

Megan: Hi everyone. This is Megan Auman here for The Creative Empire and today I am joined by Sarah Feingold. Sarah is currently licensed to practice law in the state of New York and she serves as the general counsel for Etsy. I actually first met Sarah way back when I was a senior at Syracuse University studying metalsmithing and Sarah was in law school, but she also happened to be taking classes in the jewelry studio. So Sarah and I go way back with that awesome Syracuse connection.

So we're doing this call today because a lot of you guys had questions in the forums about some different legal stuff. So I'm going to go ahead and introduce Sarah and I think she's got a little disclaimer for us to start things off.

Sarah: I do, Megan. And we go all the way back from Syracuse Law. Go Cuse. They're out of the Final Four though. So that's sad. My first bit of disclaimer is I work for Etsy, but the information on this broadcast is not authorized or endorsed or affiliated with Etsy. And my second disclaimer is that I am a lawyer, but I'm not your lawyer. Laws can change and so the information contained in this podcast, it doesn't constitute legal advice.

So, you know, Megan and I should not be responsible for any losses or damages arising from the use of the information. Laws may change and so the information presented could change with time. And so, consult a licensed attorney in your area if you need specific legal advice. That's about it.

Megan: Awesome. Alright, now you've all been fairly warned. Let's just get right down to it. Kind of the hot topic in the Creative Empire forums was about sourcing images for use on people's blogs. So when it comes to sources images to use on your blog, what's legal and what's appropriate?

Sarah: Well, I mean, every great lawyer will say it depends. And isn't that annoying? It really is a case by case issue and a lot of people will argue, "Well, Sarah, I just use an image on my blog. Isn't that fair use?" Well, yes and no. First of all, I like to think of fair use as this no man's land. No one's really sure when you're in it or when you're not in it and that's because there are a lot of public policy reasons behind it and it's really difficult to decide whether something is fair use or isn't fair use because even judges and lawyers can't really decide.

There's a four-part test to determine if something is fair use and courts disagree, lawyers disagree. And if you think about it, you might disagree. For example, if somebody uses my image on their blog, I might find it fine or I might find it's not fine. And if I use someone else's image on my blog, the same thing will go. So the four-part test, for those who are really interested, it's first the purpose and the character of the use. The court looks at whether the copying is for commercial or non-profit purposes.

And as you can imagine, if it's for non-profit then it probably will go towards finding a fair use. Then they're going to look at the nature of the copyrighted work. So is the original work with a result of a lot of labor? Then the copying is less likely to be permitted. Third, they're going to look at the amount and importance of the portion of the work. The more your copy of the

original, the less likely its use will be permitted. So for example, to use “the meat” of the material, then that might not be fair.

And the fourth and arguably the most important one is the economic impact of the use on the potential market. So, you know, if you’re use of the work actually negatively affected the market of the original work, then that’s going to be held against you. So, as you can see, it’s not quite as cut and dried as you’d hoped it would be. And that’s why it’s so case by case specific and if you do have questions you might want to just get permission or you should talk to a lawyer.

Megan: Alright. So I want to go back to the kind of the point about, sort of, commercial or non-profit because that came up in our discussion on the forums. So there was talk about it being alright to use images in an editorial format that even though you might, say, run ads on your blog, the content is not for profit. That’s editorial because that’s the way that magazines work. Is that something that’s true?

Sarah: Well, I mean, that’s difficult because A, the commercial aspect is only one part of a four-part test. And depending on, like, you know, what judge you have in front of you, they might weight certain factors differently. But, you know, if you are...you have ads on your blog and you’re basically not really adding too much to the context. That might be found as commercial.

You know, if it’s newsworthy or you’re doing commentary or criticism, that might be better for a finding of fair use, but as I said, I think a lot of artists are like, “I’m just going to cling to this fair use thing and that’s going to protect me.” It’s not as simple as that. For example, today I was doing some research and I found that this person posted a photo of the TSA on his blog and he was sued for \$150,000. And he was just making some commentary about it. It was a comedy blog.

