

# Copyright & Education

An introduction to copyright and related rights in the European Union (and how this works for education)

Lisette Kalshoven, Kennisland (DFI, Frankfurt, April 2016)





*Why are we discussing copyright?*



SMK, Public Domain



# The balance of copyright

- Through the rise of the digital information society copyright has come to play a more central role in our societies
- Copyright law has great influence on subjects like access to knowledge and culture, education, research and innovation
- Especially education practices have changed: how do we combine education innovation with copyright law?
- To function properly copyright law needs to balance the interests of makers (exclusive rights) and the society at large (exceptions and limitations to exclusive rights).





*Copyright*



SMK, Public Domain





# What is protected by copyright?

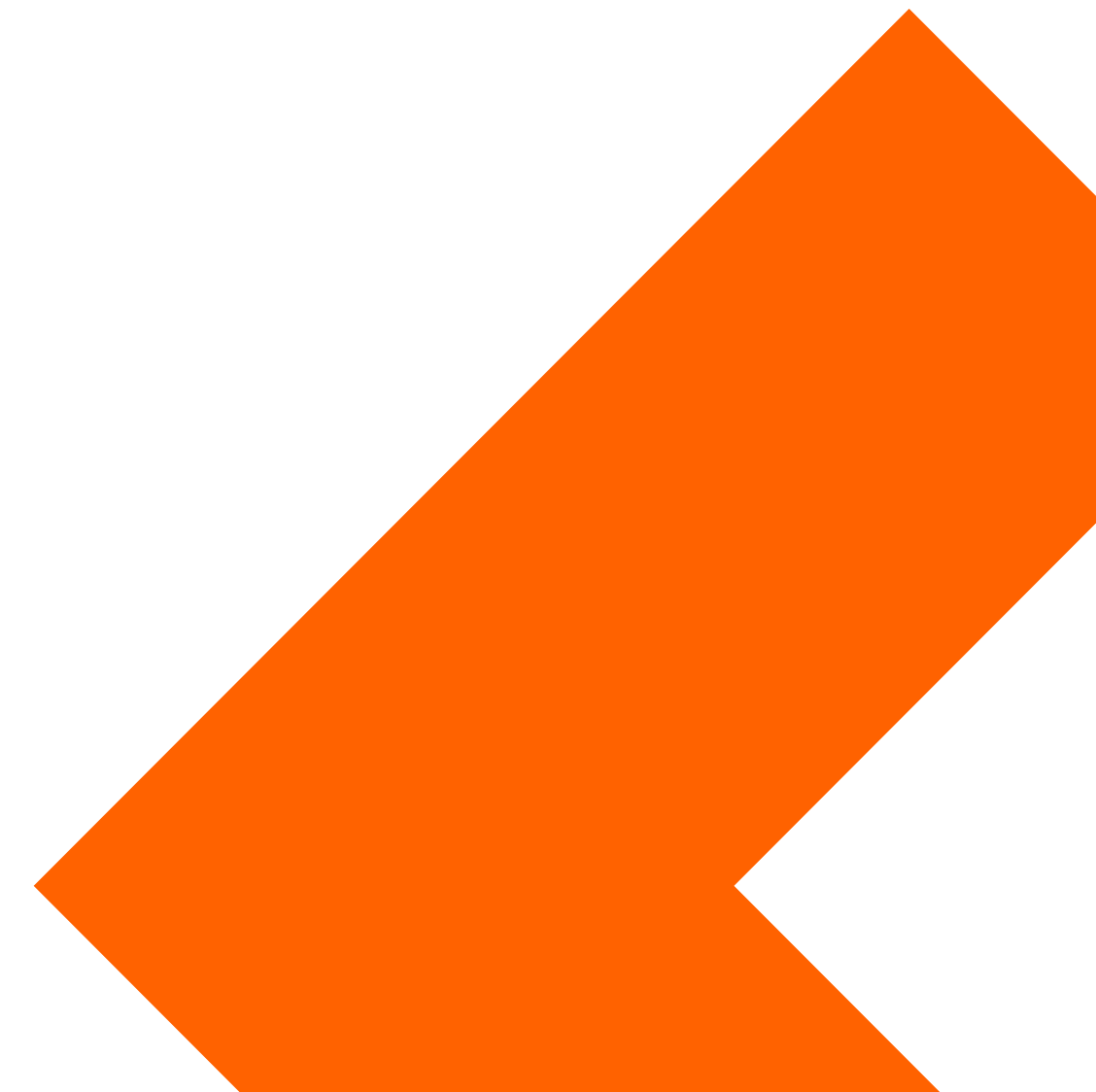
- Only **original expressions** of ideas are protected under copyright law.
  - Ideas are not protected
  - Facts are not protected
- The European Court of Justice defines originality as “the Author’s own intellectual creation”.





# Main aspects

- Copyright is the exclusive right of the creator to the **making available/communication to the public** and **reproduction** of his/her work
- Copyright is automatic, there are no formalities required
- Copyright is temporary, usually 70 years after the death of the last surviving author
- Copyright is (partly) transferrable
- It is possible that there are multiple authors/rights holders in one object or work (co-authorship)
- Copyright is territorial: there are currently 28 different (but partially harmonised) copyright systems in the EU.





# International

Berne convention (1896)

Rome convention (1961)

TRIPS (1994)

WIPO copyright treaty  
(1996)





# European Union

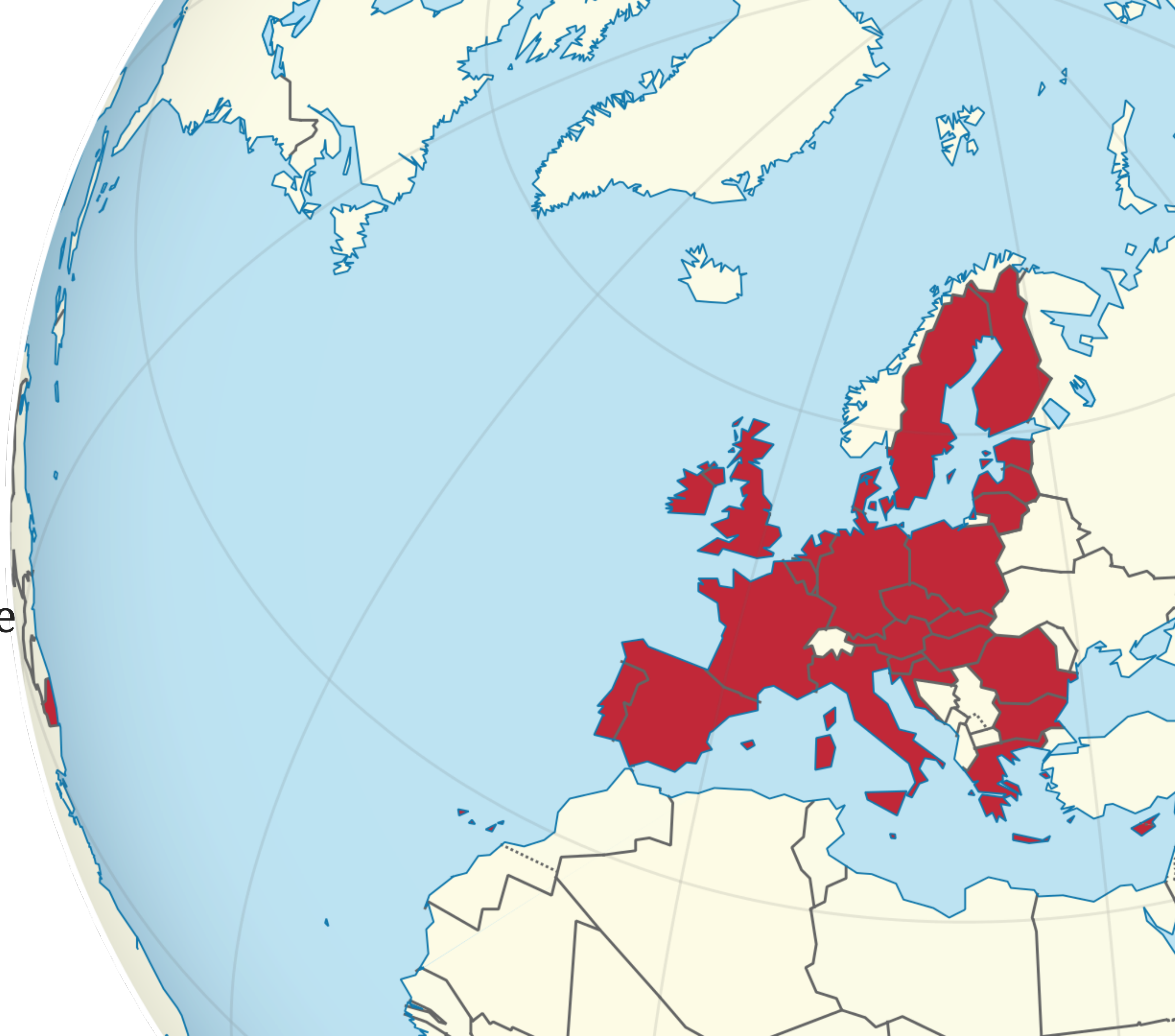
Orphan works directive  
(2011)

Copyright term directive  
(2006)

Copyright/InfoSoc directive  
(2001)

Database directive (1996)

SatCab, Rental, Computer  
programs, etc...





