



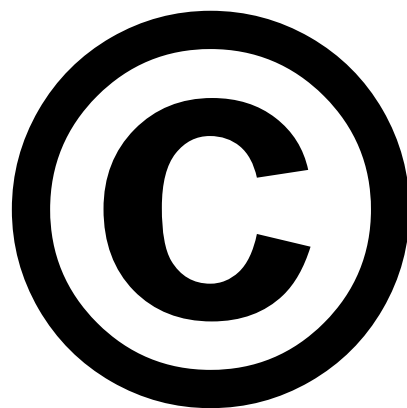
Copyright

Copyrightable Subject Matter: Fixation, Authorship, Originality, Creativity, and the Fact/Expression Dichotomy

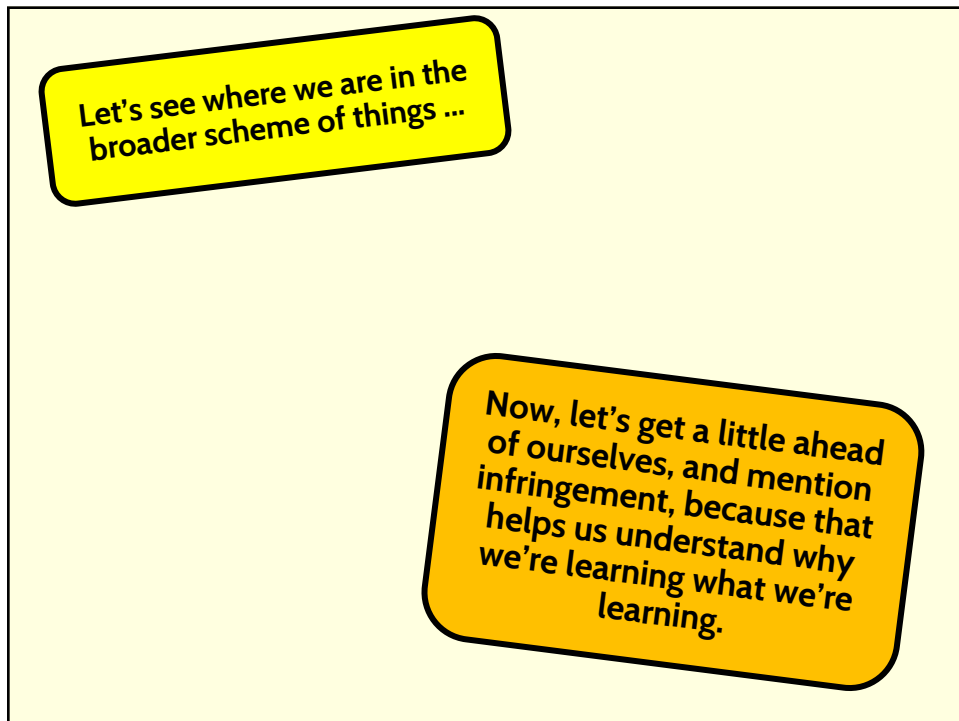
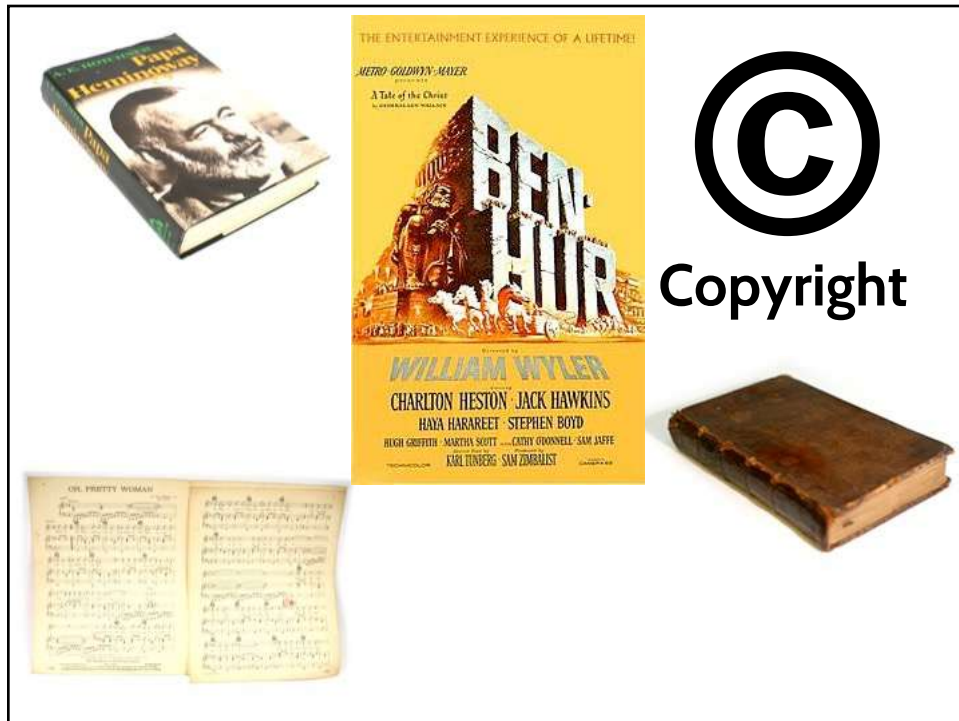
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Konomark
Most rights sharable



