

Preface

This guide provides students of the University of Applied Arts Vienna with an overview on the use of images in academic work. Furthermore, it gives answers to recurring issues in regard to image rights/copyright.

Although more complicated cases may arise when using images, in the university context the practice is easier to handle. Say, you want to use images in a presentation or a seminar paper, the most common way for you to do so, is to quote an image. How to do an image quotation correctly is discussed on the following pages. More extensive regulations and background information can be found in the back of this guide.

Since many terms are rather difficult to translate, Austrian terms or paraphrases are used if needed.

Comments and suggestions for improvement are welcome to image@uni-ak.ac.at. The guide reflects the status as of October 2021. It does not replace professional legal advice.

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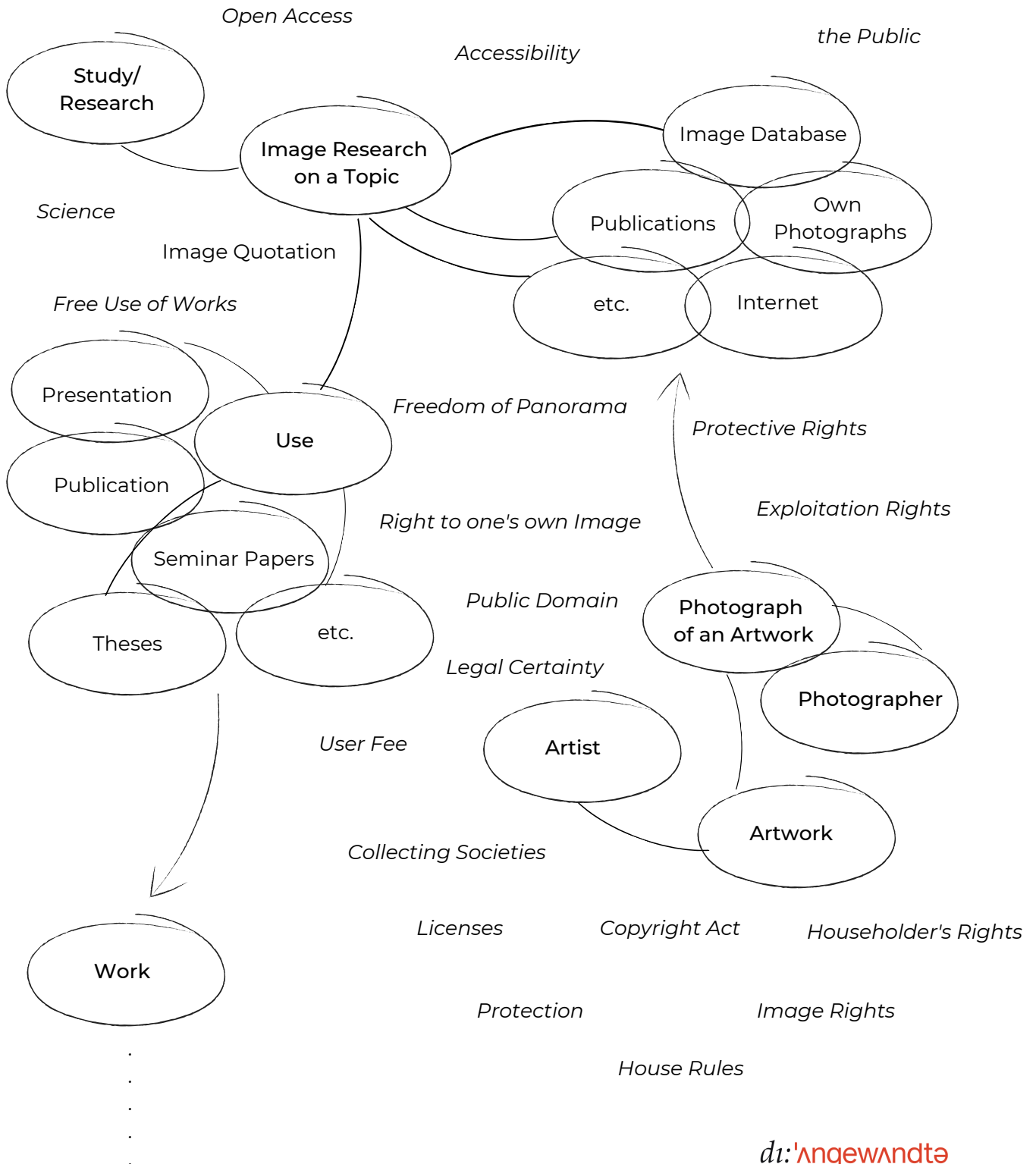


