

The Do's & Don'ts of

Copyright

ONWARDS Project

January 23, 2025

1-3:00pm

Via Zoom

The logo for CDAS, consisting of the letters C, D, A, and S in a bold, teal, sans-serif font, enclosed within a teal rectangular border.

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Copyright Myths

Internet

If visual content is on the internet, it is in the public domain.

© Notice

If there is no copyright notice associated with visual content, I can use it without permission

No Profit

If I don't profit from the use of content, I don't need permission.

Fair Use

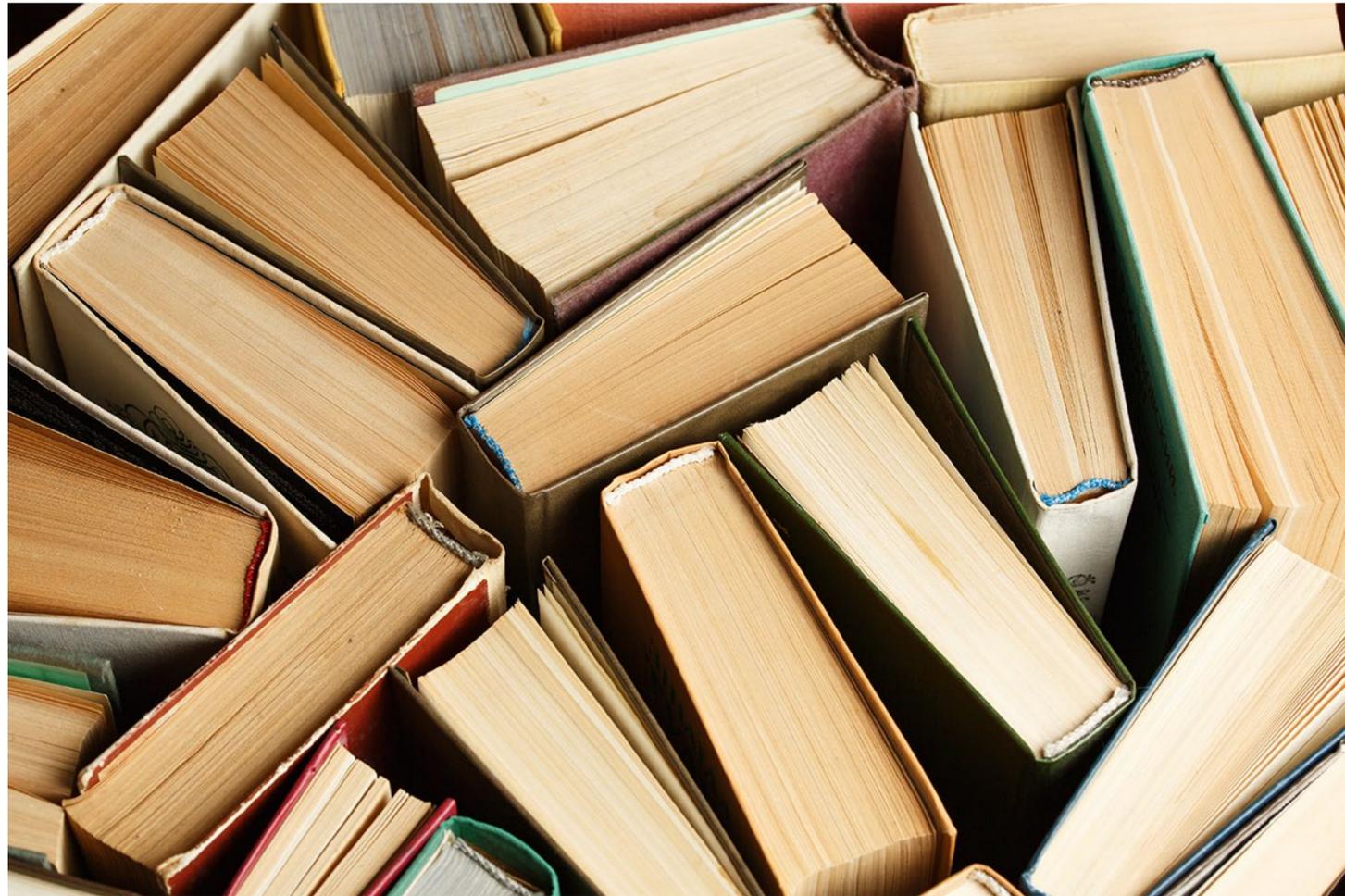
If I alter the by a certain percentage, I don't need permission.

International Copyright

No universal international law on copyright; each country has its own laws

International treaties require signatory countries to meet certain minimum standards





Purpose of Copyright: U.S.

The U.S. Constitution gives Congress the power to enact laws “to promote the progress of science and useful arts, by securing for limited times to authors and inventors the exclusive right to their respective writings and discoveries.”

Purpose of U.S. copyright law: Balance the economic interests of creators with the public’s interest in stimulating intellectual enrichment

What Does Copyright Law Cover?

17 U.S.C. § 102(a) – Copyright protection subsists... in **original works of authorship fixed in any tangible medium of expression**, including:

- (1) literary works;
- (2) musical works, including any accompanying words;
- (3) dramatic works, including any accompanying music;
- (4) pantomimes and choreographic works;
- (5) pictorial, graphic, and sculptural works;
- (6) motion pictures and other audiovisual works;
- (7) sound recordings; and
- (8) architectural works.



Who owns Copyright?

**Author or joint authors of a work
OR
Corporations/Employers**

- Works Made for Hire.—In the case of a work made for hire (e.g., commissions), the employer or other person for whom the work was prepared is considered the author
- Independent contractors/freelancers work is assumed to be held by them unless there is a writing that transfers their rights



Length of Copyright Protection?

- Current Act (1978): For the life of the author, plus 70 years
- 95 years for corporations



What does Copyright Law Not Cover?

Facts, Ideas, procedures, processes,
systems, methods of operation, concepts,
principles, or discoveries

Words, titles, and
short phrases

Works in the Public
Domain

Unfixed works (e.g., choreography, a
speech, or a live performance of a
musical composition)

Works by non-
humans

Idea v. Expression

Copyright Law does not protect the ideas, concepts, and methods employed in the creation of a work.

If it did, this would give creators a monopoly over the ideas expressed in their works.



Only sufficiently original expression of ideas is protected (low threshold).



Copyright law generally protects the fixation of an idea in a “tangible medium of expression,” *not the idea itself*, or any processes or principles associated with it.



Stock characters



Scènes à faire



Tropes/Themes

Copyright Exclusive Rights



17 U.S.C. § 106 – The Copyright Act identifies 6 specific rights that belong exclusively to the copyright owner:

1. Reproduction,
2. Preparing Derivative Works,
3. Distribution,
4. Public Performance (e.g. of dance, theater, audiovisual works, etc.),
5. Public Display, and
6. Public Performance of digital sound recordings.

