

Copyright

System of norms that attributes **rights** to **authors** over their intellectual creations, qualified as **works**, that are **original**, in arts, literature or science.

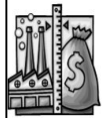
Copyright and related rights law is relevant for:



- **Arts**

Visual Arts (paintings, sculptures, etc.), Music, Literary (fiction, scientific, educational, translations), Choreographies, Dramatic Works, Operas

- **Industries**



Software, Industrial Design, Databases, Architecture (Drawings and produced work), Videogames, Websites, Movies / Videos, Digital Art, User Manuals, Logo Design, Advertisement,

Main characteristics

- No formalities in Italy
- Automatic protection
- Almost worldwide protection
- Territorial rights / EU has as many copyright systems as members!
- International/EU regional norms



Copyright

Italian Law No. 633 of April 22, 1941 and modifications / Italian constitution / civil code

What is a work?

Art 1 CL: works of **creative nature**

Needs a minimum creative act that can be expressed to the outside world.

Created by any means of expression.



Damien Hirst

**US system requires
fixation of the
work.**

- Not required in Italy.
- But not even in US you can fix (record) live performances without authorization.
- Art 7 Rental and Lending Directive: performers have exclusive right to authorise or prohibit the fixation of their performances / broadcasting organisations the exclusive right to authorise or prohibit the fixation of their broadcasts



A work must have originality (creative character).

Work must have something at least minimally individual of the author to be protected.

Resides in expression representative shape of the work reflected in the external world.

*Work can be original even if it uses pre-existing elements (but cannot copy or imitate).

*Cultural or artistic merit is not relevant (generally), neither its use in cultural or utilitarian context (in principle)



