

# Images

## Photographs, Paintings, Drawings, Clipart, Diagrams,

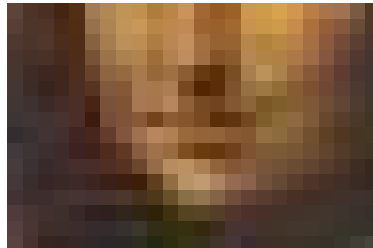
An image is protected in copyright law as an artistic work and can be created in a variety of formats (e.g. physical drawing or painting, hard/print copy, electronic files/collections) and available from a variety of sources such as in museums, galleries, private collections, literature (books, journals, periodicals, newspapers, leaflets etc.) CD's, and now more commonly via the internet and are protected by copyright regardless of where they appear.

Copyright protects the expression of an idea, not the idea itself. This means that just because someone has painted a picture or takes a photograph of a cat sleeping on a cushion does not mean that no-one else can paint a picture/take a photograph of a cat sleeping on a cushion.

Copyright restricts the copying of a 'substantial amount' of a protected work. However substantial is undefined and is left to the courts to decide on a case by case basis. In previous cases, a substantial amount has been measured by quality, not quantity i.e. how important it is to the work as a whole. Therefore it is very difficult to apply a defence of insubstantial to the reuse of images, as the whole image or the most important parts are normally the areas of interest being copied **e.g.**




The whole image  
= Substantial



The smile being most important part  
= Substantial



A random part of the background  
= Insubstantial

<http://www.flickr.com/photos/25876167@N08/> by Joachin Martinez Rosado 

Licensed or 'free to use' images may be found from a variety of sources but are still copyright protected unless in the public domain (See: [How to Include Images Diagram below](#))

## Public Domain

Works are in the public domain only if the copyright period has expired (e.g. over 70 years from the end of the year of the death of the creator) or the copyright owner has waived his/her rights.

## Renewed Copyright

Even where you believe a work to be in the public domain, the source is very important factor.

A republished version of a previously expired image may be afforded its own copyright protection as an entirely new work if creative skill and judgment were involved in its creation.

e.g. The copyright in the actual painting of the Mona Lisa has expired, but the photographer of the above image, owns the copyright in the photograph he has taken, of the painting which is on display in a public gallery. Although the image is freely accessible on Flickr, it was only possible to copy it under the attached [Creative Commons 'By' Licence](#) without direct permission from the photographer.

## Ownership and Duration of Copyright

Copyright in images and artistic works is usually owned by the creator/artist/photographer. They are automatically protected as artistic works from the moment created for 70 years from the end of the year the creator's death, regardless of who owns the actual work.

If the work was created by more than one person, there will be a joint copyright ownership.

**Unless**

- The work was created as part of normal contractual duties under an employment contract, in which case the employer owns the copyright.
- The copyright has been assigned by contract to someone else e.g. to a publisher on publication, a customer commissioning the work, an organisation or individual by sale or donation.  
(Contract law overrides copyright law)

**However**, a person who has commissioned the taking of a photograph or the making of a film for private and domestic purposes, although doesn't own the copyright, has a moral right to privacy in those photographs and films. ([s.85 CDPA 1988](#))

Where copyright subsists in the resulting work, they have the right not to have copies of the work issued to the public the work exhibited or shown in public or the work communicated to the public.

**In photographs, portraits and engravings created before 1<sup>st</sup> August 1989** as part of a commission for payment, copyright is owned by the commissioner, not the creator (unless otherwise agreed/contracted).

Images and artistic works in general are automatically protected as artistic works from the moment created for 70 years from the end of the year the creator died, regardless of who owns the copyright. If the work is registered as a Trademark, it will also receive Trademark protection in addition to copyright for as long as the registration is renewed.

## Photographs

Copyright in photographs is a little more complicated depending on the year created, published and whether the photographer is known or unknown and if the photograph is owned by the Crown or Government.

- **Copyright in Photographs taken on or after 1<sup>st</sup> August 1989** belongs to the photographer and lasts for 70 years from the end of the year of his/her death unless a contract exists agreeing otherwise i.e. a commission may include a clause whereby the commissioner purchases the copyright (moral rights remain with the subjects if the commission was for photographs private/family portraits or occasions).

If the photographer is unknown, copyright last for 70 years after creation or 70 years from date made available to the public if this is within the 70 years from creation.

If the photographer and year of creation is unknown, and the work remains unpublished, copyright expires on 31<sup>st</sup> December 2039.

Once an unknown photographer is identified, 70 years from end of year of death applies.

- **Copyright in photographs taken before 1<sup>st</sup> June 1957** is the same as above (unless the copyright had already expired at 50 years from the life of the creator or date of creation/publication, prior to the 1<sup>st</sup> January 1996 when copyright was extended to 70 years, and was not protected anywhere else in the EEA therefore not eligible for copyright revival).
- **Copyright in photographs taken after 1<sup>st</sup> June 1957 but before 1<sup>st</sup> August 1989** is owned by the photographer (unless commissioned) and lasts for 70 years from the end of the year of first publication (unless the photographer died 20 years before publication, in which case copyright expires 50 years from year of first publication)

If photographs taken before 1<sup>st</sup> August 1989 were commissioned and money was paid for the work, the commissioner would own the copyright unless otherwise agreed/contracted.

If the work was not made available to the public by 1<sup>st</sup> August 1989 or never made publicly available, protection originally lasted indefinitely but this has since been capped and now lasts until 31<sup>st</sup> December 2039.

