



Visual Artists Rights Act of 1990 (VARA) & Moral Rights

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VOLUNTEER LAWYERS FOR THE ARTS

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Welcome!



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Agenda



- **Copyright Basics**

- Requirements for Copyrights
- Copyright Ownership
- Length of Copyright Protection
- Transferring a Copyright

- **Moral Rights**

- History of Moral Rights

- **The Visual Artists Rights Act (VARA) of 1990**

- Moral Rights Protected by Vara
- VARA Exceptions
- Open-Ended Questions

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Copyright Basics

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Copyright Introduction

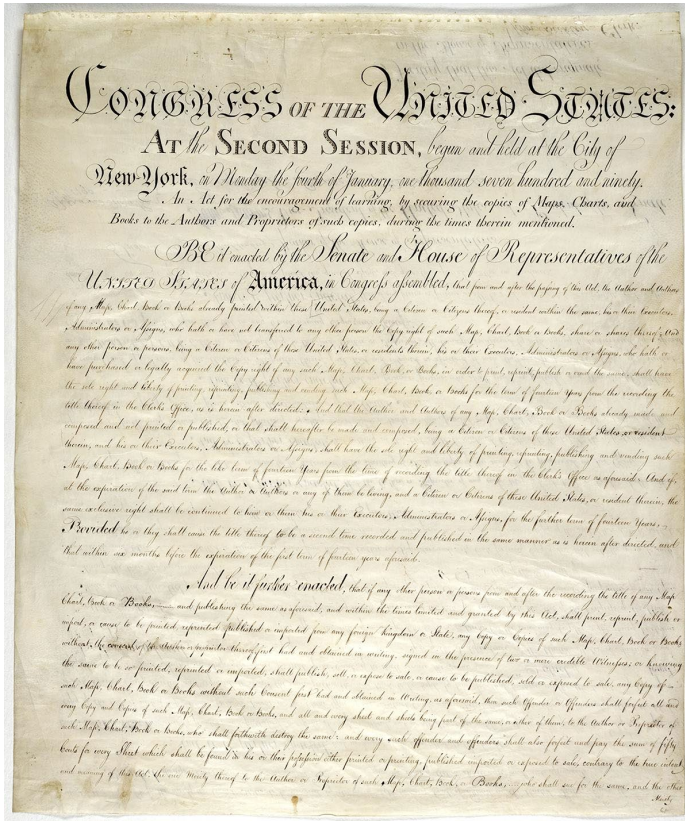
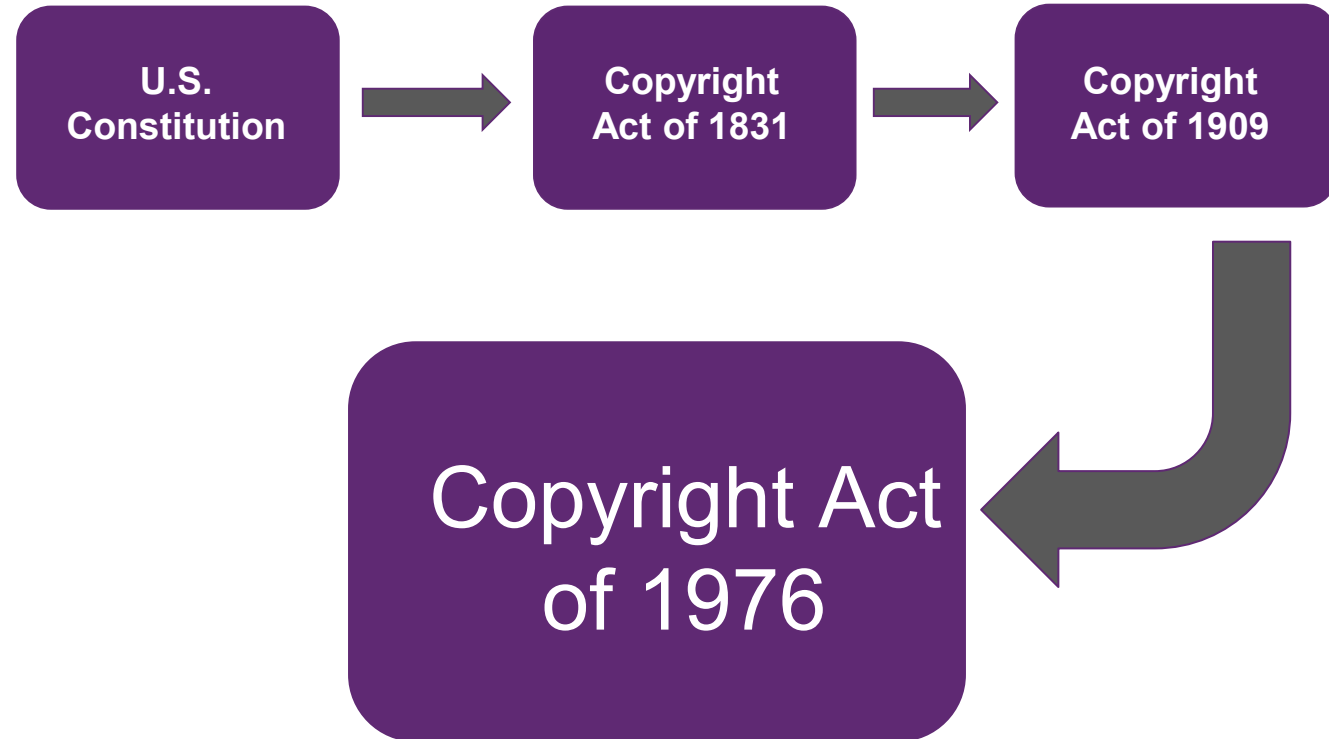