Image database IMAGE+ How to quote an image? I/II

IMAGE+ Platform for Open Art Education
Vordere Zollamtsstraße 7
1030 Wien



IMAGE – Image database of the University of Applied Arts Vienna

Illustration: zukunvt.com (Lukas Novak, Bartholomäus Traubeck), [CC-BY 4.0](#)

- **IMAGE** is the University of Applied Arts' own image database, based at the department of Art History. As it is an academic image database, the information on the artworks is scientifically sound.
- You can use the images within your study by quoting them.
- If you'd like to have images digitized and available on IMAGE, feel free to contact us at image@uni-ak.ac.at.

Image quotation: How to quote an image?

Within copyright law, the right to quote (§42f) [*Zitatrecht*] restricts the authors' rights and enables us to use protected images. In the legal text, the following part of the first paragraph is particularly relevant to us [*emphasis added; no official translation*]:

(1) A published work may be reproduced for the **purpose of quotation**, distributed, broadcasted, made available to the public, and used for public lectures, performances, and demonstrations, provided that the **extent of the use is justified by the particular purpose**. This is permissible in particular if

1. individual works, that have already been released, are included in a scientific work constituting the main subject matter; a work of the kind referred to in § 2 item 3 or a work of the fine arts may only be included to explain the content;
2. works of fine arts, that already have been released, are publicly presented at a scientific or educational lecture that forms the main subject matter merely for the purpose of explaining the content, and the necessary copies are produced for this purpose; [...]

- **Released** means that a work has been made available to the public with the permission of the rightholders.
- **Published** means that a work has been published and sold in sufficient numbers.

Image quotation: How to quote an image?

- An image quotation is legally possible if you use an image already released or an image you have rightfully taken to explain the content of your presentation, your seminar paper/thesis or within a publication (For publications e.g. essays, the image you are using should have already been published).
- It is important that it is primarily a scientific work or lecture in which you are quoting an image.

What does that mean in practice?

- If you quote an image, there must be a discussion of the content (in copyright law this is called *Erläuterung des Inhalts*). The image that is specifically addressed supports your text argumentation and has a supporting function. However, your argument also works without the quoted image. Even if the image "only" supports, it should not be superfluous. Furthermore, there should be a proportionality between size and content function (if you only want to use a detail of the image, see. Editing of Lichtbildwerke and Lichtbilder p. 10). It is not sufficient if you quote an image or several images as mere illustration.
- As the conditions for an image citation are similar to those of a text citation, it can be helpful to work out how you would proceed with a text quote.
- Name the author, title of the work and source (illustration credits) as well as the photographer (e.g. p. 9; the credits were noted by the institution as a citation requirement).
- Generally speaking, any released or published image can be cited. But only if it meets the requirements for an image quotation; a string of copyrighted images, you only discuss on a superficial level or which are merely nice to have, will not qualify as an image quotation. At the same time, the image quotation often remains unused as a possible option, e.g. in a publication, due to legal uncertainty for authors and/or the lack of suitable images.