# Nederland

Auteurswet (1912)

Wet Naburige rechten  
(1993)

Databankenwet  
(1999)

Wet auteurscontractenrecht  
(2015)

Wet Toezicht collectief  
beheer (2013)





# Structure of copyright

- Economic rights (transferrable - harmonised):
  - The exclusive right to create reproductions of the work
  - The exclusive right to communicate the work to the public
- Moral rights (not transferable - not harmonised):
  - The right to be named (attribution)
  - The right to resist publication under a different name or title
  - The right to object to any distortion, modification or other derogatory action, which harms the author's honor or reputation

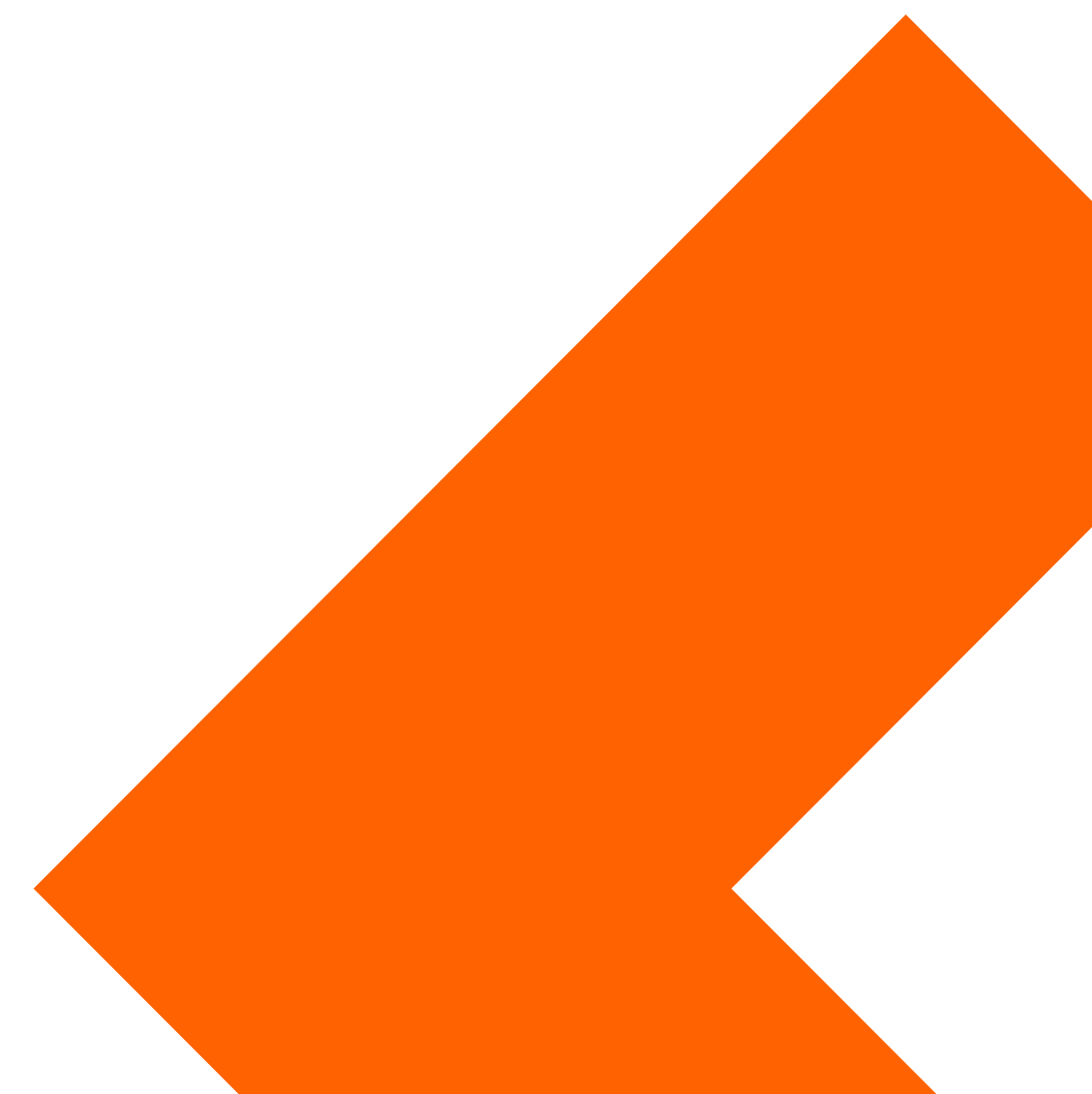




# Duration of copyright

- For natural persons:
  - January 1st following the death of the last surviving author +70 years
- For institutions and anonymous authors:
  - January 1st following 70 years after first publication

**Note:** there are exceptions to this rule, many of them specific to individual EU member states.





# Exceptions & Limitations

Not every use of a copyright protected work requires permission from the rightsholder(s). The EU copyright directive recognises 21 exceptions and Limitations (plus one in the Orphan works directive) that safeguard the interests of the public in areas such as access to information and freedom of education and research.

Exceptions and Limitations differ from country to country as they are not harmonised.

Some of these exceptions have requirements, such as fair compensation for the rights holder for the use of his/her work. These are usually managed by collective management organisations.





# Key exceptions & limitations

- Transient or incidental copying as part of a network transmission or legal use (Art 5.1 InfoSoc directive)
- Reproductions for private use (Art 5.2.b - requires fair remuneration)
- Use for the purpose of illustration for teaching or scientific research (Art 5.3.a)
- Quotations for purposes such as criticism or review (Art 5.3.d)
- Use for the purpose of caricature, parody or pastiche (Art.5.3.k)
- Use for the purpose of research or private study by individual members of the public on dedicated terminals on the premises of cultural heritage institutions (Art 5.3.n)





# *Rightsholders*





# Rightsholders

- In principle the creator is the rights holder of his/her work. Rights can be transferred and inherited.
- In many EU member states employees lose their copyright to their employer for works that are created as part of their employment contract
- Physical ownership of an object **does not** necessarily imply that the owner is the rights holder.
- A work can have multiple rights holders.



