



# Copyright

WHAT YOU NEED TO KNOW

# What is copyright?

- ▶ What is copyright?
  - ▶ Copyright is the “bundle of rights” that protect one’s intellectual property.
  - ▶ Therefore, copyright law is the **law** that protects what creative people create.
- ▶ Entire US copyright law is over 100 pages long!
- ▶ Duration of copyright is complex, but anything produced today is protected for “Life + 70” : 70 years after the death of the creator.
- ▶ Copyright laws vary from country to country

# A key section of the law:

Copyright is a form of protection provided by the laws of the United States to the authors of “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. Works of authorship include the following categories:

- ▶ 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 and
- ▶ architectural works.
- ▶ In no case does copyright protection for an original work of authorship extend to any idea, procedure, process, system, method of operation, concept, principle or discovery, regardless of the form in which it is described, explained, illustrated or embodied in such work.”

# Translation:

1. Creator possesses a so-called “**bundle of rights**” which can be retained in their entirety or split up. **Licensing** is the term used for the sale, lease or rental of some rights.
2. Creator has the exclusive right to “**reproduce the work**”, “prepare derivative copies based on the work”; to distribute copies by sale, rent, lease, giving away or lending; to display the work publicly and, if appropriate, perform the work. Ownership of the work alone does NOT automatically confer copyright privileges.
3. Artwork must exist in **tangible form**: Ideas are not copyrightable!
4. How long does protection last? The basic rule for **copyright protection is “life + 70”**, for works created on or after January 1, 1978. For works created prior to this date, there is a patchwork of laws covering different time frames.
5. Copyright law is complex!

# Why copyright is important to artists:

- ▶ Creatives want to **protect their own work** from being copied without permission. Using the creative work of others without permission is called infringement. It is illegal to do so!
- ▶ Creatives also want to **use images and styles** they find elsewhere. At what point does “appropriation” turn into “infringement”?
- ▶ Let’s look at both sides.

# How to protect original work:

- ▶ Good news! Creative work is **AUTOMATICALLY copyrighted** upon its creation in tangible form. No need to do anything.
- ▶ However, this alone won't necessarily keep people from reproducing your work.
- ▶ **Sign your work** in one of these ways – it shows people that the work is copyrighted, and that you as an artist will proactively protect it:
  - ▶ © date + name (example: © **2009 Marvin Maloney**)
  - ▶ c. + year + name (example: **c. 2021 Josie Johnson**)
  - ▶ Copr. Year + name (example: **Copr. 2018 Rebecca Ramírez**)
- ▶ If you have created an image that will be widely dispersed or visible, you may consider registering your copyright with the **US Copyright Office**. It will cost \$35/registration. This must be done prior to publication. The main advantage is that you could sue for more money if you are a victim of copyright infringement.

# Important!

## Please note:

- ▶ Physical ownership of the work – say, a photograph or an original artwork – does NOT automatically mean ownership of the copyrights to that work.
- ▶ Copyright remains with the creator UNLESS they sell or give away some or all of their rights.



# Work-for-hire is NOT infringement

- ▶ **“Work for hire”** – is a phrase used when the creator is employed by someone else in order to create content, and has **contractually** agreed to turn over **ALL** rights to the creative work produced as part of their job.
- ▶ It is common for employees, including interns, to work this way. This means that all creative work done as an employee belongs to the company or person they work for. For example, animators at Disney don't own anything they create – not a simple sketch, not a finished file. They cannot even use these in their portfolios.

