deduct

- + Supplies (creative and administrative)
- + Insurance (business and health)

✦ Things you can't deduct

- + Personal / Living expenses

✦ Watch Hobby Loss Rules!

- + More than three years of loss - the IRS calls you a "hobby," and you cannot deduct expenses!



SMALL BUSINESS TAXES

Taxes You Pay - Taxes You Collect

✦ Sales Tax Paid to the State - what is it, when do you collect?

- + 7% - more than 30 days - "in the business of"

✦ Sales Tax You Pay for Purchases - what's exempt?

✦ Employment Tax - when do you have "employees"?

✦ Income Tax - Estimated Payments required

- + 110% of current income tax obligation
- + 100% of previous year's tax obligation



SMALL BUSINESS TAXES

Deductions, Deductions, We Love Deductions!

- ✦ Home Office/Studio – dedicated space
- ✦ Utilities (heat, light, phone) – pro-rata share
- ✦ Insurance – business insurance, pro-rata share of casualty insurance on home
- ✦ Automobile – travel to/from events, exhibits
+ 2011 IRS Mileage Rate = 50¢ per mile *or* actual expenses
- ✦ Meals and Entertainment – 50% rule for meals
- actual costs for lodging, travel
- ✦ Art Supplies and Equipment
+ “Consumables” = immediately deductible
+ Equipment with useful life = depreciate
- ✦ **What Do You Want to Deduct?**



SMALL BUSINESS TAX TRAPS

The IRS is watching you...

✦ Top 10 Audit Triggers

✦ State Tax Traps

- + Failing to file sales tax returns
- + Failing to file employment tax returns
- + Failing to file Secretary of State documents

✦ What to do if you have trouble

- + Memory Devices
- + Hire a professional

**Remember:
Keep records!**



SMALL BUSINESS LAW

Legal Risks

✦ Personal Risks

- + Personal assets at risk from business practices
 - × Financial Issues
 - × Liability Issues

✦ Business Risks

- + What is your business worth?
- + Protect your business reputation

✦ Work Product – See Intellectual Property



BASICS OF INTELLECTUAL PROPERTY

Copyright - Trademarks – Patents – Creative Commons

- ✦ What is IP?
- + Copyright - Creative Expressions fixed in form
- + Trademarks - identification of goods and services
- + Patents - invention that is useful, novel, and non-obvious
- + Creative Commons - Deliberately making your work available for use by others.

COPYRIGHT

Creative Works

- ✦ Copyright
- + “Original creative expressions”
- + Form, not content
- + Duration - Life + 70 (Mickey Mouse Life)
- + Infringement if copy is “substantially similar”
- + Derivative works
- + DMCA (Digital Medium Copyright Act)



COPYRIGHT

Public Domain - Free to use in any form

- + Published before December 31, 1922, or
- + Expires 70 years after the death of the creator, or
- + Specifically placed in the public domain (freeware, shareware, etc.), or
- + Government works.
- + However, new arrangements or versions of a public domain work are copyrighted to the extent of the arrangement or version



COPYRIGHT

Fair Use and "Not" Fair Use

✘ "Fair Use" is an exception to copyright protection

+ Examples:

- ✘ Excerpts for review or critique
- ✘ Parody
- ✘ News reporting
- ✘ Educational Use

+ Balance test – how much is too much?

✘ Copyright Use and Fair Use

**FAIR
USE**

COPYRIGHT

How to "Get Around" Copyright Law

✘ Obtain permission from the owner

✘ Use Public Domain

- + Public Domain by passage of time
- + Public Domain by Government works
- + Public Domain by design

✘ Create your own source materials

✘ Top 10 Copyright Myths



COPYRIGHT

Protect Your Creations

✘ Copyright Protection

- + Protected at Creation (fixed in form)
- + Notice © + year + name
- + Registration to recover costs and fees for claims
 - ✘ www.copyright.gov/register for online registration
 - ✘ \$35 filing fee (online) \$50-65 filing fee (hard copy)
- + Failure to protect rights may mean you lose rights
- + Fair Use – See handout
- + [alt] 169 = ©

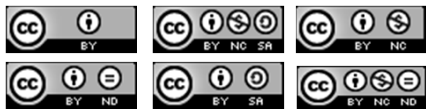


OTHER COMMENTARY ABOUT COPYRIGHT

- ✘ Swennseemel.com – Art Careers Without Copyright – “Crowd Marketing”
- ✘ Theabundantartist.com – “How YouTube sees Copyright” (From TED TV)
- ✘ Mariabrophy.com – “What we can learn from a bikini model.”

