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Joachim Kobuss
Alexander Bretz
Arian Hassani

BECOME A SUCCESSFUL DESIGNER
PROTECT AND MANAGE YOUR DESIGN RIGHTS INTERNATIONALLY

BIRKHÄUSER
Basel

For Alexander-Semjon and ß

Joachim Kobuss

For Nicole Zeddies, my puppy friend,
in thankfulness and auld acquaintance.

Alexander Bretz

Table of Contents

Preface

Joachim Kobuss

My writing partner *Alexander Bretz* and I have spent many years consulting and coaching in the design industry. Together, we run an institute which aids companies and political institutions in finding, funding, and collaborating with designers – with the aim of safeguarding the design industry for the future. Nothing seemed more natural than to compile our experiences in dealing with the protection of design services into a book, in order to reach you – the designers – more effectively.

The first step in this direction came with the German edition of *Become A Successful Designer – Protect and Manage Your Design Rights Internationally.* This was published in Germany, Austria, and Switzerland (as the second book in a series) in 2009. It quickly became clear to us that we also wanted to release an English-language edition. You hold the result of this decision in your hands.

However, this is no mere translation from German to English, rather a complete reworking and rethinking, taking into account the prevailing circumstances for designers in the English-speaking world. To our great good fortune, we were able to win Paris-based American national, *Arian Hassani,* as coauthor. Having worked for many years at UNESCO, she is recognized as an expert on design issues at the international level. Canadian-born copywriter and translator *Rose Tizane Merrill* was a further asset, thanks to her well-honed skills in communicating complex ideas in clear language. In all, it's been a congenial collaboration which has brought several significant departures from the original German edition with it. To the legal and economic expertise essential to the German edition, were added further insights on the international political situation.

In his introduction on the following pages, *Alexander Bretz* explains how designers can most effectively put this book to use.

Upon finishing the German edition, we came to the conclusion that above and beyond the descriptions and recommendations on exploiting, creating, and wording contracts, we had to make clear our position on the future of design rights internationally. This can be found in Chapter 18 of this book. It's a recommended course of

action for policy, administration, and all players in the design industry. We're delighted to have had the opportunity to contribute to the current discussion on copyright law in this way.

To this end, this book should be viewed as our offering to the discussion, wherein we express our position as it has been formed and informed by our experience. Suggestions and criticism are always welcome.

Joachim Kobuss, Berlin, July 2012

Introduction

Alexander Bretz

Why it's necessary to transform two red pedestrian stoplight men into two green ones, what this has to do with design and how it can be accomplished?

At some road intersections in Germany you'll find pedestrian lights that were actually designed for automobile traffic, with three lights arranged vertically. However, as pedestrians only really need two lights, one of the lights is doubled.

I've always wondered why on these lights *two* red lights displaying a stiff, stern figure are used at the top, while there's only one little green man running along at the bottom. It seems much more intuitive to me to have two green walk lights – and preferably at the top. I suspect that if such traffic lights existed in the USA, they'd do it that way around.

There's no need to dwell any further here on traffic lights and their relationship to German anxieties. However, metaphorically speaking, it's precisely this shift from red lights to green ones that this book aims to achieve. Simply put: the big red light that so many designers see whenever the subject of law or lawyers comes up, should be switched to green.

This book takes a different approach to other publications on the laws relevant to creatives and designers. With its help, you should begin to understand law as a crucial aspect of your profession as a designer – and maybe even begin to like it a teeny bit. Information has been brought together here from extremely diverse areas. Naturally, there's information on design rights and licensing contracts, as well as advice on how to negotiate such agreements. But there are also discussions of why the current rules exist and if anyone really needs them. And all this, taking into account the situation worldwide: in Europe, the USA, and in a total of 23 countries around the world, significant to design: Argentina, Australia, Brazil, Canada, China, Denmark, France, Germany, Great Britain, India, Israel, Italy, Japan, Kenya, Korea, Latvia, Russia, Sweden, Switzerland, Spain, South Africa, Turkey, and the USA, of course.