So who knows that’s going to happen with that? And there are some pretty mean people out there and some pretty greedy attorneys, some of them who went to law school with me. Hi, guys! Not me. So you’ve just got to be careful. I don’t want to make anyone, like, completely worried, but these are the truths of the internet sometimes.

Megan: So, does that mean that it’s probably not a good idea to, say, go on to Etsy and find someone’s work just to use as an illustration for a post that maybe you’re not actually even talking about the work at all? Would that seem like something that was too commercial? I mean, I know you can...

Sarah: Well, it’s difficult to say. I mean, it really depends on the person; it depends on the work. I would see a lot of artists being thrilled for the free publicity, especially if you link back to their listing. But I could see some artists just not having it. I think communication is always key and I think getting on the same page, not assuming things, it depends on what kind of risks the blogger wants to take and, you know, what kind of risks they don’t want to take. I don’t know if your readers are familiar with the Creative Commons.

It's [CreativeCommons.org](https://creativecommons.org). It's a way to have licenses where you can communicate to other people that you have some rights reserved and some people have creative common licenses that say, "Sure, you can absolutely use my image as long as you're not making commercial use out of it, as long as you're giving attribution." So that's the way to kind of communicate to the world how your images can be used.

Megan: Yeah, you know, I think an interesting scenario that I seem to kind of come across is that where I've seen artists become, you know, frustrated that their images are being used, you know, to illustrate maybe an article as people who...seems more so in, like, two dimensional media.

So someone who is an illustrator or a painter or a print maker who might actually make part of their living doing commercial print work, those seem to be the people who are first to be angry. Whereas, say, if I use a ceramics artist to illustrate a point in my post, they're usually more so thrilled for the traffic.

Sarah: Yeah, well it's interesting because even US copyright law doesn't really protect all art the same. For example, if something functional is not...the functional aspects of an item are not protectable via copyright, just forms of expression are.

So I feel like there's certain artists that might feel more connected to their work in such a way just because they know that the copyright, the US copyright law, protects them better because of the nature of their work. So, you know, a ceramic mug, you know, is functional so maybe only the design on it would be protectable via copyright as opposed to a print maker who knows that their print is, like, very creative and so the whole thing would be protectable.

Megan: Yeah, that's actually really interesting. And I'll mention this again at the end, but I think this seems like a good time to throw this out there for those of you who are just like, "Whoa, that was stuff I didn't know." Sarah has an e-book called Copyright for Artists and we'll be sure to include the link with this that you guys should all check out for a little bit more detail on stuff like that.

So back to that kind of image issue. If you are going to use an image from someone else and, you know, let's say you sourced it through, like, Creative Commons on Flickr or, you know you found someone on Etsy, you know, you feel pretty confident that the image you're using, you're legal to use. What is the, kind of, appropriate method for attribution? Like, a link back? You know, something else?

Sarah: Well, I mean, if you feel confident that you have their permission, you could ask what they would like. You know, a lot of people would like a link back. Or you could just link it back just because that's sort of, like, best practices on the web to show where you got the image. You could put, you know, their name if they want their name there, their business name, the year. It all depends on your agreement with them and maybe what it says, you know, in their creative commons information.

Megan: Alright, so I'm curious to know. I know that you and I have talked about this, that you are only licensed to practice law in the United States. So for our international members, I'm sorry. Sarah can only be one place at a time. But I do have a question. Let's just say you are blogging in another country. Let's say you're blogging in Australia, but your domain, your site, is hosted in the US. What jurisdiction would you fall under should there be copyright issues?

Sarah: You know, that's pretty difficult and I think it would really be case by case. There's no such thing as an international copyright, but there are certain agreements like the Bern Convention or the Universal Copyright Convention. And in many, but not all countries, honor US copyrights so, you know, obviously this is case by case and it really would depend on your specific situation. So, you know, I would suggest consulting a foreign copyright expert. I went to school in the US, I did study abroad in London for a little while, but I would no way feel like I have adequate knowledge to even dive into this sort of area. It's really complicated.