CREATIVE COMMONS

- ✘ Allowing defined types of licenses for your creative works
 - + Creativecommons.org
 - + FREE
- ✘ Types of Licenses:



Attribution – No Derivative – Non Commercial – Share alike

TRADEMARKS

Industry Identification



TM

- ✘ Trademarks (also Service Marks)
 - + Commercial methods to identify and distinguish goods and services from competitors



PATENTS

Inventions and Processes

✦ Patent – exclusive rights to an invention in exchange for public disclosure

- + Must be new, inventive, useful, industrially applicable
- + Good for 20 years



SMALL BUSINESS DEVELOPMENT

Planning to Grow Your Small Business

✦ Financing growth – know why you need \$\$\$

- + Investors - want to see profit
- + Patrons - want to see your art
- + Business (loans) - want \$\$ + interest

✦ What is your time worth?

- + When is it worth *hiring* it done?
- + Administrative details
- + Gal/Guy “Friday”
- + Share administration with a partner (artist or business)



SMALL BUSINESS “BUSINESS PRACTICES”

- ✦ 8 things you must do when selling a piece of art
- ✦ 10 Principles of Success for Artists
- ✦ Top 10 Tips to Grow Your Art Business

CREATIVE COOPERATIVES

Art Teams that Succeed

- × Sharing a business - increase profitability
 - + Like Kind of Art
 - + Compatible Kind of Art
 - + Diverse Kind of Art
 - + Mixing Art and "Other"

- × Investment Limits - when is enough, too much?

CREATIVE COOPERATIVES

Art Teams that Succeed



- × Tips For Partners
 - + Discuss expectations - then write them down
 - + Written agreement for sharing costs and income
 - × Sharing store space, studio space, equipment
 - × Sharing costs and sharing time
 - × What happens if it doesn't work out?
 - + Feeling of Fairness - MOST Important!
 - + Not for friends or the faint of heart!

EMPLOYEES

Do I Need Employees? What Do I do with Them?

- × Employees increase business complications
 - + Employment taxes and rules
 - × Full time and part time
 - × Over time and benefits
 - + Training Employees to read your mind

- × Can you succeed without help?
 - + Employees allow you to be in two places at once
 - + Employees can be hired for business management
 - + What is the "marginal benefit" of an employee?

HOW TO SUCCEED AT (ART) BUSINESS

Plan, Work, Time, and Art

- ✦ Make a Plan - stick with the plan
- ✦ Formalize Your Business - act like a business, not a hobby or “for fun”
- ✦ Keep up with the paperwork
- ✦ Keep up with taxes (and keep receipts!)
- ✦ Watch and protect your rights
- ✦ Enter partnerships with eyes wide open
- ✦ Don't forget to MAKE ART!



OTHER RESOURCES FOR ARTISTS

- ✦ Swennseemel.com – a professional (“makes a living as”) artist who has a lot of great ideas about promoting yourself. Look for the sample sales agreement and model release on her website.
- ✦ Theabundantartist.com – Lots of great business development info, including building a website and developing a business plan
- ✦ Mariabrophy.com – Maria is an artist consultant with business tips about selling and marketing your artwork.

RESOURCES FOR SMALL BUSINESS

Finding Help for what you need

- ✦ US Small Business Administration
+ www.sba.gov
- ✦ Hoosier Heartland Small Business Development Center
+ <http://www.hhsbdc.org/>
+ Susan Davis - West Lafayette
- ✦ ***See Handout for more resources!***

Top Ten Start-Up Steps

So, you've decided to start a business. What do you do first? What next? What do you have to do right away and what can you delay?

Here's what most entrepreneurs actually do in their first few months in business:

1. **Choose a business name.** It's hard to start marketing your products or services without a name, and you don't really feel like you're in business until you've got a business name.

2. **Get business cards.** You can't start selling or networking without them.

3. **Search the Internet for information and advice.** Be cautious, however, unless you know and trust the source of that advice. Just because it's on the Internet doesn't make it true.

4. **Envision how much money you'll make.** Every new entrepreneur does a back-of-the-napkin projection of how much money they can make. This is almost always wrong.

5. **Set up a place to work.** This may only be a corner of the living room or a table at a local coffee house, but you'll want to find some relatively consistent place to do business.

6. **Set up some basic financial accounts.** Even if just using paper and pen, most people start keeping track of expenses and set up some kind of basic financial record keeping.

7. **Look for customers.** You're not in business until you start making sales. Many would-be entrepreneurs drag their feet before starting to look for customers because it's scary. But you're not in business until you go out there and start trying to make sales.

Those are steps that entrepreneurs actually do the first few months in business. But what about things they should do that they often put off?

1. **Talk to an attorney and/or accountant.** It's wise to have a simple standard contract or agreement drawn up you can use. It's also a good idea to understand some of the tax implications of setting up your own business.