It's a book that challenges intelligent designers who understand that design illuminates the path to the future when it's created by designers who see themselves as entrepreneurs – entrepreneurs who have perhaps the single most important quality to offer the world for the future: intelligent design. To contribute on this scale, you need to be legally fit – and for that reason you'll also have to leave behind those lawyers – the majority – who are still all tangled up in their national legal systems. These guys are sure to find a lot to disapprove of in this book.

But that doesn't matter, because this book is for you. We recommend you work your way through it like a textbook, with highlighters and pencil in hand. We even offer you three ways to read this book to soften the experience: the nightmare, the challenge or the brown-noser trip.

The nightmare trip works on the assumption that you really have absolutely no desire to delve into this subject, but have bought the book anyway, because it was some sort of penance inflicted upon you or because you felt obligated for whatever reason or because you're one of those people who believes that if you put a book under your pillow its contents will be magically funnelled into your brain. In other words, you're a hopeless case and you just want to read the bare essentials. It's doubtful that this is something to be encouraged, but your fear of the issue obliges us to provide a way through the book for you that at least helps you learn the bare necessities. You should read chapters 1, 2, 5, 7, and 11. Make no mistake – it won't be easy, because these are chapters presenting fairly sophisticated content in a concentrated way. But you should really be punished in some way if you're only going to read so little of the content.

The challenge trip will also be tough, but you'll be rewarded with considerably more knowledge. It works like this: in addition to the nightmare trip, read chapters 8, 12, and 13 – in other words, the five chapters of the nightmare trip plus the three of the challenge trip, in sequence. Then stop and ask yourself whether you shouldn't just read the rest of the book – afterall, you're already about halfway through!

And now for the readers we like the most: the ones who aren't afraid of being called goody-two-shoes by the nightmare and challenge gang. This journey consists of simply reading the book in full. There are three possible ways: following the order of the chapters, following the nightmare-challenge-everything-else order or simply choosing your own adventure. And does not absolute freedom make for real adventure?

If some stuff in this book seems a bit odd to you or others tell you the book isn't totally kosher, just remember that as a designer you're different from a lot of people. And that's why you and your talents will be needed in the future – like all those others who Wolf Lotter dubs the *disturbeds*.

Wolf Lotter: The Disturbeds. Germany embarks on a search for the creative economy, the key to the information society … in the process, it discovers a class that somehow doesn't fit the plan. In: brandeins Nr. 5/2007, p. 53:

> Creatives are creative because they respond very openly to sensory stimuli of all kinds. In the average brain, a mechanism called latent inhibition ensures that external stimuli are more or less blocked. People with severe inhibitions are virtually imperturbable and reluctant to be distracted from their routines. The unknown, the new – it rolls over them like a drop of water across a fresh coat of glossy paint. The mind of a creative person is wired quite differently, their latent inhibition only very faintly developed, the mind open 360° degrees – ready for anything, round the clock.
>
> To simplify matters, we'll call the first test group from now on the "inhibiteds" and the second, that of the easily excitable creative people, the "disturbeds".

Naturally, you'll ask yourself why there are no law texts or model contracts printed in such a great book. Tell me, have you ever actually read this stuff? Surely, you only read the odd model contract if there's no way to avoid it. We'll come back to that later, incidentally: how damaging it can be when you rely on texts that have been worded by others. That's the reason there are no model contracts, and certainly no law texts in this book. If you really want these, you can find enough of them elsewhere on the market.

Which brings us to a final piece of very important advice: please take note that this book reflects the opinions of its authors and may not be applicable to all situations. Many situations may appear similar on the surface, but actually differ from one other in key legal respects. What's more, the laws and jurisdiction don't just differ from country to country, but also change over time. So it may be that information in this book has already become out of date at the time of publication. Although we've done everything possible to avoid mistakes, the authors and publishers can assume no responsibility for any readers' acts or omissions based on the information or advice in this book. Our readers should be very careful in applying

the information or advice in this book and, as a precautionary measure, seek the support and counsel of appropriate experts. To sum it up: please use your brain at all times and be careful!