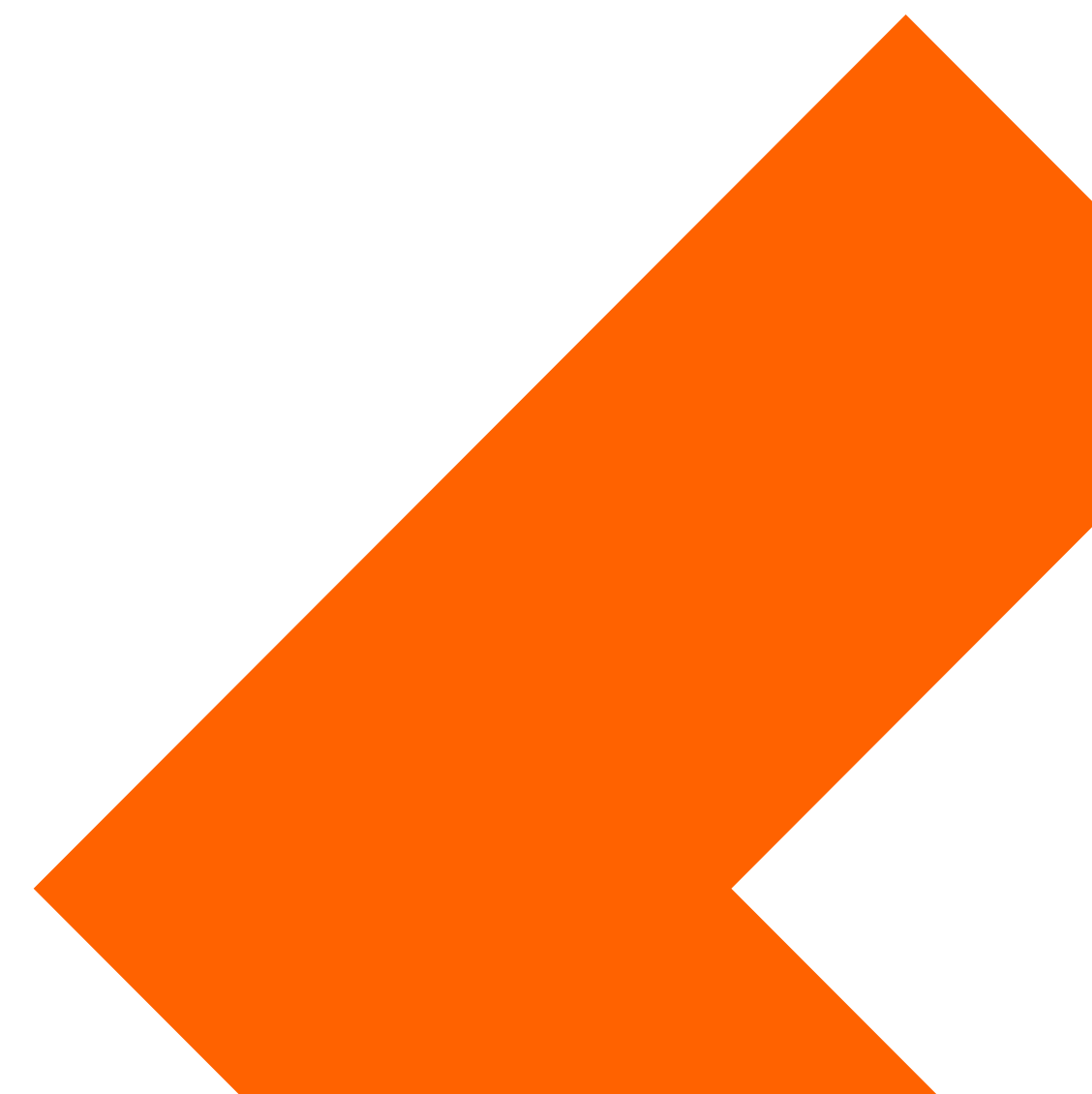


# Rights can be stacked

One object can contain several types of rights. Think for example of combinations of:

- Copyright
- Related Rights / Neighbouring Rights
- Database rights

There may also be rights belonging to third parties such as portrait or privacy rights that limit if and how a work can be used.





A detailed oil painting of a garden scene. In the foreground, a wide stone staircase leads up to a wooden door. To the right of the stairs is a wooden fence with a gate. The background is filled with lush green trees and foliage. The overall style is impressionistic with visible brushstrokes.

# *Neighbouring Rights*

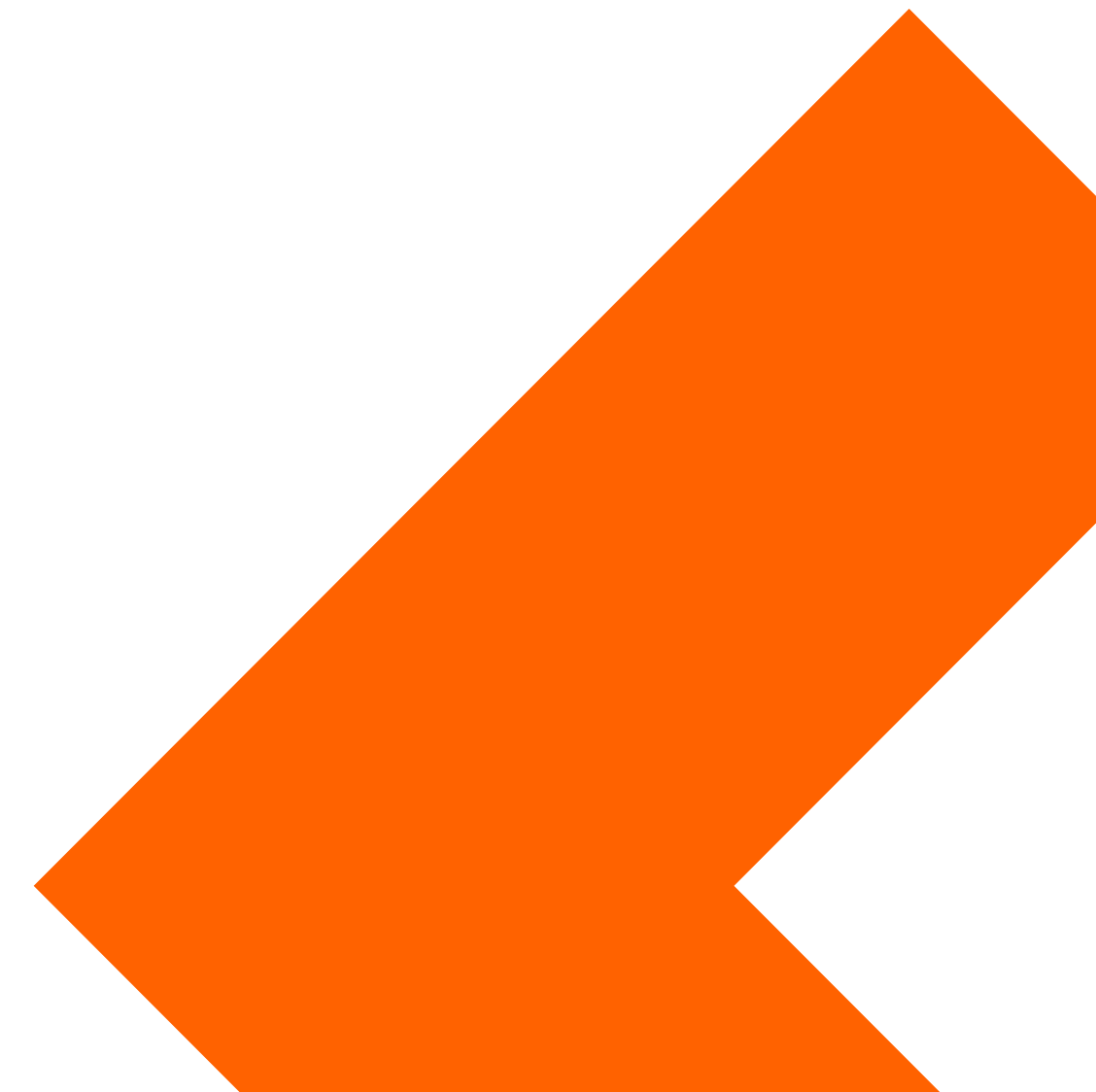


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# Who gets related rights?

- Exclusive rights for performers and producers on their work, including:
  - Broadcasts of radio / television
  - Phonograms (fixations of sound)
  - First fixation of a film
  - Performances





# What rights do related rights grant?

- Rights holder can decide on:
  - Whether a performance may be recorded
  - Whether a recording of a performance may be duplicated and sold
  - Whether a recording of a performance may be broadcasted or screened
- **Note:** commercially distributed phonograms may always be broadcasted, when the rights holder(s) receive a fair compensation





# Duration of Neighbouring Rights

	<b>published / communicated to the public</b>	<b>unpublished / not communicated to the public</b>
<b>Broadcasts</b>	50 years after communication	50 years after creation
<b>Phonograms</b>	70 years after communication	50 years after creation
<b>Performances on phonograms</b>	70 years after communication	50 years after creation
<b>Other performances</b>	50 years after communication	50 years after creation