Megan: Yeah, I know. It's kind of amazing to me what you have stored in your brain and what you know about all of this. And speaking of that, I know you mentioned the case that you were just reading about today about the guy using the image of the TSA. Are there any other cases that you've seen regarding use or attribution of images online that you think would be either a good cautionary tale or a good green light for people to hear about?

Sarah: Well, in fact, I have a bunch of Storque articles. I guess we're calling it the Etsy blog right now called You be the Judge. And what I do over there is, you know, every couple of months I'll find some really interesting topic and I'll write about it and then I'll let people be the judge and decide how they would rule if they were the judge in that case. So I'll look at trademark issues, I'll look at copyright issues, I'll look at patent issues and most of them are pretty clear cut.

And you would be amazed how many people absolutely would take one side or the other side in how it's so difficult to decide, you know, what would you do if you were the judge? And I think by watching Law and Order and, you know, all these television shows, you can see how difficult the law is. So there are cases that come out pretty much all the time. You know, and it's kind of interesting to see what happens as you follow it. Most of the cases settle and unfortunately when things settle they usually have some sort of confidentiality agreement so you don't know, you know, who won? Who lost? What happened? They just say, "Oh, they settled."

So that's always disappointing. Off the top of my head, you know, I guess you could think about the Shepard Fairey was using the Obama image for his image that was on the Associated Press and they settled. So, you know, there was a big fair use debacle there and I was following it and I went to a bunch of lectures on it. And I was absolutely fascinated by this case and then they settled. So who knows? Who knows if that use was fair use or not? So it's always pretty difficult when these cases settle.

Megan: Interesting. So let's just say that you are an artist and someone is using one of your images on their blog or website in a way that you are not happy about. What's the best course of action?

Sarah: Well, my favorite thing to say when that happens to someone is to first, step away from your computer, step away from your phone, and breathe. Because I promise you that there's nothing good that can come of writing an angry email. And I know that if I were to think that somebody were infringing on my copyright and I thought that I was being, you know, my rights were being violated, I would be pretty upset. So I think, you know, getting a little perspective, take a day, walk away, that's your first step. And I think we could all agree that that's probably a good idea.

Second, you know, really look at it and try to think, you know, is this person really trying to take advantage of you? Are they not trying to take advantage of you? Maybe this could be good for your business. You might want to reach out to them and say you know, like, "Listen, could you please remove it." You might want to reach out to them and ask that they link that to your shop. You might think that this is wonderful and thank them for using your image. Or you might think that there is a really big problem and you might want to speak with an attorney because, you know, this could be a bigger issue than what it seems to be.

You know, in my book I talk about, you know, do you even have a copyright. Like, do you even have rights to this because the first thing is, do you have a copyright? And if you don't have a copyright, well then there goes all your arguments right there. You know, someone can't copy from things that you never had the rights to in the first place. So yeah, sometimes you need to talk to a lawyer to try to figure out what to do next. But hopefully the person didn't mean anything by it and maybe you can just work with them.

Megan: Awesome. So we talked a little bit about, kind of like, fair use and images. And I know you kind of mentioned that the four things that fair use is judged on, which I know apply to text also, but do you have any specific suggestions if you are quoting a lot of text that someone else has written? Say, in your blog or on your site.

Sarah: Well, I mean, it really depends on how you're using the text. If you're going to use a quotation for a book review or something like that, that's generally safe as long as you attribute the author. This is because of the first amendment, protection of free speech. But if you use the "meat of the work" and, you know, the use might diminish the value of the work, that could be copyright infringement and that could be, you know, not fair use. So it really depends on how you're going to use it.

There's really no test that says, like, "Oh, well I only used 20% of the work," or, "I only used 200 words." It's really...the test is a fair use test and that is very difficult to try to determine. There's no, like, bright line there. So when in doubt you might want to ask permission from the copyright owner.