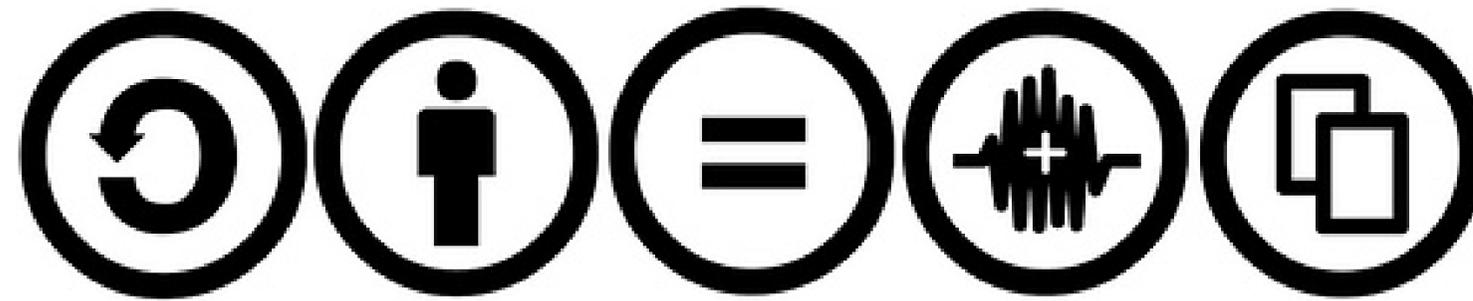
Transfers of Rights

- **Exclusive transfers:** *requires a writing* signed by copyright holder or authorized representative
 - 17 U.S.C. § 104 - requires a writing for any exclusive transfer to be valid (except by operation of law).
- **Non-exclusive Transfers:** can be transferred without a writing, **BUT** it's still a good idea!



Creative Commons

What about Creative Commons?



**creative
commons**



Creative Commons Licenses

-  **Attribution.** You let others copy, distribute, display and perform your copyrighted work—and derivative works based upon it—but only if they give credit the way you request.
-  **Noncommercial.** You let others copy, distribute, display and perform your work—and derivative works based upon it—but for noncommercial purposes only.
-  **No Derivative Works.** You let others copy, distribute, display and perform only verbatim copies of your work, not derivative works based upon it.
-  **Share Alike.** You let others distribute derivative works only under a license identical to the license that governs your work.
-  **CC Zero.** You dedicate the work to the public domain, waiving rights to the work worldwide under copyright law, including all related and neighboring rights, to the extent allowed by law.

What Don't you Get With Creative Commons?

- Ownership can uncertain
- No indemnification
- No 3rd Party Clearance

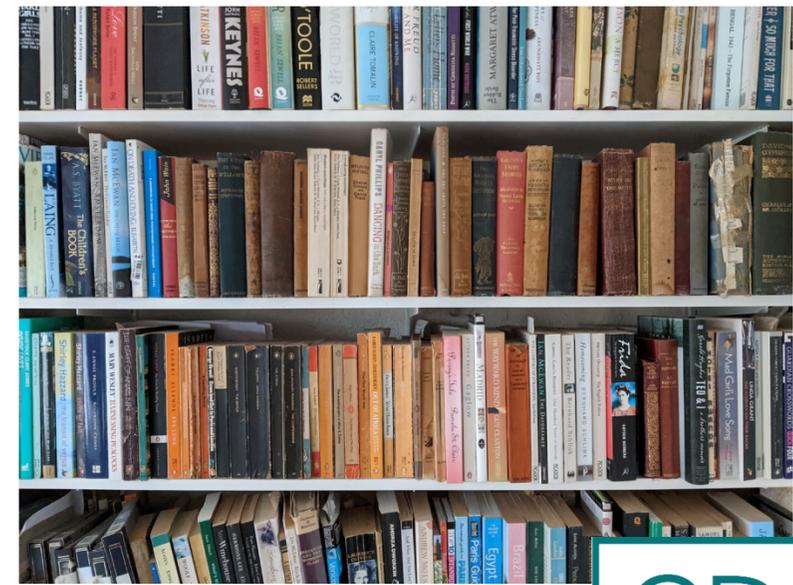
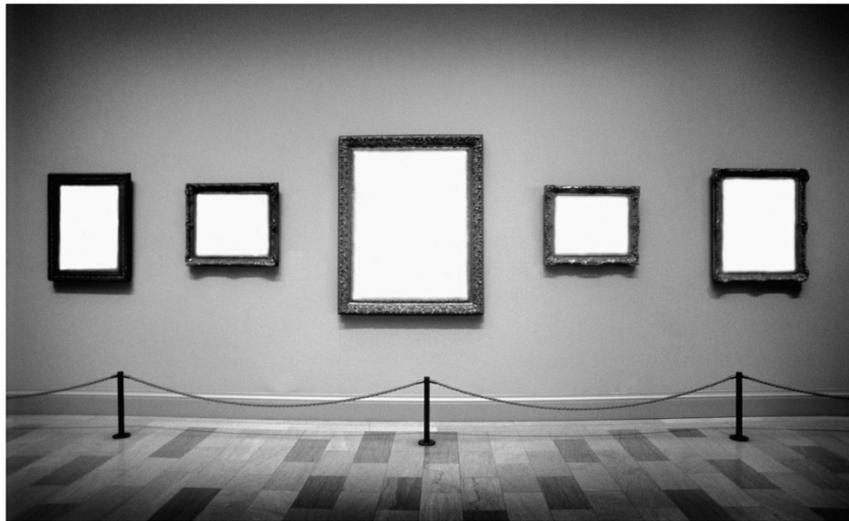
Limitations on Owner's Rights

- § 108 – Libraries/Archives
- § 109 – **First Sale Doctrine**
- § 110 – Face-to-face Education
- § 111 – Secondary Transmissions
- § 121 – Reproductions for the Blind/Disabled