How do I use images for ...?
Handout & presentation
Seminar paper

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... Handouts & presentations

- On a handout or in a presentation you can use photos that have already been released as well as your own e.g. as an **! image quotation !** By deploying an image quotation you don't need to clarify the rights of use.
- If you would like to use unpublished images to which you do not hold the rights of use, get in touch with the copyright holder as well as the photographer and clarify whether/how you can use the images.
- If you want to share the handout or presentation online with other course participants, use the university cloud, your email, or another university platform that is password protected and therefore only accessible to a limited group of people. Social media is not covered.
- Name the author, title of the work and source (illustration credits) as well as the photographer (if known). (Protection of intellectual interests p. 14 or protective rights p. 15)
- Note: Editing of Lichtbildwerke and Lichtbilder p. 10

Consider:

- author's rights (p. 14).
- protective rights (p. 15).
- right to one's own image (p. 12).
- freedom of panorama (p. 12).
- Domiciliary right (p. 12).

possible uses:

- image quotation (pp. 3–4).
- EU directive 2019/790 (p. 16).

... Seminar papers

- In a seminar paper you can use as an **! image quotation !** any photos that have already been released, as well as your own photos. By deploying an image quotation you don't need to clarify the rights of use.
- If you would like to use unpublished images to which you do not hold the rights of use, get in touch with the copyright holder as well as the photographer and clarify whether/how you can use the images.
- If you want to share your handout or presentation with other course participants online, use the base Angewandte cloud, your email, or another university platform that is password protected and therefore only accessible to a limited group of people. Social media is not covered.
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How to use images for ...?

Theses

Publications

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... Theses

- If you have written a bachelor's, diploma, master's or doctoral thesis, it is obligatory to publish it after the successful completion of your studies (see Universitätsgesetz, § 86).
- You can use as **! image quotation !** any photos that have already been released, as well as your own photos, without clarifying usage rights.
- If you do not have the rights to use the images in question and they do not meet the requirements for an **! Image quotation !** (e.g. they are not published), you should refrain from using them or clarify the rights of use.
- Name the author, title of the work and source (illustration credits) as well as the photographer (if known). (Protection of intellectual interests p. 14 or protective rights p. 15)
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... Publications

- If you are writing a mainly scientific text e.g. an article, to be published in Austria, you can use as an image quotation any photographs that have already been released or that you have taken yourself without having to clarify usage rights.
- If you publish abroad, the local copyright law applies.
- If you do not have the rights to use the images in question and they do not meet the requirements for an **! Image quotation !** (e.g. they are not published), you should refrain from using them or clarify the rights of use.
- Name the author, title of the work and source (illustration credits) as well as the photographer (if known). (Protection of intellectual interests p. 14 or protective rights p. 15)
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... Social Media

- If you want to share copyrighted images on social media platforms, you should own the image rights (for the photo and the depicted work) and/or be the copyright holder yourself.
- While many cultural institutions use hashtags for exhibitions, if in doubt, check the house rules to see what reuse of your footage is possible. Private use, which is mentioned as reuse in many house rules, does not include sharing on commercial social media platforms, even if you want to share images on your private and/or restricted account.
- Sharing and creating memes and the like is supposed to be covered by EU Directive 2019/790 (p. 16), which should have already been implemented by June 2021.
- **Note:** Editing of Lichtbildwerke and Lichtbilder p. 10

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possible uses:

- EU directive 2019/790 (p. 16).

Course: Is it permitted to photograph/film?

- Do not photograph or film without permission.
- Respect the personal rights and copyrights of the participants and teaching staff.
- If you are allowed to make recordings, use them only for yourself. Do not share your recordings on social media without explicit permission.
- Always ask before taking a photograph or recording and clarify how and whether you can use them.

Consider:

- author's rights (p. 14).
- protective rights (p. 15).
- right to one's own image (p. 12).

Online course: Are screenshots/recordings permitted?

- Do not make unsolicited recordings or screenshots.
- Respect the personal rights and copyrights of the participants and teaching staff.
- If you are allowed to make recordings/screenshots, use them only for yourself. Do not share your recordings on social media without explicit permission.
- Always ask before taking a screenshot or recording and clarify how and whether you can use them.

Consider:

- author's rights (p. 14).
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What kind of images?