Image from Copyright.gov



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Requirements for Copyright

- **Fixation**
- **Originality**
- **Authorship**
- **More than trivial creativity**

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Works Protected by Copyright

- Original expressions of authorship can receive copyright protection, examples of such works are:
 - paintings
 - books
 - movies
 - songs
 - maps
- Ideas are NOT copyrightable



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Your Rights As A Copyright Holder

- Automatic Protection*
- Duration = Life + 70 years**
- 17 USC §106 “bundle” of “economic” rights:
 - Reproduce the work
 - Prepare derivative works
 - Distribute copies of the work to the public
 - Perform and display the work publicly
 - Perform by digital transmission (sound recordings)

*But federal registration is always beneficial and is required to protect your IP in court!

** For works created by a single author after 1978, not made for hire.

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How Long Does a Copyright Last?

Created Before 1927	Copyrighted After 1927 and Renewed by 1978	Originally Copyrighted between 1950 and 1963	Originally Copyrighted between 1964 and 1978	In Existence but Not Copyrighted or Published before 1978	Created after 1978 by a single Author	Created After 1978 by Joint Authors	Created After 1978 Anonymously, Pseudonymously, or Work for Hire
All are in the Public Domain	Copyright for 95 years from original copyright year.	If renewed by the end of first term, Copyright lasts 95 years. If first term was allowed to expire without renewal, Public Domain	95 years from Original copyright year.	Guaranteed at least 25 years of protection, but follows rules from 1976 act based on author type.	life of the author +70 years	Life of the last surviving author +70 years	95 Years from first publication OR 120 years from creation, whichever is shorter.

*For works created before 1978, there may be additional formalities that are required for a copyright to be valid.

**This chart does not include sound recordings made before 1972.

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Copyright Ownership and Rights

Sole Author	Joint Authors	Employees/Work for Hire
<ul style="list-style-type: none">• Owns full rights to the work• Can grant exclusive licenses• Lifetime + 70 years	<ul style="list-style-type: none">• Each Author has rights to use the full work.• Can grant non-exclusive licenses• Cannot prevent the other authors from exercising their rights• Lifetime of surviving author + 70 years <p>*All of these are default rules and can be changed or adjusted by contract</p>	<ul style="list-style-type: none">• Company/Employer retains the Copyright• Usually stated in a contract but not always• The work has to be within the scope of employment.• 95 years from the first publication or 120 years after creation, whichever expires first.

