

# Artistic Works

Artistic works can range from paintings, drawings, photographs, sculptures, architecture to fashion, jewellery, furniture or packaging designs. For general information scroll down, or for information on a specific type of artistic work, use the links in the table below.

|                                     |  |
|-------------------------------------|--|
| <a href="#">Images /Photographs</a> | Photographs, clipart, diagrams, paintings, drawings, logos |
| <a href="#">Fashion</a>             | Clothing, jewellery, fabric                                |
| <a href="#">Sculptures</a>          | Metal, marble, stone, ceramic, wood carvings               |
| <a href="#">Buildings</a>           | Buildings, building designs, architecture                  |
| <a href="#">Product Design</a>      | Graphics, packaging, casing, furniture                     |

## Protection

**Copyright** - Provided that the work is original and involves some skill or creativity, copyright automatically protects the physical object or creation, not an idea or a design for making something (see Patents and Design Right below).

Copyright protection of an artistic work lasts for 70 years from the end of the year of the artist or creator's death, under the [Copyright Designs and Patents Act 1988](#). The duration of copyright is a little more complicated for work created before 1st August 1989 and where the creator is known (see [Ownership and Duration](#)).

**Trademark** - An artistic work may also be protected as a trademark if used as a company logo, but must be registered.

### **Design Right** -

Original, creative designs will automatically receive copyright protection as artistic works for 70 from the death of the creator. Three-dimensional designs will also be automatically protected by 'Design right' in the UK or the design can be registered for further protection. Two-dimensional designs (e.g. covering, textural or fabric design), must be registered in order to receive protection. Therefore if a product includes both 3-D and 2-D creations, it must be registered to receive 'Design right' protection.

**Patents** - Designs or ideas for a new invention can be protected by a Patent registration.

## Orphan Works

If the author or copyright owner is unknown or untraceable, the work is referred to as an 'Orphan work' and protected either for 70 years from creation, or 70 years from when it was first made available to the public, if made available within the 70 years from creation. For orphan works created before 1<sup>st</sup> January 1969 and also made public before this date, or if never made available to the public at all, protection lasts until 31<sup>st</sup> December 2039.

Licences to copy or re-use orphan works may be requested from the government created **Copyright Hub** at <http://www.copyrighthub.co.uk/> if accompanied with evidence of a prior diligent search for the owner.

## Unpublished Works

Unpublished works are works that have never been made available to the public, whether by publication, issue, rental, lending, exhibition, broadcast or communication etc. in any way (e.g. private photographs, letters, paintings, drawings, manuscripts). They enjoy additional protection in that the legal exceptions allow copying only for private study, non-commercial research, illustration for instruction or examination. Any communication or making available to the public is prohibited and requires specific permission from the copyright owner.

## Public Domain Works

If a work is in the 'Public Domain' i.e. the copyright has expired or has been specifically waived by the rights owner, you may use any amount and in any way you wish without permission, e.g. copy, distribute, display, republish etc.

The only exception to this is with the play of 'Peter Pan' or 'The Boy who Wouldn't Grow Up' by J.M. Barrie, which although expired has perpetual royalty rights assigned to it in UK law (S.301 CDPA 1988) for the benefit of the Hospital for Sick Children, Great Ormond Street, London.

# Legal Exceptions for Copying

Anyone may copy from a copyright protected work under the 'fair dealing' exceptions in the [Copyright Designs and Patents Act 1988](#) (as amended) for the following purposes, provided sufficient acknowledgment of the source is given unless it's impossible to do so.

## What is 'Fair Dealing'?

Fair Dealing is not defined in law but left open to the discretion of the courts in a possible copyright infringement claim. The courts will decide on a matter of fact, degree and impression in each case i.e. what you are doing, how much are you copying and what impact your copying has on the work and its market value.

The key question asked is: how would a fair-minded and honest person have dealt with the work?

Before copying under the 'fair dealing' exceptions, you should always consider:

- a) Would your use substitute for possible sales and cause the rights owner loss of revenue?
- b) Is the amount you are using reasonable, appropriate and absolutely necessary for your purpose?
- c) Does the copying meet the provisos of the exception/s you are relying on?

Although limits are not specified, copying a whole work or a large proportion as opposed to buying a copy would be difficult to defend as fair i.e. would be considered damaging to the rights owner's legitimate economic interests and unfair.

Therefore unless the amount copied can be justified as fair, it would be advisable to remain within the confines of an 'insubstantial' amount.

## The Exceptions

[General exceptions which apply to anyone](#)

[Education](#)

[Disabled Persons](#)

[Libraries](#)

## Licences

[OGL Licence](#) (Open Government Licence) permits copying of Government produced materials and Parliamentary papers e.g. Legislation, reports, reviews, guidelines.

[Creative Commons Licensing](#) Copyright owner attaches a licence which allows specific uses for specific purposes. Usually found attached to works made available via the internet, e.g. Open Access/Institutional Repositories and content sharing sites such as YouTube and Flickr.

## Sculptures

Provided there is creative skill and originality, sculptures are protected by copyright as artistic works for 70 years from the end of year of death of the creator.

## Buildings

Currently, buildings are protected as architectural works and may also be protected by 'Design right'. If the design includes an innovative engineering invention, Patent protection may also be applied for that aspect.

Buildings constructed, or if construction commenced prior to 1989, are regarded as unpublished work, (even though in public view), and as such, could be reproduced or 'published' under the earlier 1956 Copyright Act.

A building constructed before 1 July 1912, is not protected at all unless a court were to find that there was a common law right in the work of architecture before 1911.

## Product Design

As with any copyright work, provided the creation involved artistic skill and originality, it will be protected by copyright. The design feature may also claim automatic [Design Right](#) protection for the three-dimensional work within the UK (but unregistered designs are not recognised outside UK jurisdiction). To receive overseas protection or 'Design right' protection in any 2-D designs (even if part of a 3-D work, e.g. decoration), the work must be registered.

For general copyright advice, email: [copyright@mdx.ac.uk](mailto:copyright@mdx.ac.uk)