

Licensing 101

by jessica swift



So you want to start licensing your artwork?

How exciting!

Don't know where to begin? Feeling overwhelmed?

I'm here to help.

To follow is a bit of a primer on what licensing even IS (I know it can seem really confusing in the beginning!), along with some other useful info on things like copyrighting, licensing agents, contracts, and more. I hope it's helpful!

Best of luck to you in your art licensing journey.

xo

jessica

What is licensing?

Art licensing is basically renting/leasing the rights to use your artwork and your name/business name together with a product, promotion, or service. Licensing can help you increase your exposure, build awareness of your art and brand, and create new revenue streams in your business.

The difference between licensing, limited use sale, and outright sale

LICENSING:

There are a number of different ways that you can partner with a company to allow the use of your artwork on their products.

Here's a break-down:

Licensing basically means you're renting your artwork to a company for a specific amount of time. During that time they have the right to use the art based on the parameters set in the contract, and after that time period is over those rights revert back to you, the artist. Or, as often happens, you and the company can choose to extend the license for another specific amount of time. The typical lengths of a license are 1 year, 2 years, 3 years, and 5 years, in my experience. A license is typically for a specific industry-- for example, I can license the same artwork to a fabric company, a wallpaper company, a rug company, and a stationery company. None of these industries overlap at all, so this is totally acceptable and happens all the time in the licensing world. You can't license the same work within the same industry, though-- meaning, I couldn't license the same artwork to two different fabric companies. This will get you into big trouble if you do it, so it's

best to steer completely clear of any potential overlaps!

Your name is almost always on the licensed products, too, which is fabulous, because it helps increase your exposure and grow your brand as an artist/designer. Quite often the products will be marketed with your name as well, like “Orla Kiely for Target” or “Jessica Swift for Case-Mate”, and this is especially good if the company is well-known and has lots of eyeballs on it!

Licensing can work in a couple of ways:

ROYALTY-BASED:

Earning royalties on your licensed images means that you earn a percentage of the profit on each product sold with your artwork on it. The royalty rate is typically a percentage of the net sales of your products, and it varies from industry to industry, contract to contract. (The net price is the wholesale price minus all deductions that the company will take, like the cost of goods sold.)

Here’s an example:

You’ve licensed an image to a company for a set of boxed note cards. They retail in stores for \$10.95. The wholesale price would likely be 50% of that, so about \$5.50. The cost of goods sold (COGS) is probably around half of that, \$2.75, so when you subtract the COGS from the wholesale price, you’re left with \$2.75. This is the number from which your royalty rate is calculated.

If your contract has a 7% royalty rate, you would make $\$2.75 \times 0.07 = \0.19 per set of note cards. I know this doesn’t seem like much, but if the company sells in large quantities, that \$0.19 can add up quickly.

This is how most licenses work. Most of my licensing contracts have worked this way. Sometimes you can get an advance against royalties, which means you’ll receive a sum of money up front, and then once the product hits the market you won’t earn any royalties until the product sales have surpassed the amount of the advance paid to you. This is how many book deals works.

FLAT FEE LICENSE:

A flat fee license means you’ll get one lump payment up front and no royalties for the life of the contract. The difference between a flat fee license and a sale, though, is that the licensee (a licensee is the company you licensed the artwork to; you are the licensor) can still only use the work for a period of time, just like in a royalty-based license. Once that time period is over, the rights revert back to you, the artist. This is how my T-Mobile and TeNeues licenses have worked, among others. This can be a nice situation, because it ensures you will make at least some money from the license. There’s always a risk with a royalty-based license that the product won’t sell and you’ll earn very few royalties. Flat fee licenses are nice, too, because you get the money up front rather than having to wait until the quarter (three months) after the product hits the market and begins selling, as with a typical license, to see any money from it.

LIMITED USE SALE:

Limited use sale means selling partial rights to a piece of artwork to a company for use on their particular products in a specific industry. For example, you could sell the rights to a pattern to a wallpaper company, and they would then OWN the rights to reproduce it as wallpaper and anything associated with wallpaper (maybe adhesive wall tiles or something like that). You could then sell the rights to the same pattern to a stationery company for use on greeting cards/paper goods. You could also sell the rights to the same pattern to a home goods company for use on bedding and towels. See how this works? Similar to licensing, limited use sales allow you to use the same piece of artwork across multiple industries, and to make more money on an individual piece of artwork than you would if you sold the full copyright to someone (that's an outright sale, which I'll explain next). The difference between licensing and limited use sale, though, is that there is a time limit on licensing, and there is no limit on a limited use sale. You SELL the company those specific rights, and they then own those rights forever. Also, your name will likely not be on a product sold through a limited use sale.