Exploiting rights

1 The legal framework for design in a globalized economy

The systematic development, use, and enforcement of intellectual property rights are still very much in their early stages. This not only affects large corporations but it also severely impacts creatives themselves as our experiences in advising and coaching designers and design service providers have shown. This finding is especially disturbing given that all the livelihood of designers hinges on their capacity to effectively manage their intellectual property rights. This chapter is about how earning money as a designer works, and how it can be improved with relatively little effort. It is an in-depth investigation on a commodity no one can spare to lose: income.

Alexander Bretz: Before I began studying law, I did an apprenticeship in publishing. In our training, we had a course called *Subsidiary Rights and Licenses,* so naturally I began searching for the course that addressed primary rights, but I couldn't find anything in the syllabus. I asked our friendly and competent instructor what primary rights were, given that we were concerning ourselves with *Subsidiary* Rights and Licenses. Despite his usual easygoing demeanor, he answered curtly and somewhat indignantly, *Copyright law, of course!* All of a sudden I had the impression that I was behind everyone else, and that I was lacking an essential piece of general knowledge that embarrassingly came to light with my misplaced question.

Of course, I didn't have the guts to admit that I actually didn't have a clue of what *copyright law* consisted. So I bought myself books on *copyright law,* which I couldn't understand at the time because they were legal textbooks that assumed substantial background knowledge, and I trembled with fear up until the final exam, terrified that someone would ask me about the primary law. I'm happy to say that no one did. In the meantime, I thankfully know a bit more what it's about now.

This is why this book begins with a gentle approach to what kind of rights we're actually talking about. Primary rights are not really as

simple as my professor made them sound, so don't doubt your intelligence if you don't understand right away. Intellectual property rights for designers can be like bitter medicine: the first encounter might make you cough a lot, but you might still depend on it for your health. You probably didn't purchase this book out of a love for law, but you may find that law is much easier and more interesting than you think – not to mention easier to swallow than bitter medicine!

1.1 Creativity, law, and money

Whether you're self-employed or an employee, as a designer you're part of the economic system. Even the most artistic or experimental approach comes down to the necessity of survival in the end. Individuals who earn their money through the exploitation of design-oriented activities, at the end of the day are dependent on the money they earn through the value of their work. But what do you actually get paid for? Your advice? Your strategy? Ideas, sketches or prototypes? Effort? The time you need for this?

In theory, it's simple. Lawmakers provide you with copyright laws that allow you to define for a certain time period who can use your intellectual efforts for how much money and in what way. You can completely forbid the (re)production of your designs, allow it in individual cases at a cost or regulate it in some other way. One can also interpret it as a plot of land with specific boundaries that lawyers and policymakers put at your disposition for a limited time frame. You can choose to sell this plot, rent it as it is, or make it more lucrative through construction.

The cultural and creative industry

Policymakers, lawyers and economists have gone out of their way to establish intellectual property rights not because it's in the interest of designers, but because it's in the interest of society at large. After all, the growth and development of the global knowledge economy, including the cultural and creative industries, is based on the maximization of creative production in all forms.

Constitutional right

Creativity is an integral human attribute that is protected by the constitution of most free and democratic societies. Following this train of logic, intellectual property rights legislation merely carries out the tenets of the constitution.

Constitution of the United States of America, Fifth Amendment:

... nor shall be any person ... deprived of life, liberty, or property, without due process of law; nor shall private property be taken for public use, without just compensation.

Open source

Lawrence Lessig, the American lecturer in constitutional law and Stanford University professor, takes a fundamental approach to this question. Lessig claims that copyright legislation is the prime enemy of creativity and recommends replacing it with a system that allows free usage after payment of a one-time fee (or *ticket*), which has given rise to the so-called Creative Commons movement. According to Lessig, the current copyright law system and other intellectual property laws have up to now only led to an enormous expansion of more derivative laws, which have been of no use to individual creators.

> **Lawrence Lessig** in an interview with the Süddeutsche Zeitung, 22.12.2006:
> There has been an explosion in recent years of so-called laptop music. Songs and individual fragments of songs are mixed via digital media and used to construct completely new songs. However, this is forbidden, according to the U.S. courts, when permission has not been obtained. And so now we have teenagers sitting in Harlem, making fantastic music which they don't dare release because it's unbelievably expensive to clear the rights. Many of them ignore the legal situation, others give up, and not even the music teachers in the schools teach them how to deal with it, because, well, you shouldn't teach children illegal things. It's just ridiculous.