Photographs: Lichtbilder & Lichtbildwerke

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Photographs

- If you want to use works of art in your scientific activities and studies, e.g. in a presentation, you will usually not only rely on your own photographs.
- Both the artworks that are photographed and the photographs of the artworks themselves are subject to the rights of the authors and/or the photographers. In order to be able to use the photographs, you must therefore observe two levels of rights.
- The Austrian Copyright Act (UrhG) also distinguishes between Lichtbildwerke [*photographic works*] and Lichtbilder [*simple photographs*]. This is relevant for you because of the differing scope of protection and the duration of protection that limits the copyrights or the property rights in time.
- Lichtbilder are protected for 50 years after the photograph was taken or after it was released. Lichtbildwerke, on the other hand, fall under the definition of a work and therefore are protected up to 70 years after of the author's death.
- After the protection period, works, Lichtbildwerke, and Lichtbilder enter the public domain (p. 11); they can then be used by anyone for any purpose.
- The protective rights (p. 15) to a Lichtbild are hereditary and can be sold. The copyrights (p. 14) to a Lichtbildwerk/work can be inherited and transferred to special successors. It is important to note that this may result in different conditions of use.
- Note: Editing of photographic works and photographs p. 10.

What is a Lichtbild [simple photograph]?

- A Lichtbild does not benefit from the same protection as a work.
- It is created, for example, when a reproduction photograph of a "two-dimensional" artwork, e.g. a graphic, is made. The photograph is therefore a reproduction of the depicted artwork that is as faithful to the original as possible and does not reach the level of creation of a work.
- Because it does not leave sufficient scope for a "peculiar intellectual creation", the photograph therefore does not fall under the concept of work.

What is a Lichtbildwerk [photographic work]?

- A Lichtbildwerk is a work and is protected accordingly. It falls under the concept of a work protected by copyright due to the author's peculiar intellectual creation.
- Decisions such as the point of view or light/shadow conditions are already sufficient for an original intellectual creation. If you photograph a "three-dimensional" work of art, e.g. a sculpture or a painting, in such a way that no faithful reproduction is produced, the criteria for a photographic work are already fulfilled.
- For instance, if you take a photo of a landscape, you also create your own photographic work.

What kind of images?

Third party photographs, Lichtbilder & Lichtbildwerke: examples

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Example of a Lichtbild of an artwork



Unknown, Lord Byron, after 1813, Wien Museum
Inv.-Nr. W 1033, [CCO](https://sammlung.wienmuseum.at/objekt/297940-lord-byron/)
(<https://sammlung.wienmuseum.at/objekt/297940-lord-byron/>)

Example of Lichtbildwerke of a artwork

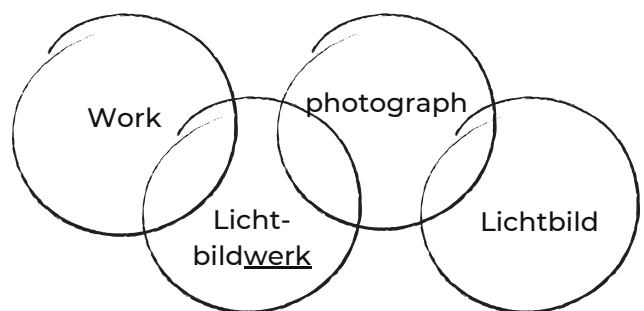


Unknown, inscription stone from St. Stephen's,
around 1450, Wien Museum Inv.-Nr. 577, [CC BY 4.0](https://sammlung.wienmuseum.at/objekt/276/),
Fotos: Birgit und Peter Kainz, Wien Museum
(<https://sammlung.wienmuseum.at/objekt/276/>)

Example of a Lichtbildwerk



Photo: Charlotte Reuß



- It is important to note that the protection period varies between a Lichtbild and a Lichtbildwerk/work of art. It is also relevant that with a photograph of an artwork, there are usually several levels on which different rights exist and which must be considered.
- For example, if you want to use a Lichtbildwerk or a Lichtbild ([for the latter, see EU Directive 2019/790, p. 16](https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX%3A32019R0790)) by a photographer that shows a work by Max Beckmann (d. 1950), you must clarify the rights to the Lichtbild/Lichtbildwerk, even if Beckmann's works have been in the public domain since 2020.