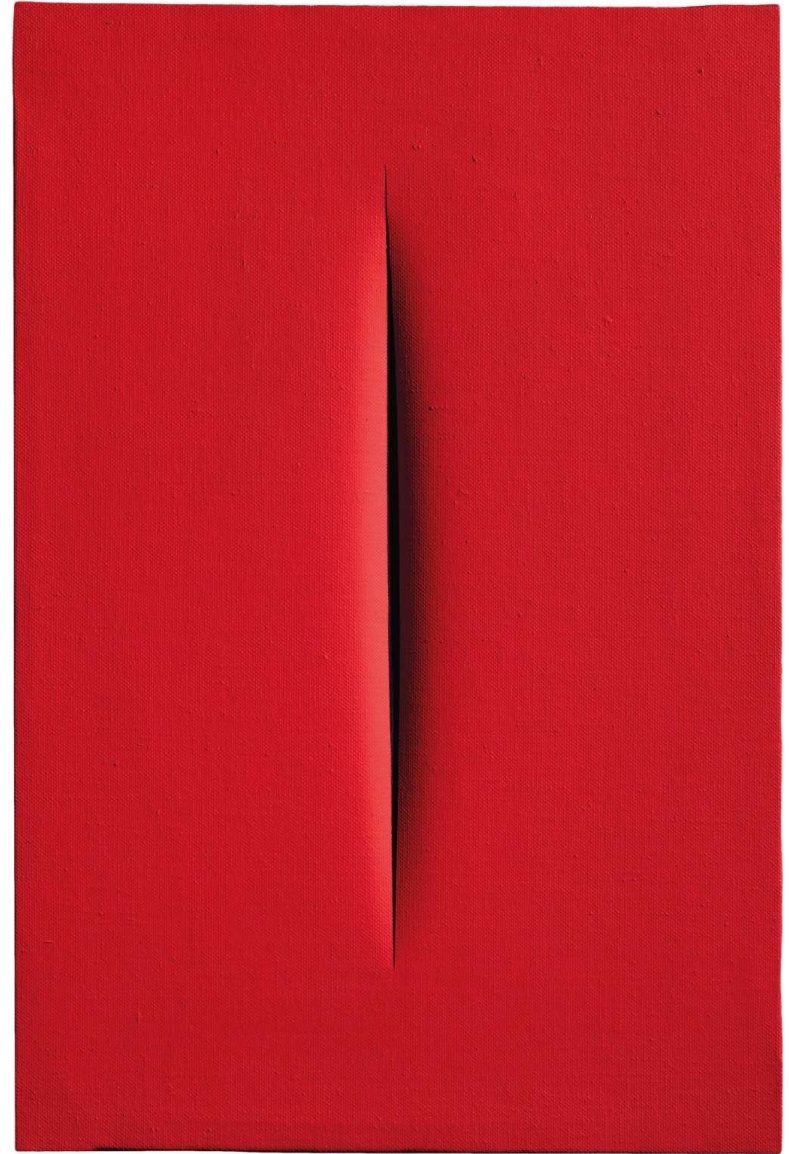
NOT DEEMED ORIGINAL ENOUGH IN ITALY

- Postcard without particular artistic qualities
- Nativity scene
- Theatrical costume using well-known models
- Graphical compositions that do not show a minimum a Creativity level
- List of translators





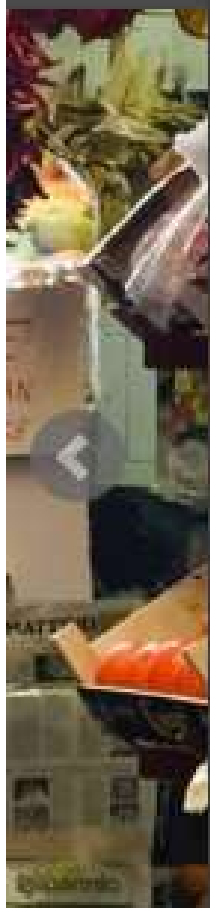
Example: Marcel Duchamp "Bicycle Wheel" ready-made
1913



Fontana, Concetto Spaziale, 1967



Banana di Cattelan ovunque, anche in vetrina al ristorante in Galleria Subalpina



You cannot protect the IDEA.

- *Ideas are free.

- *The rights are over the **work, original form that the author uses to express the idea.**

- *Right is not extended to the abstract field, nor to the practical expression of the content of the work (protected by patents/trade secrets)



Who is the author of the work?

Who CREATES it (person).

He/she is rightholder of the work, and has:

a) Moral rights

Exploitation /economic rights

In US, copyright can directly belong to corporation!



Author ?

What about creations of A.I.?



Draft Report of the **Committee on Legal Affairs of the European Parliament of the year 2015**: “the elaboration of **criteria for «own intellectual creation» for copyrightable works produced by computers or robots is demanded**. The current insufficient legal framework on data protection and ownership is of great concern due to the (expected massive) flow of data arising from the use of robotics and AI.”

Computer scientist: the “best learning algorithms are these neural network- based ones inspired by what we find in humans and animals. These **algorithms** are very accurate as they can **understand the world based on a lot of data at a much more complex level than we can**. But they are completely opaque. **Even we, the experts, don't understand exactly how they work. We only know that they do.**”

Who can be the right holder?
(of some or all economic the rights)

- **Author of work**
- **Heirs (including some moral rights)**
- **Those that with authorization, modify a work, creating a new one, (author of a derivative work)**
- **Those that without authorization, modify a work in public domain / under an exception, creating a new one**
- **People or corporations / State that acquire the copyright**
- **(contract, license, testament, bankruptcy procedure)**

Co-authorship

***Works created in collaboration**

Two or more authors working together or individually, but taking into account mutually their contributions and working under a common inspiration.

-Indivisible (complex): cannot be divided without losing its coherence.

-Divisible: part of each author can be separated.

In principle: joint proprietorship of the work product of the collaboration.

Co-authorship

*** Collective works**

Created under the initiative and coordination of a person, that edits it under his name, using works of other authors, that are interwoven in an autonomous and unique creation.

E.g.: magazines, newspapers, encyclopedias, dictionaries.

The editor only acquires rights of collaborations only to use them in the sphere of the collective work.

Non original databases

- Article 7.1 of the Database Directive: right for the **maker of a database** which shows qualitatively and/or quantitatively a **substantial investment** in either the **obtaining, verification or presentation** of the contents to prevent extraction and/or re-utilization of the whole or of a substantial part, evaluated qualitatively and/or quantitatively, of the contents of that database.”
- Recital 40 of the Database Directive, investment “may consist in the deployment of financial resources and/or the expending of time, effort and energy;”.