Copyright



Elements of prima facie case for copyright infringement (for reproduction right)

1. it's a copyrighted work

 (copyrightable subject matter)

2. that the plaintiff owns

– I don't know if this is really an
element, but it's analysis you
might need to do

3. copying

4. substantial appropriation

Copyright

- Books
- Poems
- Movies
- Computer software
- Photographs
- Paintings
- Sculptures

Copyright

- original works of authorship fixed in any tangible medium of expression from which they can be perceived, either directly or with the aid of a machine

Copyright subject matter – what's included (requirements)

- “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”
17 U.S.C. § 102(a)

**Copyrightable subject matter –
here's three requirements from § 102(a)**

- 1. originality**
 - independently created by the author
 - possesses some minimal degree of creativity (“some creative spark”)
- 2. work of authorship**
- 3. fixed in a tangible medium of expression**

**Let's do some
hypotheticals
and some
realotheticals**

I whispered to you a secret – the lottery numbers I am mentally planning to pick when I buy a ticket tonight.

I whispered to you a secret – the lottery numbers I am mentally planning to pick when I buy a ticket tonight.

Is that copyrightable? (I.e.: Is it within copyright subject matter? Is it capable of being protected by copyright law? Can I prove the first element of an infringement case?)

No.

Why not?

I whispered to you a secret – the lottery numbers I am mentally planning to pick when I buy a ticket tonight.

Is that copyrightable? (I.e.: Is it within copyright subject matter? Is it capable of being protected by copyright law? Can I prove the first element of an infringement case?)

No.

Why not?

The easiest reason is that it's not fixed in a tangible medium of expression.

Two women find a cornflake shaped like Illinois. Can they “copyright it”?

[cornflake picture omitted]

No.

What if it were shaped like Abraham Lincoln?

[cornflake picture omitted]

No.

What if they owned the automatic cornflake producing machine, and then found it?

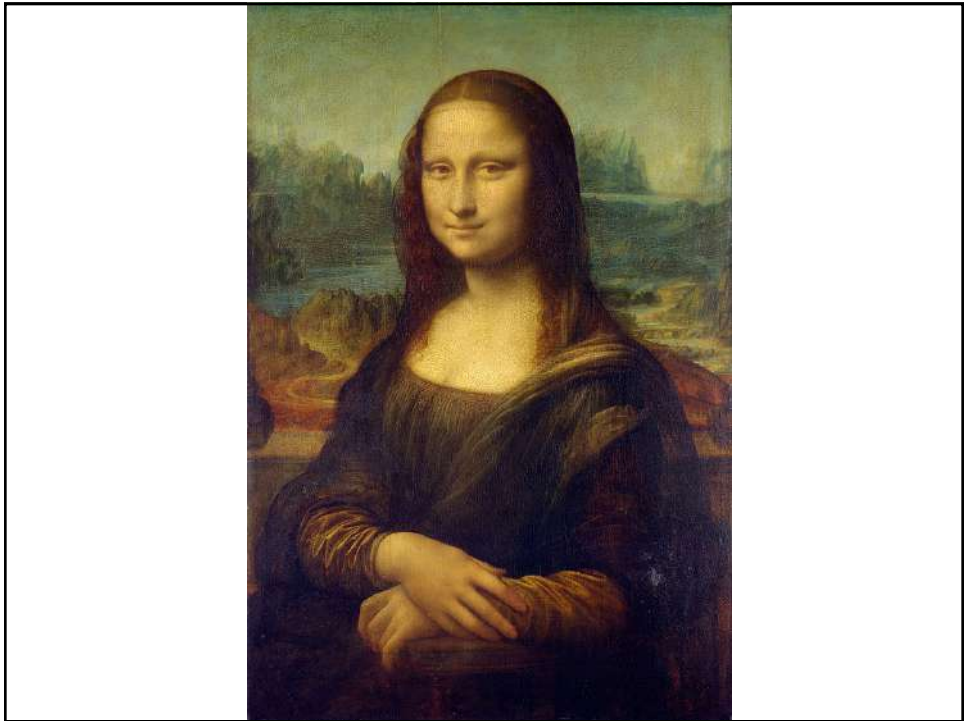
[cornflake picture omitted]