Open Design

Analogous open-source approaches already exist in the area of design, for example in furniture design. The Web site of the Open Design Club (address in Appendix) offers designs with detailed construction manuals even for commercial production under the condition that the name of the designer is always mentioned on the product. Widely available sewing patterns from decades ago also serve as good examples of a widespread democratization of design.

1.2 Intellectual property rights relevant to designers

One of the most important questions you must address as a designer is what intellectual property rights are currently available and which ones are relevant to you. Here is a preliminary overview.

A glossary of legal terms can also be found in the Appendix.

- Copyright – protective right of the individual's intellectual creation, thus, important for your designs.
- Registered design right – protective rights over the (optical) presentation of products obtained by application to the administrative authority.

- Unregistered design right – only possible in the EU, these are the protective rights over the (optical) presentation of products, granted automatically upon disclosure.
- Industrial design patent – protective rights over the (optical) presentation of products, obtained by application to the administrative authority. As explained below, here *originality* must be proven via rigorous scrutiny.
- Trademark – a distinctive sign or indicator used to establish that the products or services bearing the trademark originate from a unique source, as well as to distinguish these products or services from those of other entities. A trademark may, in most places, consist of a name, word, phrase, logo, symbol, design, image, or a combination of these elements.
- Patent – a protective right over technological inventions. This will only be relevant to you in rare cases.

In continental Europe, these rights are more or less engineered in the same way (and relatively widely differentiated).

USA A possibility to simply register a design does not exist in the United States. The design patent, which is statutorily regulated there, doesn't play a very big role in practice, because the Patent Office reviews it in a longer (and quite expensive) procedure which may also cause infringement proceedings by competitors. Due to the reviewing process so far more than 70 percent of design patent applications have been rejected in contested infringement proceedings.

Great Britain The law in Great Britain is still very different: while it's true that even before the EU's uniform regulations there were registered designs (and nonregistered designs), like in the U.S. there is still the basic concept of common law (as opposed to the civil law in central European states). The difference between the two systems is a bit like the difference between building a house in the traditional way with walls bearing the load and the modern way to build a concrete skeleton first and then adding walls as a skin. But don't worry too much: in both cases eventually you have a house.

Japan Japan bases its civil law system on German law. Because Japan has booming design and technology industries, it has been forced to develop a highly sophisticated intellectual property rights system. Designs are protected from identical copying for three years; however, this has become progressively more difficult to prove. Applications

for registered design rights are, as in the U.S., formally reviewed for form and content, causing various problems in practice.

China

Despite all rumors to the contrary, China now has commercial law with intellectual property rights that are largely in line with international standards. Although admittedly for the time being only on paper. This highlights China's classic problem with intellectual property rights enforcement rather than legislation. In order for an injured person to seek justice, they have to rely on the administrative bodies which tend to take action only in the bigger cities. However, plagiarists and intellectual property violators are frequently found outside of the the big cities, which easily slip through the cracks. The problem in China is therefore not the lack of rights, but their reinforcement.

1.3 International legal relations

But of course in the context of a globalized economy it doesn't just come down to the various national laws of the different countries. It also depends on the legal relations and the handling of laws between countries. Without going into too much detail at this point, there are essentially two different models for international legal relations in the realm of intellectual property rights, namely bi- and multilateral contracts in which the involved countries agree on certain (minimum) standards. There are also contracts between countries where an independent organization is created to take on specific functions for all the member states.

European Union (EU)

The model of creating an independent organization by several countries is best exemplified by the EU, which is already on its way to becoming a full-fledged subject of international law even though it is not one unified nation. Since its founding, most of the legal matters pertaining to intellectual property rights for designers have not only been established but also harmonized. The most important agency for designers in the EU is located in Alicante, Spain, and it is called Office for Harmonization in the Internal Market (abbreviated OHIM, or in Spanish: OAMI). This agency is only responsible for EU-wide registration of design rights and trade names, not for EU-wide patents. In fact, there exists no EU-wide patent office – as of yet (despite long-lasting discussions).