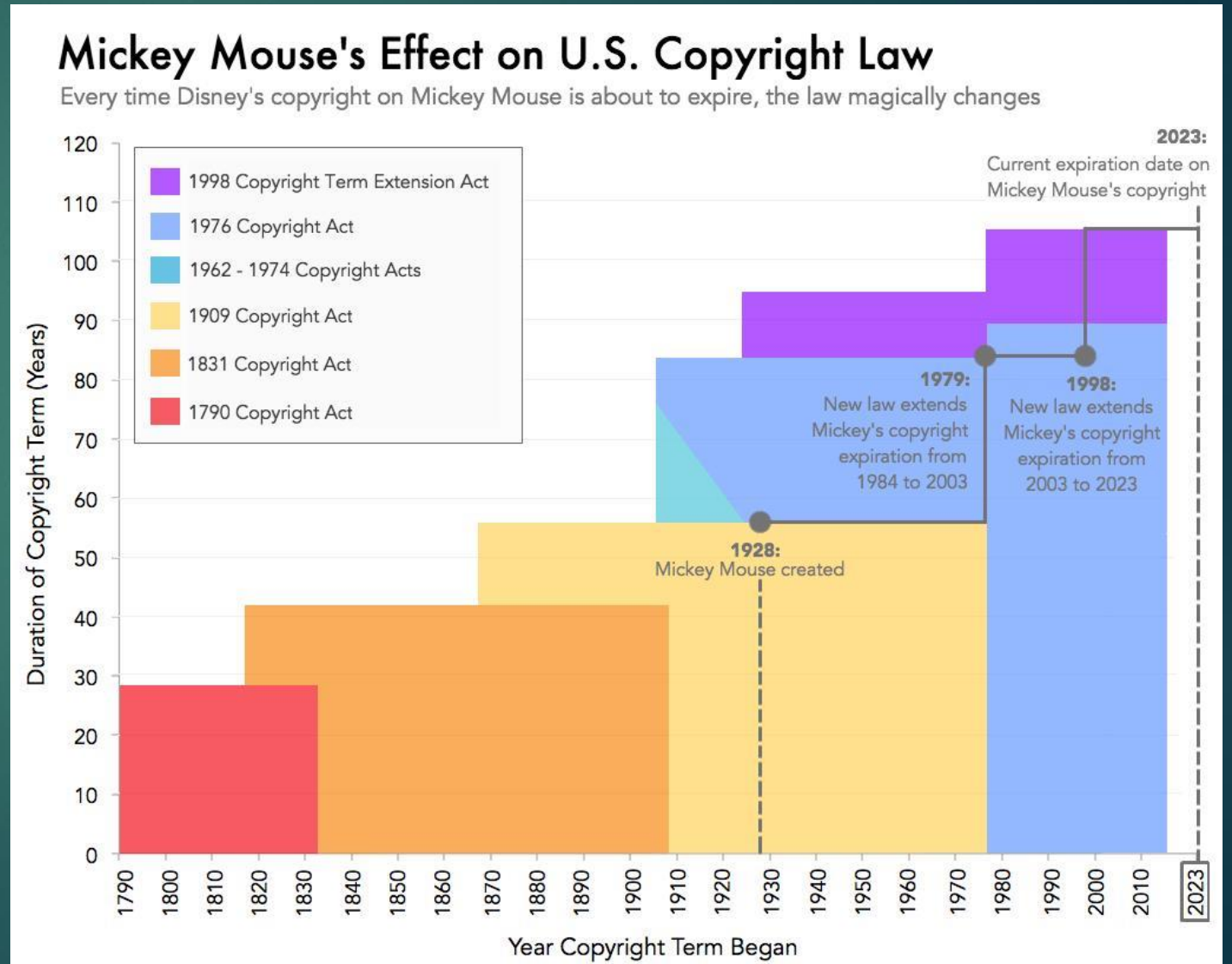




# Duration of copyright:

Creative works that are no longer covered by copyright law are said to be in the **public domain**, able to be used by anyone.

Laws have been revised repeatedly over the years, mostly because of Disney, which makes it hard to know if a vintage work is in the public domain.