No.

Scientists using the Gemini North 8.1 meter telescope on Mauna Kea in Hawaii take this image of galaxy NGC 3359. Is the image protected by copyright?



Burrow-Giles
Lithographic Co. v.
Sarony, 111 U.S. 53
(1884)



Mona Lisa – Portrait of Lisa ...

www.louvre.fr/en/oeuvre-notices/mona-lisa-portrait-lisa-gherardini-wife-francesco-del-giocondo

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Collection & Louvre Palace Curatorial Departments Mona Lisa – Portrait of Lisa Gherardini, wife of Francesco del...

Previous work

Work
Mona Lisa – Portrait of Lisa Gherardini, wife of Francesco del Giocondo
Department of Paintings: Italian painting

Next work

All works



Portrait of Lisa Gherardini, wife of Francesco del Giocondo, known as the *Mona Lisa* (the *Joconde* in French)
© RMN-Grand Palais (musée du Louvre) / Michel Ugeux

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Paintings
Italian painting

Author(s):
Cécile Scailhéz

This portrait was doubtless started in Florence around 1503. It is thought to be of Lisa Gherardini, wife of a Florentine cloth merchant named Francesco del Giocondo – hence the alternative title, La Gioconda. However, Leonardo seems to have taken the completed portrait to France rather than giving it to the person who commissioned it. After his death, the painting entered François I's collection.

Technical description

Leonardo di ser Piero da Vinci, known as LEONARDO DA VINCI (Vinci, 1452 - Amboise, 1519)
Portrait of Lisa Gherardini, wife of Francesco del Giocondo, known as the Mona Lisa (the *Joconde* in French)