Worldwide organizations

There is a wide range of international organizations that deal with intellectual property rights, including the World Intellectual Property Organization (WIPO or, in French, OMPI), and the World Trade Organization (WTO), who in certain cases can have a considerable

influence on the international validity of a trademark and associated legal matters.

The principle of equal treatment

Contracts that have been ratified by two or more countries also play a large role. Later we'll discuss this in detail. Here we'll just handle the principle which is mentioned in almost all of these contracts, namely the principle of *equal treatment with nationals*. This means that the intellectual property rights of a citizen in one contracting nation will be protected in the same manner as citizens in the other contracting nation. This sounds good, but it really only works when the participating countries have an essentially similar standard of intellectual property rights. Otherwise – and even in the case of totally different systems – such an agreement is to the advantage of the country with the lower standard of intellectual property rights.

Progress in legal systems

Regions with relatively complex and differentiated legal systems are in general somewhat at a disadvantage to those with a more simply legal structure and lower protection standards. It is not so much a lower standard of protection but the fact that simpler rules add to the usability. However, over time these competitive disadvantages level out and in the end also lead to more complex structures. In this process (which has to be seen over decades) the different legal solutions are also played off against each other by people who intend to profit from this. We are still in this process towards a system worldwide, so for national legislatures it is still a big question whether to have their legal systems more finely tuned and the people running from it or vice versa.

A recent example can be found in U.S. copyright law where, until 1976, in order to be copyrighted, you had to send in your work to be registered. However, with time the law leveled out internationally and since 1977, copyright in the U.S. is granted automatically, without product or application submissions. Even though submission and registration processes are still possible and even recommended, their removal as a requirement was a fundamental paradigm shift in American copyright law. This demonstrates the perpetual evolution of the rule of law and legislation as it adapts to competitive forces in the environment.

Method: Helping you to help yourself

International topics will be addressed again and again in the following chapters of this book. Don't worry: it's not about bombarding you with oodles of information about foreign countries that may not interest you in the least. Rather, this method of *Helping You to*

Help Yourself should enable you to get your bearings in most circumstances, even in relatively unfamiliar conditions.

In any case, seek the advice of a lawyer specialized in international design law concerning issues that cross international jurisdiction!

Now that you've gotten some preliminary insights into the legal apparatus at your disposal, the next chapter will introduce you to a radical new world where you'll learn how to design your own rules for the optimum legal protection of your intellectual property.

In the *Appendix* you'll find an overview of the intellectual property rights system in several, particularly relevant countries. You'll find more information on the regulations in force in each country and the addresses of their representative agencies and authorities on the Web site of the World Intellectual Property Organization (WIPO, see Appendix).

In summary

- IP rights allow you for a certain time period to determine who can use your intellectual efforts for how much money and in what way.
- The existence of such rights is very often explained by the usefulness of creativity for society.
- The Creative Commons movement stems from the notion that intellectual property rights diminish creativity, advocating for a system that allows free usage of intellectual property after a one-time payment.
- There are four groups of rights which are important for designers:
  - design and product-affiliated: copyright, design patent
  - brand-affiliated: trademark
  - activity-related: laws against unfair competition
  - technical: patent, utility model
- Copyright, which helps to protect the right of the individual's intellectual creation, is one of the most important forms of intellectual property rights for designers – but not available for them in all countries. Not at least because of the uniformity of trademark laws in most countries worldwide the importance of trademark protection is growing rapidly.
- Designers in countries or regions with relatively simple legal structures are often at an advantage to those working in places with relatively complex and differentiated legal systems.

2 Why successful designers don't need intellectual property rights

This chapter is about how you can best use the law to your own advantage. Those of you who find this approach unusual or even strange are probably under the mistaken impression that the law is static. This attitude can also be attributed to many lawyers who don't have much more to offer than references to centuries of legislation and scholarship. We want to align ourselves with Thomas Jefferson. He recommended a revolution every two or three generations. Whether intellectual property rights are absolutely necessary for designers can best be explored by considering a situation where a designer has no intellectual property rights whatsoever.