# *Practice*

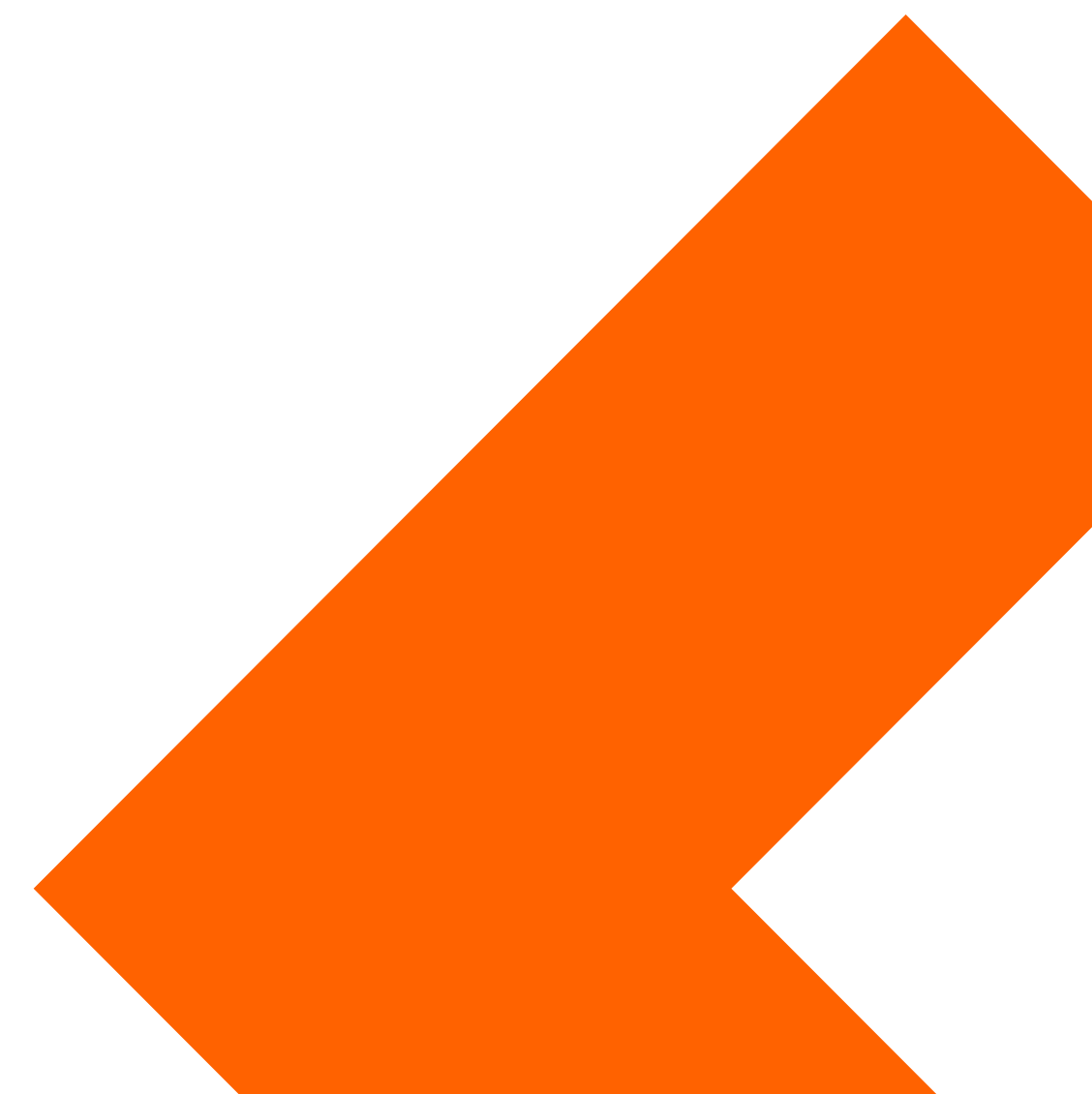


Public Domain, Rijksmuseum

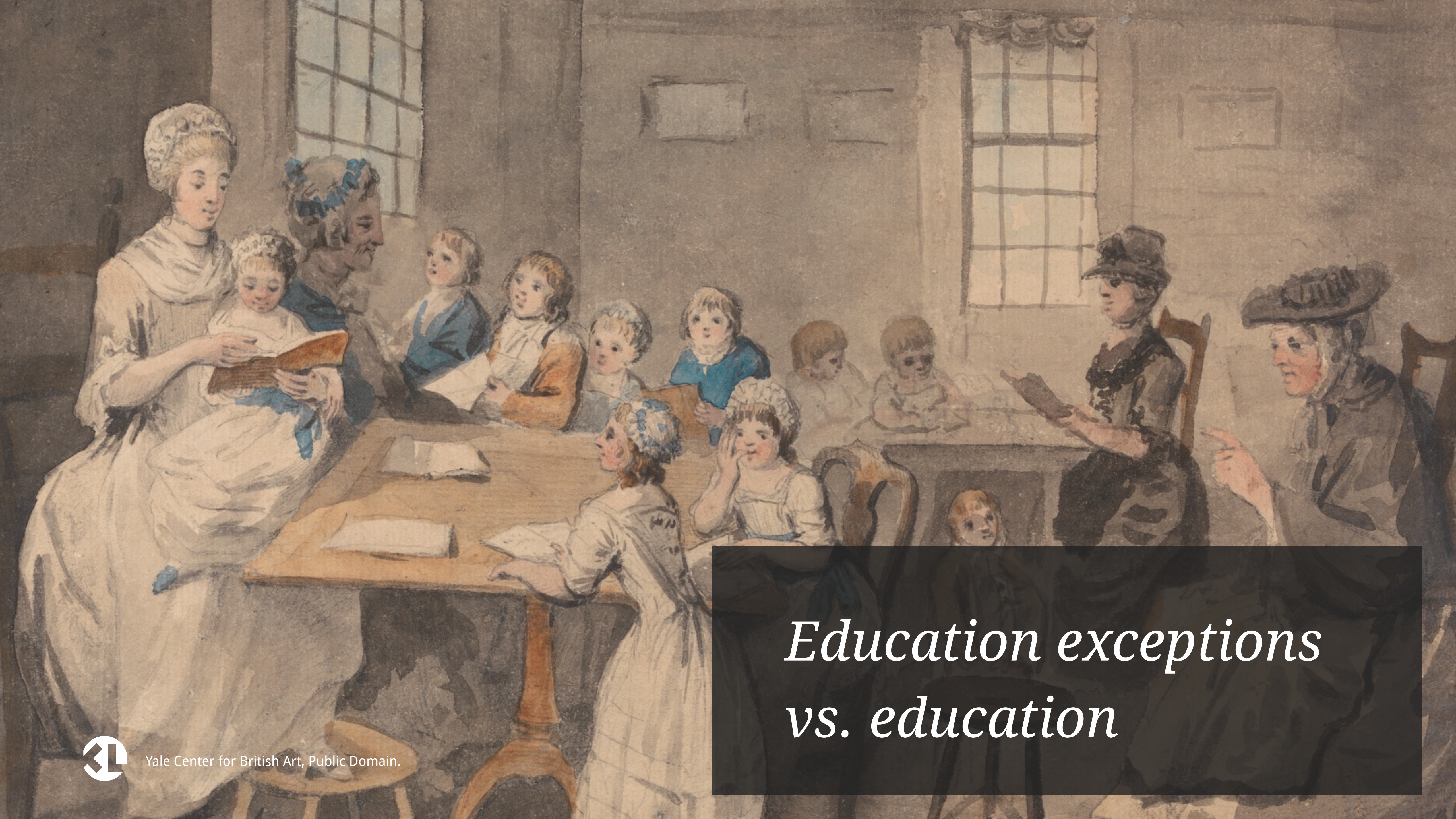


# Copyright protected?

- 'Hamlet' by William Shakespeare
- The sentence: 'Today I am in Frankfurt'
- An idea I have to start a new business
- Pulp Fiction by Quentin Tarantino
- A doodle-drawing I made on a napkin
- A selfie I make in front of a Picasso







*Education exceptions  
vs. education*



Yale Center for British Art, Public Domain.



# Main aspects of education exceptions

- Based on Information Society Directive: Use for the purpose of illustration for teaching or scientific research (Art 5.3.a)
- Different in all member states (if implemented)
- Often does not include online use of materials, or is unclear whether it includes online use
- Often subject to fair remuneration for the rights holders





# What is possible in your country?

Source: [OERpolicy.eu](https://oerpolicy.eu), research done by Teresa Nobre “[Mapping Copyright Exceptions and Limitations in Europe](#)”

EU/EEA countries and Switzerland	Does the law permit it?	For free?	In which <b>forms</b> can works be used?		What <b>kinds</b> of works can be used?					To what <b>extent</b> can works be used?			Which <b>acts</b> of use are permitted?		Other limitations
			Any	Translations	Any	Works of Art	Video	Music	Textbooks	Any	Entire Short Works	Entire Works of Art	Any	Online Uses	
Austria															Yes
Belgium															Yes
Bulgaria															Yes
Croatia															N/A
Cyprus															Yes
Czech Republic															Yes
Denmark															Yes
Estonia															Yes
Finland															Yes
France															N/A
Germany															N/A
Greece															Yes
Hungary															Yes
Iceland															N/A
Ireland															Yes
Italy															N/A
Latvia															Yes
Lithuania															N/A
Liechtenstein															Yes
Luxembourg															Yes
Malta															Yes
Netherlands															Yes
Norway															Yes
Poland															Yes
Portugal															Yes
Romania															Yes
Slovakia															N/A
Slovenia															N/A
Spain															N/A
Sweden															N/A
Switzerland															Yes
United Kingdom															Yes
32	22	14	19	20	14	19	15	17	20	12	21	15	11	16	22