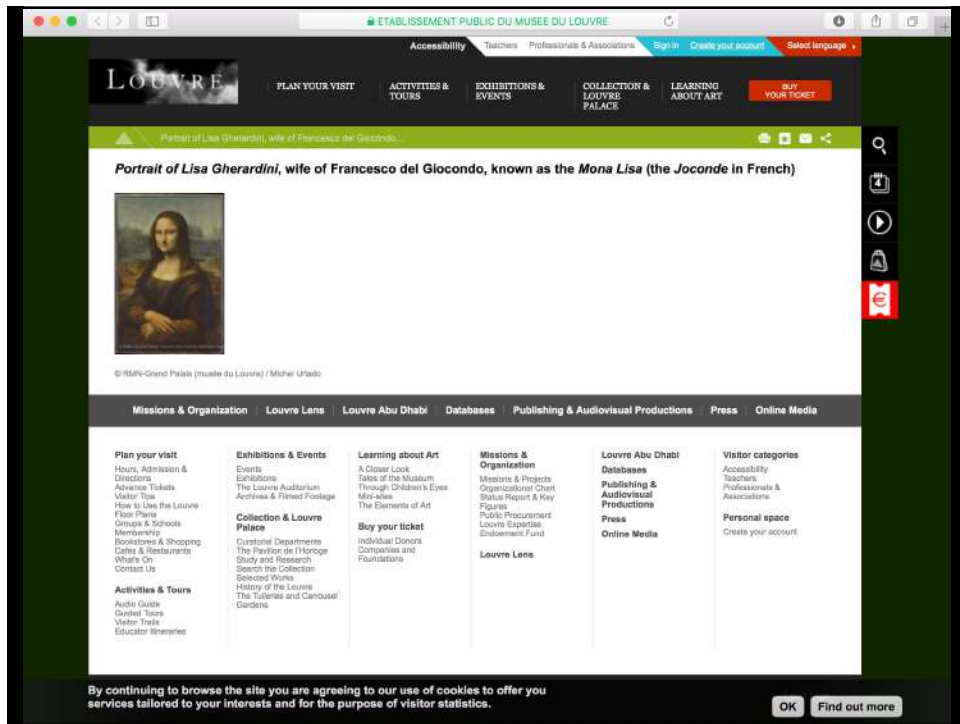


Portrait of Lisa Gherardini, wife of Francesco del Giocondo, known as the Mona Lisa (the Joconde in French)
© RMN-Grand Palais (musée du Louvre) / Michel Urtado

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Portrait of Lisa Gherardini, wife of Francesco del Giocondo...