Megan: That's so interesting because I remember reading somewhere something like that you could only, you know, reprint like 300 words before asking for permission. So that's not actually true? There's no magic number?

Sarah: Yeah, there's no magic number. The copyright office doesn't have a magic number there. I keep seeing numbers every once in a while. Someone says, "Oh, if you change a work by 20%, it becomes your work." How do you know if you change their work by 20%? Where is the 20%? Do you like make a grid? And then you take 20% and change it? That doesn't work. There is no percentage, there's no number of words. You know, the meat, you have to look at the four-part fair use test. There's also this defense called the de minimus use, which means, like, you use such a small, small, small amount that it couldn't be copying. So, I mean, that could help you out as well. But, as I said before, I'm always hesitant about relying on fair use because it's so difficult to prove.

Megan: So switching gears just a little bit. And I know, as you've mentioned at the beginning, that your statements are not endorsed by Etsy at all. In particular conversation, but can you talk a little bit about Etsy's copyright and intellectual property policies as they pertain to artists?

Sarah: Sure, absolutely. So Etsy's copyright and intellectual property policy is published on every single page of Etsy. If you scroll all the way down to the bottom, you'll see those little blue links and one says copyright. And when you click on that, the policy is right there. And basically the policy complies with the Digital Millennium Copyright Act and this is because Etsy is an online venue. As well all know, Etsy's not a jury site. You know, people aren't applying to be on Etsy. You can post your items yourself and when you post your items you basically agree that your items are legal and that they comply with Etsy's policies.

So if you find something on the site and you're like, "Oh my gosh, that person copied me." Check out our intellectual property policy and it's pretty straightforward. If you want to report something, there's six pieces of information that we need. And we can go from there. I just want to make a note that it's a very serious statement to report something to Etsy via our intellectual policy. You need to give a statement under the penalty or perjury and it would have consequences for you and for the person that you're complaining about.

So if you have questions or you're not really sure, like, you know, is this person copying me? Do I even have copyright protection that might be a useful object? I don't know. You might want to talk with an attorney. I've seen things get pretty messy, and I know people meant well and people really thought they were being copied, but it can kind of get out of hand. So, you know, beware and be careful, but the policy is right there. And I hope that it's in plain English and understandable.

Megan: Yeah, I think it is. You know, I have to say just from like a personal perspective, I ran into an incident a couple years ago now. You know, every so often, well-meaning people will send me an email saying, "Hey, I saw this thing on Etsy and I think they ripped you off." And I'm smart enough to be like, "No, they didn't" Like, they're pretty universal forms. But I actually got an email one day of someone selling earrings where I could tell that they had taken my product and made a mold of it and were casting it. And so I went through all of Etsy's kind of legal stuff and I actually think I even shot you an email, Sarah, and you directed me to the intellectual property policy.

And the person was not based in the US, they were based in another country. I don't know how they got my earrings in the first place. And I have to say, in the end, I ended up not doing anything about it because it wasn't a big seller for me and I thought until I spend all of the money fighting this, the person hadn't even sold that many of them. So, you know, I think that's another case of walk away from your computer, take a deep breath; think about it. Like, is it really worth my time, energy, and possibly money to fight someone that's kind of, in the end, inconsequential.

Sarah: Right. I think that that was a good thing for you to do and it really depends on the circumstances. And sometimes it's really hard to, like, track these people down and it can cause a lot of money. A lot of people say to me, like, "I want to put something on the Internet. How can I be 100% sure no one copies me?" and I'm like, "You can't." Otherwise, when I'm walking around China Town, I wouldn't see all these counterfeit goods.

Like, if Tiffany and Gucci and Louis Vuitton are like fighting the fight and they are doing not as great a job to try to keep this stuff off of the street then, you know, you're going to have to fight the fight, too. The only thing to do is just be above it. And a lot of fashion designers, a lot of fashion, isn't protectable via copyright because of the functionality aspect. If you think about a shirt, it's pure function. And if you were to say, you know, "This cuff of a shirt is mine. No one else can use it." Okay now you have to get a license to use a cuff of a shirt.