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Monkey Selfie, Naruto the Monkey



Still Life with Apples and a pot of Primroses, Paul Cézanne



Balloon Dog, Jeff Koons

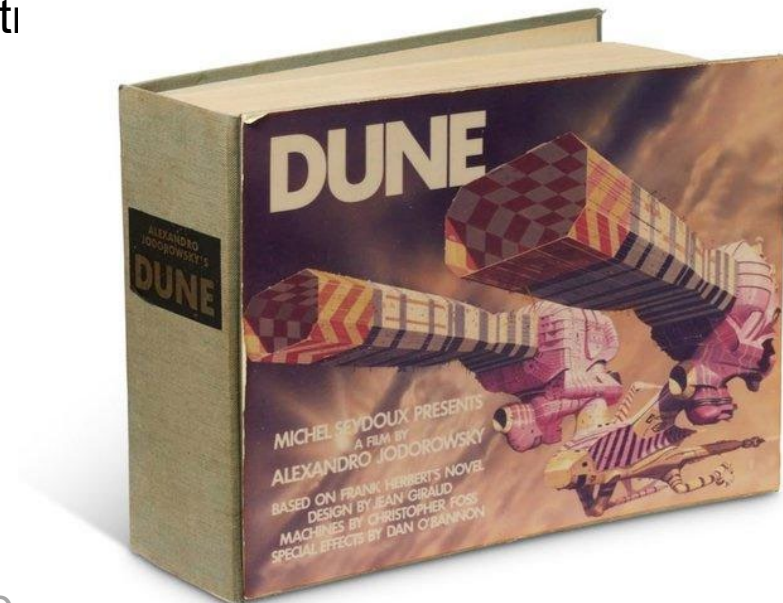
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Copyright Limitations/Exceptions

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First Sale Doctrine

- The owner of a copyright has exclusive rights to reproduce and distribute their work, but this right is limited by the First Sale Doctrine, which limits the copyright holder's control to their first sale of the work.
- This is a default rule, so you might be able to write a contract that overrides it.
- The First Sale Doctrine is limited by VARA.



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Fair Use Doctrine

- Allows the unlicensed use of copyright-protected works in some circumstances
 - Criticism, commenting, news reporting, teaching, scholarship, research, etc.
- Four Factors for Evaluating Fair Use
 - Purpose and Character of the use
 - Nature of the Copyrighted Work
 - Amount and Substantiality of Portion Used
 - Effect of the use on potential market for or value of the copyrighted work.



Puppies, Art Rogers



String of Puppies, Jeff Koons

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Useful Articles

- Utilitarian objects or processes are not covered under copyright
- An object that is useful but has a component that would be independently copyrightable, will fall under this category
 - Only SOME parts of the work will gain copyright protection
- Physical Separability and Conceptual Separability