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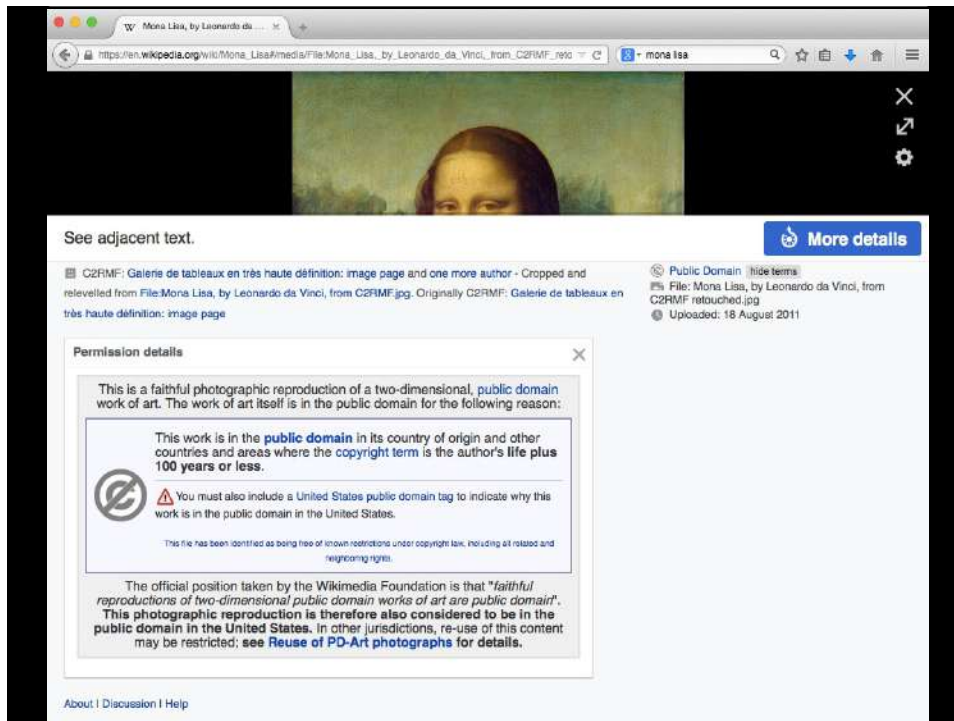
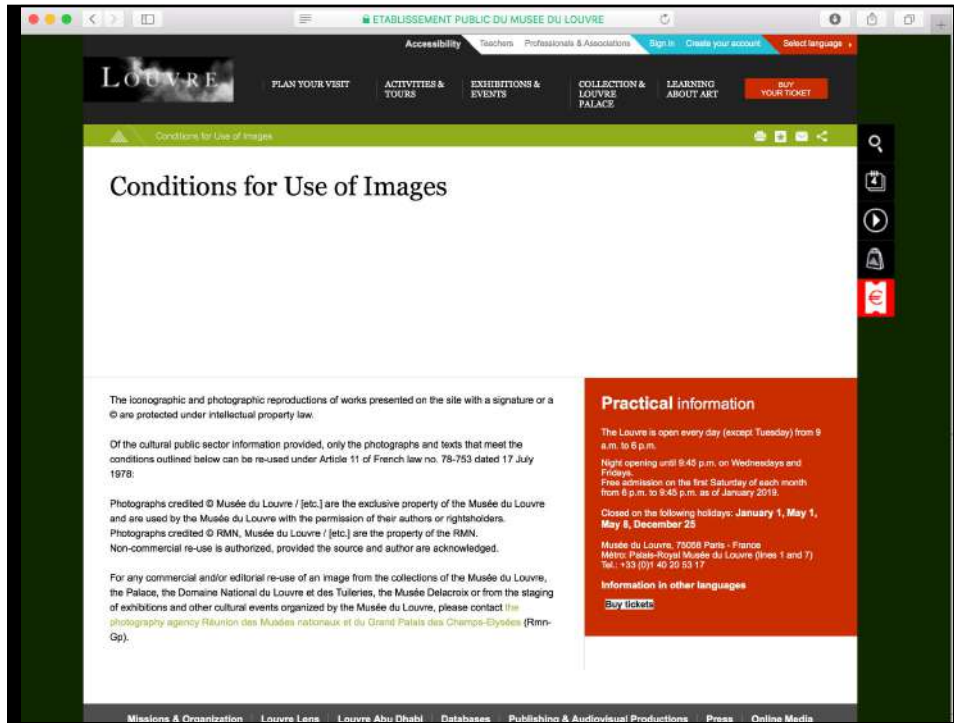
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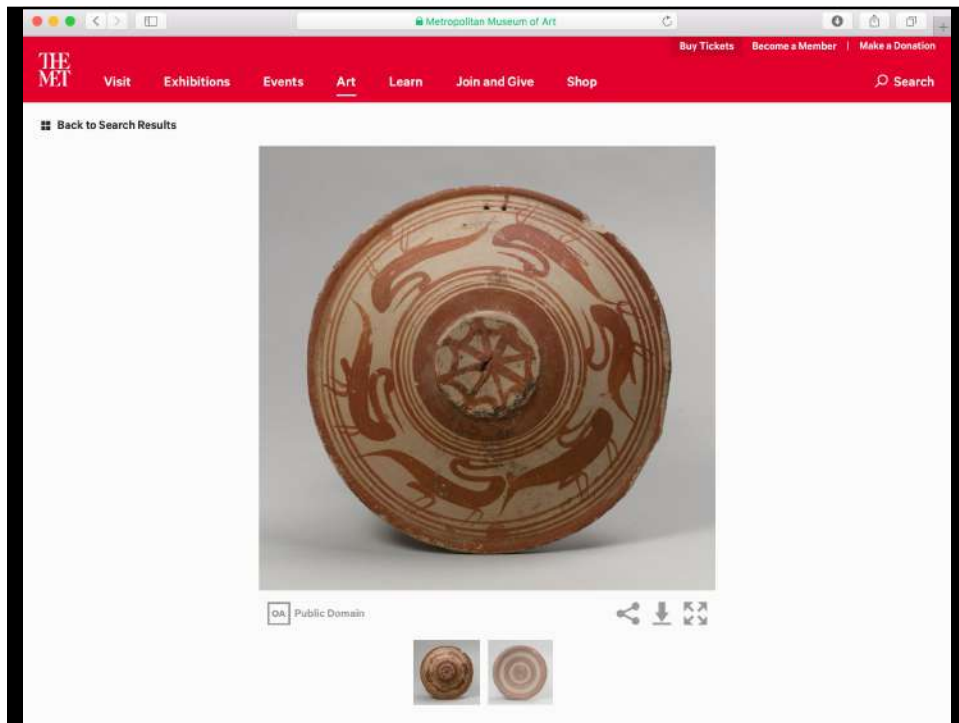
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Public Domain



The Associated Press has sportswriters from various organizations rank college football teams and publishes the result as the AP Top 25 College Football Poll. Does AP have a copyright in the list of 25 teams such that unauthorized people cannot reproduce the list?



Does an association of universities and bowl game organizers need the permission of the AP to use the AP poll in determining who should play in the national championship game (or playoffs)?



Do the Cubs have a valid copyright claim against rooftop bleacher owners?

[picture of rooftop bleachers omitted]