The copyright office doesn't like it and that's why a lot of fashion isn't protected. And you talk to fashion designers and you say like, "Oh my god, don't you hate all the knockoffs?" And they say, "That's so last season." You know, "I've gone on. I've made better stuff." You know, "My stuff is better quality. It's not a mold, it's not made in China and my buyers appreciate that and they want something brand new, they don't want last season." I think that that's a pretty good attitude to take. Of course it might not be appropriated in everyone's circumstance.

Megan: Right. And I think, you know, along the similar lines I had read or heard somewhere, you know, people talking about the idea of that, you know, with like the fashion industry, the person who is buying the knockoff Gucci bag, that's not Gucci's customer anyway. They were never going to spend the money on a Gucci bag so here is someone...at least you're kind of still out perpetuating...they're still perpetuating the brand, but they would have never bought it to begin with in the first place.

So you have to kind of think about that, too. Like, is my customer going to be fooled? Is the person who actually buys from me really going to go buy from that? No, that was someone who was never going to buy from me anyway.

Sarah: Right. That's another really good point.

Megan: Yeah. So someone brought up in the Creative Empire forums that there have been some recent cases online of bloggers posting tutorials on how to recreate a product, not a product they designed, but a product that they found on Etsy. And I think this is one of those kind of things where, like, artists making money and then kind of like DIY people sort of collide in this what's

right and what's wrong. You know, ethics dilemma. So do you have any thoughts of ideas about that?.

Sarah: You know, to be completely honest, I've never heard of this. This is news to me. Maybe I've been living under a rock, which absolutely could happen. You know, I live in New York City so that probably would be cheaper than my apartment. But, you know, sometimes...I just wanted to say that I am really fortunate to have had some really amazing teachers in my days who have taught me techniques.

And, you know, when you're teaching someone a technique, sometimes you teach them how to recreate exactly what you made. You know, I've always taken those techniques and gone my own direction. And, you know, use my own creativity. And I would hope that these tutorials are teaching more techniques, and techniques aren't covered by copyright, rather than, you know, encouraging people to make something to copycat someone else's work. And I would hope that the people that make it are kind of going on their own to make what they need to make to bring their own creativity to it.

I see Etsy's position on it, you know, we just have our copyright and intellectual property policy. So, you know, if you see someone posting something on Etsy that you feel violates your rights, you could report it that way. And of course, you know, as I've said before, you know, it's very serious to report it that way. So you might want to speak with an attorney first.

But it all depends on what the tutorial is anyway because, you know, if someone's just teaching how to do, you know, a Peyote stitch or, you know, a simple crochet technique or something like that, then, you know, it's arguably not protectable anyway because those have been around for so many years and it's a technique. So, you know, I guess it's a case by case basis.

Megan: You know, I have to say, too—and people listening may not really love my stance on this—and I do think that, you know, like I don't personally think that it's appropriate to look at someone else's work and be like, "I'm going to teach other people how to make it." But the flipside is that, as a maker and a designer, you know, if someone can look at your products and reverse engineer them that easily then you might want to start to think about what you can do to differentiate your products, to make your products more unique and what techniques and what skills can you learn and develop. You know, like you, Sarah, I had really great teachers.

Sarah: That's absolutely true.

Megan: Right. And one of them would always say, you know, like when you're designing for production, I mean, we're not talking about one of a kinds, we're talking about stuff that you're actually designing to reproduce and sell, that it should involve five steps. Because if it needs at least five steps, that totally diminishes the likelihood that someone's going to copy you. But if you have something that like, basically it's like a one step or two step and done thing, then a lot more people can look at it, figure out how to do it, and then copy it.

Sarah: Yeah. No, that's some good advice right there.

Megan: I had some smart teachers, too.