First Sale Doctrine

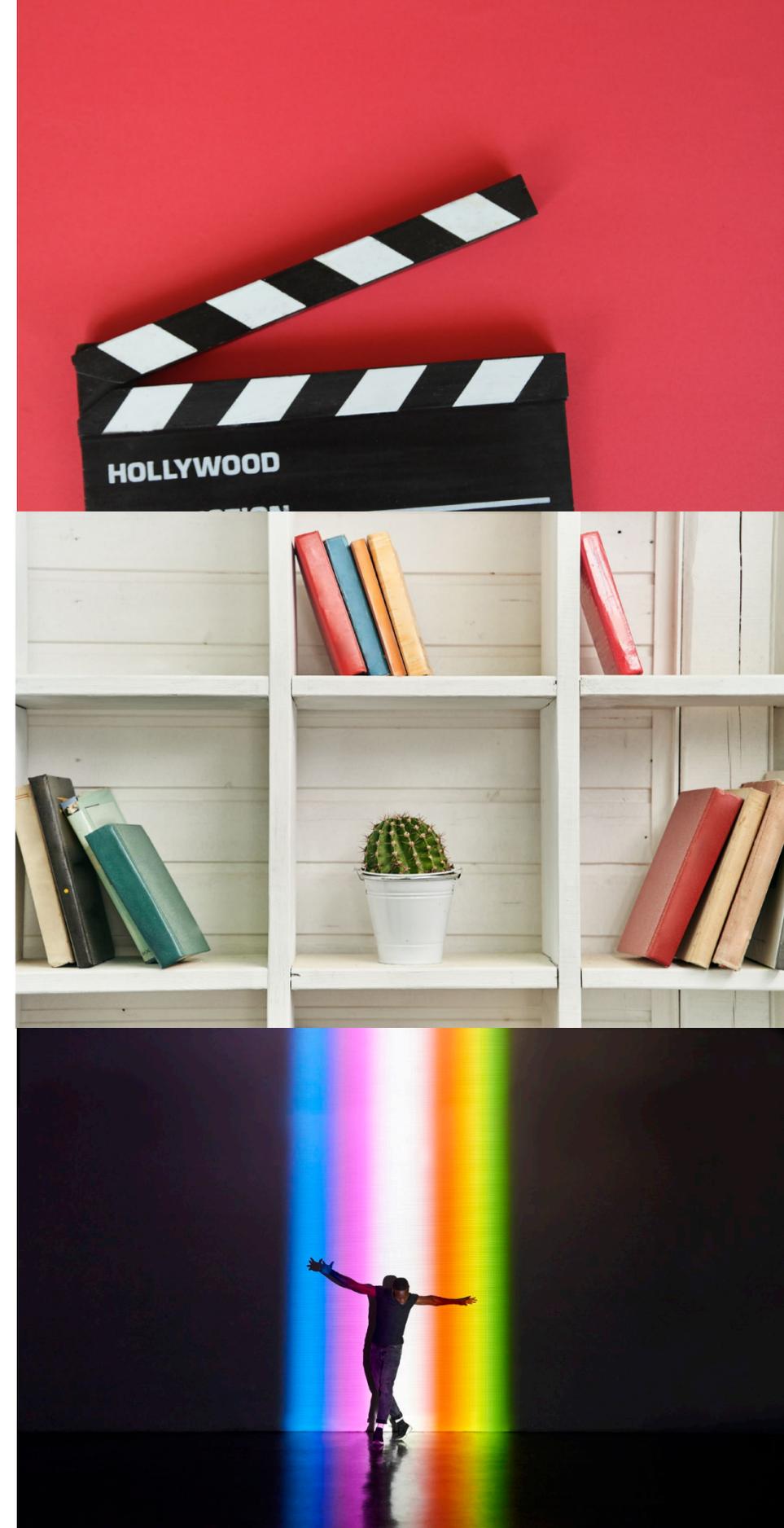
This allows the distribution of copyrighted materials beyond the initial sale by the copyright owner.

Without the first sale doctrine, no one would be able to sell or otherwise dispose of books, CDs, DVDs, art, or other tangible works that they have purchased without the copyright owner's permission.

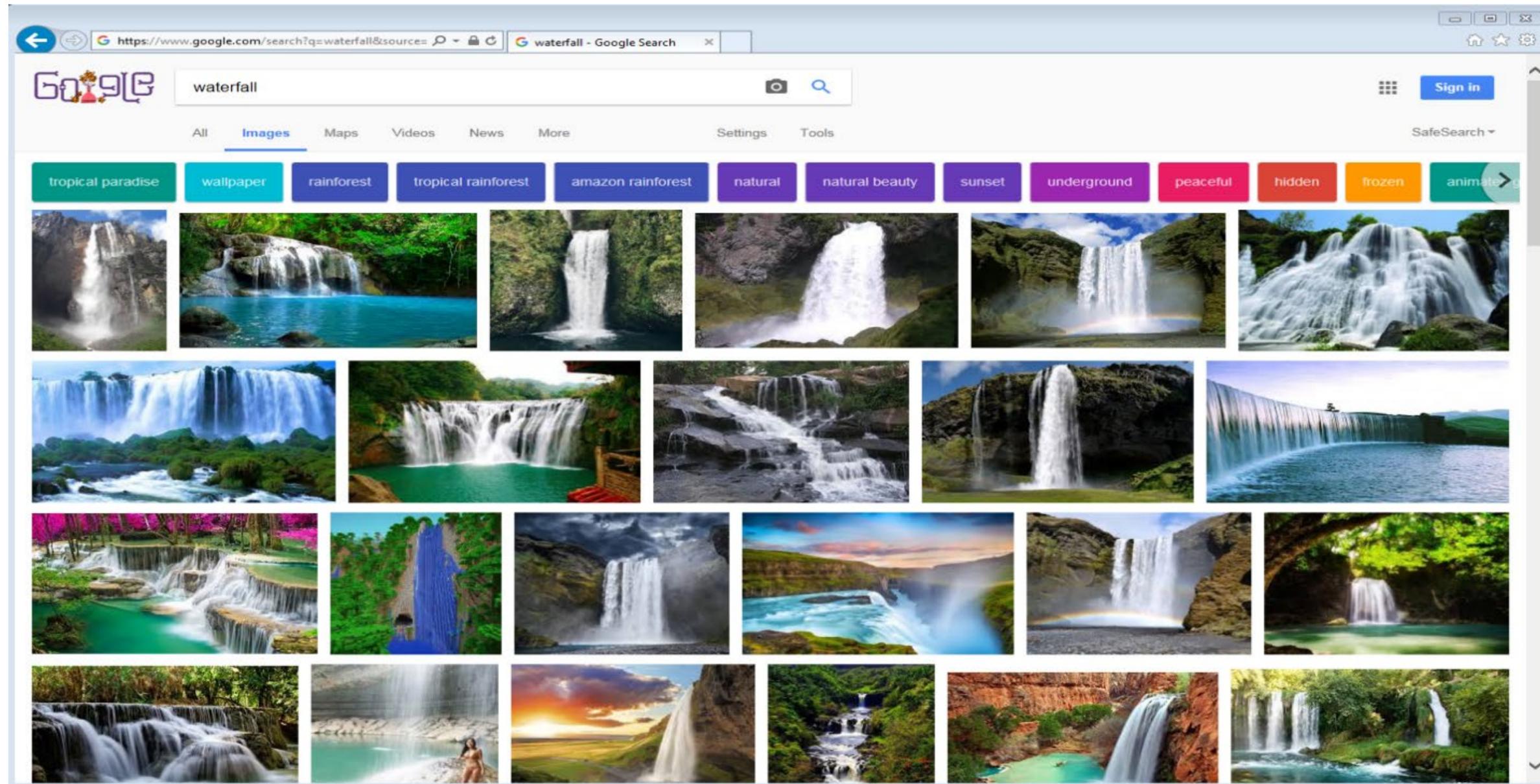


Derivative Works

- A derivative work is a “work based upon one or more preexisting works.”
- Dramatizing, fictionalizing, recasting, or otherwise adapting a copyrighted work without permission may amount to copyright infringement.
- **The issue in licensing is whether the use would be a *true* derivative work or qualify as *fair use*.**



Public ≠ Public Domain



What is the Public Domain?