Table 5. To otherwise use copyrighted works in educational resources: EU member states, EEA member states and Switzerland



Yes	No
Yes? (Unclear)	No? (Unclear)



# Example: The Netherlands

Article 4(12)5:

“Onder een voordracht, op- of uitvoering of voorstelling in het openbaar wordt niet begrepen die welke **uitsluitend dient tot het onderwijs** dat **vanwege de overheid of vanwege een rechtspersoon zonder winstoogmerk wordt gegeven**, voor zover de voordracht, op- of uitvoering of voorstelling **deel uitmaakt van het schoolwerkplan of leerplan voor zover van toepassing, of tot een wetenschappelijk doel.**”





# In practice NL: offline uses

- If the film is used within the classroom as part of the lesson plan you can use the film (and pay for it through the agreements the school as made for you)
  - If not used as part of a lesson plan (but in a extra curricular activity such as a school dance) you need a license.
- If you are not in a formal educational setting (your organisation is not recognised as such) you can show the film when you have obtained a license



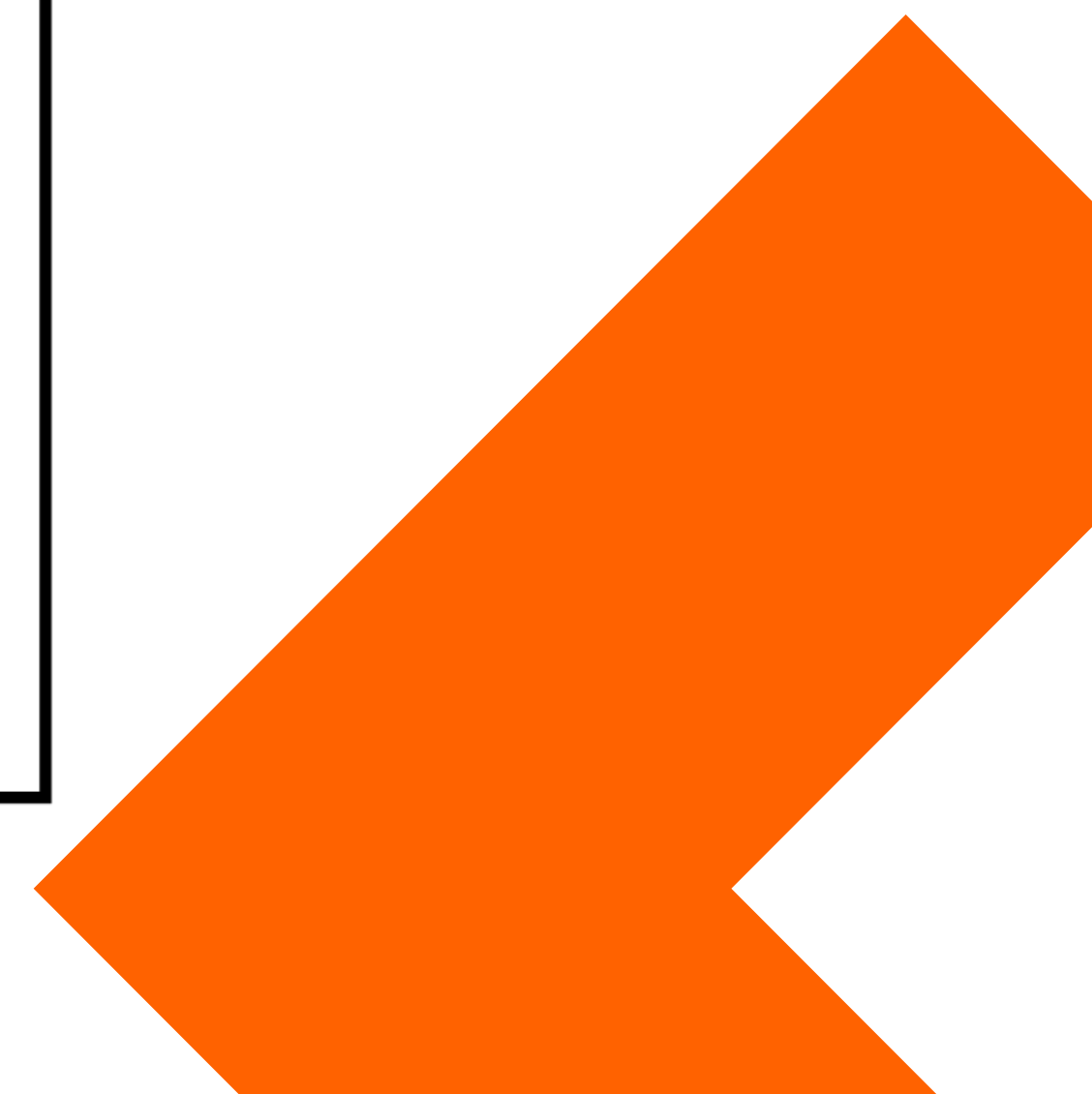
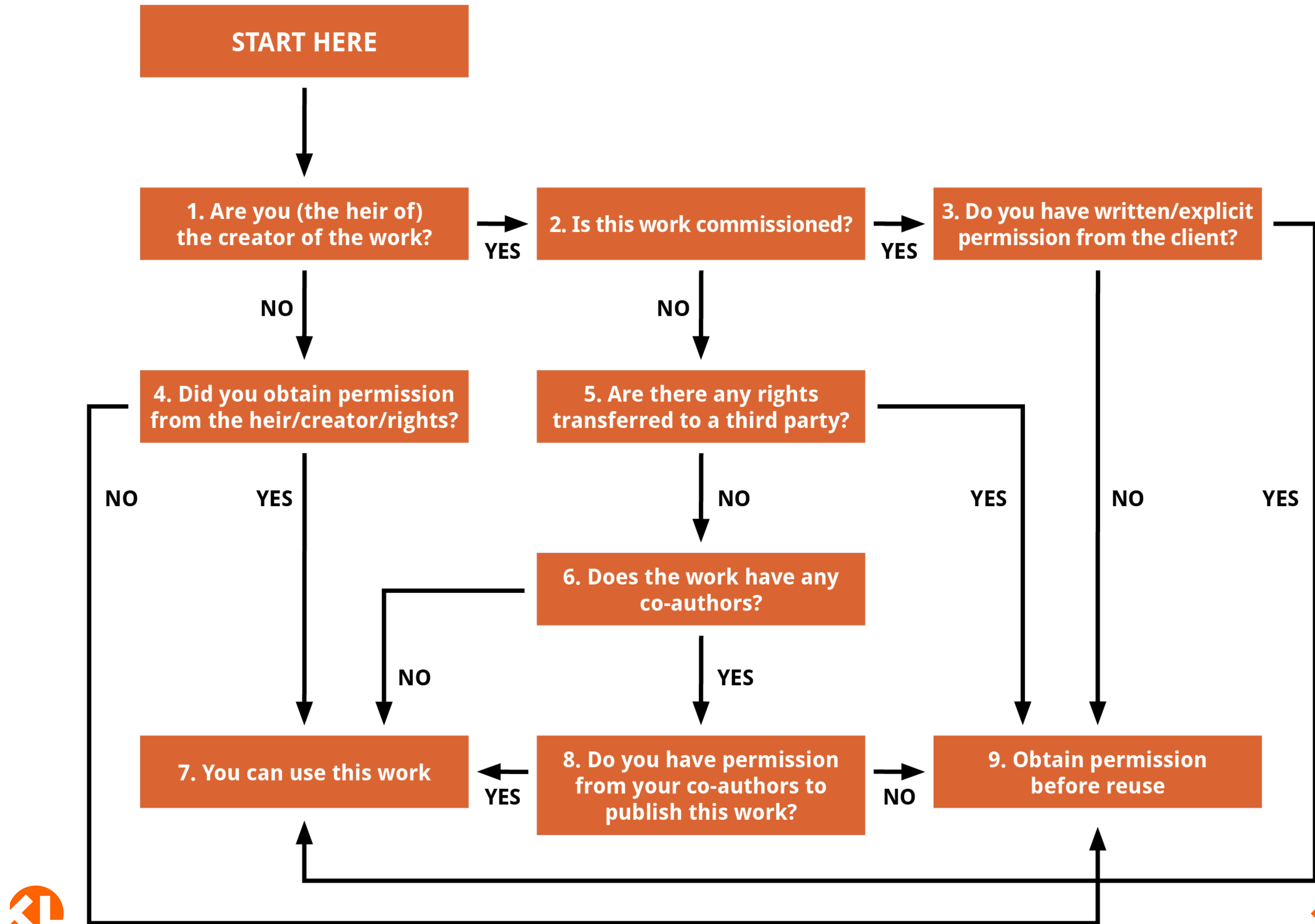


# In practice NL: online uses

- Dutch law does not specify whether online uses are permitted in educational use.
- This means we have to assume it is not allowed (and this is common practice).
- Which means permission needs to be obtained before online use of copyright protected works (through Creative Commons licenses or direct permissions from rights holders).
- **TIP:** linking is allowed - if you find the material online somewhere you are allowed to link to it on another website without issue.









