
Intellectual Property Protection for Artists

Artist's Resale Right (ARR)

The Artist's Resale Right is an intellectual property right that allows artists to receive a royalty each time their artwork is resold on the open market. This right is designed to ensure that artists benefit financially from the appreciation in the value of their work. The ARR applies in the European Union, the United Kingdom, and a few other countries. The related term is "droit de suite," which is the French term for the Artist's Resale Right.

Copyright

Copyright is a legal right that grants creators of original works exclusive rights to reproduce, distribute, and display their works for a certain period, typically the lifetime of the author plus a certain number of years. Copyright applies to various forms of creative expression, including visual arts, literature, music, film, and software. Copyright protection arises automatically when a work is created and fixed in a tangible form. Infringement occurs when someone uses a copyrighted work without permission from the copyright owner.

Creative Commons

Creative Commons is a non-profit organization that provides free, standardized licenses for creators to share their copyrighted works while retaining some rights. Creative Commons licenses enable authors to permit others to use their works for specific purposes, such as non-commercial use, attribution, or derivative works, under certain conditions. These licenses promote the sharing and reuse of creative works while still protecting the rights of creators.

Design Patent

A design patent is a type of intellectual property protection that covers the visual ornamental appearance of a functional item. Design patents protect the way an article looks, but not its structural or functional features. Design patents have a term of 15 years from the date of grant in the United States. Related terms include "industrial design rights" and "design registration," which provide similar protection in other countries.

Fair Use

Fair use is a legal doctrine in the United States that permits the limited use of copyrighted material without obtaining permission from the copyright owner. Fair use is a defense to copyright infringement and allows for the use of copyrighted works for purposes such as criticism, commentary, news reporting, teaching, scholarship, or research. Four factors are considered when determining whether a use is fair: The purpose and character of the use, the nature of the copyrighted work, the amount and substantiality of the portion used, and the effect of the use upon the potential market for or value of the copyrighted work.

****Freedom of Panorama****

Freedom of Panorama is a legal provision that allows individuals to take and share photographs of public spaces, including buildings and sculptures, without infringing on the copyright of the architect or artist. This right varies by country, with some countries providing unlimited freedom of panorama, while others restrict it to non-commercial use only.

****Moral Rights****

Moral rights are a category of intellectual property rights that protect the personal and reputational value of an author's work, separate from the economic interests covered by copyright. Moral rights include the right of attribution, the right to have a work published anonymously or pseudonymously, and the right to the integrity of the work. Moral rights are recognized in many countries, including the European Union, but are not explicitly protected under U.S. Copyright law.

****Open Source****

Open source refers to a model for developing and distributing software that promotes access to the source code, collaboration, and transparency. Open source software licenses allow users to freely use, modify, and distribute the software, subject to certain conditions. The Open Source Initiative (OSI) maintains a list of approved open source licenses that comply with its Open Source Definition.

****Patent****

A patent is a legal right that grants inventors exclusive rights to their inventions for a certain period, typically 20 years from the filing date. Patents can cover a wide range of inventions, including processes, machines, manufactures, and compositions of matter. To be eligible for a patent, an invention must be novel, non-obvious, and useful. Patent protection is granted by national or regional patent offices.

****Trademark****

A trademark is a symbol, word, phrase, or design that distinguishes the goods or services of one business from those of another. Trademarks can be registered with a national or regional trademark office to secure exclusive rights to use the mark in connection with specific goods or services. Trademark protection can last indefinitely, as long as the mark remains in use and is properly renewed.

****Trade Dress****

Trade dress is a form of trademark protection that covers the overall appearance or design of a product, packaging, or website, which serves to identify and distinguish the source of the product or service. Trade dress protection can extend to colors, shapes, and product configurations. To be protected, trade dress must be non-functional and have acquired secondary meaning, indicating that consumers associate the trade dress with a particular source.

****Trade Secret****

A trade secret is confidential information that provides a competitive advantage to a business. Trade secrets can include formulas, recipes, methods, processes, or any other information that is not generally known or easily accessible. Businesses can protect their trade secrets by taking reasonable measures to maintain their confidentiality, such as using non-disclosure agreements and limiting access to the information. Trade secret protection can last indefinitely, as long as the information remains secret.

****Useful Articles****

A useful article is a functional item that serves a utilitarian purpose, as opposed to a purely decorative item. Copyright law generally does not protect the functional aspects of useful articles but may protect the artistic or ornamental features that can be separated from the functional aspects. Design patents and industrial design rights can provide protection for the visual appearance of useful articles.

This glossary provides a comprehensive overview of essential terms related to intellectual property protection for artists. Understanding these terms is crucial for artists, art lawyers, and anyone interested in the art world. Familiarity with these concepts enables artists to protect their work effectively, navigate the complexities of copyright, patent, trademark, and design protection, and leverage the benefits of open source and Creative Commons licenses. By staying informed about intellectual property issues, artists can ensure their rights are respected and can focus on creating and sharing their work with the world.