# What is Copyright Infringement?

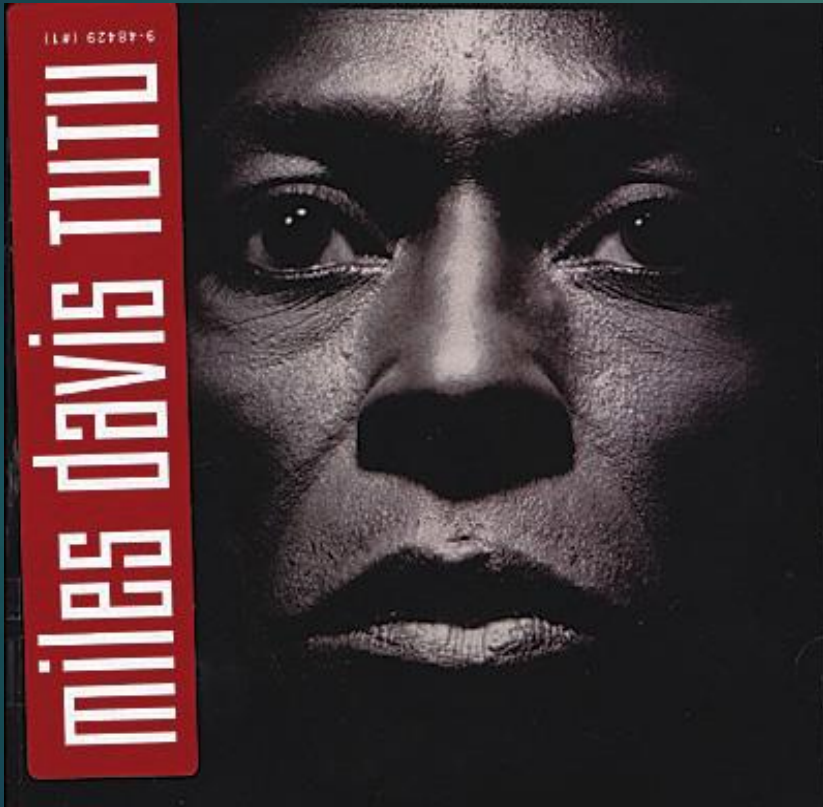
- ▶ **Copyright infringement** is the illegal violation of another person's copyright. In essence, **copying someone else's creation**.
- ▶ This can be as simple as someone scanning and printing out extra photos from someone's senior photo shoot without the photographer's permission; or copying a famous photo as a drawing or painting.
- ▶ Sometimes, images are taken without permission and used as part of another person's work or passed off as that person's own work.
- ▶ The bottom line usually is:
  - ▶ Did someone profit monetarily from the infringement? And/or
  - ▶ Did they gain publicity or fame from the infringement?
- ▶ The internet has made copyright infringement far easier and much more common.

# What constitutes copyright infringement?

- ▶ Two factors must be present for copyright violation to occur:
  - ▶ **Access to the original.** If the work was hidden away and never seen, there is no way it could have been copied. It was just a “great minds think alike” moment. However, if the work was published, it is possible that someone saw and copied it.
  - ▶ **Substantial similarity.** Even if the medium, scale or style changes, if the original source is recognizable, it WILL constitute infringement.
- ▶ Both are needed in order to prove a violation of copyright occurred.
- ▶ Note: some sources of imagery are so accessible, like the New York City skyline, that it is likely that two people just stood in the same spot to take a photo, for example.
- ▶ Here are some clear examples of copyright infringement:



Typical example of copyright infringement:



# Jeff Koons and the String of Puppies

- ▶ Jeff Koons purchased a card with this photo, then sent it to workmen in Italy to produce sculptures with this image. He was sued and argued in court that the works were “substantially different.” Jury found he infringed on photographer’s copyright.



# Loophole?

## The Fair Use Doctrine













- ▶ The Fair Use Doctrine of the US Copyright Law provides some ways in which copyrighted creations can be utilized without serious infringement.
- ▶ Uses for the **common good**: education, criticism or parody, news reporting or research may qualify as fair use. Commercial use (for profit) will not count as fair use. This doctrine is used by the courts to help establish the extent of infringement, if the two conditions (access and similarity) are met.
- ▶ Four factors come into play:
  - ▶ 1. **Purpose and character of use** (for example, in teaching)
  - ▶ 2. **Nature of the copyrighted work** (factual work is more likely to fall under fair use than imaginative works – like textbook vs. novel)
  - ▶ 3. **Amount and substantiality** of copyrighted material used (using the key portions of a photo is worse than copying one leaf in the corner of an image, for example)
  - ▶ 4. **Effect of use on the market** for or value of the original work (if a class can photocopy the entire textbook and avoid buying it, that directly hurts the author's sales).




# Dilemma: how to use references without violating copyright?


- ▶ Sometimes it is impossible to create a drawing, painting, mural, sculpture, etc. without using references.
- ▶ There are safer – and less safe – ways to do this.