Many companies don't like limited use licenses because it's hard for them to keep track of and because they may not know on exactly what products they'll end up using the artwork for that they're buying from you. But if you decide to sell your artwork, I think it's a good idea to try to get a limited use sale if you can, as opposed to an outright sale-- it's of much greater benefit to you because of the potential to make more money on each piece of art!

OUTRIGHT SALE:

An outright sale is exactly what it sounds like: the full sale of all copyright to your artwork. When you sell a piece of work outright, the artwork is no longer yours, the company owns it, and they can do whatever they please with it. This also means that your name will not be attached to the work, so you'll get no recognition for it. Many companies like to purchase artwork outright for various reasons: sometimes they use it as inspiration for their in-house designers, sometimes they want to create a range of products out of it, sometimes it's just easier for them to keep track of it if they don't have to remember who the artist was or where they got it. The reasons are many and varied. The apparel industry typically does not license work and instead tends to purchase art outright. The going rate these days in my experience is about \$400-\$1000, depending on the complexity of the print and how long it took you to create. Companies across all industries purchase art outright, though, so it's important to know how they work when you speak to them. If you're at a trade show, for example, most people will ask you right away whether you license or sell (and yes, you can totally do both!), or they'll tell you they only purchase artwork outright and to please only show them work that's available for outright sale. This is totally normal and makes everything clear from the beginning.

You can't sell a piece of work outright that is currently licensed either, or one in which you've sold partial rights. Be sure you're clear with people about what's 100% available and what's not. It's difficult to grow your brand as an artist by selling outright, because your name will never be associated with your work. While it's a great way to make some money in your business, if your goal is to grow your own brand as an artist/designer and have products with your name on them, selling work outright is not the way to go about that.

I do think that outright sales are a good way to get some cash flowing into your business, though! I would just advise you not to sell any of your best or favorite work outright, because you could license it instead, to potentially make more money and grow your brand at the same time.

A note: if you do end up selling something that's your best/favorite, don't worry! There's always an opportunity to create new art that will end up being your best/favorite. That's the great thing about being an artist! Constant creation.

Choosing whether or not to work with a licensing agent

I didn't work with an agent for many years. I got and negotiated every license and client that I worked with. I think it's wonderful to work this way, because I'm fully in charge of my own career, and I get to keep 100% of my money. (Licensing agents take anywhere from 20-50%.) I worked with an agent for about a year when my baby was first born, and I'm glad I experienced that way of working. Ultimately, though, it wasn't for me and I've now gone back to being a solo, un-repped artist.

I do know a lot of artists, though, who work with agents and love it! They can certainly get you some great jobs, because they have crazy awesome connections within the art and design world that would be nearly impossible for a solo artist to make. They take care of the paperwork and contract side of things for you so you can focus on what's most important: creating your artwork and meeting your deadlines.

I happen to be one of those artists who enjoys the business side of things as much as the creating side of things, and I'm happy to be the one running the show. I know artists who can't stand the business and organization side of things are much prefer to hand those things off to someone else.

There's no right answer here. Working with a licensing agent could save you some time on the business side of things, but you'll give up a portion of your income. Granted, your income might be higher while working with an agent than it would be otherwise, because they can get you more and better jobs/licenses, so perhaps that point is moot.

It's a very personal decision. It all depends on your personal preferences. Are you like me and you like to be in control of everything, learning the ins and outs of an industry as you move forward in your career? Or do you like letting other people handle the business-y stuff so you can create create create?

I've found that through exhibiting at trade shows and by having an active online presence, I've been able to get plenty of my own clients and licensing partnerships, and I haven't found an agent to be necessary for my own creative work. That could change again one day – who knows! For now I'm happy being on my own.

About royalty rates

Royalty rates vary a lot across industries and from contract to contract. Typical royalty rates range from 2-10%. A company that does very high volume sales to places like Target or AT&T (places that are considered 'mass market') will likely offer a lower percentage, in the 2-3% range. While this seems very low, in reality the amount of products that these mass market companies buy make your royalty checks quite nice! Most companies that I've worked with have been in the 5-8% range, with mass market sales around 3%. This is pretty standard in my experience. Most companies have a standard contract that they work with, and you can negotiate within your own comfort level. I've asked for higher royalty rates and fees before and have ended up getting more than they initially offered, so you never know what's possible until you ask. **The Graphic Artist's Guild Handbook** is a great resource to see learn more about the range of royalty rates across various industries.

Working with licensing contracts

You can hire a lawyer who specializes in working with artists/creatives (**Volunteer Lawyers for the Arts** is a great place to begin looking for someone) to help you create a standard licensing contract of your own as well. That way you'll be prepared if a company asks you to send over a draft Contract (this doesn't happen often, but it can!). Bonus points if the lawyer who creates the contract for you explains to you all the terms so you know exactly what to look for in a contract!