2. **Objectively check out the competition.** Most entrepreneurs fail to see what competitors are good at. Learn from them.

3. **Get a domain name and/or email address.** You'll look much more professional if you have a company domain name for your email rather than a personal one.

4. **Get all necessary business licenses, permits, and certifications.** Make sure you're following the law right from the start.

5. **Contact an industry trade association.** They're a great source of information and help for your specific type of business.

6. **Get a business bank account and set aside one credit card just for business use.** Separate your business and personal expenses from the day you start business.

7. **Develop at least a simple budget.** Be extremely conservative about income. Things take longer and cost more than you expect.

8. **Get bookkeeping software.** This can be something as simple as Quicken or you can get Quickbooks or Microsoft's Small Business Accounting. It's a lot easier to keep track of your accounts if you use bookkeeping software from the start.

9. **Develop a business plan.** Even a simple business plan dramatically improves your chances of success. A business plan helps you target your customers, improve your products, use your money wisely. Developing an annual business plan has dramatically improved my business over the last few years.

10. **Develop a marketing plan and go to it!** You've got to let customers know about you. Advertise, network, do direct mail. Most importantly, get out there and call on customers. You can't make money if you don't make sales.

Top 7 Reasons “Poor” Businesses Fail

1. **Poor Planning.** The moment you have the idea of starting a new business, you should start planning. Learn everything you can about business in general, about your business in particular, and what it takes to run a business - cost, personnel, resources, and time. Make use of the Internet and the Small Business Association and workshops for free or low-cost advice. Create a time line of goals, and get a second opinion about whether those goals are reasonable.
2. **Poor Reasons (for starting the business).** “I Hate My Job,” is a terrible reason to start a business. Starting a business is HARD WORK! You may hate your job, but it will be much easier than starting a business. You must be dedicated to your business and the business of your business, and passionate about your art.
3. **Poor Management.** Top management failures include: business expertise, hiring employees, managing employees, financing the business, production and selling product. If you don’t have experience in these areas, learn, study, or hire it done! (Corollary to poor management is “Neglect of Management,” where you fail to keep up on cash flow, bills, paperwork and customers.
4. **Poor Expectations.** Unless you are extremely lucky, or are selling the next, greatest “thing,” you will not make a profit in the first year (or the second). How will you live? How long will it reasonably take to earn a living from your art?
5. **Poor Advertising.** Advertising can be one of the most expensive - and one of the least expensive costs of your business. With today’s social networking, you have many “free” opportunities for advertising. Don’t forget that your demeanor sells your product as much as the product sells itself.
6. **Poor Location.** If you rely upon store traffic to sell your art, and you are in a poor location, you have an up-hill battle to bring the masses to your door. What’s the balance between a prime (aka “expensive”) location and enough interest in your art so that people will go out of their way to see (and purchase) it. Don’t forget - location includes Internet presence, too. Where is your art available “online?”
7. **Being Poor (Insufficient Capital).** Have you accounted for ALL the costs your business will require in order to be successful? Does that include the cost to pay you a living wage? Did you include taxes? How many “objet d’art” must you sell in order to cash flow your business? Have you priced your art at a reasonable level?

Why should an artist have a business plan?

5 top reasons to have a business plan –

Reason 1 – It will help you make money.

Ever wonder why some artists just seem make money appear out of thin air and have no problems selling their work, when you feel you are just as talented as they are and have completed just as large a body of work?

Reason 2 – You will become focused.

As you start planning, that shotgun approach to marketing that most artists take will start to thin itself out and you will learn how to put a system in place.

Reason 3 – You'll know where you stand.

Your strengths and weaknesses will become apparent to you as you start to create a business plan. What aspects of your art do you excel at? What do you tend to put off because you don't know how to finish?

Reason 4 – You'll know how to get where you want to be.

Once you write down a plan, it's easy to refer back to it often to get re-focused on your goals. Carefully analyzing what you really want out of your art business is a good way to stop doing what is getting in your way.

Reason 5 – You'll know what other artists are doing.

Do you want a competitive advantage? Are you afraid of really pushing your business because you don't know what will make you different and make people want to purchase your art?

Building a business plan doesn't have to be that scary. You can create something simple, as long as it has the following elements:

- A unique value proposition. Who you are and what you do.
- The kind of art you make and how you plan to sell it.
- The kind of art competitors make and how they sell it.
- Your current financial records and your financial projections.
- An analysis of your strengths, weaknesses, opportunities, and threats to your business.

It doesn't have to be very long. My business plan is four pages. In fact, the simpler, the better. You'll be more likely to act on something simple.