Consists of ALL works out of copyright

Pre-1925

In the US, all works published before 1925

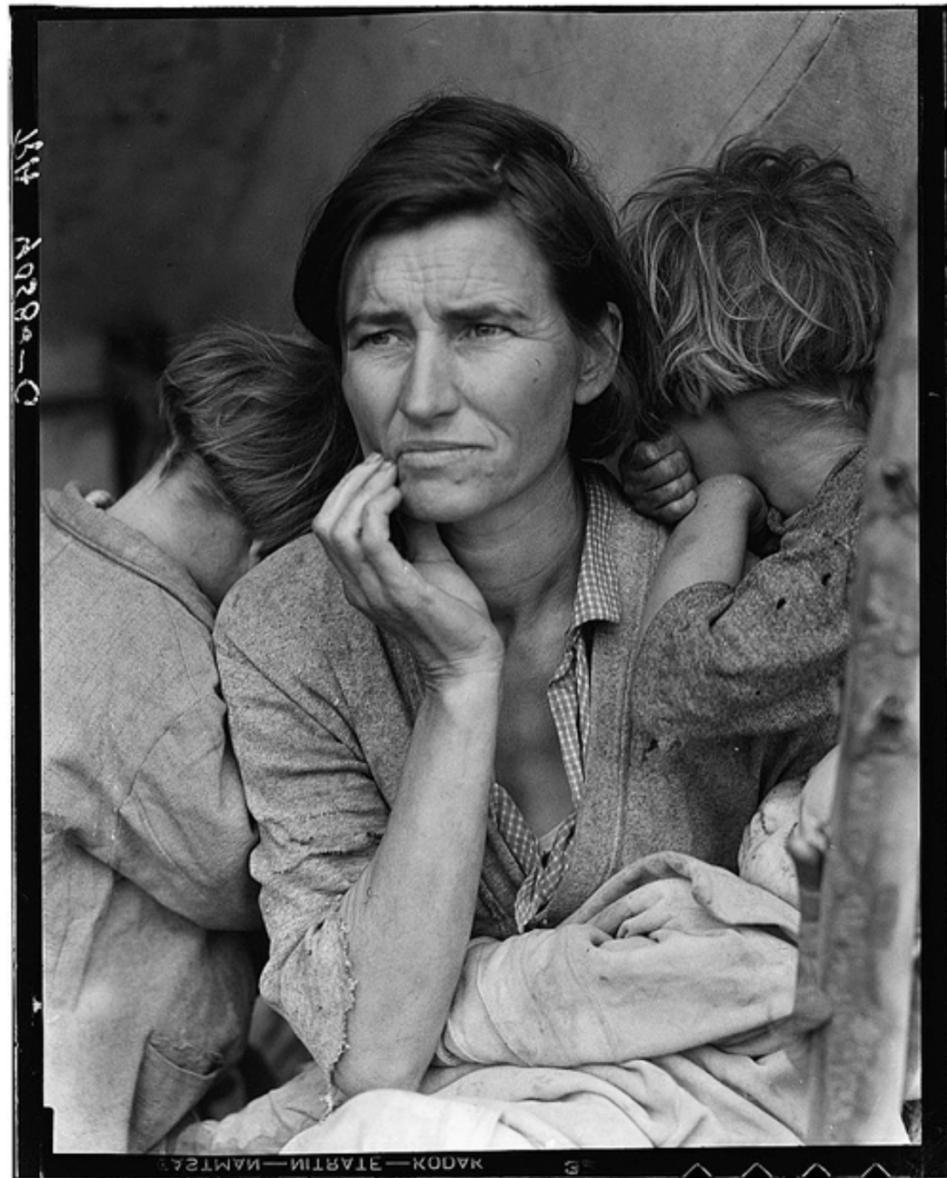
Government

U.S. government works*

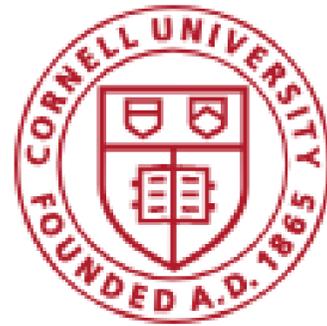
No Notice

Works that fell out of copyright for failure to register or renew under the 1909 Act or for lack of copyright notice before 1989 (except some foreign works).

Works in the Public Domain



Duration (pre-1978 and post-1978)



CORNELL UNIVERSITY
Library

<https://guides.library.cornell.edu/copyright/publicdomain>

Copyright Enforcement

Copyright Infringement occurs when there has been a violation of one or more of the exclusive rights (e.g., copying or creating a derivative work)

- Must show the alleged infringer had ***access to the original***
- Must show the alleged infringer ***actually copied*** protected elements of the original in creating the second image



Copyright Enforcement: Benefits of Registration

Copyright protection is automatic. This means you do not need to register your work for it to be protected.

Benefits to registering your work with the U.S. Copyright Office, include: the opportunity to obtain statutory damages and attorneys' fees in court.

- Statutory damages entitle successful plaintiffs to recover, instead of actual damages and profits, automatic damages that range from \$200 to \$150,000 per infringing work, depending on the extent of the infringement, the knowledge of the infringer and other factors.
- Actual damages can often be difficult and costly to prove and to calculate, so statutory damages are often a better option.

Plagiarism vs. Infringement

Plagiarism

Misrepresenting work of others as one's own without the correct citation or attribution primarily in the context of academia. Consequences of this vary across academic institutions as it is an ethical issue.

Infringement

Occurs when using someone else's work without permission from the copyright holder. However, copyright does not require attribution

Is this plagiarism or infringement?

A high school student copies the entire bird species book that she includes in several articles published in the paper, but she puts a citation at the bottom of each article that includes the author's name, the title of the book, and how the entire article is taken directly from the book.

Is this plagiarism or infringement?

Copyright Infringement *But*
Not Plagiarism :

While the student properly attributed the author and did not try to pass the article off as her own work, she copied the entire work without permission, which likely infringes the author's rights under copyright law.

Is this plagiarism or infringement?

A student copies a few sentences of a 20-page book illustrating and describing species of birds to use in article on evolution submitted for her high school newspaper but fails to provide a citation or footnote explaining that the information came from the book.

Is this plagiarism or infringement?

Plagiarism *But Not* Copyright Infringement:

This student may have committed plagiarism by not properly attributing the information and making it seem like the information originated from the student. However, the student will most likely not be found to have committed copyright infringement because such an inconsequential amount was used in an educational setting in a manner that is unlikely to harm the authors market for the work that the use is likely a fair use.