What kind of images?

Editing of photographic works & photographs

Own photographs, online

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Editing of Lichtbildwerke & Lichtbilder

- If you would like to edit a copyrighted Lichtbildwerk, e.g. crop it or add markings, this must be clarified with the copyright holder, especially for publications, university publications and presentations outside the university (see [Works Protection p. 14](#)).
- If you want to edit a photo, e.g. crop it or add markings, this must be made recognizable, especially for publications, university publications and presentations outside the university.
- Since we usually refer to a copyrighted work through a Lichtbild/Lichtbildwerk, the protection period of the depicted artwork must always be taken into account.

Notes: Create your own photographs

- If you want to use your own photographs of artworks in your scientific work, you must consider the rights to the photographed works, unless they are already in the public domain.
- Photographs you have taken in the public space, may be covered by the [freedom of panorama \(p. 12\)](#). If so, you can use them.
- If other people are visible in your photographs, you should make sure their [right to their own image \(p. 12\)](#) is not violated.
- If taking photos in a cultural institution is permitted, it is advisable to read the respective [house rules \(p. 12\)](#) to find out whether and to what extent you can use your photos. House rules should be physically displayed and can usually be found online.
- [Note: Editing of photographic works and photographs p. 10.](#)

Online

- Besides university image databases, you will find most images online, e.g. on museum websites or via commercial image databases. In order to be able to use these images, it is essential that they have been legally [published \(p. 3\)](#). This means that they were made available to the public with the knowledge of the copyright holder. Image files that you find on the Internet and that have a reputable source can be used in the context of a course.
- In order to assess whether an image file has been legally published, you can, for example, perform a reverse image search or compare the image with other images offered by the upload source.
- In addition, the further use of the images is specified in more detail in the respective imprint of the source or when downloading.

What kind of images?

Public domain, Creative Commons

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Public domain

- A work or Lichtbild becomes public domain when the respective protection period ends. After the expiry of this period (Lichtbildwerke/works: 70 years after the death of the author; Lichtbilder: 50 years after the photograph was taken or after it was released), there are no longer any intellectual property rights, e.g. exploitation rights (p. 14) or protective rights (p. 15).
- You can use public domain works for all purposes without having to pay.
- Works for which the rights have expired always become public domain on 1 January of a year ("Public Domain Day").
- Again, it is important to note: rights may still exist in a Lichtbild-/werk of a work in the public domain, regardless of whether a public domain work is depicted. Therefore, always consider the multiple levels on which the rights of others can exist (cf. p. 9, example: Max Beckmann).
- In the meantime, there are many online offers of public domain works that you can use. In order to assess whether a photograph is in the public domain, you can perform a reverse image search or compare the image with other images offered by the upload source.
- If you make recordings of public domain works yourself with permission, e.g. in a museum, this unfortunately does not ensure that you can use your recordings in accordance with public domain, since the house rules (p. 12) dictate the use.
- The fact that the use of public domain works is sometimes blocked and/or the term of protection extended has been addressed by EU Directive 2019/790 (p. 16), which should have already been implemented by June 2021.

Creative Commons

- Creative Commons is a nonprofit organization that promotes simplified, legal sharing of knowledge, especially in the digital realm.
- Creative Commons licenses are intended to provide low-threshold and transparent access to copyrighted works.
- The standardized CC licenses can only be issued by authors or authorized rights holders.
- There are 6 licenses to choose from.
- To use images under CC licenses, you must comply with the stated terms of use of the respective licenses.
- Unless otherwise stated, a CC license only covers the image in question, but not always automatically the subject depicted.

How to use images?

Right to one's own image, Freedom of panorama, Householder's rights

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Right to one's own image: How do you deal with pictures in which other people can be seen?