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Recap and Questions



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Moral Rights

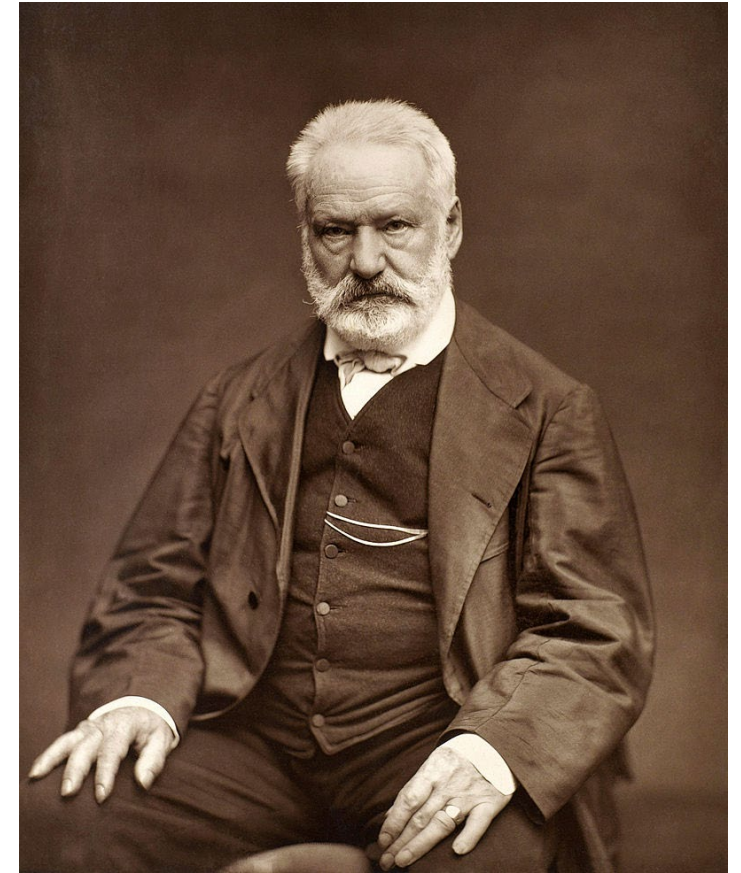
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What are Moral Rights?

- Originated in France and Germany in the 19th Century
- Non-economic rights that are personal to the author(s) of a work
- Distinct from Copyright protection