Substantial Similarity

Rentmeester v. Nike



Copyright Infringement

Elements of a photograph that can be compared:

Posing



Perspective

Lighting



Shading

Angle



Color

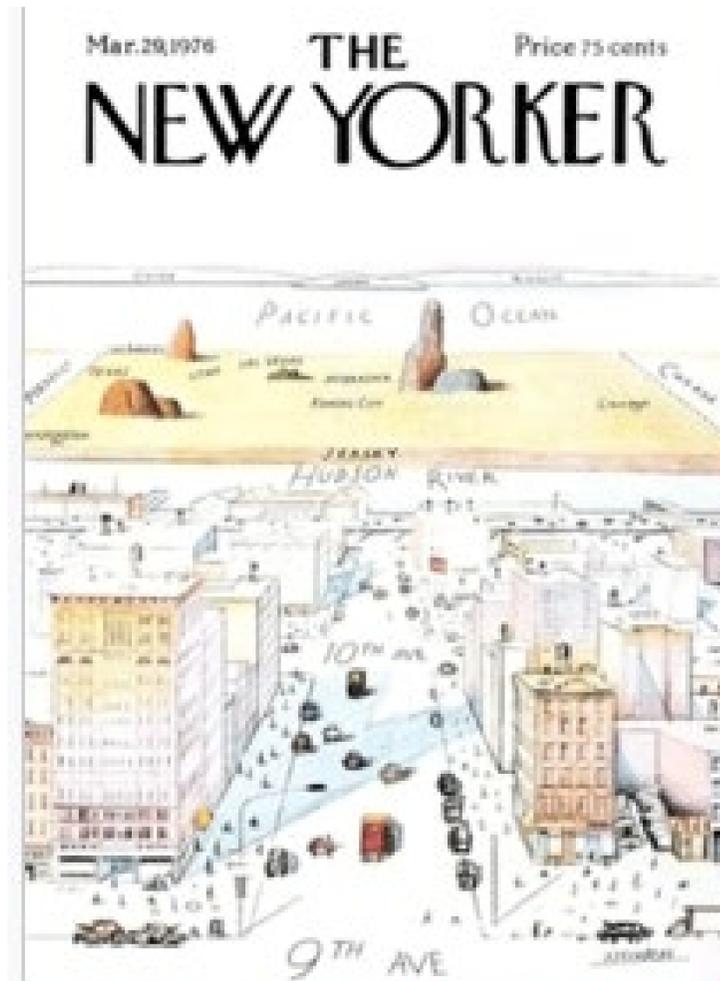
Background



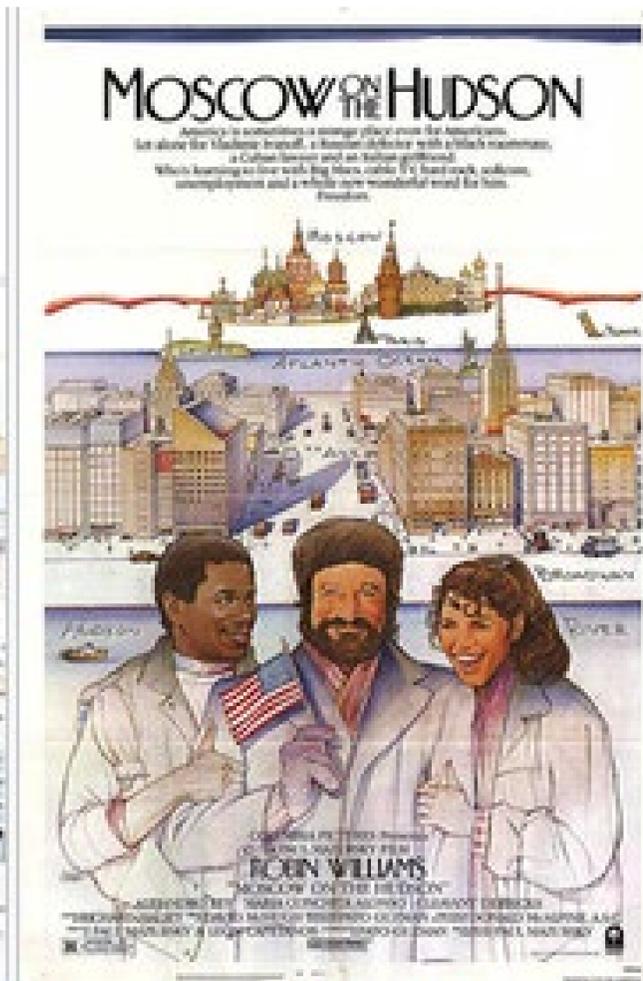
Viewpoint

Substantial Similarity

Steinberg v. Columbia Pictures Industries, Inc., 663 F. Supp. 706
(S.D.N.Y. 1987)



The *View of the World from 9th Avenue* cover



Movie poster for *Moscow on the Hudson*

Substantial Similarity

Nichols v. Universal Pictures Corp., 45 F.2d 119 (2d Cir. 1930)



Can I just “fair use” it?



NO!

**FAIR
USE ?**

*Fair use is not a verb. Something is “fair use”;
nothing is “fair used”.

Fair Use?

Non-infringing use of copyrighted work for certain purposes that are considered “fair” even without consent.

Copyright Act § 107: Examples include criticism, comment, news reporting, teaching, etc. but other uses can qualify.

Fair Use Factors

The factors are guidelines, NOT rules. Not every factor will be considered or given the same weight in every case.

Purpose & Character of the Use

How the party accused of infringement is using the original work.

Nature of the copyrighted work

Factual original works tend to weigh in favor of fair use, and more artistic original works tend to weigh against fair use

