

# 3 :: Using other people's work in your designs

You may want to include material that someone else has created in your work. Sometimes, your client may want you to produce something very similar to material that they have seen elsewhere. Or, your client might ask you to include someone else's work in yours.

## Do you need copyright permission?

You need copyright permission if:

- you use something protected by copyright;
- your use is a copyright use (a use controlled by the copyright owner);
- you use a "substantial part" (this may not be a big part);
- the copyright has not expired; and
- your use is not covered by a special exception.

You may also need permission from the **creator** of the work you're using if that person won't be attributed and/or if the use may be damaging to that person's reputation or offensive to that person.

## Is what you want to use protected by copyright?

### Using someone else's ideas

A fundamental feature of copyright is that it protects forms of expression of ideas and information, but not the ideas or information themselves. It is the image used to describe an idea, for example, that is protected, rather than the idea. A person can use the same idea, or express it in a different way, without infringing copyright. The use of someone else's idea or information can, however, breach other laws. This can happen if the idea or information is **confidential**, or if your design could be misleadingly associated with someone else's design or business.

### Using someone else's style or technique

Using someone else's style or technique to produce a new work does not infringe copyright provided you do not copy a work produced using that style or technique.

There may, however, be legal issues other than copyright to consider. For example, if you use a style made famous by another designer, and people think that your work is the other designer's work, then laws protecting consumers and business reputations may apply.

## Competitor's designs used idea but didn't infringe

In a dispute between two clothing manufacturers, Elwood and Cotton On, the court held that Elwood's designs for T-shirts and clothing swing tags were protected by copyright, but that Cotton On's designs didn't infringe that copyright. Cotton On's designs were based on similar ideas to Elwood's – they were designs based on text and numbers with graphical elements – but were executed using different design elements.<sup>14</sup>

## Copyright claim unsuccessful, but use of idea breached Trade Practices Act

Woodtree, a seller of photo boxes, sued a competitor, Zheng, who was selling photo boxes with a label similar to Woodtree's. The court held that Zheng's label did not infringe copyright, but that it did breach the Trade Practices Act because it suggested to consumers that Zheng had an affiliation with Woodtree.<sup>15</sup>