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Visit Cory Huff on the web and learn more about making money as an artist:

Theabundantartist.com

Business Plan

Top Ten Do's and Don'ts

TOP TEN DO'S

1. Prepare a complete business plan for any business you are considering.
2. Use the business plan templates furnished in each session.
3. Complete sections of your business plan as you proceed through the course.
4. Research (use search engines) to find business plans that are available on the Internet.
5. Package your business plan in an attractive kit as a selling tool.
6. Submit your business plan to experts in your intended business for their advice.
7. Spell out your strategies on how you intend to handle adversities.
8. Spell out the strengths and weaknesses of your management team.
9. Include a monthly one-year cash flow projection.
10. Freely and frequently modify your business plans to account for changing conditions.

TOP TEN DON'TS

1. Don't be optimistic (on the high side) in estimating future sales.
2. Don't be optimistic (on the low side) in estimating future costs.
3. Don't disregard or discount weaknesses in your plan. Spell them out.
4. Don't stress long-term projections. Better to focus on projections for your first year.
5. Don't depend entirely on the uniqueness of your business or the success of an invention.
6. Do not project yourself as someone you're not. Be brutally realistic.
7. Do not be everything to everybody. Highly focused specialists usually do best.
8. Don't proceed without adequate financial and accounting know-how.
9. Don't base your business plan on a wonderful concept. Test it first.
10. Never, never, never skip the step of preparing a business plan before starting.

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Top 9 Small-Business Tax Audit Triggers

Dos and Don'ts to avoid (or reduce the chance of) an IRS audit.

1. **Hiding income.** Years ago, I learned gas station convenience stores were one of the most audited businesses. Why? Lots of people pay with cash. If you get paid in cash, rather than by check or credit card, it's tempting to just 'forget' to declare some of that income. That's a huge IRS no-no. Don't.

2. **Making more than a million dollars.** Have an adjusted gross income of more than a million dollars? You'll have the highest chance of getting audited. In 2008, according to the IRS, they audited 5.6% of millionaires' returns, compared with 2.9% of those making more than \$200,000, and less than 1% of those making less than \$200,000. But, heck, if you can clear a million dollars profit, take the audit. A definite do.

3. **Mixing personal and business expenses.** It's tempting to write off your new living room furniture or that trip to the Caribbean as a business expense (after all, you read e-mail while sitting on the couch or at the beach, right?) but the IRS certainly frowns upon that. Don't.

4. **Entertaining.** Another area where personal and business expenses are likely to be construed as intertwined. Also, the IRS doesn't want to see excessively lavish parties (except, it seems, from huge banks getting TARP money, but that's another story). Remember, you can only take 50% of entertaining and food expenses as a deduction. Nevertheless, small businesses need to be out there talking to customers over lunch or dinner, at a ballgame or golfing. Most entrepreneurs don't entertain nearly enough. Do.

5. **Losing money more than three out of five years.** The IRS is on the lookout for people writing off hobbies as businesses (so forget buying those expensive cameras and calling yourself a pro photographer). They want to see that you've at least had the intent to make a profit. Don't.

6. **File a Schedule C return.** If you're a sole proprietor, you'll file a Schedule "C" — Profit or Loss from a Business — as part of your 1040 form. BDO Seidman says the IRS is scrutinizing Schedule Cs more closely this year, so make sure you have proper documentation. But unless you're incorporated, you'll need to file this form. And according to an SBA report released just April 2, 2009, sole proprietors pay half the effective tax rate of S corporations (13.3 percent versus 26.9%). Do.

7. **Taking the home office deduction.** If you work at home, remember you need a section of your house exclusively used for business to qualify for a home office deduction. The IRS particularly likes to challenge this. I worked at home for 14 years and never took this deduction. Be careful.

8. **Using your car for business.** Like entertaining, this is another area the IRS thinks has the possibility of being misused. You're less likely to be audited if you have a separate personal car. But you've got to see customers face-to-face to keep them loyal. And this year, the mileage rate deduction was increased: 50.5 cents per mile from 1/1/08-6/30/08 and 58.5 cents the rest of the year. Get out there. Do.

9. **File at the last minute.** Since fewer returns are filed early, BDO Seidman claims you'll have a lower chance of being audited if you file closer to deadline. So thumbs up on your procrastination! Do.

Copyright and Fair Use

Fair Use of copyright media

(aka: Fair Use is one of the more complicated provisions of the Copyright Act)

1. What can be copyrighted? – **All original works of authorship that can be “fixed”**
 - a. Examples of “works of authorship”
 - (1) Literary (including software and web pages)
 - (2) Music
 - (3) Drama
 - (4) Choreography
 - (5) Pictorial, graphic, sculpture (artwork)
 - (6) Motion Pictures
 - (7) Sound recordings
 - (8) Architectural works

2. Copyright is automatic
 - a. Who owns the work?
 - i. **Generally**, the creator of the work
 - (1) **Exception**: when the creator “creates” the work as part of his or her scope of employment - then the work is owned by the employer, unless otherwise contracted.
 - (2) **Exception to the exception**: Student-created works, even if done as part of a graded assignment, are owned by the student.