Here are some things to make sure are in your contract:

- It's important that you have the right to approve all products (and see samples!) with your artwork on them before they go into production. I've learned this lesson the hard way. I licensed a "Happy Birthday" image for a greeting card once, and when I got my samples in the mail months later, they'd changed the words, the font, everything! I never saw it before it went into production because that wasn't part of my contract. Lesson learned!
- Make sure the license includes the names of all the work(s) you're licensing as well as the specific types of products they'll be reproduced onto.
- In the event of any lawsuits, make sure there's an 'indemnification clause' that states you are protected against incurring any fees or damages related to the lawsuit.
- Make sure all royalties and advance payments are defined clearly, as well as your payment schedule (when you'll receive your royalty payments, advances, etc).
- You should also be granted the right to audit the licensee's books if and when necessary. (You are the Licensor, the company you're licensing to is the Licensee.) If there ever came a time when you felt the company was not accurately reporting your sales/royalties to you, you would want to have the right to perform an audit to make sure the company is being honest and that you're getting your full payment due.

- A clear termination or auto-renew date. It's important to be aware of whether the contract will auto-renew or not, because you'll want to know how far in advance you'll need to contact the company if you decide you want to end the contract. 90 days is fairly standard. Your contract could auto-renew without you being aware of it, and then all of a sudden you're signed up for another couple of years, or whatever the time frame was in the original contract!
- A statement that your copyright/name will be put on every product that goes to market. What do you expect to see in a good licensing contract? What are some pitfalls to avoid or red flags to look for in a contract?

Things to avoid:

- Make sure the company does not gain any of the rights to your work upon signing the agreement. ALL rights should revert back to you at the end of the agreement.
- Don't give the company full reproduction rights either – make sure the products that will be produced are defined in the contract. You don't want to allow them to reproduce it however the heck they want! I also like to make sure they can't produce derivative works based on my art without my approval.
- Don't allow sub-licensing without your written approval. This means the company can't license your artwork to another company with whom they work without you approving it first.

What kind of income you can expect from licensing, and when

As I mentioned earlier, it can take some time in the beginning before you start seeing any money from your licensing deals. Flat fee licenses are paid up front, which is great, but many companies work on a royalty basis rather than a flat fee. In these cases, you won't start earning any royalties on products until at least 3 months after they are on the market. For example, my first licensing deal with T-Mobile was a flat fee license. They paid me a sum of money up front, and then I didn't earn any royalties on the sale of the products. But with my first fabric license, I didn't receive my first check until 15 months after I'd signed the contract. It generally takes a long time for fabric to be produced and to get to the marketplace. Same with books. Fabric companies start pre-selling it after they've received their samples (called strike-offs), and the first royalties will usually be paid the quarter following the one in which the pre-sell period began. For example, if the pre-sale began in October (4th quarter), you would get your check sometime in late January or early February (1st quarter.) Sometimes, though, they wait until after the pre-sell period is over and the fabric begins actually shipping to stores, in which case you have to wait even longer.

It can take a while to create any significant income from licensing, but the more contracts you have, and/or the bigger the companies are who you work with, the better. More checks = more money. Bigger companies who sell more product = more money. You'll start looking forward to the end of the quarter, because you'll know that checks will be arriving in the mail!

As for what amount of money you can hope to make from licensing, the sky is really the limit! As I mentioned before, I've gotten checks for as little as \$2.00 for 3 months worth of sales, but I've also received checks ranging into the 5-digits. I know artists who make hundreds of thousands of dollars a year licensing! So it really depends on the companies you work with and the products that you create with them. But it's absolutely possible to make quite a nice living from licensing your artwork!

Finding contacts at manufacturing companies on your own

Is it possible to find contacts at the companies with whom you'd like to partner if you aren't working with a licensing agent? Of course! Working on your own can definitely be more challenging, but there's nothing wrong with a challenge, right? It can be tricky to find the correct person to submit your work to at some companies, and Google and LinkedIn will become your best friend. I use LinkedIn often to search for specific people within a company. Sometimes you'll get lucky!

It also helps to have a lot of connections on LinkedIn, because you never know who your connections are connected to. If you get really lucky, you'll be one step away from the exact person you were looking for, and you'll be able to add them as a contact, too.

Many companies also have their staff listed right on their websites, so I always start by digging around their website to see what I can find.

Ask your artist friends, too! They might know who the art director is, or maybe they know someone who does. We've got to stick together, right? I've gotten great info from friends before (and given great info, too!)