2.1 Shared space: A project

In 2006, the town of Bohmte, in Lower Saxony, Germany, launched a project based on the so-called shared space philosophy. All traffic rules were abolished and all road users, from pedestrians to bicyclists, cars, busses, and trucks, had to share the road equally. The goal of this project, which had previously been launched in numerous towns in the Netherlands, was to explore the effects of fewer and more flexible regulations on the use of public space. Incidentally, the project is being supported with funding from the European Union. The fact that the abolition of rules apparently requires money has nothing to do with our subject, however.

Something else is of interest here. In Bohmte, as well as in the other municipalities taking part in the project, a strong trend became apparent immediately. The number of accidents fell drastically and traffic on the whole ran more smoothly. According to surveys, there haven't been any serious accidents in the 107 shared space towns in the Netherlands since. However, it should be noted that shared space projects have only been systematically evaluated since 2008.

The Bohmte project sets the stage to introduce the concept of shared space in the realm of intellectual property rights. Take a moment to think about what would happen if there were simply

no intellectual property rights at your disposal. Would you stop designing? Would you, consumed by fear and frustration, change your career? As the last chapter's findings indicate, probably not. But what would such a situation really be like? What new developments could come out of this unregulated, thus free and unencumbered, point of departure?

More about this from a revolutionary point of view can be found in *Chapter 18.*

2.2 Places without protection

Before it all becomes too abstract, it should be said that there are most definitely areas where designers have absolutely no intellectual property rights. For example, in the U.S. where available, fashion designs can *theoretically* be registered as so-called design patents. However, the application has to meet the same criteria as a regular patent, which we pointed out in the previous chapter will be rejected more than 70 percent of the time. Thus, copyright is simply not a consideration for fashion designs in the U.S., essentially meaning that American fashion designers work without intellectual property rights.

You'll find an overview of the intellectual property rights system in the U.S., as well as other relevant countries, in the *Appendix.*

In Germany, one of the most regulated countries in the world, there is one area where designers are left out in the cold without any intellectual property rights, namely Web site design. At best, individual elements such as text, photos, logos, and programming are copyright protected or protectable, and this may even include the final visual results. However, the communication design in its entirety, including its templates, is virtually unprotected and unprotectable.

You'll find an overview of the intellectual property rights system in Germany, as well as other relevant countries, in the *Appendix.* More details on the difficulties of protecting works of communication design and Web sites can be found in *Chapter 4.*

Nevertheless, fashion designers in the U.S. and communication designers in Germany manage to survive. There are, incidentally, even more examples of unprotected intellectual property where huge sums of money can be made, including television series formats, cell phone ring tones or book editions where the copyright term has expired. How is this possible if intellectual property rights are supposedly the most important prerequisite to creativity's economic usefulness? If the reasons for having intellectual property rights were really so solid, none of this would be possible. So *why* does it work after all, and can you draw conclusions from this that can help your own dealings with intellectual property rights?

2.3 How to design without intellectual property rights

Yes, designing without intellectual property rights does work, for two reasons.

First, the possibility to fall back on other protective rights exists in more or less all legal systems. It's not without reason that brands are so important in the U.S. It's true that the triumph of branding and the use of logos have their roots in marketing, but the fact that American fashion labels prominently display their logos is a direct result of this particular legal situation. In the U.S., the so-called Trade Secret also plays a very powerful role by prohibiting the unauthorized disclosure of business secrets. There are plenty of other international examples of *legislative safety nets,* which will be explored throughout this book. For now, it's just important to note that, whenever possible, you should thoroughly investigate the existing options for protection in a new market. Don't necessarily assume that the most obvious form of protection is the one best suited to your needs.

Second, much can be controlled through contracts, which is exactly what's done in the U.S. In this way confidentiality, obligations to perform, and restrictive covenants can be contractually defined. The contract might also simply be used to explain in detail what a client receives without the necessity to establish any particular legal basis.

These two factors should provide you with some food for thought on how to optimally protect yourself in different legal systems worldwide while maintaining your calm. Furthermore, they can help you to establish another, relatively simple, tactic for international survival, learning from those without rights.