3. Public Domain works – Free to use in any form
 - a. Any works published before December 31, 1922, or
 - b. Copyright expires 70 years after the death of the creator, or
 - c. Any works specifically placed in the public domain (freeware, shareware, etc.), or
 - d. Government works.
 - i. However, new arrangements or versions of a public domain work are copyrighted to the extent of the arrangement or version

4. Fair Use – Exception to the Copyright Law – Balance of the author’s right to control with public’s need to gain access to a copyrighted work.
 - a. **Four Factor Balance Test**: (These are applied IN ORDER by the Courts)

 - b. Factor #1: What is the character of the use?
 - ✓ Works that are used for educational (versus commercial) purposes are more likely to pass Factor #1 test.

 - c. Factor #2: What is the nature of the work to be used?
 - ✓ Works that are more factual in nature (versus imaginative) will be more likely to pass Factor #2 test.

 - d. Factor #3: How much of the work will be used?
 - ✓ Use of small amounts of a larger work, or excerpts of a work (versus use of entire books, images, or music) will be more likely to pass the Factor #3 test.

 - e. Factor #4: What effect would this use have on the market for the original or for permissions if the use were widespread?
 - ✓ Use of materials that are out of print, not readily available, or created by someone that cannot be identified (versus works with a ready commercial market) are more likely to pass Factor #4 test

5. Some examples of inappropriate use

Copies of Entire issues of Newsweek for Students Copies of one "legit" copy of music for band Classroom viewing of entire feature motion picture	Definitely Wrong
Digitally re-formatting a feature motion picture for class use Using the same current events article for 10 years Use of image downloaded from a commercial Internet site Copy of an entire book for research project	Very Questionable
Copying an entire book that is out of print for class use Repeated (year after year) use of one coursepack (not updated)	Somewhat Questionable

6. Some examples of Fair Use

Copy of selected chapters of a book for research project Copy of selected images for reference or use in a research project	Probably Fair Use
Classroom viewing of excerpt of feature motion picture for discussion Copy of a current events article for class discussion Copy of Shakespeare's "Twelfth Night" from Project Gutenberg web site Viewing images of art for class discussion, criticism, identification Coursepacks of selected (short) articles, chapters, etc. Use of free clip art or images from a free site Face-to-Face" teaching of copyrighted work (dramatic reading, display)	Definitely Fair Use

7. How you can be "Right" with copyright Regardless of "Fair Use"

- a. Permission obtained from the author or copyright holder always wins!
- b. In any published works (that means, any work that someone else will see, whether another teacher or students), always attribute the source!
- c. Many published works (mostly books and software) have a special educational license which permits copying and modifications for classroom use. Look for "Educational License" information on the product.

8. For more information... Selected Internet resources for further exploration of Copyright guidelines:

- a. Authorama – free literature works on the Web: <http://www.authorama.com/>
- b. Bitlaw.com – Technology law web site, "Fair Use in Copyright" http://www.bitlaw.com/copyright/fair_use.html
- c. Report on Congress "Conference on Fair Use" (CONFU), with useful guidelines and examples: <http://www.utsystem.edu/OGC/intellectualProperty/copypol2.htm#test>
- d. IUPUI Copyright Management Center <http://www.copyright.iupui.edu/fairuse.htm>
- e. Project Gutenberg – Public Domain literature on the Web http://www.gutenberg.org/wiki/Main_Page
- f. US Copyright Office, "Fair Use" <http://www.copyright.gov/fls/fl102.html>
- g. US Library of Congress Online resources <http://www.loc.gov/index.html>