Sarah: Yeah. And, you know, I just want to thank my teachers because I always hear people saying, you know, I'm so afraid to teach people, you know, how to make what I make because then they're going to copy me. And I just want to say, you know, like, if you want to teach somebody something and you don't want them to copy your exact thing then just tell them. You know, just say, "Listen, I'm teaching you the techniques. I hope that you will take this and run with it in your own direction." And I just want to thank all my teachers for teaching me what I've, you know, because I wouldn't know anything if it wasn't for my teachers. Like, I wouldn't know how to solder, you know, I'd probably be using the wrong pliers to make jump rings. Like, you know, it would be a whole big old mess. I would have gotten burned so many more times than I already have gotten burned.

Megan: Well, you know, and I have to say as someone who also teaches that I would kind of do that where I would worry about teaching a particular technique. And so I would sit down in my demos and I would come up with like eight other ways to use the skill that I was going to share so that they couldn't copy my work. And some of those, like, eight other ways that I developed as part of a demo ended up becoming like best sellers in my own product lines.

Sarah: That's amazing!

Megan: Right. It's so great. So I think, you know, I agree with you. I don't think you should be scared of teaching people because actually there's a lot of money to be had in teaching people. So it's worth it. So you mentioned a little bit about the Digital Millennium Copyright Act, which I think kind of folds into my next question which is just, how does Etsy handle these kind of, like, IP issues in a global marketplace where laws and enforcement vary from country to country?

Sarah: Well, we comply with the Digital Millennium Copyright Act and that's about it. I mean, you know, we're always up to speed on the new cases that come out and we always try to keep an eye on those just because, you know, we're a venue and, as I said before, we're not juried. And so, you know, that's just what we do. That's our policy and, you know, if people see something on our site that they feel infringes on their rights, then they can choose to contact us or they can choose to go directly to the artist and talk with them and work it out with them.

And, you know, we don't want infringing material on our site period. And sometimes people say to me like, "Oh my god, I see so much infringement." And I say to them, "Well, how do you know it's infringement?" "Oh, well they couldn't have a license." You don't know. And I have to tell you there have been times that an attorney will contact me, you know, to take down something in a very popular brand and the person will write me back, Etsy's lawyer will write me back and say, "I have a license."

You know, "I have purchased a license to use this brand," and I'll say, "Okay well you need to work it out with the attorney and then the attorney will write me back and say, "My bad. I revoke the complaint," because, you know, they had a license. So you never know, you know, who has a

license, who has rights to what, and unless you're standing in the person's shoes and you really know, then you don't know what's going on.

Megan: Interesting. Yeah, you know, I think that's so true. It's kind of like a mind your own business thing, too. Like, you should worry about your stuff, but, you know, you shouldn't probably be that worked up about other people's stuff unless you know from like the direct source that there's something inappropriate.

Sarah: Exactly. And sometimes people will take chances because they see, you know, someone using a different brand and so they'll use it and they'll get their stuff taken down and they'll say, "Well, why didn't you take down this person?" They could have a license, I don't know. You know, I don't know, you know, I can't step in the shoe of the attorney and know, you know, why something was okay and why something was not okay. I don't know. And so I want to make sure everyone knows, you know, take the risks that you need to take, but don't take...you know, be careful with those risks because, you know, it could have detrimental effects on your business.

Megan: So we talked about this a little bit, you know, when I asked you what you would recommend doing if someone's using an image of yours in a way that you don't like. But what would your recommendations be for, you know, an artist or crafter who feels like their work has been kind of "ripped off" by another artist?

Sarah: You know, it's pretty much the same thing. You know, breathe. And then, you know, try to decide how you want to move forward. This is ultimately a legal in the business decision that you need to make on your own. You might want to get an attorney involved.

Like, you know how big is this issue? Is this just one person who, you know, might not ever make a sale ever or is this a big company? Is this a big Etsy seller? Is this person, you know, one of your pieces that you're not even sure that you have copyright protection on at all? Are they taking your money maker? You know, do you want to enter into a licensing agreement with them? Do you want to sue them for all they're worth? This is a decision that you would have to make on your own, you know, as a business person and as a creative person.

