



TRADEMARK AND  
COPYRIGHT PROTECTION  
FOR AMERICAN INDIAN  
AND ALASKA NATIVE ARTISTS

## TRADEMARK AND COPYRIGHT PROTECTION FOR AMERICAN INDIAN AND ALASKAN NATIVE ARTISTS

Prized for their beauty, originality and workmanship, American Indian and Alaska Native arts and crafts continue to gain international recognition as valuable art forms. Unfortunately, the rising popularity of these works has resulted in the increased proliferation of imitations and mass-produced reproductions of original Indian arts and crafts.

The Indian Arts and Crafts Act has a special provision that allows members of federally recognized Indian tribes, or the Tribe itself; to bring a civil lawsuit against anyone who misrepresents an art or craft item as Indian made, or credits it to a particular tribe that is federally recognized, or claims the item was made by a specific Indian artist or artisan who is enrolled in a federally recognized Indian tribe, and did not actually create the work. For more information visit [www.doi.gov/iacb](http://www.doi.gov/iacb).

You may acquire additional protection for your work by taking advantage of the intellectual property programs offered by the United States Patent and Trademark Office (USPTO) and the United States Copyright Office.

### *Trademark*

A trademark is a mark on a product used to identify and distinguish one source of goods from another. Your trademark on your art or craft item identifies the product as your own. It may be a word, phrase, hallmark, symbol, or design. Registration of your mark is not required. However, owning a federal trademark registration may provide several legal advantages. For further information on the benefits of trademark registration and the application process, visit the USPTO's web site at [www.uspto.gov](http://www.uspto.gov), or call toll free (800) 786-9199.

If you are interested in obtaining trademark protection overseas, visit [www.uspto.gov/web/trademarks/madrid/madridindex.htm](http://www.uspto.gov/web/trademarks/madrid/madridindex.htm).

### *Copyright*

A copyright protects original pieces of art or craftsmanship. Basic copyright protections attach to your work when you make it, and you can expand your protections by registering with the U.S. Copyright office. Copyright ownership is completely separate from ownership of a physical artwork. An artist can sell the artwork, but unless the copyright or license derived from the copyright is transferred in writing, the artist retains these rights *even after selling the work*. You can find more information at [www.copyright.gov](http://www.copyright.gov), or by calling (202) 707-5959.

### COMMON FAQs FOR AMERICAN INDIAN AND ALASKA NATIVE ARTISTS

*Introductory answers to frequently asked questions. For more information contact the Indian Arts and Crafts Board, and for legal advice contact an attorney who specializes in intellectual property law.*

#### *I use a hallmark to protect my work, is that enough?*

Consistent use of one distinctive name or character to identify your art or craft piece as made by you is a very important aspect of protecting your heritage, artistic integrity, and the income you derive from selling your work. The decision as to whether to register your

hallmark as a trademark with the USPTO is purely a business decision. First use of your hallmark on items you sell, without registration, is enough to prevent others from using the hallmark, or one similar, on their goods to sell. Putting a "TM" next to the hallmark, while not necessary, tells the world you are claiming it even if you have yet to have it registered. Use of "TM" may also enhance your damage award. Unfortunately, not having your hallmark federally registered means that someone else could use it in a geographical area that you have not started selling in yet, and even prevent you from using your hallmark there once you expand your market, if they used it there before you did. Registration of your hallmark as a trademark on the Principal Register of the USPTO is the only way to make sure that you can use and enforce your hallmark throughout the United States, as well as register for protection by the US Customs office. Upon registration of your mark, you must denote on your products that it has been registered with the USPTO in order to collect certain types of damages. The most common method is to use a "®".