Top 10 Copyright Myths

1. **If it doesn't have ©, it's not copyrighted.** Myth. All original work acquires copyright protection as soon as it's created, or "fixed in form." © is not required for copyright protection.
2. **Copyright protection requires registration.** Trick myth. Copyright protection happens as soon as a work is created. However, in order to sue for copyright infringement, damages and attorneys fees, you may need to register your work. Registration also establishes a creation date.
3. **Mailing your work to yourself has the same effect as registering with the Copyright office.** Nice try, but all this does is establish the postmark on the envelope. If it's important to establish a creation date, spend the \$35 to register with the Copyright office.
4. **If it's on the Internet, it's free for the taking.** No, Digital form does not render a copyright invalid or unenforceable; just harder to catch.
5. **Copying "just a little bit" is not copyright infringement.** This is "just a little bit" true. Exceptions to copyright exist for educational use, criticism, parody and news reporting; however, there is no bright line for how much is too much.
6. **It's not copying if I change the original.** If you can identify the original work, it's a copyright violation. However, this is a matter of degree, for which it's nearly impossible to know where the "line" is drawn.
7. **Copyright protection is forever.** Nope. Copyright protection lasts for the life of the creator plus 70 years (if created before 1978, the expiration is life plus 95 years, thanks to Disney).
8. **If I acquire the original copyrighted work, I also acquire the copyright.** NO. The transfer of the created work does not transfer the copyright. If you sell an original work of art, you still own the rights to use the images, to recreate the artwork, and to sell the copyright to someone else. Transfer of copyright can only be accomplished in writing.
9. **If someone hires me to create something for them, they also own the copyright.** Depends. This is called "work for hire," there are two points of view: If you are an employee, and creating things is part of your job, then your creations belong to your employer. If you are a contractor, and you are hired to create a specific work, the transfer of the copyright must be in writing.
10. **Public Domain works are "Up for grabs."** Wrong again. Public Domain only means that you can freely use the work to create your own work - you cannot claim rights to the work. "Derivative Works," or works that you create from the original work, are yours. Examples include new arrangements and performances of classical music.
11. **Bonus "Moral Question." I can use the "fair use" exception to show what I think about someone else's work.** There is a limit to how "fair use" can be applied: the law prevents "intentional distortion, mutilation, or other modification of the work which would be prejudicial to" the artist's honor or reputation.

- Want to let people share and use your photographs, but not allow companies to sell them?
- Looking for access to course materials from the world's top universities?
- Want to encourage readers to re-publish your blog posts, as long as they give you credit?
- Looking for songs that you can use and remix, royalty-free?

What Is Creative Commons?

Creative Commons is a nonprofit organization that enables the sharing and use of creativity and knowledge through free legal tools.

Our free, easy-to-use copyright licenses provide a simple, standardized way to give the public permission to share and use your creative work — on conditions of your choice. CC licenses let you easily change your copyright terms from the default of “all rights reserved” to “some rights reserved.”

Creative Commons licenses are not an alternative to copyright. They work alongside copyright and enable you to modify your copyright terms to best suit your needs. We've collaborated with intellectual property experts around the world to ensure that our licenses work globally.

What Can Creative Commons Do For Me?

If you want to give people the right to share, use, and even build upon a work you've created, you should consider publishing under a Creative Commons license. CC gives you flexibility (for example, you can choose to allow only noncommercial uses) and protects the people who use your work, so they don't have to worry about copyright infringement, as long as they abide by the conditions you have specified.

If you're looking for content that you can freely and legally use, there is a giant pool of CC-licensed creativity available to you. There are hundreds of millions of works — from songs and videos to scientific and academic material — available to the public for free and legal use under the terms of our copyright licenses, with more being contributed every day.

Step 1: Choose Conditions

Publishing under a Creative Commons license is easy. First, choose the conditions that you want to apply to your work.



Attribution. All CC licenses require that others who use your work in any way must give you credit the way you request, but not in a way that suggests you endorse them or their use. If they want to use your work without giving you credit or for endorsement purposes, they must get your permission first.



NonCommercial. You let others copy, distribute, display, perform, and (unless you have chosen NoDerivatives) modify and use your work for any purpose other than commercially unless they get your permission first.



ShareAlike. You let others copy, distribute, display, perform, and modify your work, as long as they distribute any modified work on the same terms. If they want to distribute modified works under other terms, they must get your permission first.



NoDerivatives. You let others copy, distribute, display and perform only original copies of your work. If they want to modify your work, they must get your permission first.

Step 2: Get a License

Based on your choices, you will get a license that clearly indicates how other people may use your creative work.