Megan: So do you think that the kind of things that you might do would be different if it's, say, like another artist ripping you off versus a larger company?

Sarah: Well, I mean, I think it all depends on the circumstances and yeah, if you were going to some very popular store and see something that you made sitting there, I think my blood would boil even more than if I just saw that this was maybe just some innocent artist who might not know any better. So yeah, if you feel that, you know, a giant company is ripping you off, it's probably better to get an attorney involved sooner rather than later to try and put an end to it.

If you, you know, again, it's a business decision and, you know, do you have rights to it? There are a lot of things that need to be taken into consideration and that's why, you know, people say, "Oh, you're always saying 'Talk to an attorney, talk to an attorney'." Sometimes a tiny little fact,

like, one little thing that you might not even think about mentioning could have a giant impact on your case. You know, it could mean the difference between infringement or not infringement.

And so there is no, you know, like, equation. You know, $A + B = C$. You need to look at the whole circumstances. And that's why, you know, lawyers study so very hard and they keep up to date on all the new cases and all the new laws so that they can help you, the client, as quickly as they can to come up with the best decision possible to move forward.

Megan: So there have been a lot of instances in this conversation where you've kind of mentioned, you might actually want to consult an attorney. So let's just say that you're at that point for anything. Whether it's that you think that maybe you need to file for a design patent or you think that you've legitimately been ripped off. What are some suggestions you can give someone who's actually looking for an attorney?

Sarah: Good question. First of all, you probably want an attorney in your area just because it might be easier to talk to them. So you could always...if you have any small business friends...word of mouth is amazing. You know, you could Google and Google and Google and you don't know these attorneys. They could be slime balls. You don't know what's going on. Or you could, you know, just asking your friends, asking small business people, there's an organization called Volunteer Lawyers for the Arts and their in all different states.

So if you Google them you might find a Volunteer Lawyer for the Arts around you that you can maybe talk with them about. Remember, you know, ideas are generally free to be copied and it's really hard to determine, you know, whether something is copyrightable, whether it's functionable, so it's not protectable. Functionable? That's not even a word. Functional. Oh, my brain. So, you know sometimes it's really great to get an attorney and finding someone that your friend trusts, that might be the best place to start.

You know, you could even go into like a local art gallery or a restaurant or, you know, if there's a Bar association near you, like the New York State Bar Association, you could contact them and see if they have any referrals. And then, you know, call up an attorney, talk to them, usually the first consultation should be free and ask, you know, ask for their rates. See if you get along with them. You know, ask if they have a client list that'd be anyone you could talk to. If you get a bad feeling about them, move on to someone else. You know, you can shop around and see who you feel is your best fit.

Megan: Awesome. So do you have any suggestions if you're going to meet with your attorney, especially once they start charging you by the hour? How to make your meetings with your attorney as efficient as possible so that you're giving them all the information?

Sarah: First I like to think, I would ask the attorney, "Listen, how long do you think this is going to take? How much is this going to cost me?" And it's really hard to given an estimate, but hopefully they can. Sometimes attorney's will charge you a flat fee, but most of the time they're going to charge you by the hour. And people say to me like, "I just want a lawyer on

contingency.” And contingency means that if you win in court or if you win some sort of settlement, the lawyer takes a percentage.

And so you don't have to pay unless you win. It sounds amazing, but a lot of times lawyers won't take that chance because, you know, they don't know if you're going to win or lose. They don't know how big this is going to be. There's a risk right there. And sometimes, you know, you might want a lawyer to help protect yourself for like, you know, if you want to get a patent or a trademark or if you want help registering your copyright. So, in that case, you know, there is no litigation. So how is that lawyer going to be paid? They're probably going to be paid flat fee or by the hour. So you want to make your time count.

So come up with a list of questions, you know, during your day, in the week before you're going to be meeting with your attorney, just write down your list of questions. Because wouldn't it be terrible to leave your attorney's office and be like, “Oh man, I forgot to ask this.” So just make your time count. Try to get on the same page. Like, how much is this going to cost me and remember some people say like, “Lawyers are so expensive. I can't even take it.”

