

DIGITAL IMAGE RIGHTS COMPUTATOR (DIRC)

A Project Of The Visual Resources Association's Intellectual Property Rights Committee

***Please note that the information provided in this handout is in DRAFT form only. Prior to releasing the web version DIRC will be vetted by legal counsel; please read the Advisory Note.**

The Visual Resources Association is making available this Digital Image Rights Computator (DIRC) as a public service to assist members of the visual resources profession and the academic communities they serve.

DIRC is a set of general guidelines based on community practice regarding image acquisition and use, and is not intended to constitute legal advice (i.e., the application of law to specific, individualized circumstances). Additionally, the DIRC is not intended as a substitute for institutional copyright compliance policy, which may in some instances place further restrictions on the practices outlined in this program. The DIRC should therefore be used in conformity with applicable institutional policies, with advice from counsel as appropriate. Users should also be aware that DIRC is based on current United States copyright law and community practices within the educational context, and may not be applicable in other jurisdictions or in other contexts.

DIRC is a web-based interactive query program designed to guide educators, academic image curators, and administrators through the layers of intellectual property rights that may affect a given digital image.

The goal of DIRC is to enable image users to make an informed assessment of rights in a selected image, and to apply the results in a manner consistent with their institution's copyright compliance policies.

ADVISORY NOTICE

While it is the intent of this program to set forth acceptable parameters of good practice, intellectual property law is in a state of constant evolution through both legislation and litigation. The Digital Image Rights Computator program is provided as a public service to assist members of the visual resources profession in making decisions regarding image use; it does not constitute definitive legal advice, and should not substitute for appropriate consultation with institutional counsel. In some instances, the policies of individual institutions may place additional restrictions on some of the practices outlined in this program.

Users should also understand that this program is based on current U.S. copyright law, and may not be fully applicable to other jurisdictions. The decision making process presented in the Digital Image Rights Computator program deals specifically with images obtained through copy photography or scanning from printed sources, whether the output

is intended to produce analog slides for classroom display, or to produce digital image files for a variety of purposes. The digitizing of purchased commercial slides, or the extended use of digital images obtained under various licensing arrangements, may be further restricted or prohibited altogether by specific contractual terms. Provider contracts, under which a user obtains images only for specific purposes and/or periods of time, may impose additional conditions which limit, or render illegal, various uses otherwise permitted under Fair Use or the right of the Public Domain. Visual resources professionals, and their patrons, should therefore evaluate carefully their ability (and intent) to comply with such restrictions when selecting image sources from among the various available options.

Basic Principles

What is Copyright?
How Does Copyright Work?

Essential Information and Definitions

What is the “Bundle of Rights” in a Copyright?
When Does Copyright Protection Begin?
How Long Does Copyright Protection Last?
What is the Public Domain?
What is Fair Use?
What are Derivative Works?
What is an “Underlying Work”?
What is a Photographic Reproduction?
What is a Photographic Documentation?
What is a Photographic Interpretation?

Clicking on each of the links above will take the user to a web page.

How to Use DIRC

The DIRC program functions through a series of query pages, each of which requires the user to provide input about one aspect of a given image’s rights profile. Each query sequence in the interactive DIRC program will guide the user through a series of questions that will assess five variables:

- The copyright status of the underlying work represented in the image.
- The copyright status of the photographic reproduction.
- The specific source of the image.
- Any terms of use or contractual agreements that may govern the uses of the image.
- The intended use(s) of the image.

Each page will prompt you to answer a question about the image you are assessing. Some questions require you to make a “YES” or “NO” response. Other questions provide a wide range of responses, from which you should select the most appropriate. While DIRC is designed to allow only one response per question, you may return to the previous query level by clicking on the “back” button if you wish to enter a difference response without having to start the entire query sequence over again.

Each query sequence concludes by directing the user to a highlighted portion of a color-coded grid that indicates an image’s intellectual property right status.

Level 1: The Copyright Status of the Underlying Work

Question:

Is the underlying work (the subject of this photographic reproduction) copyrightable?

Yes

No

Reminders will help you answer the question.

- Works published prior to 1923 have reverted to the public domain status so most historic works of art are not subject to copyright in the US.

Live links located below the response buttons offer additional information resources for the user who may be uncertain how to answer.

- Each query level after the first one will begin with a summary of the user’s previous decisions, followed by a new question to answer.

Level 2: Copyright Status of This Photographic Reproduction

Question:

Is the underlying work (the subject of this photographic reproduction) currently protected by copyright?

Yes

No

Reminder: To be eligible for copyright protection as a unique derivative work, a photograph must manifest a significant and discernable degree of uniqueness or original creative content sufficient to distinguish it from other photographs of the same underlying work.

Level 3: Source of This Image

Question:

Is a photographic reproduction of this work readily available from a provider as a commercial slide or licensed digital image?

Yes No

Check one of the boxes below.

- Digital image purchased or licensed from provider.
- Digital scan of slide purchased from provider.
- Digital image obtained by scanning or copy stand photography from a published source.
- Digital image of unknown provenance.
- Original digital image, or copy, to which you hold documented use rights.
- Original digital image, or copy, to which you do not specifically hold documented use rights.

A Reminder will help you answer the above question

Resource links and references to help answer the question.

Level 4: Alternative Sources for Same or Similar Image

Summary of previous decisions (will change with answer)

Question:

Is an equivalent digital image of this work readily available for purchase or licensing?

Yes No

Here is a recommended action to help you answer the question:

- Review the definition of “Fair Use” below and access the four Fair Use factors as they apply to this particular image.

Level 5: Intended Use of This Image

The fifth and final query level asks the user to detail the intended use of the image under assessment. The specific use one selects will complete the query sequence by taking the user to the results page that is in the form of a color-coded chart showing where your proposed use falls in regard to the image's rights profile that you have established.

The color-coded chart will indicate the classification of the person using the image (faculty, library/visual resources, or student).

An image of a two-dimensional work in the public domain, acquired without contractual restrictions, can be used for any desired purpose. Access to it does not need to be protected and that is indicated by the bold green "go" color.

But images, even of works in the public domain, acquired under terms that restrict their use must be used only in conformity with the terms of your purchase or licensing agreement. This is indicated by the "caution" color. A commercial contract your institution may have entered into with an image vendor can actually trump fair use or your public domain rights.

In regard to other potential uses, the user will be alerted by a glowing red light to STOP before proceeding, and to seek prior permission from the rights holder BEFORE engaging in possibly infringing actions.

Example 1:

Mona Lisa (Image obtained by scanning or copy stand photography)

- No copyright in underlying work
- No copyright in photographic reproduction

But you are NOT in violation of the law if instead of purchasing a vendor image of this work you acquire it by alternate means, exercising your public domain rights.

Example 2:

Mona Lisa (In-house digital scan of a vendor image; use is restricted by your purchase agreement)

- No copyright in underlying work
- Copyright in photographic reproduction

You ARE in violation of the law if you agree as a condition of purchase not to digitize a slide, for instance, and then later go ahead and do it anyway.

References on the VRA web site

Image Collection Guidelines: The Acquisition and Use of Images in Non-Profit Educational Visual Resources Collections (VRA 2000)

<http://www.vraweb.org/copyright/guidelines.html>

Copy Photography Computator (VRA 2002)

<http://www.vraweb.org/computator/welcome.html>