How to find and work with companies/manufacturers

Many companies who manufacture artful products have submission and contact info right on their websites! This is always the first place that I look. Often they'll detail exactly how they want artwork submitted, but if not, I send a nice email (addressing it to the appropriate person by name, of course!) with several jpegs attached, a link to my website, and I let them know when I'll contact them next if I don't hear from them. This is important, because you don't want to leave it open-ended, like "hope to hear from you at some point!" You want it to be very clear what you want them to do: "Please email me back at your convenience. If we haven't connected by xxx date, I'll reach back out to you. Looking forward to your reply!" Something like that (but more friendly, of course!).

Trade shows are wonderful and direct places to meet manufacturers and art directors at companies with whom you'd like to work. Exhibiting in a booth at a surface design trade show or gift show can be one of the best investments you can make for your business.

It's also beneficial to visit **big gift shows** like the **NY Now** in New York City and **AmericasMart** in Atlanta-- you can walk the show and visit all the manufacturers' showrooms and/or booths

to get an idea of what types of products they make, what type of artwork they use, etc. It's not generally a good idea to take your portfolio and try to show it to the busy people working in the showrooms-- they're there to sell to their wholesale clients, not to scout for artists. But if someone seems particularly friendly and you're feeling bold, you could certainly tell them that you're an artist and that you'd love to submit your work to them, and then ask if they could please share the art directors name or even their email address with you. This has worked for me before! When I walk around a show like this, I take detailed notes on which showrooms I liked and which new companies I discovered that I might like to work with, and then I Google them when I get home and try to find out what their submission policy is. I also look up the companies I'm interested in on LinkedIn to try to find key people within the company (art directors, creative directors, people in product development...).

How do you protect your work from plagiarism or exploitation?

This is a really tough one, and in my experience there's a lot of trust involved. I copyright all of my work through the US Copyright Office. You can file everything online, and then a certificate is mailed to you. I typically copyright a lot of work in batches, rather than one at a time. Last time I went through this process it cost USD \$35 per copyright (this may have changed, so don't quote me on that!).

It's important to have proof of copyright in the event that any legal action needs to be taken if your work is copied. While any artwork you create is technically copyrighted as soon as you create it, having an official copyright is further proof that you are indeed the creator of the work. It's also proof of when you created it. It's a good idea to copyright your new work at least once a quarter. (I need to take my own advice on this one! It's been a while since I've gone through the process myself. Ha ha.)

As far as actual protection goes, though, this is where it gets tricky. I'm sure you've heard stories about solo artists getting ripped off by big companies like Forever 21 and Paperchase, or that an artist's work is being reproduced overseas and they can't do anything about it. Here's my view: this is a chance we all take by being part of this internet culture. Everything is visible online, and if someone wants to copy it, they're going to, whether you have an official copyright or not. That's the sad reality.

The good news is that social media is changing the way artists can stick up for themselves if something like this happens. The story of Hidden Eloise and Paperchase illustrates this perfectly; Paperchase was forced to back down against accusations that they'd copied the artist's work and used it on their products. The accusation began as a blog post on Hidden Eloise's blog and spread like wildfire across Twitter. The power of social media is undeniable. I once got a tweet from an online friend alerting me to someone who'd copied one of my images-- I may not have ever seen it otherwise! I love knowing that all of us in this creative online community of people are looking out for one another.

So, while it's a reality that copying does happen, I tend to trust people and try to believe that it won't ever happen to me in any terrible way. I think putting that energy out into the universe protects me

somewhat, too. I don't let a fear of people copying me stop me from putting my work online, on my blog, on **Instagram** and **Facebook**, etc-- how am I going to get clients unless they see some of my work?!

I do put a large portion of my pattern portfolio behind a password on my website, though – so qualified manufacturers/art directors/etc can request access, which only I can give them. It's not open to the direct public. This is an added measure of protection that I feel is important. I show part of my pattern portfolio on my website, though, so people can get a preview of my work.

Some people also feel that it's a good idea to watermark all the images that you put online (adding a transparent copyright/logo on your digital images) -- this can easily be done in Photoshop or Illustrator. A watermark can help make it clear that the artwork is copyrighted and is not to be reproduced unlawfully. I don't do this often, because I find it distracting to the image, but I do usually put a small stamp with my name/logo on it in the corner of my images, rather than putting a watermark across the center of the image. But if watermarking feels like the right step for you, by all means, watermark away!

If you do discover someone copying you, it's essential to take immediate action and not be afraid to be firm and clear in your demands. A lawyer can help you craft an email or a letter if necessary and determine the best course of action.



I hope this has been useful and helpful information and that you're feeling excited, invigorated, and a little more prepared in your journey toward becoming a licensed artist!

You can find me on my website at **jessicaswift.com** and at **patterncamp.com** (*where we have lots of real conversations about topics like art licensing and much much MUCH more – come join us!*) if you'd like to learn more, if you have questions, or if you're just looking for a bit of inspiration and support.

You are awesome!

xo

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