

# Preservation and presentation of Installation Art & **Copyright law**

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# Copyright: basic principles

- Exclusive right of a creator to exploit his or her work (or: intellectual property right).
- Copyright is internationally recognised.  
(Berne Convention 1886, WIPO Copyright Treaty 1996, EU Copyright Directive 2001)
- A work enjoys copyright if it is **original**; expresses the personality of the artist. All works chosen for the project are protected by copyright.

# Copyright principles

- Owner of copyright = the person who actually created the work (principal rule). Exception in UK and NL: employer.
- Copyright consists of:
  - I. Exploitation rights (or economic rights)
  - II. Moral rights

# I. Exploitation or economic rights

- **Reproduction right:**  
copying a work e.g. by filming, photographing, digitising it.
- **Making available right:**  
publish and distribute physical copies of a work e.g. in catalogues, CD-Roms, T-shirts etc.
- **Right of communication to the public:**  
online publication of a work e.g. on a museum website or in a closed computer network.

# I. Exploitation rights

- Duration: from the creation of the work until 70 years after the death of the maker (© goes to heirs). No registration is needed for copyright protection.
- May be *licensed*: maker gives someone else a one-time permission for a specific use of the work, against a royalty.
- May be *transferred*: copyright in the work goes to another person, who may now exclusively license it and ask royalties. Transfer must be done in writing!
- *Exceptions to copyright* serving the public interest: right to quote, use for educational purposes, special exceptions for museums.

## II. Moral rights

- Protect the personal bond between maker and work.
- Art. 6bis of the Berne Convention:  
Independently of the author's economic rights, and even after the transfer of the said rights, the author shall have the right to claim authorship of the work and to object to any distortion, mutilation or other modification of, or other derogatory action in relation to, the said work, which would be prejudicial to his honour or reputation [integrity right].
- On the basis of the integrity right, an artist may protest against re-installation or restoration which disrespects his/her intentions with the work.
- The project's purpose is to document the artist's intentions and thus to respect his/her moral rights.

## II. Moral rights

- Cannot be transferred or licensed but always remain with the maker of the work, even after transfer of the exploitation rights.
- The strength of the moral rights varies: strong on the European continent, weaker in the US and UK.
- Duration differs between countries:
  - Same term of protection as the exploitation rights (NL and UK require a written transfer, e.g. in a will)
  - Expire with the death of the maker (US).

# Installation art project & copyright

## The documentation phase:

- Project presupposes that the artist permits re-installation and restoration. To be sure, museum should ask written/recorded permission by the artist (also for exhibiting the result), e.g. at the start of the documentation on his intentions.
- Creating documentation on artist's intentions:
  - Film, video, audio-interviews recording the artist when answering questions, lecturing, re-installing the work etc.
  - Written interviews or other texts, photographs etc.
  - All documentation will be original. Copyright=owned by:
    - the actual maker (or the museum as the employer),
    - in case the artist collaborated:
      - a joint copyright for maker & artist when contributions are fused.
      - separate copyrights for maker and artist when their contributions remain distinguishable.



# Art work included in documentation?

- Inclusion of the art work (on photo, film, video) generally requires permission of the artist, because of reproduction.
- Difficulty: several artists are represented by a copyright collecting society. NL: *Stichting Beeldrecht* exclusively represents its members, so permission must be asked from the society, not the artist. UK: *Design and Artists Copyright Society*.
- However: perhaps possibility to invoke the copyright exception which allows quotation.

# Inclusion of art work might perhaps be permitted by:

- The exception for quotation allows a work of art to be ‘quoted’, provided that:
  - it is for purposes such as criticism or review,
  - the work has already been lawfully made available to the public,
  - the source, including the author’s name, is indicated,
  - the use is in accordance with fair practice, and to the extent required by the specific purpose.
- Question remains: how broad may ‘criticism or review’ be interpreted? The Dutch exception also applies to scientific publications.

# Publishing documentation on internet

- Requires permission of the maker (and artist), since:
  - Exception for educational purposes is not available for all uses intended by the project; large public, not just schools.
  - Copyright Directive and NL: exception for museums to display the works within their collection on terminals in their building, for private study or research by the public. But only applies to a closed network, not the internet!
- Recommendations:
  - Have the copyright in the documentation *transferred* to the museum *in writing* by the actual maker (and artist).
  - Museums should give a free (written) licence to INCCA and Tate to use the documentation in the way foreseen by the project & for future uses serving the project's goals.

# Re-installing & restoring the work

- Permission for re-installation & restoration already acquired on the occasion of creating the documentation on the artist's intentions. (Special Dutch provision on restoration and conversion).
- Recommended: also ask permission for conversion & for showing the result of a re-installation, restoration and conversion.
- No copyright in the re-installed work for the re-installers.
- Copyright for the person(s) who create documentation on the re-installation. Or for the employing museum (UK&NL).
- No copyright for the restorer in the restored work.
- Copyright for the (freelance) restorer who creates documentation on the restoration. Or employing museum.
- Inclusion of reproductions of the art work might perhaps be permitted via the quotation exception.

- Recommendations:
- Have the copyright in the documentation on the re-installation, restoration and conversion transferred to the museum in writing.
- Museums give INCCA and Tate a free licence to use it for the project's purposes.
  
- Moreover, museums could also:
- Put their copyrighted documentation online for the public to use under specific conditions.
- This does not mean that they give up their copyright, but they give licences for use of the documentation.

# Creative Commons

- In putting their documentation online, museums could use the licences provided on the Creative Commons website which, for instance:
  - Permit only non-commercial use of the protected documentation.
  - Require users to add your name as the copyright holder.
  - Give others the right to use the work but not to adapt it.
  - Give others the right to use the work if they add the same licences as you added to it .
- See on the internet: [creativecommons.org](http://creativecommons.org)
- These licences could also be added to the museums' documentation on the websites of INCCA & Tate.

# Creating a website (= database)

- Database = a collection of independent works, data or other materials, arranged in a systematic or methodical way, and individually accessible by electronic or other means.
- Copyright exists in a database's *original selection or arrangement* for compiler of the contents (or employer).
- Database right (or: sui generis right) is for the producer who *substantially invested* in the creation of the database. This right only lasts for 15 years.
- Add use conditions/licences to your website, for instance the examples of Creative Commons.

# Accumulation of rights in a database:

element 1
element 2
element 3
etc.



Copyright in individual elements such as works of art, text et cetera.

## Database:

1. Copyright on a database's *original selection or arrangement* for the database maker;
2. Database right for the *substantial investment* made by the producer.



# Final recommendations:

- Acquire the artist's written permission to re-install, restore and convert the work, and to display the result.  
(Note: it seems that artist can still oppose this on the basis of his integrity right when his intentions change in the future).
- Have copyright in all documentation on the artist's intentions *transferred in writing* to the museum by the actual maker and the artist.
- The same for the documentation created by the re-installers, the (freelance) restorer, and converters.
- Museums give a written, free licence to the INCCA and Tate Gallery to use the documentation in all (future) ways which serve the project's goals.
- Museums, INCCA and Tate can put the copyrighted documentation online, adding licences (e.g. by Creative Commons).