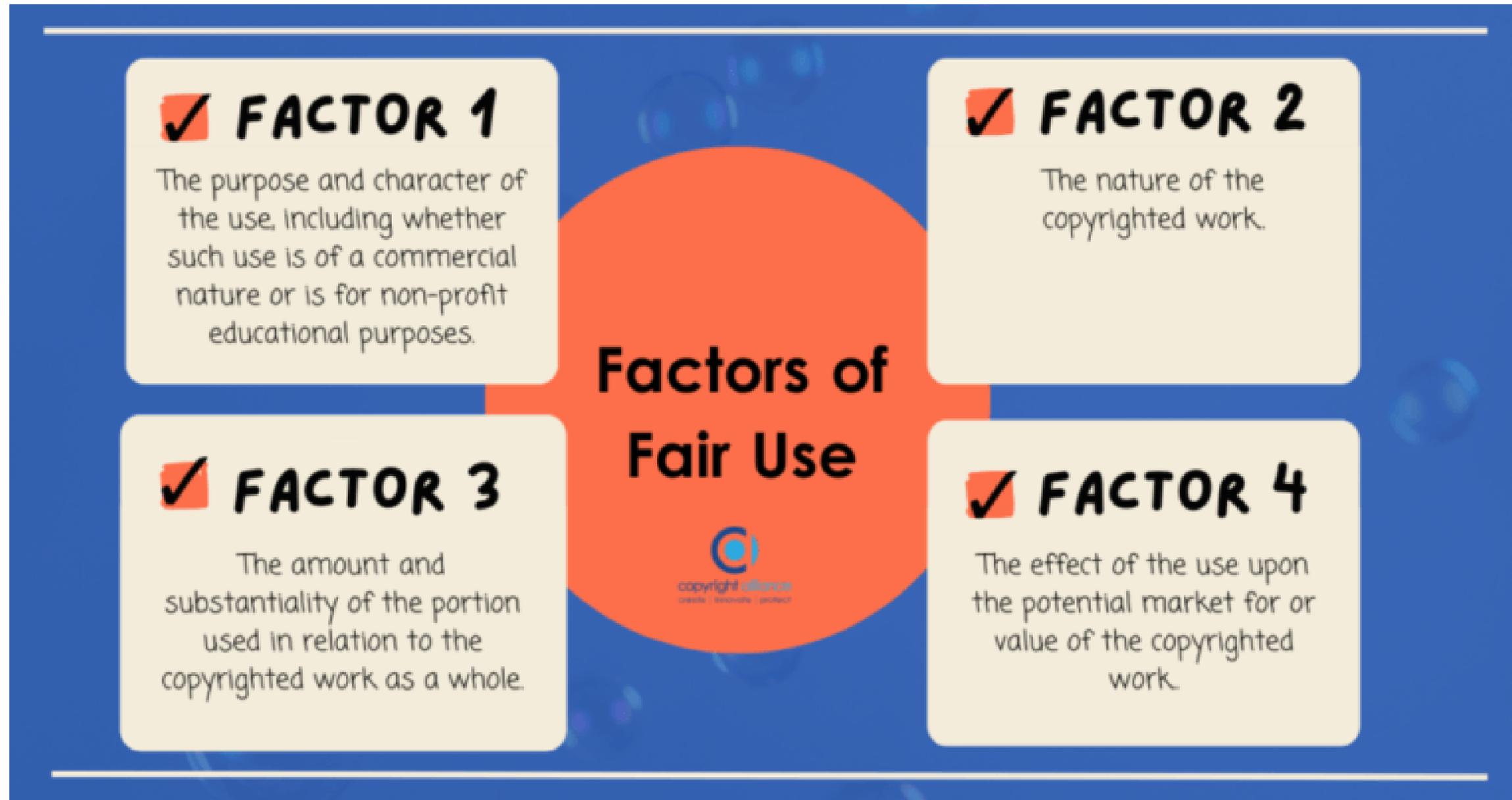
Amount & substantiality of the portion used

in relation to the copyrighted work as a whole

Potential Market

raises substantial concerns for the licensing market and other potential future markets

Fair Use Factors



Fair Use?

Fair Use is never an easy yes or no answer: think guidelines, not rules.

Fact-intensive

The analysis is highly fact-intensive.

It Depends

The weight given to each factor will depend on the particular circumstances.

Assess Arguments

Look at the arguments that can be made on both sides for each of the factors.

Case Law

Look at recent case law for guidance.

FAIR USE

Andy Warhol Found. For the Visual Arts, Inc. v. Goldsmith, Supreme Court (May 18, 2023)



Parody

Campbell v. Acuff-Rose Music

“[P]arody has an obvious claim to transformative value... it can provide social benefit, by shedding light on an earlier work, and, in the process, creating a new one.”

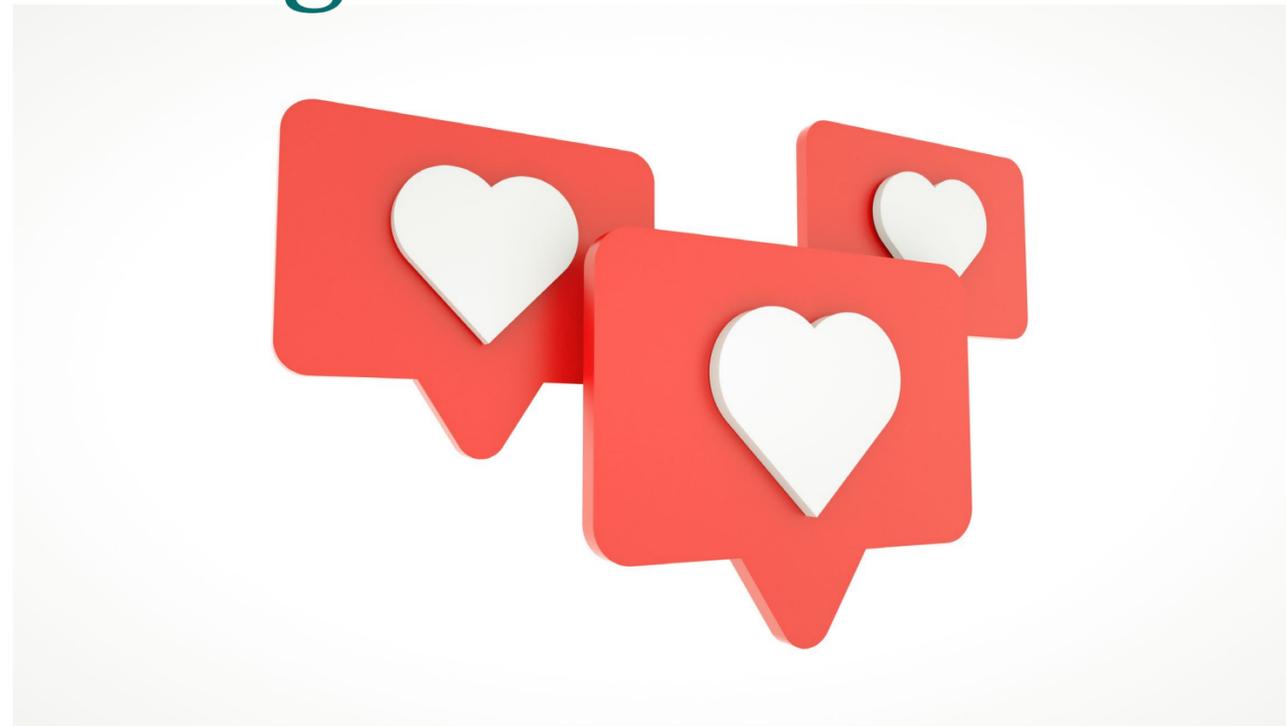
- Note: Although parody must mimic the original, taking too much can defeat fair use.