# Questions?





# Thank you!

Kennisland advocates for modern copyright rules that support access to information and culture. We help organisations with opening up their collections, data and other information in a structured way.

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Kennisland

# Creative Commons licenses for Education

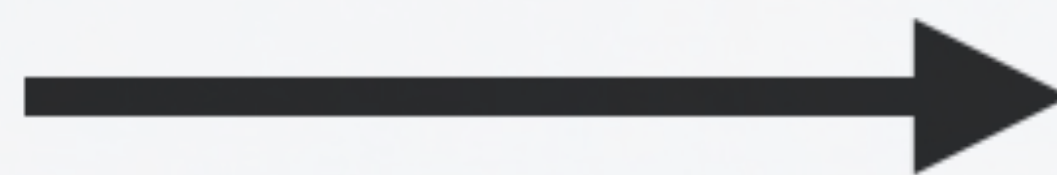
Lisette Kalshoven, Kennisland (DFI, Frankfurt, April 2016)







 **creative commons**



**Full copyright:**  
all rights reserved

**Creative Commons Licenses:**  
some rights reserved

**Public Domain:**  
no rights reserved

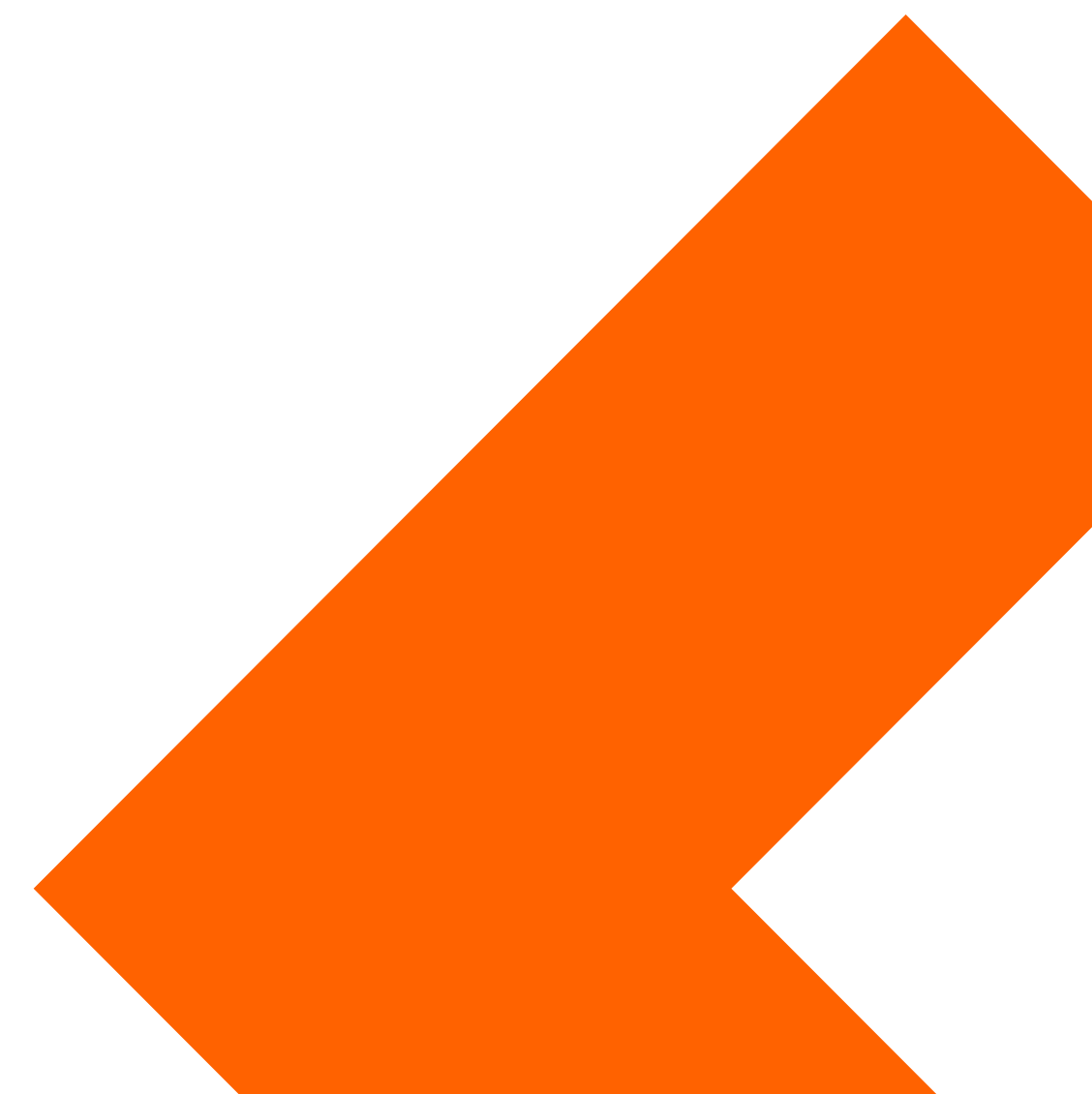


SMK, Public Domain.



# Main aspects

- Creative Commons (CC) licenses give universal permission for certain types of use of a copyright protected work.
- CC license can only be applied by the rightsholder of the work, or with explicit permission from the rightsholder.
- CC licenses are built up of three layers:
  - The deed (human readable summary)
  - The legal code (complete license in legal language)
  - The data (the machine-readable layer for search engines)





# The 6 licenses and their building blocks

There are 4 main elements of the Creative Commons licenses which can be combined to form 6 different licenses (BY, BY-SA, BY-NC, BY-ND, BY-NC-SA, BY-NC-ND):

Attribution: Give attribution to author and link to license



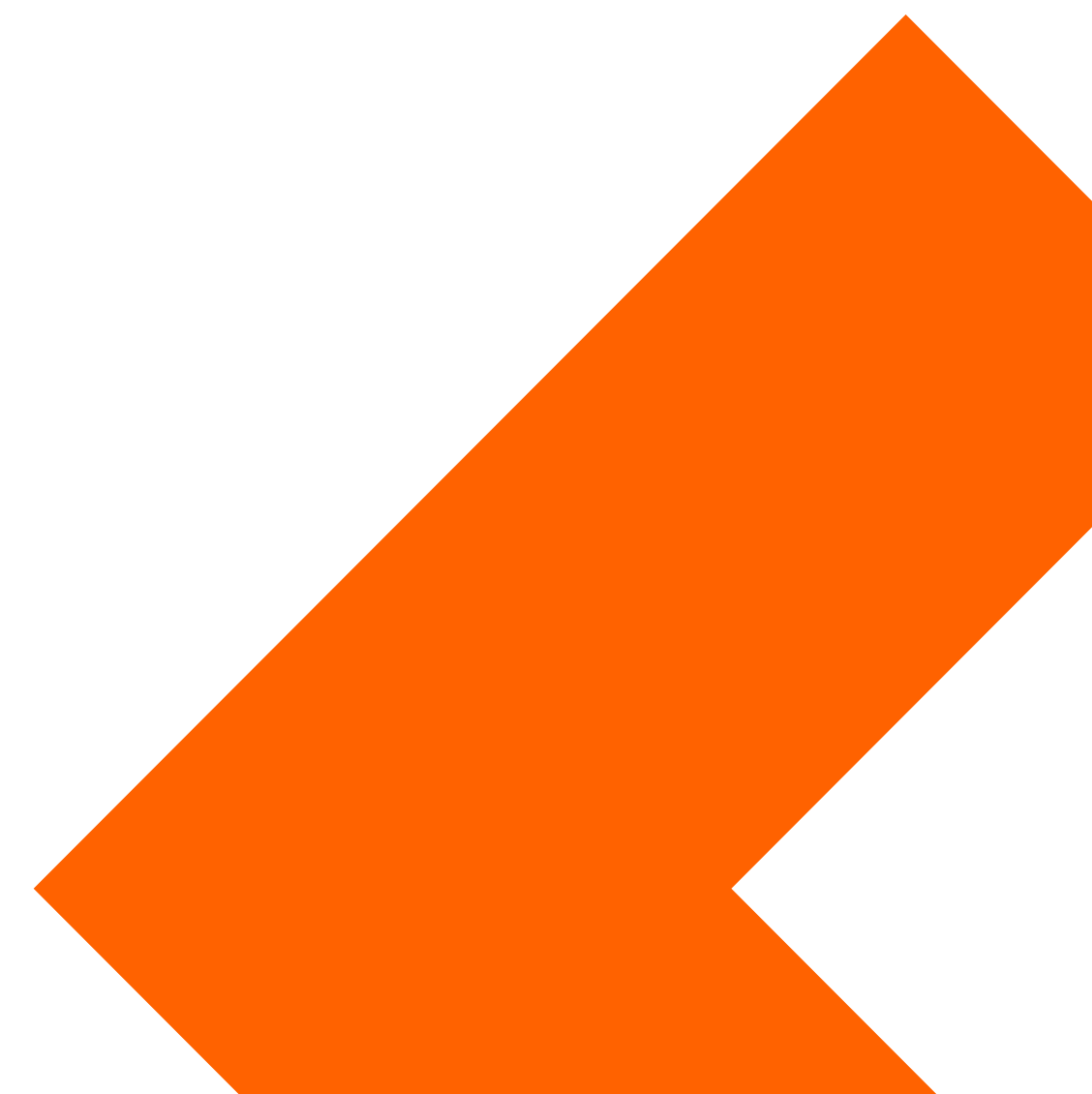
ShareAlike: Derivative works need to be made available under same license