Copyright

A) Moral right (Art 20 ICL (l. N. 633/1941))

Author only can decide:

- Claim **paternity**.
- Oppose any deformation, mutilation or other modification, affects its **honor or its reputation**.
- **Withdraw** the work (compensating users / cannot be transferred to heirs)

Even if economic rights have been waived!

It is “eternal” in Italy! In case of absence of relatives, the State can intervene!



Integrity Right “Calatrava Zubi Zuri Bridge”



Copyright is not the only law to take into account sometimes

Article 106 of the **Italian Cultural Heritage Code** sets the general principle that for **cultural heritage** items subject to their own control, the State, the various Italian regions and local **public bodies** may allow **individual applicants** to use such items for **purposes compatible with their own cultural value**, by means of acts of reproduction.



Copyrights

B) Economic rights

- Allow **exploitation of the work**, or authorize others to do so.
- Can be **transferred** and their **duration is limited**.
- Can be as many as **forms of the utilization** are possible.
- They are **independent among themselves**.
- Most are **not implied** when acquiring the material object in which



(main) Economic rights

- ***Right to transfer copyright** (but no moral rights in principle, unless by heritage)
- ***Right to license:** can divide the rights by time / territory.
- ***Right to publish:** choose when to first show it to the public.
- ***Right to distribute** original and copies

(main) Economic Rights

- ***Reproduction right** in any medium.
- ***Public communication:** author can decide if the work is exhibited, performed or transmitted (radio, satellite, cable, Internet).
- ***Right to transform/modify:** author can authorize the creation of a derivative work

Communication to the Public / Linking - CJEU GS Media C-160/15

If posting on a website hyperlinks to protected works, which are freely available on another website without the consent of the copyright holder, constitutes a 'communication to the public'.

See:

- links are provided without the pursuit of financial gain by a person who did not know or could not reasonably have known the illegal nature of the publication of those works on that other website
- links are provided for financial gain -> knowledge must be presumed



Copyright Exceptions

Italian Law

- Articles of current interest (unless expressly excluded) in other magazines or broadcasted
- Political speeches
- Personal use / payment of compensation
- Loans from public libraries
- Quotation or reproduction of fragments or parts of a work for criticism, discussion or teaching

DON'T FORGET TO MENTION
AUTHOR AND TITLE!!!!



Characteristics of parody:

- To evoke an existing work while being noticeably different from it.
- Constitute an expression of humor or mockery.

IMPORTANT: To achieve a “fair balance”, the court should also take into account the **freedom of expression** of the user of a protected work who is relying on the exception for parody..

Author creating under a contract

Author accepts:

- *Creates freely.
- *Is the author of the work.
- *Has economic and moral rights.

Assignee:

*can only use the work as stipulated in the contract (even when he gives certain orientation about the realization of the work).

Exception-> when gives instructions that are so precise that the execution of the work is a purely technical.

AND WHAT HAPPENS IF YOU ARE WORKING UNDER LABOR CONTRACT?

Employee hired to create

Works **belong to employer**. But the employment contract should be carefully written

Transmission of copyright to employer / not authorship

TERM OF PROTECTION OF ECONOMIC RIGHTS IN ITALY

General:

- **author** -> all his life
- **heirs** -> until the end of the **70th year** since the **death** of the author

Co-authorship: general term since death of last collaborator remaining.

Anonymous work / collective work:
70 years since publication

**Cinematographi
c work:** end of
70th year since
death last
collaborator:
artistic director,
author plot,
author screen-
play, author
music (when
specially
composed for
the film)

Registry

Non mandatory in Italy, but confers:

- Presumption of authorship
- Date



Link SIAE

<https://www.siae.it/it/autori-ed-editori/i-registri/deposito-opere-inedite>

Alternative Models:

Creative Commons

Copyleft

GNU General Public License



Creative Commons repository

<https://ccsearch.creativecommons.org/>

New copyright directive:

<https://www.valigiablu.it/direttiva-copyright-articolo13/>