Yeah, they are. I know, I am. It's okay, but you know what? It's worth it because I promise you, you know, the amount of time that you're going to be saving and if you get a really great attorney, it's well worth it. It's worth the peace of mind, it's worth knowing that you're in really good hands, because this is your business. And you don't want to take chances and you don't want to cheap out in every way.

Megan: Awesome. So what is kind of the number one thing, and maybe it's not just one thing, maybe there are a couple. What's the number one thing that an artist or designer or craftsperson can do to protect their intellectual property?

Sarah: Well, I like to say, you know, be creative. And I think your thoughts about, you know, when you make your art have five steps, I think that's really interesting. Always be more creative than the next person because, you know, you'll have more rights the more creative that your pieces are. Keep an eye on your work.

If you think that your rights have been violated, you have to be really smart about your accusations. You might absolutely want to file for copyright protection. You know, CopyrightForArtists.com and I'm on AttorneySarah.Etsy.com. I have e-books, but you can just go to Copyright.gov. It's free and it's the US copyright website and they'll tell you how to register for copyrights.

You know, if you want to accuse somebody of copying you and you have a copyright registration in your hand, doesn't that look great? You know? Other than being like, “Well I have time stamps about where I first listed my items.” You know, that person might have time stamps, too that they faked. So it's really great to have a copyright registration in your hand.

Megan: It's also really fun when that copyright registration arrives in the mail. It kind of makes you feel official.

Sarah: Isn't that pretty?

Megan: It's so nice and official looking.

Sarah: It sounds official. You can frame it. And also, when necessary you should consult an attorney because attorneys...you're an expert in your business, you're an expert in your art. Attorneys are experts at being attorneys so they can help you out. And I would say, like, be organized and document everything. You know, your sketch books, I always say, you know, put the date at the top every once in a while, keep everything together just in case someone accuses you of copying. You want to be able to show something. And just have fun and be creative and make your art and just be smart. That's it. You do that.

Megan: That's awesome. Yeah, you know, I have to say, you know, as someone who, you know, obviously is a designer and a maker and develops a lot of products, I spent a lot of time in my life stressing about copyright and trademark and patent and all that stuff. And, you know, did a ton of research, read a lot of books and obviously I'm not in any way qualified to be a lawyer. But I felt like I was kind of doing my diligence, like, reading everything. And in the end I realized that, first of all, and you mentioned this in a talk I heard you give, Sarah, that no one is going to police your work but you.

So it doesn't matter if you have all these pretty pieces of paper. If you're not out there policing, it doesn't matter. But then I also realized probably the biggest thing that I have to worry about is not getting ripped off. The biggest thing that I have to worry about, I always tell people, is obscurity. You know what I mean? Like you're way more likely to just have no one ever kind of give your work the time of day than you are to have someone kind of rip you off.

Sarah: It's so true. I mean, the 100% surefire way to never be copied is to never make anything. And how sad is that? You know, you've got to take chances in your life and you've got to put yourself out there for your business. And, you know, people love what you do and love your work and they're going to wear it and run around wearing it or not wear it or put it on their wall or do whatever they want with it. And it brings joy to people. So, you know, keep making things.

Megan: That's awesome. And I think that's a pretty good final statement there. So I will just remind everyone that Sarah does have an e-book and it's super informative. It's Copyright for Artists and you can go to either CopyrightForArtists.com or AttorneySarah.Etsy.com and I will be sure to put those links in with this recording as well. So Sarah, do you have any final words of wisdom or disclaimers you need to share with us?

Sarah: Well, just remember the disclaimer from before that was not legal advice. And just be awesome, make art. Get your crafting an MBA on.

Megan: Awesome. And I want to say thanks to Sarah for joining us. I think we learned a lot today and I will see you guys all in the forums. So thanks, Sarah.

Sarah: You're welcome.