NonCommercial: Re-use is only permitted for non-commercial purposes



NoDerivatives: The work must not be modified



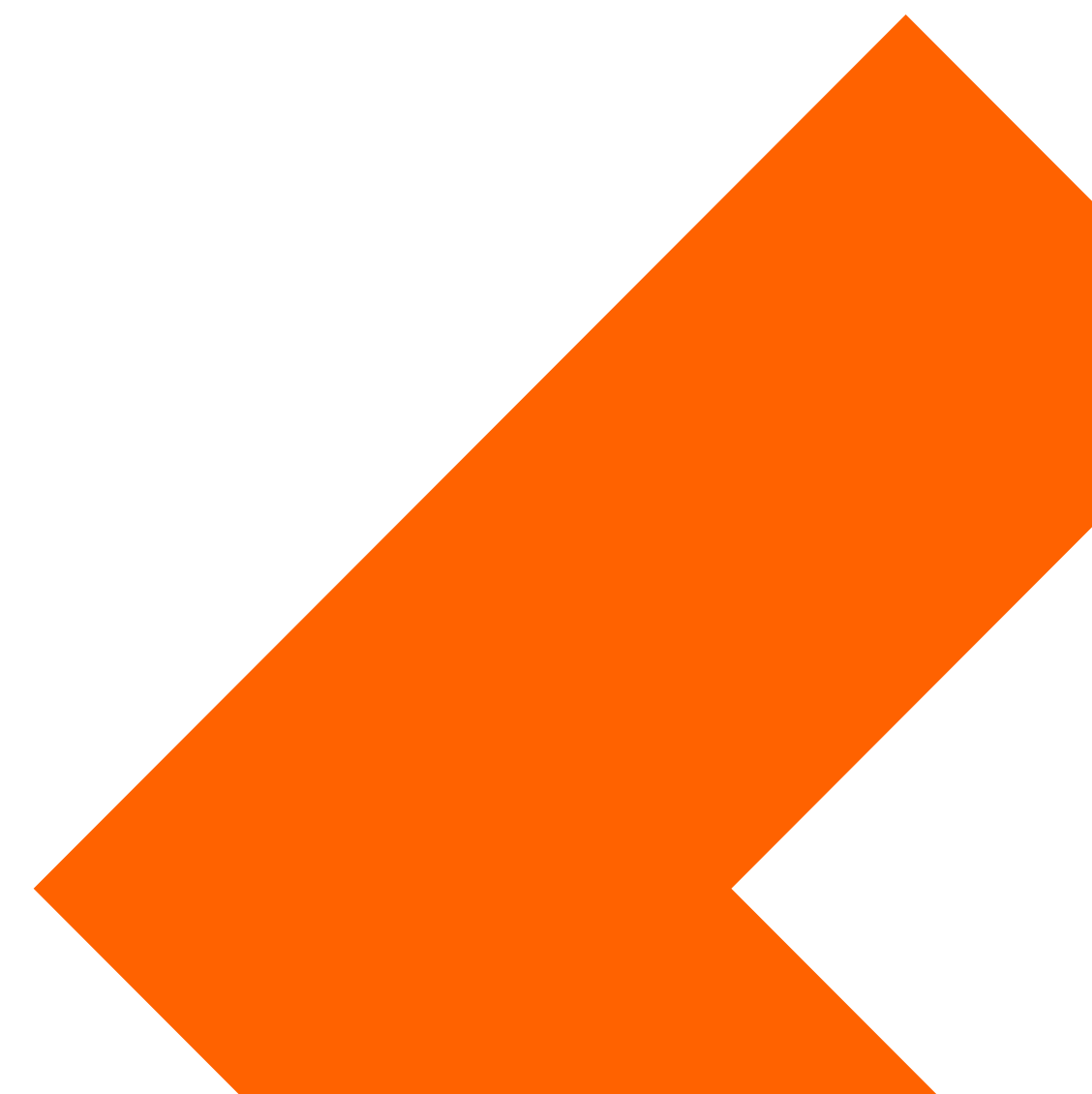


# Public Domain legal tools

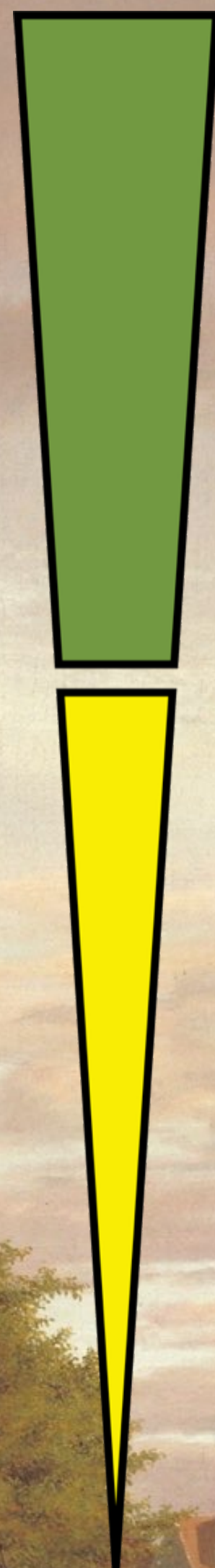
Technically these are not licenses but legal tools that signal the public domain status of a work:

**Public Domain Mark:** applied when there is no copyright in the material. It is meant as a signal to the end-user that they can reuse this material. Can be applied by anyone

**CC0 Public Domain Dedication:** applied when there are copyrights or other rights in the material. The rightsholder waives all possible rights in the object and declares it to be in the public domain. Can only be applied by the rightsholder.







CC0



BY



BY



BY



BY



BY



BY



SA



ND



NC



NC



NC



SA



ND

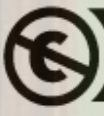





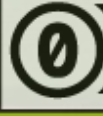
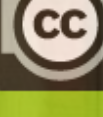

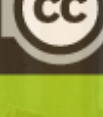
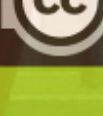


These are sufficiently  
open for OER



SMK, public domain



	 PUBLIC DOMAIN	 PUBLIC DOMAIN	 BY	 BY SA	 BY NC	 BY ND	 BY NC SA	 BY NC ND
 PUBLIC DOMAIN	✓	✓	✓	✓	✓	✗	✓	✗
 PUBLIC DOMAIN	✓	✓	✓	✓	✓	✗	✓	✗
 BY	✓	✓	✓	✓	✓	✗	✓	✗
 BY SA	✓	✓	✓	✓	✗	✗	✗	✗
 BY NC	✓	✓	✓	✗	✓	✗	✓	✗
 BY ND	✗	✗	✗	✗	✗	✗	✗	✗
 BY NC SA	✓	✓	✓	✗	✓	✗	✓	✗
 BY NC ND	✗	✗	✗	✗	✗	✗	✗	✗