Attribution



Attribution — ShareAlike

Used by Wikipedia



Attribution — NoDerivatives



Attribution — NonCommercial



Attribution — NonCommercial — ShareAlike



Attribution — NonCommercial — NoDerivatives

Eight Things You Must Do When Selling A Piece of Art

1. **PHOTOGRAPH OR SCAN YOUR ART:** Before selling any and every piece you create, be sure to have a photograph of it, preferably a high quality scan. Trust me, this will come in handy later for more reasons than I can list here.
2. **AGREE TO A PRICE:** The price of your artwork should already be determined and listed, either on your website or on the price sheet if you're at an art festival or event. A customer may ask for a discount. It's up to you if you want to offer a discount. Some artists will bump their prices up by 5%, then give a discount of 5% when asked. Or, if a customer is buying multiple pieces, you may want to give a small price break.
3. **ADD SALES TAX AND SHIPPING CHARGES:** In Orange County, California, our sales tax is a whopping 8.75%! That gets added to the price of the piece, as well as my estimated shipping charges, if the item will be shipped. Be careful with estimating shipping – sometimes you'll end up paying a lot more because you didn't charge enough. (Note: If you are shipping the item to an out-of-state location, you don't have to charge sales tax.)
4. **ARRANGE DELIVERY:** There are a few options for artwork delivery:
 - a. **CUSTOMER TAKES IT HOME ON THE SPOT.** When at an event, if the customer paid cash or credit card (and you processed the card already), then let them take it with them if possible. This will save you the trouble of shipping later, and the customer is usually happy not to have to pay shipping charges.
 - b. **WAIT FOR PAYMENT TO CLEAR.** If they paid by check or PayPal, I strongly advise you to wait for the payment to clear. We've sold many art pieces at shows where the customer paid by check, and only one time did a check bounce. But I'll tell you, that one time stung! I no longer let the customer take the item home until after the money is officially in the bank.
 - c. **PICK UP AT STUDIO:** If the buyer is local to your area, arrange for them to pick up the piece at your studio after the payment has cleared. I love when people come to our Drew Brophy studio to pick up art, because it's an opportunity to show them other pieces. Once we get a new collector to come into our studio and get to know us personally, they become a Drew Brophy fan for life. The personal connection is very powerful.
 - d. **DELIVER AND HANG FOR THEM:** You could offer to deliver and hang the art for a small additional fee that would cover your time and travel expenses. If a customer purchases several large pieces, and they are less than a two hour drive from our studio, we offer to personally deliver and hang the art for them at no charge.
 - e. **FOLLOW UP:** If you've shipped the piece, follow up by phone or e-mail later, to make sure that it arrived safely.
5. **PROVIDE A RECEIPT:** Print out a receipt for the customer so that they have a record of the artwork and price they paid for it. The receipt should have all of your contact information on it, as well as your website address, your phone number and your email. Many artists include a copyright notice on their receipts. Ours states that "The artwork copyright is owned by Drew Brophy. Any reproduction of this artwork must be agreed to, in a separate licensing agreement and in writing, by Drew Brophy."

6. **RECORD THE COLLECTORS CONTACT INFO:** Always keep a record of all buyers of your artwork. We have a spreadsheet of every person who has bought Drew Brophy's originals going back to 1996 (which is when we started keeping track). I recommend using an Excel Spreadsheet so that you can sort according to year, or painting name, or medium, as you need to. The spreadsheet has the following information:

TITLE OF ARTWORK	Year Created	MEDIUM	Size
\$ PRICE PAID	Buyer NAME	Buyer ADDRESS	Buyer PHONE/Email

7. **SEND A THANK YOU CARD:** We mail a nice "thank you" card about a week after the painting was shipped, delivered or picked up. In the card we write our heartfelt thanks for the buyer contributing to the arts and we share our wish that they enjoy the art for years to come.
8. **MAILING LIST:** Add your collector's information to your mailing list (ask permission to add their e-mail to your newsletter list). If you don't send out mailers or newsletters, eventually you will, so start your list now. A mailing list is a fabulous way to keep in touch with your collectors over the years, particularly if you want to invite them to future shows or let them know about new works that you've created.

Be sure to let your collector know that you appreciate their love of your art, and that you are happy to see the piece go to a good home. Without the support of our collectors, I don't know what Drew and I would be doing for a living.

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For more information about marketing your artwork, visit the author's website: <http://mariabrophy.com/>

10 Principles of Success for Artists

1. **PLAN YOUR ART CAREER** – Decide what you want: You can't get what you want without a concrete vision of what it is. Deciding what you want is the jumping off point. Once you do that, you are capable of creating the lifestyle of your choice.
2. **Have Integrity**: A good reputation will get you more work, collectors and clients, and it comes from having integrity. Integrity means doing what you say you're going to do, when you say you will do it. Meet deadlines, respect your agreements, and make ethical decisions. Make your mother proud.
3. **Brand Yourself**: Tell your own personal story. Carve your own niche and have your own distinctive style. You'll be remembered for this.
4. **Promote yourself Shamelessly**: Marketing is how you announce to the world that you have something to contribute and it's for sale. Tell everyone that you are an artist. Hand out business cards. Keep your website fresh, because it's your window to the world. Document your work with photos and video. Ask the media to write about you.
5. **Keep the Passion**: Being passionate about what you do will shine through you and your work. Think Big. Be a light for your ideas. Never give up. Don't do things you don't enjoy. Not for long, anyway.
6. **Control Your Copyrights and Use Legal Agreements**: Be protective of your style and your name. Use common sense when going into legal agreements. Never sign anything that you don't fully understand or agree with.
7. **Manage Your Money**: If you aren't making a profit, than what you've got is a hobby. **THINK BEFORE GOING INTO DEBT TO SELL YOUR ART.** You must be able to make money off of your craft to be a professional. This means charging the proper amount, handling your money well, and keeping track of expenses. Never give your work away – you hurt your collectors and your fellow artists when you do.
8. **Say “yes” to most everything**: Be open to trying new mediums and new techniques. Don't ever be “too busy” to give interviews or to be featured in a book or magazine. Consider all opportunities that come your way, even those that you aren't sure of.
9. **Contribute to the Industry of Art**: Network with other artists, help your fellow artists, buy from your favorite artists. Join us in the vision of making the profession of art become a lucrative career.
10. **Tenacity**: Commit to your craft and don't look back. Never give up. Realize that you can live the lifestyle that you dream of. It's within your reach. Remember that you are making a contribution to the world, and it's important.

