

# What You Need to Know About Copyright

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# What is Copyright?

Copyright is a **bundle of rights** that provide the artist or creator of a creative work the exclusive rights to:

1. Reproduction
2. Distribution
3. Public Performance
4. Creation of Derivative Works
5. Moral / Intellectual Rights

# What kinds of things are eligible for Copyright?

*“Copyright protection subsists, in accordance with this title, in **original** works of authorship **fixed** in any tangible medium of expression, now known or later developed, from which they can be perceived, reproduced, or otherwise communicated, either directly or with the aid of a machine or device.”*

-United States Code, Title 17, Chapter 1 § 102

# What kinds of things are eligible for Copyright?

- literary works
- musical works, including any accompanying words
- dramatic works, including any accompanying music
- pantomimes and choreographic works
- pictorial, graphic, and sculptural works
- motion pictures and other audiovisual works
- sound recordings
- architectural works

# What kinds of things are **NOT** eligible for Copyright?

- “Slavish Reproductions” - anything that lacks the originality necessary to be copyrightable. (e.g. photos or scans of photographs created by museums)
- Works created by the federal government
- Functional objects

# How long does Copyright last?

**Life of the author + 70 years** (or 95 years for corporate authors)

Exception: when the author or death date of the author is unknown copyright term is **120 years from the date of creation**

# The Public Domain

- Works by authors who died before 1946
- Works created before 1896
- Works first registered or published before 1923
- Works first published between 1923 and 1977 without a © notice
- Works created by the federal government

# Factors to consider when determining the Copyright status of a work

- Date the work was created
- Life dates and nationality of the creator
- Type of work
- Whether the work was ever published (including where and when)
- If the copyright was registered

# Orphan Works

## United States

- Not currently a special class
- *Orphan Works and Mass Digitization: A Report of the Register of Copyrights*

## Europe

- United Kingdom - Evidence of diligent search
- Nordic Countries - Extended Collective Licensing

# Fair Use

Fair use is a legal doctrine that promotes freedom of expression by permitting the unlicensed use of copyright-protected works in certain circumstances.

Four Factor Test:

1. Purpose and character of the use, including whether the use is of a commercial nature or is for nonprofit educational purposes
2. Nature of the copyrighted work
3. Amount and substantiality of the portion used in relation to the copyrighted work as a whole
4. Effect of the use upon the potential market for or value of the copyrighted work

# Some activities that are typically considered **Fair Use**

- criticism
- comment
- news reporting
- teaching
- scholarship
- research

# Supporting Fair Use in Museums

## **College Art Association:**

*Code of Best Practices in Fair Use for the Visual Arts (2015)*

## **Association of Art Museum Directors:**

*Guidelines on Fair Use of Thumbnail Digital Images (2011)*