- The right to one's own image regulates the handling of images in which people can be recognised.
- You may only publish a photograph of another person without their consent under certain conditions.
 - The legitimate interests of the person shown must not be violated; for example, he or she must not be shown in a detrimental way, such as visibly drunk. Legitimate interests of a person may be violated by the photograph, captions or context.
 - Photos must not violate the privacy of the person shown.
 - Photographs taken in public space, at a public event or public occasion (e.g. on the street, a vernissage) and that do not infringe on any legitimate interests of persons may usually be used.

Freedom of panorama: May I use my own photographs taken in public space?

- You may photograph artworks and buildings that are permanently installed in public spaces and that are accessible and visible due to the applicable freedom of panorama. You can use your photographs.
- Accessible and visible means that you may not use any aids such as ladders or drones; neither may the photograph be taken from the viewpoint of a private property.
- Temporary installations (e.g. Bregenzer Seebühne) are not considered permanent.

Householder's rights: Why are householder's rights often relevant for image use?

- The householder's rights are not part of the copyright law, but are often decisive for the use of images.
- For instance, it allows the granting of photography permits or prohibitions in a cultural institution by means of house rules.
- Thus taking photographs in a cultural institution may be permitted. At the same time, however, this does not mean that the further use of one's own photographs, for example on social media, is automatically permitted. Therefore, to be on the safe side, read the house rules, which should be available physically and often also online, or ask directly.

How to use images?

Public domain, CC licenses, licenses & work use permissions/right

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Public domain: How can I use public domain works?

- You can use public domain works for any purpose without payment.
- If you want to use a work in the public domain, you will usually have to use a Lichtbild-/werk of the actual work. You will have to clarify the existing rights of the photographers.
- The [EU Directive 2019/790 \(p. 16\)](#) aims to simplify the accessibility and use of public domain works in the future. It should have been implemented by June 2021.

Creative Commons: How can I use images under CC license?

- To use images under CC licenses, you must comply with the stated terms of use.
- Unless otherwise stated, a CC license covers only the image, but does not always cover the work depicted.
- To make sure that the images have been made available legally under a CC licence, you can carry out an image search or compare the image with others offered by the upload source. In addition, the respective imprint of the source often specifies the further use of the images.

Licenses & permission to use works: How do I obtain them?

- If you want to use copyrighted images outside of courses and cannot do so within the framework of the [free use of works \(p. 15\)](#) (e.g. image citation), you must obtain the image rights yourself.
- Cultural institutions usually offer their own reproduction service for this purpose, sometimes for a fee, which takes into account both the rights to the work and the rights to the Lichtbild-/werk. In addition, many artists are represented by collecting societies – in Austria by Bildrecht – which can grant licences for the use of works.
- The [collecting society responsible in Austria \(p. 15\)](#) – Bildrecht – offers an [artist search](#) on their website, which shows who is represented by them. In addition, it is possible to inquire directly with artists, rights owners or galleries.
- The clarification of image rights often differs in individual cases, which is why no general procedure can be outlined here. Nevertheless, you can formulate relevant details in advance that specify how you want to use copyrighted works in order to facilitate subsequent communication.

Background information Copyright Act (UrhG)

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Who is the author? (to be read: §§ 10, 11 UrhG)

- The person who created or co-created a work is the author or co-author.

What is a work? (to be read: §§ 1, 3 UrhG)

- A work is a peculiar intellectual creation.
- It is protected by copyright as a whole and in parts.
- Works of fine arts include Lichtbildwerke (photography), architecture and applied arts.
- Ideas are not protected by copyright.

For our purposes, the rights listed in the Copyright Act can be divided into two parts: the copyrights, which concern works created by authors, and the protective rights, which among other things regulate the protection of photographic images.

What rights does the author hold?

- In the Copyright Act, the following elements constitute the copyright:
 - Exploitation rights (§§ 14, 15, 16, 16a, 16b, 17, 17a, 17b, 18, 18a)
 - Protection of intellectual interests (§§ 19, 20, 21)
 - Duties of the owner of a workpiece (§ 22)
 - Transfer of copyright (§ 23)
 - Permission to use the work and right to use the work (§ 24)
 - Execution restrictions (§ 25)
- The copyrights are inheritable and transferable to special successors.
- In addition to the exploitation rights, the personal rights of the authors are particularly decisive for the use of images. For instance, they regulate the naming of the authors or the editing possibilities of the work.

