



## REUSE OF OTHERS' WORKS

([Law + ArtWorks](#) is happy to provide this basic information. Needless to say, this does not constitute legal advice or set up any attorney-client relationship.)

### What are Copyrights?

Copyright give the owner the exclusive right to: (1) reproduce the work (2) prepare derivative works based on the copyrighted work (3) distribute copies of the work to the public for sale/lease/ownership/rent (4) display the copyrighted material publicly (5) perform the work publicly. ([17 U.S.C. § 106](#)) If you are doing one of these things, and you are not the copyright owner, your use might be an infringement of copyright.

Registration isn't required for copyright protection. The moment you "fix the work in a tangible medium" it is protected by copyright. It's safest to assume that everything is copyrighted unless you have a factual basis for believing otherwise.

### Copyright Registration

Although copyright exists at the time of fixation, copyright is best protected by registration. Registration requires: (1) an application (2) non-refundable filing fee (3) non-returnable deposit (of a copy of your work, to be housed in the Library of Congress). Find more information at: [Copyright Basics](#).

## Public Domain

Something is in the “public domain” if the work no longer is protected by copyright. This can occur in several ways: (1) It was published before January 1, 1924; (2) it was a work created by the U.S. government; or (3) for works published between January 1, 1924 and March 1, 1989, the work did not meet all the formal requirements of copyright notice and renewal. Figuring out whether the formal requirements were met will be, at best, difficult, and often is impossible.

Find more info at:

- [Is It In the Public Domain?](#)
- [Copyright Term and the Public Domain in the United States](#)

Many collections are making high quality public domain works available online:

- [Project Gutenberg](#)
- [Internet Archive](#)
- [Library of Congress](#)
- [Monash University Library index](#)

## Licensing

A license is simply permission from the copyright author to use the work. It does not have to be a one-to-one grant or given with any formality. An email exchange that says “may I” followed by “yes” will be enough. A license can be granted to the public at large, such as a Creative Commons license. [Creative Commons](#), [Flickr](#), and [Google Images](#) allow you to search for works that have a Creative Commons license. Make sure you understand the requirements of the CC license you are relying on. At a minimum, they require that you attribute the original artist.

Sometimes creators will say something that indicates that they are willing to allow reuse, like “dedicated to the public domain.” The works aren’t actually in the public domain and instead these statements are technically licenses, but you can safely reuse the work based on the statement.

You can safely assume that reuse of a work on the same social media platform, like sharing on Facebook, retweeting on Twitter, or reblogging on Tumblr, is a licensed use – that is, if you post a photograph to Twitter, Twitter’s terms of use grant Twitter

and the other platform users a license to retweet. If you want to use the content elsewhere, though, you need to figure out if you have a license. "I found it on the internet" is not a license.

## First Sale

The owner of a physical copy of a copyrighted work can dispose of their copy as they please. This means that you may sell or give away a painting, a CD of music or a book. ([17 USC § 109](#)) It is also generally ok to reuse that physical copy (without copying) in a new work, e.g., using it in a collage or a found object work. Exercise caution, though, when the physical object is modified into a new work but the main impression is still of the original work. In that case, you should assess whether the reuse would be considered a "fair use" (below). As a practical matter, you cannot "reuse" a digital work, since that is going to necessarily involve making a copy.

## Fair Use

[Section 107](#) of the Copyright Act says that even though creators have exclusive rights, it is not infringement if their work is used for certain purposes, like comment, criticism, news reporting, teaching, scholarship, or research. Courts consider a number of factors to determine if the use fits such purpose. It is a complicated, heavily nuanced legal conclusion, so for that reason there will rarely be any certainty about whether your use is a fair use. Some fairly safe harbors are:

- If your work is highly transformative, like as a mash up by Girl Talk or Danger Mouse, it is likely a fair use.
- If your work is a comment on the original, like a parody, it is likely a fair use. But consider whether it is a true commentary about the original or you are simply using the original work as a substitute for originality.
- If your work cuts into the market of the original copyright owner, it is unlikely to be considered a fair use.

Find more info at:

- ["Can I Use That Picture" Flow Chart](#)
- [Columbia University Fair Use Info](#)