If the work was not made available to the public by 1<sup>st</sup> August 1989 and the photographer died before 1<sup>st</sup> January 1969, copyright lasts until 31<sup>st</sup> December 2039.

If the photographer is unknown but the work has been made publicly available after 1<sup>st</sup> January 1969 and before 1<sup>st</sup> August 1989, copyright expires 70 years after the year the work was made publicly available.

## Photographs owned by the Crown

### Copyright in Crown photographs taken:

- **on or after 01/08/1989**  
Published = 50 years from date of publication  
Unpublished = 125 years from date taken.
- **between 01/06/57 – 31/07/1989**  
Published = 50 years from date of publication  
Unpublished = to 31<sup>st</sup> December 2039.
- **before 01/06/57**  
Published = 50 years from date taken  
Unpublished = 50 years from date taken

## Orphan Works

Works are referred to as Orphan works where a copyright owner is unknown or untraceable. In such cases where permission is required but can't be obtained, a licence can be applied for from the Government created [Copyright Hub](#), but only after a due diligent search has been performed.

## Legal Exceptions

Current copyright legislation is contained in the [Copyright Designs and Patents Act 1988](#) (CDPA 1988) and the exceptions which apply to specific purposes or groups.

These exceptions more commonly referred to as '**Fair Dealing**', are defences in law, not absolute rights. Therefore it is important to consider how much of the work the rights owner might accept as fair or insubstantial and the purpose of the use.

## 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 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?

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.

## The Exceptions

[General exceptions which apply to anyone](#)  
[For Education](#)  
[For Disabled Persons](#)  
[For Libraries](#)

As each image or diagram is a whole copyright work, it is difficult to apply the legal exceptions above, although it has been suggested that re-using an image in a lower resolution may lessen the risk of an infringement claim.

Where an image is used in lecture slides and necessary to illustrate a point during teaching, it would most likely fall under s.32 'Illustration for Instruction'. There may even be a defence for also providing those slides containing the slides online via MyLearning. However, if the use is purely for decorative purposes and not crucial to the message, it would be advisable to remove the images from the slides prior to uploading to MyLearning.

Uploading several images from a single publication would fall under S.36 'Copying extracts for instruction' therefore must comply with the CLA Licence terms if taken from a licensed publication. (see [Adding Copyright Content to MyLearning](#))

If you are unsure if the legal exceptions or the CLA Licence apply to your use, please contact [Copyright@mdx.ac.uk](mailto:Copyright@mdx.ac.uk) for advice.

Useful guidelines are available from:

The Government Intellectual Property Office website at:

[https://www.gov.uk/government/uploads/system/uploads/attachment\\_data/file/305165/c-notice-201401.pdf](https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/305165/c-notice-201401.pdf)

and the JISC Legal archived Q&A pages at:

[http://www.jisclegal.ac.uk/ManageContent/ViewDetail/ID/3596/Questions-and-Answers--Copyright-Changes-2014.aspx#\\_Toc391026514](http://www.jisclegal.ac.uk/ManageContent/ViewDetail/ID/3596/Questions-and-Answers--Copyright-Changes-2014.aspx#_Toc391026514)

***NB. Exceptions are defences that may be used in a possible legal action and not absolute rights and must not be confused with the US term 'Fair Use'.***


## Licences

Various types of licence cover the use of images and diagrams

### Primary Licences –

- Direct publisher or rights owners licence,
- Subscription or agreements, personal or institutional
- Terms & Conditions attached to Books, CD's, DVD's, Web sites

Or **Secondary Licences** – where the Licensing body or host organisation has been mandated to act on behalf of the rights owners.

- [CLA, Copyright Licensing Agency](#)
- [DACS, Design and Artists Copyright Society](#)
- [E-resource Subscriptions, Institutional subscriptions to Electronic Books Journals and Databases](#)
- Creative Commons,  <http://www.creativecommons.org>
- Wikipedia Commons [http://commons.wikimedia.org/w/index.php?title=Main\\_Page&oldid=58750217](http://commons.wikimedia.org/w/index.php?title=Main_Page&oldid=58750217)
- [Copyright Hub](#) for Orphan Works only

Before using an image, if none of the legal exceptions or licences apply to your intended use, permission must be obtained from the rights owner or an alternative image found that is licensed or copyright free.

## Where to Find Licensed Resources

[Microsoft Clipart](#) - Licensed to all staff and students under the Middlesex institutional licence.

[Creative Commons](#),  [Flickr](#), [Google Advanced Image search](#), [openphoto.net](#)

<http://www.wikimediacommons.com/>

[vads](#) - Free art and design images for education, from the Visual Arts Data Service

**N.B.** Images you may find on the Internet are free to print and download for your own private viewing. Unless there is a licence attached or the terms of the website permit, you cannot re-use, republish or re-distribute the images, without permission from the copyright owner (except under the statutory [Fair Dealing exceptions](#)).

You should never use copyright infringing/pirated content. The legal exceptions will not apply and licences not granted by the original rights owner or an official representative are invalid.

#### **Further copyright information**

**Copyrightuser.org** - <https://www.copyrightuser.org/create/creators-discuss/visual-artist/>

**ArtUK** - <https://artuk.org/about/copyright-explained>

**DACS** - <https://www.dacs.org.uk/knowledge-base/copyright-advice-for-artists>

**Writers&Artists.co.uk** - <https://www.writersandartists.co.uk/advice/copyright-law-artists>