What are exploitation rights?

Exploitation rights (§ 14) are part of the copyright:

- Reproduction right (§ 15)
- Distribution right (§ 16)
- Renting and lending (§ 16a)
- Resale right (§ 16b)
- Broadcasting right (§§ 17, 17a, 17b)
- Lecture, performance and presentation right (§ 18)
- Right to make available (§ 18 a)

Background information Copyright Act (UrhG)

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What are protective rights (related rights) to Lichtbilder? (to be read: §§ 73, 74)

- Related rights to Lichtbilder are part of the Copyright Act.
- The producer of a photograph has the following exclusive property rights, which are heritable and alienable:
 - Reproduction right
 - Right to make available
 - Broadcasting right (broadcasting)
 - Distribution right
 - Lecture, performance and screening rights
- There are also rights to the producer being named in the case of reproductions and to significant changes to the photograph being noted.

What are collecting societies?

- They represent the rights of authors on their behalf and in their name.
- Certain copyright claims can only be asserted by collecting societies.
- In Austria, the collecting society Bildrecht is responsible for the interests of its members in the fields of fine arts, architecture, choreography, design, photography, graphics, illustration and performance.
- Link to the [Austrian Collecting Societies Act](#)

Where does copyright law apply?

- The Austrian Copyright Law is valid for the University of Applied Arts Vienna.
- Copyright law applies, which concerns the destination of an activity, such as the place of publication.
- For publications abroad, the respective national copyright law applies.

What exceptions ("barriers") exist in the Copyright Act?

- The following free uses of works in the UrhG are important in the university context and limit the exploitation rights of authors: [Reproduction for own and private use, § 42 \(2\) & \(6\)](#); [Making available to the public for teaching and learning § 42g](#); [Quotations § 42f](#); [Public reproduction in education § 56c](#)
- Also provide the following information in the case of free use of the work: Author, title of work and source (proof of illustration) as well as the photographer for Lichtbilder.

Background information

Accessibility & Science

EU Directive 2019/790

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Accessibility & Science

As can be drawn from the said, the scientific use of images still is complicated, to say the least, and requires extensive familiarization, which does not necessarily lead to more legal certainty—especially since many practice-related interpretations of the legal texts are only substantiated by court rulings. The difficulty of balancing the interests of authors and those of science often proves unfavorable in practice for scientific activities. Since science and research build on already existing knowledge and thus are obliged to refer to copyright-relevant material, the use and especially the dissemination of acquired knowledge to the public is often not possible or insufficient. Rather, primarily commercial interests are increasingly obscuring the idea of Copyright law: besides assuring their rights to the authors, Copyright law also grants the general public the right to use works.

To what extent will the EU Directive 2019/790 make public domain works more accessible?
(work in progress)

The fact that protection periods of public domain works can be indirectly extended by protection periods of photographs is to be weakened by the [EU Directive \[RL\] 2019/790](#). Reminder: Due to double protection periods on photographs of public domain works, they often remain inaccessible.



In addition to further amendments to the Copyright Act, the EU Directive provides for no further protective rights to Lichtbilder (not to Lichtbildwerke!) of works in the public domain. The Directive should have been implemented in all European countries by 07.06.2021. In Austria, a final draft law is not to be passed until autumn 2021. Provided that the Directive is implemented, there will be no further protective rights in Lichtbilder (reproductions) of "two-dimensional" works in the public domain.

Background information

Links & Sources

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base Angewandte:

<https://base.uni-ak.ac.at/>

(accessed on September 30, 2021)

IMAGE+ Platform for Open Art Education:

<https://www.angewandtekunstgeschichte.net/forschung/image-platform-for-open-art-education>

(accessed on September 30, 2021)

UrhG Österreich:

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