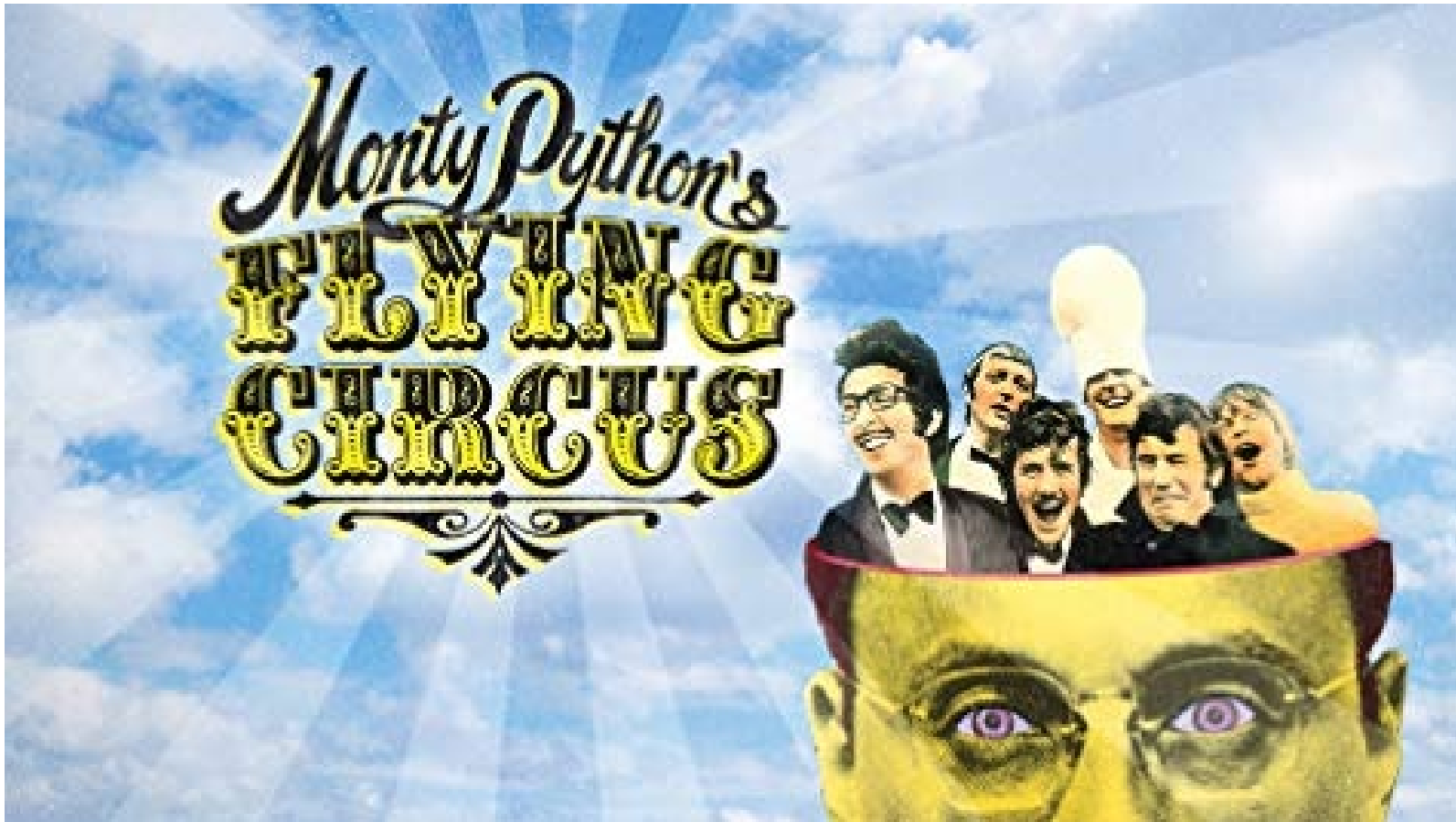
Outdoor Victor Hugo



Indoor Victor Hugo

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What are Moral Rights?



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Visual Artists Rights Act of 1990

(VARA)

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Visual Rights Act of 1990 (VARA)

- Enacted after the U.S. joined the Berne Convention in 1988
 - First step for Moral Rights in the U.S.
 - VARA protects “works of visual art” such as:
 - Paintings
 - Drawings
 - Prints
 - Sculptures
 - 200 copies of your work are protected
 - Cannot be transferred, but CAN be waived
- Duration:**
- United States : Life of the author for works covered under VARA
 - United Kingdom: life of the author +70 years
 - France: No time limit.
 - Germany: life of the author +70 years

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Works Protected by VARA

Protected

- single copy or a limited edition of 200 or fewer signed and numbered copies
 - Paintings
 - Drawings
 - Prints
 - Sculptures
 - Photographs (produced for exhibition)

Not Protected

- Posters
- Maps
- Globes
- Motion Pictures
- Electronic Publications
- Applied Art
- Site-Specific Works
- Works for Hire

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VARA Protection Exceptions

Modification which is a result of (unless gross negligence):

- Passage of time
- Inherent nature of materials
- Conservation efforts
- Public presentation

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Kelley v. Chicago – Site Specific Works



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Attribution & Integrity

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Attribution

17 U.S.C.S. § 106A (1)-(2) creates the right for artists ...

1. Claim authorship of the work
2. Prevent use of artist's name in any work they did not create
3. Prevent use of artist's name on any work of theirs that has been modified in a way that would be “prejudicial to their honor or reputation”

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Integrity

17 U.S.C.S. § 106A (3) (A)-(B) creates the right for artists...

1. Prevent any intentional distortion, mutilation, or other modification of a work which would be prejudicial to your honor or reputation
2. Prevent any destruction of a work of recognized stature

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Castillo v. G&M Realty L.P. – Street Art

The 5Pointz Case

Garrett Zeigler/Flickr



Castillo v. G&M Realty L.P. – Street Art

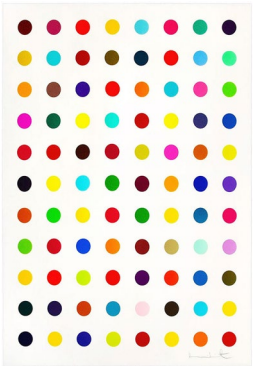
The 5Pointz Case



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Open Questions about VARA

- What happens with non-U.S. national artists?
 - Untested, but there is a very good argument for international artists being protected by VARA because the Berne Convention requires reciprocal rights.
- What happens if another artist displays their work in a way that could change how your work is seen?



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Questions



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