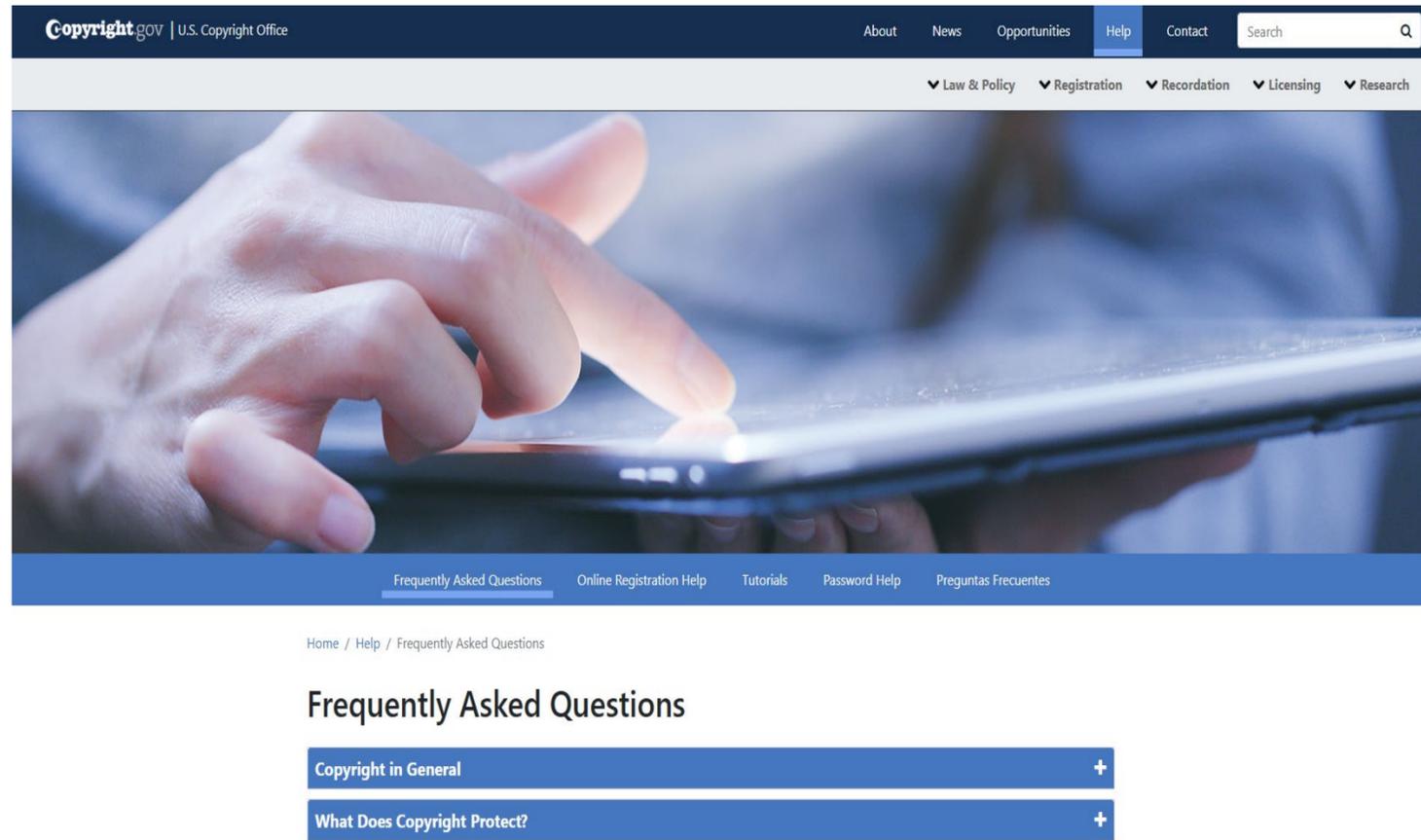
Fair Use and Social Media: “Going Viral”

The law lags years behind social media norms and practices.

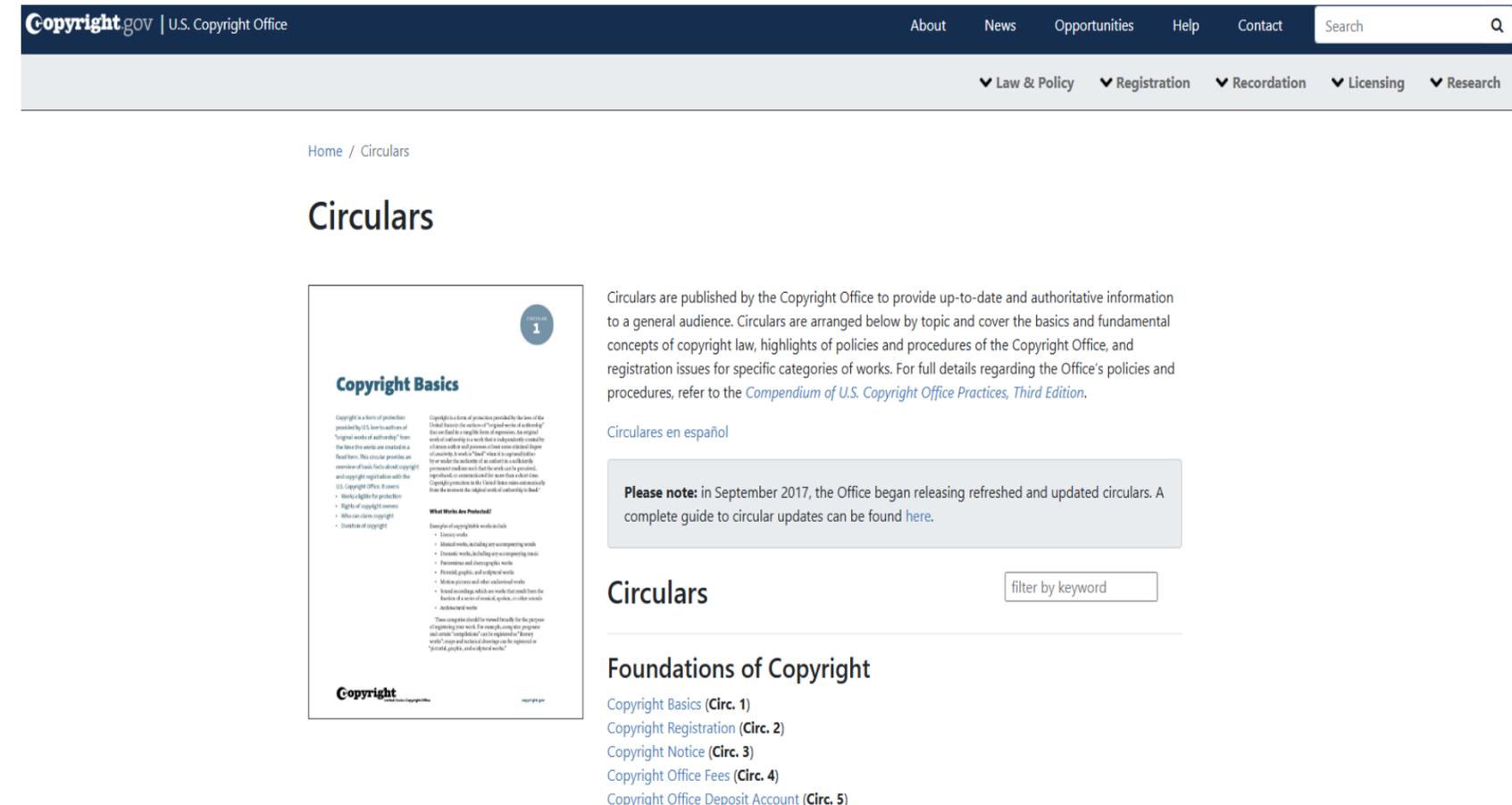
Viral content may be newsworthy or of public interest depending on context.