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<http://mariabrophy.com/>

Top 10 Tips to Grow Your Art Business

“Art Business” is not an oxymoron. Artists can plan to make a living doing what they love, with some simple business tips.

1. ***Be Visible.*** Whether you work out of your home studio or have a place in a gallery downtown, your artwork must be visible - and you should be, too. Plan to have “gallery hours,” when are open to the public. Participate in community shows where you can both display your art and demonstrate your process.
2. ***Be Accessible.*** Have business cards, photo cards and flyers, and place them everywhere that will let you. Make your name (or your business name) easy to remember.
3. ***Be On the Internet.*** Have a website. Register a domain name. Even if it is a free blog-style site, put yourself and your artwork on the Internet. Many artists sell more work online than from a studio. Investigate Ebay and other online sales portals as a way to display and sell your art to the world. Document your daily art routine, complete with pictures. Your patrons will be more likely to purchase your art if they can witness the creation.
4. ***Be Involved.*** Join art groups to both network with similar artists and to become known in the art community. Join TAF as an “artist member” to get information about what’s going on in the community, become known in the community.
5. ***Be Charitable.*** Strategically donate art for worthy causes. If you can get exposure for your art at an event, and if the “final product” results in a prominent display of your work in a public space, use this opportunity as “free” advertising.
6. ***Be Festive.*** Participate in local fairs and festivals that encourage artists to display and sell works. [Note, however, the difference between “professional” and “amateur” events, so you are not mistaken for a talented amateur instead of a paid professional.]
7. ***Be Instructive.*** Supplement income and build a following for your art medium by teaching classes. This gets your name in the community, as well as examples of your artwork displayed.
8. ***Be a Partner.*** A business partnership with a like-minded or aligned artist can increase your visibility and patron base, while allowing you to more effectively leverage your business dollars.
9. ***Be Realistic.*** Artists can have great creative ideas, but might need a reality-check on a risky business idea. Find a friend who can help you weigh the pros and cons of new ideas before you invest, and be sure you have a plan to overcome obstacles.
10. ***Be an Artist.*** Don't forget why you started your business - don't get so wrapped up in the “business” that you forget to MAKE ART!

Helpful Business Links for Artists

Business Plans

US Small Business Administration “How to Write a Business Plan” (Tutorial)
<http://app1.sba.gov/training/sbabp/index.htm>

Art Glass Studio Business Plan –
<http://www.fundinguniverse.com/sample-business-plans/?plan=Art%20Glass%20Studio%20Business%20Plan>

Cory Huff - The Abundant Artist
Theabundantartist.com

Formalizing Your Business

Indiana Secretary of State's Office - online Articles of Incorporation, Articles of Organization (for Limited Liability Company), Assumed Business Name (online applications) – \$90 filing fee for forming new entities
<http://www.in.gov/sos/business/index.htm>

IRS – Obtaining a Tax ID number for your business (online application)
<http://www.irs.gov/businesses/small/article/0,,id=102767,00.html>

Indiana Department of Revenue – Sales Tax/Retail Merchant Certificate (online application) (Select “Online BT-1” – \$25 filing fee)
<http://www.in.gov/dor/3731.htm>

Getting Advice for Developing Your Business

Hoosier Heartland Small Business Development Center (West Lafayette)
<http://www.hhsbdc.org/>

Business.gov, “The Official Business Link to the US Government”
www.business.gov

US Small Business Administration
www.sba.gov

Business Owners' Idea Café – online networking and information site (Lots of Info)
www.businessownersideacafe.com

Small Business Help Center (Basic info)
www.helpbizowners.com

Maria Brophy – Artist development consultant
www.mariabrophy.com