*I use traditional processes and imagery, so does my work qualify for any type of protection at all?*

You may acquire some copyright protections as soon as you make your art or craft. Basic copyright protections *automatically* attach to your item as a whole, and will protect all original, decorative elements of an art or craft piece. This means it is possible that your work could consist of both copyrighted and non copyrighted elements. For example, a functional object (such as a bowl) does not have copyright protection, but a functional object incorporating an artistic motif that combines new and traditional elements can be copyrighted, and the copyright will protect the new artistic material or combinations. If you produce a pin in a traditional bear shape, the pin itself is subject to copyright protection, even if the traditional aspects of the bear are free for others to use. Someone who copies your work, even if they change it somewhat, could still be in violation of your copyright. If you believe that someone has copied your work, you should always contact a lawyer who *specializes* in copyright law, due to the complexity of the issue.

Some works that cannot be protected under copyright law might still be protectable under design patent law. In general, design patents are more expensive and time consuming to acquire than copyright protection, but they provide a broader scope of protection for craft art. Craft items that incorporate motifs from nature are often protected by design patent rather than by copyright.

If you use a hallmark on an item to identify yourself as the maker of the item, that is subject to trademark protection as discussed above.

Many artists and artisans who incorporate traditional elements into their work find that a combination of available protections works best for them.

*Did I miss out on copyright protection because I never registered my work? Can I still register it?*

Copyright protection is automatic for the protectable elements of a work upon its creation, and generally lasts for the life of the artist plus 70 years. Registration is unnecessary to have general copyright protection, but registration with the Copyright Office, prior to an infringement, entitles artists who bring suit to attorney's fees and statutory damages of up to \$150,000 for each proven violation of copyright. Procedurally, artists must register their copyright before bringing a lawsuit.

*Do I need to register my work with the Copyright Office in order to use the Copyright symbol (the “©”)?*

No, there is no need to register your work in order to use the copyright symbol. In fact, use of the copyright symbol is not required to preserve your rights unless the work was created before March 1, 1989. Use of the symbol strengthens your copyright protection, regardless of whether you registered it or not, by reminding potential copiers that your work is protected. This may benefit artists who create protectable work based on interpretation of traditional motifs. The legal effect of notice is that it prevents the infringer from arguing that they did not know your item was protected by copyright law. Adequate notice consists of a “©”, then date of creation, then artist’s name; placed in a location on the work that is easily seen.

*I have a design that I would like to make and sell, but I am afraid someone will steal it and have it produced in another country to sell in the U.S. What should I do?*

If your design is protectable under copyright law, you should register it with the U.S. Copyright Office. If your hallmark is protectable under trademark law you should register it with the U.S. Patent and Trademark Office. Upon receipt of your certificate from either agency (or both), you can then register it with U.S. Customs. Once listed in the U.S. Customs copyright or trademark database, the agency would have the authority to seize any foreign manufactured items that infringe your copyright or trademark once they are imported into the U.S. If you are interested in protecting your work from piracy overseas, visit [www.stopfakes.gov](http://www.stopfakes.gov). Also, if someone is manufacturing arts and crafts in another country and selling it as Indian made in this country, this violates the Indian Arts and Crafts Act. Contact the Indian Arts and Crafts Board immediately at 888-ART-FAKE or file a complaint through the website at [www.doi.gov/iacb](http://www.doi.gov/iacb).

*I sold a piece to someone who then copied it, mass produced it, and is now selling it in their store. What can I do?*

When you sell your art or craft, your intellectual property rights to the piece still belong to you, unless you specifically sign a contract to the contrary. Therefore, someone who buys a piece of your art or craft work at a market or a pow wow, over the internet, from a retail store or even from another owner, may not reproduce it or create something even similar to the protected parts of your work without your permission. Nor may they use your hallmark without your permission. You can contact the Indian Arts and Crafts Board for more information, or contact an attorney who *specializes* in intellectual property law. Violations of the Indian Arts and Crafts Act should always be reported directly to the Indian Arts and Crafts Board.



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For more information, contact the Indian Arts and Crafts Board  
toll free (888) ART-FAKE or visit [www.iacb.doi.gov](http://www.iacb.doi.gov).