U.S. COPYRIGHT OFFICE



<https://www.copyright.gov/help/faq/>



<https://www.copyright.gov/circs/>

AI Visual Art Considerations

- Copyright Office recently issued guidance/decisions clarifying their view that copyright only inheres in works created by human authors
- Copyright Office has denied and rescinded registrations for images created using AI visual generators
- Copyright applicants must disclose and disclaim AI-generated portions of a copyright application, including updating already-filed applications, or risk cancellation



COPYRIGHT SMALL CLAIMS

Copyright Small Claims and the Copyright Claims Board

In December 2020, Congress passed the [Copyright Alternative in Small-Claims Enforcement Act of 2020 \(CASE Act\)](#), which directed the Copyright Office to establish the Copyright Claims Board (CCB). The CCB is a three-member tribunal within the Office that provides an efficient and user-friendly option to resolve certain copyright disputes that involve up to \$30,000 (called “small claims”).

You can read more about what the CCB is and why you might want to participate in a CCB proceeding at ccb.gov.



Subscribe for Email Updates

Related Resources

- [Copyright Alternative in Small-Claims Enforcement Act of 2020 \(CASE Act\)](#)
- [Copyright Small Claims Report](#)
- [CCB FAQs](#)
- [Key Features](#)
- [Section 512](#)
- [Rulemaking Page](#)
- [Legislative History ▾](#)
- [Statements to Congress ▾](#)
- [Handout: CCB 101](#)
- [CCB Statistics ▾](#)

<https://www.copyright.gov/about/small-claims/>

Releases: Basic Principles

- First Question: What is the Context of the Use?
 - Commercial?
 - Expressive?
 - Editorial?
- Second Question: Is a release even necessary?
 - Not for editorial use.
 - Fine art prints



Editorial Use

- It primarily addresses uses where an image truthfully describes the subject matter such as documentaries, news broadcasts, articles, and books.
- There must be a relationship between the image and the content.
- Advertorial is not Editorial.

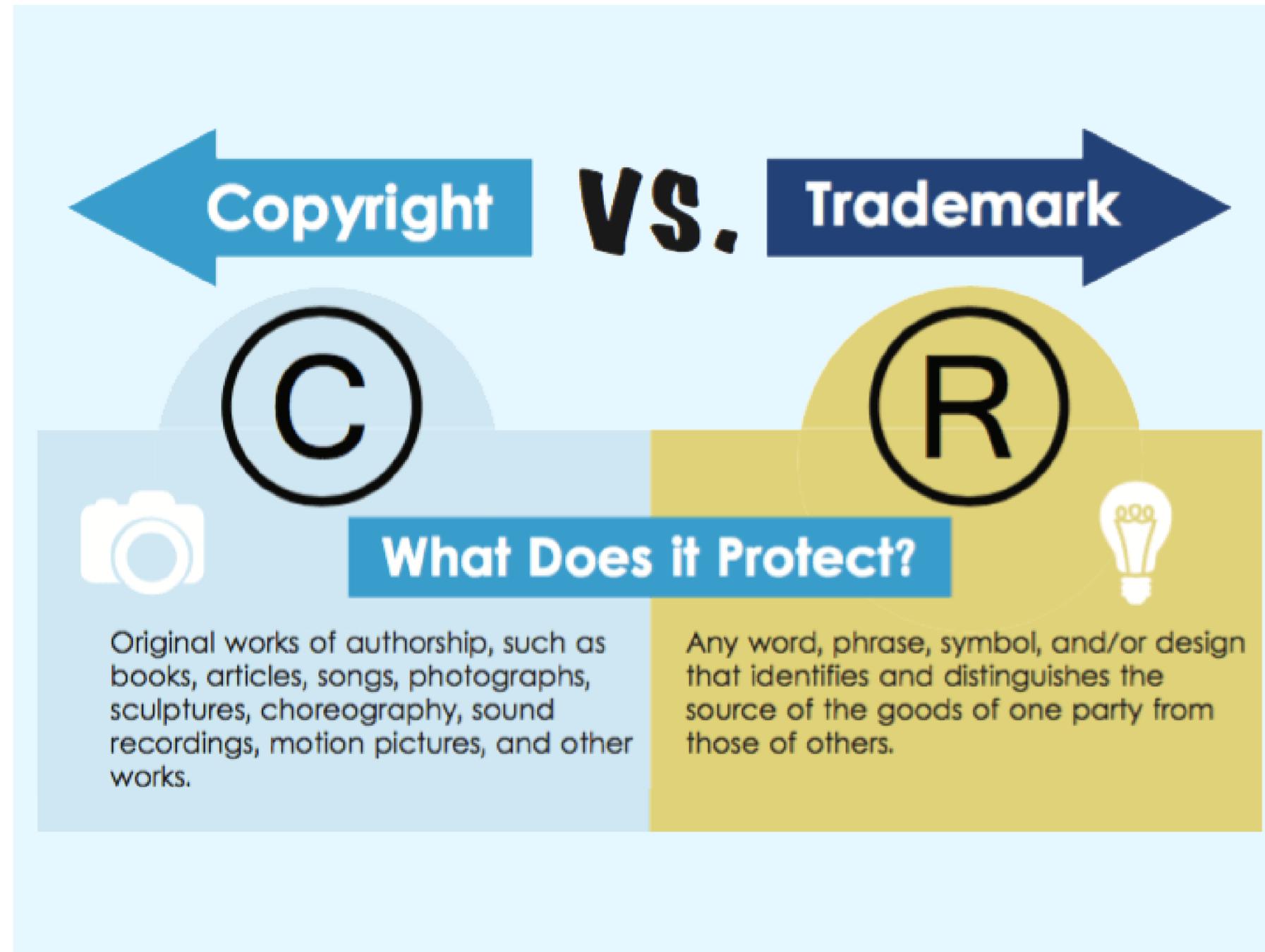
Editorial vs. Commercial Use

The First Amendment allows great freedom to publish works of recognizable people and things for editorial uses.

Commercial uses receive only limited First Amendment protection and may require releases.



TRADEMARK



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QUESTIONS?