

QUICK REFERENCE GUIDE BASIC KNOWLEDGE ON COPYRIGHT

In this quick reference guide we provide more information about the most important aspects of copyright and the corresponding terms. We will discuss the different types of rights you have as the creator of a work and the exceptions that apply.

WHAT IS COPYRIGHT?

Copyright is a right granted by law to the creator. As an author, this entitles you to a right to the work you created. Copyright is a so-called “sole” or “exclusive” right. This means that you, as the creator, decide what should happen to your work. You have the sole and exclusive right to exploit your work: this is also called exploitation right.

Copyright protection arises as soon as the work is created. You do not need to apply or register for it. Throughout the European Union, copyright continues to apply until 70 years after the creator's death. Then the work becomes part of the public domain. This means that the work may be used freely. After the creator's death, the copyright passes to the heirs.

The legislator defines copyright in Article 1 of the Dutch [Copyright Act](#) as follows:

'Copyright is the exclusive right of the creator of a literary, scientific or artistic work or of his successors in title to disclose the work to the public and to reproduce it, subject to the exceptions laid down by law.'

WHO IS THE CREATOR?

The creator is the person who originally created the work. Creators may include writers, artists, directors, composers, producers and photographers. A work can have multiple creators if multiple people made an original contribution. Sometimes the creator is not the copyright holder. For instance, if a work is created by a person under an employment contract, the copyright is generally held by the employer. In principle, at the majority of universities the staff members are considered the copyright holders.

WHAT IS A WORK?

Work is defined as any product in terms of literature, science or art, produced in any way or form whatsoever. Under Dutch case law the work must have an original character, be the result of creative choices and bear the personal stamp of the creator. In addition, the form may not be borrowed from other works. The following are not considered a work:

- facts
- data
- ideas
- thoughts
- styles
- methods and theories
- technique

Data collections may be protected under the Dutch Database Act.

PERSONALITY RIGHTS

Personality rights are based on the personal relationship that exists between the creator and his or her work. They are also sometimes called 'moral' rights. These rights allow the creator to oppose any adaptation to a work. Personality rights cannot be transferred to another person. Therefore, they always remain with the creator, even if the exploitation rights to a work are transferred to another party. It is possible (partially) to waive your personality rights as the creator.

EXPLOITATION RIGHTS

Exploitation rights are defined as the right to publish and reproduce a work.

When is a work considered to be published?

Publishing means making the work available to the public. This could be in the form of the publication of a work, the public presentation, live performance, posting an article on-line or via broadcast on radio, television or Internet. In order to publish a work, permission is required from the copyright holder(s).

What does reproduction mean?

Reproduction is any form of copying, including digitisation and download. This includes: making a compilation, including (parts of) a work in a database or reusing parts thereof in a new work.

CREATOR'S PERMISSION

In return for a fee a creator may give other people permission to copy and publish the work. The creator may also give permission for the free reuse of a work. Permission for an agreed form of reuse against payment is called a licence.

Requesting permission directly from the creator is also possible. For instance, if you want to use another person's photograph, video or music, do not hesitate to contact the creator. Explain what you want to use his or her work for. If you are given permission, whether or not against payment, it will usually only be for the requested purpose. Make sure to make clear agreements about this.

PORTRAIT RIGHTS

Portrait rights apply to the use of a portrait. Portrait rights gives the person portrayed the right, under certain conditions, to object to the publication of a photograph, film or image depicting him or her. If a person is recognisable on the photograph, the photograph is considered a portrait. The facial features are not only important here but also the degree of recognisability of the person depicted.

Under Dutch law there are two types of portraits: commissioned and not commissioned. A commissioned portrait may only be published with permission of all those portrayed. A portrait that is made without having been commissioned may in principle be published without

permission although the person concerned may oppose it. You must take the interests of the photographed person into consideration. Would you like to know more? Make sure to read the [Quick reference guide for the use of photographs and images](#).

GDPR

The General Data Protection Regulation (GDPR) is a European regulation that standardises the rules for processing personal data. Both by private companies and public authorities throughout the European Union. The purpose is not only to guarantee the protection of personal data within the European Union, but also to regulate the free movement of data within the European internal market.

The GDPR applies worldwide to all enterprises and organisation that process personal data within the European Union. No distinction is made between independent data retention organisations or those that pay for this service. GDPR is primarily concerned with privacy and not so much with copyright. Also see the [Quick reference guide on GDPR](#).

EXCEPTIONS (RESTRICTIONS) TO COPYRIGHT

Copyright protects the creator's rights but the legislator has determined that there must be exceptions to copyright. These exceptions are in the public interest, for instance for the optimal dissemination of (scientific) information. Some common examples of these exceptions are given below.

Hyperlinks

Each time a work is (digitally) published, permission is required from the copyright holder(s). Hyperlinks to a website are an exception to this rule. This is not considered a form of publication and may therefore be used without the creator's permission.

Copying for private use

Making a few copies of a work for private practice, study or use is permitted. Making a copy for another person who will use it privately is also permitted. Making multiple copies and distributing them, whether or not for payment, is not permitted.

Quotation

The right to quote allows the reproduction of a part of a text or image without the creator's permission, provided you attribute it correctly. A quotation must be functional; it must be intended to support your work and not solely as decoration. Would you like more information about quotation and acknowledgement of sources? Then read [The APA guidelines explained](#).

Use in education - screening limitation

A protected work can be shown or played without the copyright holder's permission for an educational purpose. There must be no question of a profit motive. This applies to films, video and television programmes, music and audio recordings and for still images such as photographs and works of art. The publication must be part of the educational curriculum and must physically occur within the educational institution. A film or piece of music must therefore not be put on a digital learning environment for students to view or listen to at home. The Netherlands Association of University Colleges has reached an agreement with [Videma](#) which

effectively regulates the screening of all video and television programmes at the University Colleges. This agreement does not apply to universities. For more information, visit the page [Quick reference guide for the use of photographs and images](#).

Use in education – education limitation

Parts of works may be copied and published for the purpose of illustration in non-commercial education (Article 16 of Dutch Copyright Act). In that case, the publication or screening does not have to take place physically in the classroom. Publishing a copy through a secure digital learning environment is therefore permitted, provided that it is intended for educational purposes. The parts of the works are used as an illustration in the education. This means that they must be supplementary to, but do not replace the teaching.

Sometimes, the copyright holders must receive fair compensation for the use of their work, for instance if a work is included in a reader and it is not covered by the right to quote. In higher education, this is arranged by communal regulation via Stichting UvO (formerly Stichting PRO) with a separate reader scheme for higher professional education and university education. For more information about open educational resources, read the [Quick reference guide to Open Educational Resources \(OER\)](#).

Government publications and copyright

In the Netherlands no copyright applies to legislation, regulations, court decisions and administrative decisions. Other government publications may be copyright protected. Nevertheless, such work may be copied and published unless the work itself states that copyright is reserved.

QUESTIONS? GET IN TOUCH WITH YOUR COPYRIGHT INFORMATION POINT (AIP)

Do you have further questions about this quick reference guide? Please contact one of the members of staff at the [Copyright Information Point \(AIP\)](#) of your institution.

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