Therefore we call this tactic: *Learning From Those Without Rights.*

If all designers walked around pretending there were no intellectual property rights, they would be forced to better secure their rights themselves. The aim is to transform subconscious demeanors that preclude accidents in the shared space projects into active defensive strategies that work in all systems.

2.4 Learning from those without rights

Learning from those without rights means two things:

First, learn what you can from the range of legal alternatives at your disposal. Problems with protection in a broad spectrum of design fields are pretty much the same everywhere, yet legal systems are different and people find different solutions. Legal systems are also in competition with one another, which means that they will begin to resemble each other more and more over time. Simply take your own precautions and help yourself to what's legally available.

We're thrilled with the idea that the future simplification of legal systems will enable us to spend significantly less time in future editions of this book on questions of law in order to have more time for inspiring revolutionary and innovative topics for every generation (Jefferson again).

Second, set yourself up to get a slice of the action. This means, above all, taking care of your own legal problems. The more that is spelled out directly, and the more you anticipate ahead of time, the better your contracts and the greater your future prospects. You can handle this very effectively yourself because you are best aware of your special requirements and situation. This allows you to easily draw up contracts yourself and be taken completely seriously by your contractual partners and lawyers. One positive side effect is much greater independence, which is what really sets you free.

From the above you can derive the following two core principles for your practice, and you'll find more pertinent information about them in the following chapters:

- Document everything – file as much as is necessary and as little as possible.

You'll find the essential information on this in the *Part II* of the book.

- Contracts – regulate as much as possible yourself.

You'll find out what this is all about in the *Part III* of the book.

Before you turn away shuddering, asking yourself if you, a designer, now have to transform into *Super Lawyer,* remember that perfect conditions don't exist! In your daily interaction with regulations, it's not a question of how you manage them or even ignore them. It's about using them to find the best possible solution for yourself and others.

Designing rules

You know from your own creative activities that the optimum solution is always relative. This approach can and should be applied to all legal solutions as well. This means that handling legal problems is nothing more than applying design rules. Law is relative. It depends on the circumstances and requirements. You have to take it into your own hands to find an ideal solution. But you're a designer, you can do that.

2.5 Intellectual property rights vs. competitive environment

So is it accurate to say that you don't need intellectual property rights to be a successful designer? To answer this question we return to the example of fashion designers in the U.S. Clearly, the absence of intellectual property rights causes greater economic competition where sometimes not the better but the more financially advantaged competitor wins out. The reason intellectual property rights exist is not because creatives wouldn't work without them, but it's a way to honor the personality and the efforts of creatives.

The reason is highly political in nature. Creative businesses are delicate seedlings in the beginning, and they are prone to collapse easily when there's too much economic uncertainty. If a society wants to ensure the fair founding of creative enterprises, it has to provide intellectual property rights that guarantee maximum protection of designs and start-up companies with a minimum of prerequisites. Even if EU policymakers have yet to come up with the best solution, they are much closer to providing this type of protection than any other place in the world.

We should always be suspicious of prophets promising huge freedoms, as has been the case in the public debate over the free use of cultural works on the Internet. This debate is nicely illustrated in Steve Jobs' (CEO of Apple) essay Thoughts on Music, published on February 6th, 2007, on his company's American Web site.

Jobs' essay argued that Apple was always concerned with the freedom and self-fulfillment of the creatives of the world, but unfortunately it was forced to sell music through its iTunes Store with Digital Rights Management (DRM) because the evil music industry demanded it of the company. Of course, Jobs didn't neglect to mention that there are only four huge corporations in the music industry that control over 80 percent of the world's music market.

So whatever can Apple do? Apple can continue along the path it has been on so far (but then why write this essay?). Or it can make its DRM more widely available and license it, if you will, across the board to everyone for a few cents. But then someone would certainly reveal the security codes because that's just how naughty users are. This would mean that Apple would be forced to further develop newer and ever better codes, which would cost unbelievable amounts of money, leading Apple to increase its prices again against its will, so to speak. Well there's another solution. We could get rid of DRM altogether. Well yes, of course, we don't want to destroy the music industry, but that would really be the best solution. So, away with it!