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 A group of people, including a woman in a yellow shirt and a man in a purple shirt, are smiling and talking.	 A close-up of a purple and green hummingbird perched on a branch.	 John Wood Community College: SLF 120 Introduction to Small Farm Viability	 Bio-logy	 A hand holding a small, round object, possibly a seed or fruit, in a forest setting.	 A vertical garden or hydroponic system with various plants growing in a structured frame.
 A colorful, abstract, glowing orb with blue and purple hues.	 A small bird perched on a branch with yellow flowers.	 A stylized brain with neural connections, overlaid on a grid pattern.	 PLOS Publications	 A golden bust of a man's head, possibly a historical figure.	 Zero Sum Game – SL Huang

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# SAFE ways to use references:

- ▶ **Creative Commons** is an online network of copyright free images, audio and other works.
- ▶ Use images in the **public domain**. Images that are no longer covered by copyright law are said to be in the public domain, able to be used by anyone. Victorian era images, for example, are all in the public domain now. Additionally, some people freely allow everyone to use their work (see [www.creativecommons.org](http://www.creativecommons.org) )
- ▶ Use your **own photo references**.
- ▶ **Obtain permission** to use the image or images you want.
- ▶ Use **stock photo** or design/illustration agencies – this will cost money.
- ▶ Use **references to gain background knowledge**, then draw from imagination. Example: a ceramic artist had a commission to create a piece about lacrosse. She borrowed images from sports photographer friends, drew them, looked closely at the details (how sticks were laced, for example; then she put them away to create her OWN lacrosse players.

# Less safe strategies:

- ▶ Create work without the intent to make it public. You can copy anything in private, but once it goes public (in an exhibit, on a calendar, on Instagram) you are opening yourself up for accusations of infringement.
- ▶ Use a portion of an image. IF the portion is small enough that no one recognizes where it came from, you are safe.
- ▶ Change the medium and style so dramatically that no one would recognize the source. This usually does not work.
- ▶ Hope you are obscure enough that the original creator doesn't find you. This does not always work, either.



# Public art especially needs to clear copyright issues ahead of time

- ▶ Public art is so visible, copyright violations are literally out in the open!
- ▶ If copyright owner didn't give permission for the use of this image, the mural might have to be painted over and/or the photographer (or copyright owner) might be compensated.



# Ignoring copyright law is a bad idea.

- ▶ **Donna Ferrato**  
Images from her book of photographs on domestic violence were the key images in artist Eva Rivera Castro's collage, without significant transformation, and without permission. The collage was displayed at the Whitney Museum in NYC. Ms. Rivera Castro was sued and the museum had to issue a public apology and develop guidelines to avoid using works that violate the copyright of other creators

**PUBLIC EYE**

## THE FERRATO INCIDENT

### PLAGIARISM, PART I

In the world of postmodern ethics, one of the touchier topics is the notion of appropriation. Increasingly, some artists think that their right to express themselves is an excuse to bypass copyright laws. They're wrong.

This was made clear last September, when New York's **Whitney Museum** offered a public apology to photojournalist **Donna Ferrato** for exhibiting a collage that reproduced her images out of context, without attribution or her permission. The collage, part of a student-curated show called "The Subject of Rape," was done by artist Eva Rivera Castro, who, according to the show's catalog, "investigates the secrecy surrounding rape."

connected with rape." After negotiation, the **Whitney** amended the wall credit to include **Ferrato's** name, and a correction slip was inserted into the show's catalog (though it failed to mention that the original images were not about rape). The **museum** then issued an apology, promising to institute "stringent investigations and procedures to avoid such occurrences in the future." As for Castro, she has thus far refused Ferrato's terms for a separate settlement.

Whether artists and institutions can be universally enlightened concerning such usage of photographic images remains to be seen. Certainly more will be heard on this subject.

—CATHERINE CALHOUN

**ERWITT VS. PARASITES**



The Ferrato shot reproduced in the disputed collage.

office of the Young & Rubicam ad agency caused Magnum photographer Elliott Erwitt to suffer "moral and property loss" when it re-created two classic Erwitt images for a Kronenbourg Light beer campaign.

The images at issue make up Erwitt's famous "Cannes 1975" diptych and show two middle-aged seaside revelers seemingly blown away by a Mediterranean gust. The Kronenbourg Light ad was done in color and substituted a leggy model, but the French court said there were too many similarities. "This sequence of two images has an incontestable originality marked by the personal emotional imprint of the creator...and makes it a protectable work," the court stated in a strongly worded ruling that called the ad's creators "parasites." Even better, the court awarded