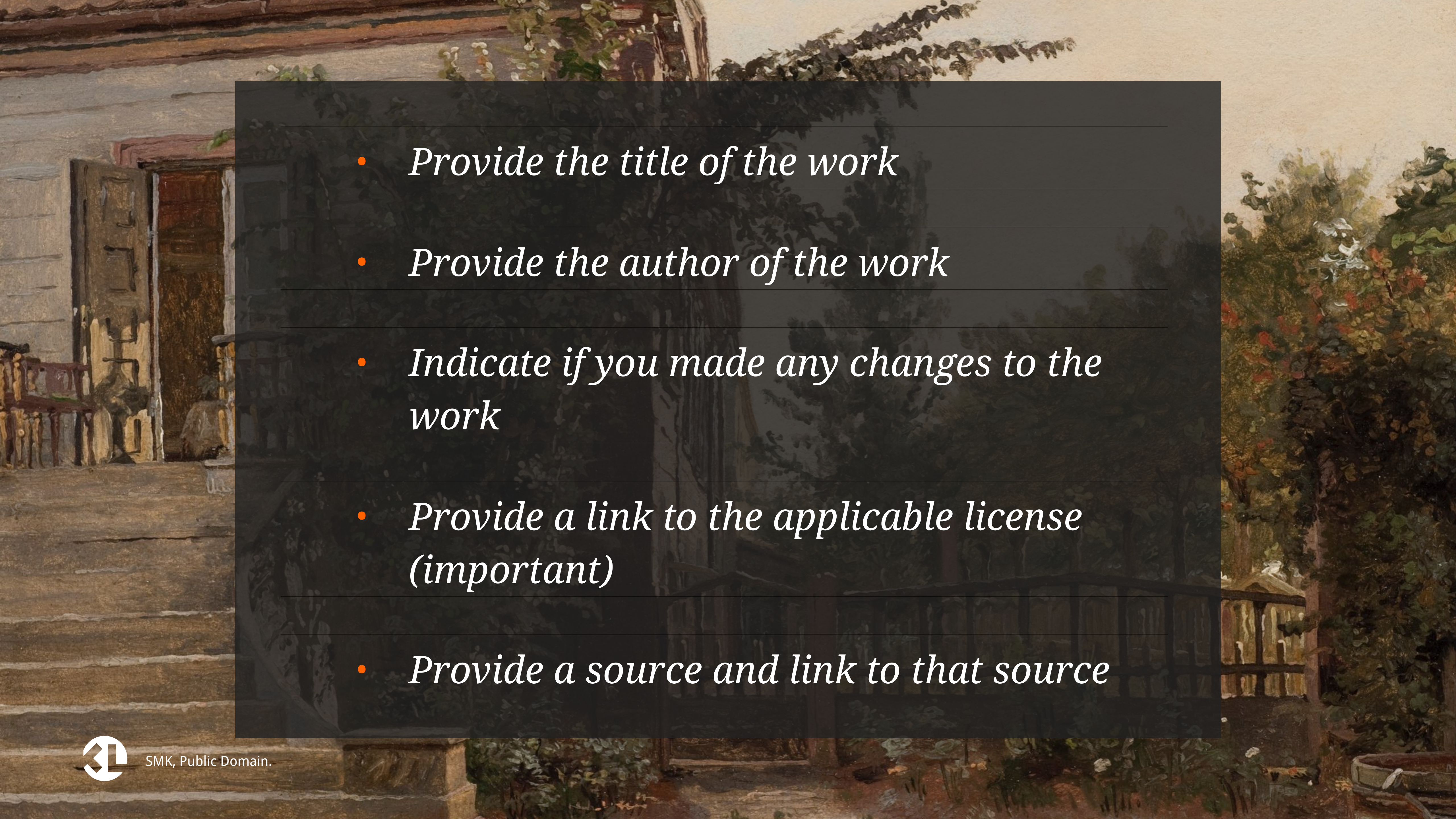


*How do you apply licenses?*



SMK, Public Domain.



- 
- *Provide the title of the work*
  - *Provide the author of the work*
  - *Indicate if you made any changes to the work*
  - *Provide a link to the applicable license (important)*
  - *Provide a source and link to that source*





*Where? Appropriate for the medium:*

- *Below the object you are licensing*
- *In a bibliography*
- *In the credits of a movie*
- *As a linked CC icon on your webpage*
- *Offline works need to provide the entire URL*







*Examples:*

- *Flickr*
- *Kennisland website*
- *Wikiwijs*





# Example (1)



You can use the final credits of a film for the license (note: URL is written out).





# Example (2)



KL website: pop-up on every image with rights information.



# Example (3)

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If you have the space, be as specific as you can in terms of copyright information: make it easy for the re-user.





# Before you apply a Creative Commons license

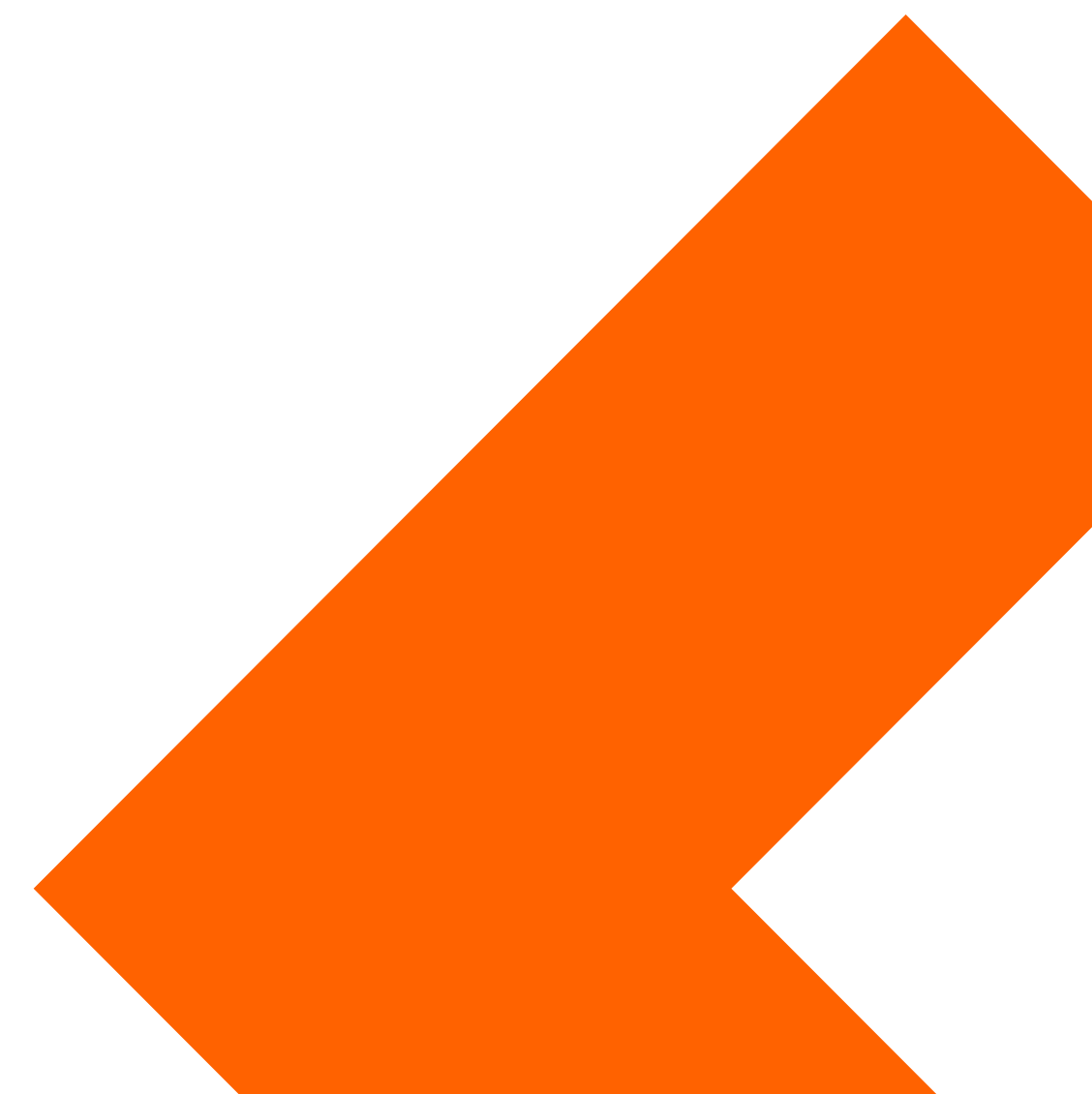
- Are you the (only) rights holder of the work and/or do you have permission from the rights holder to apply the license?
- Have you chosen the license that meets your needs?
  - With help from: <https://creativecommons.org/choose/>
- Have you attributed third-party content in the work correctly?





# Where to find CC licensed works?

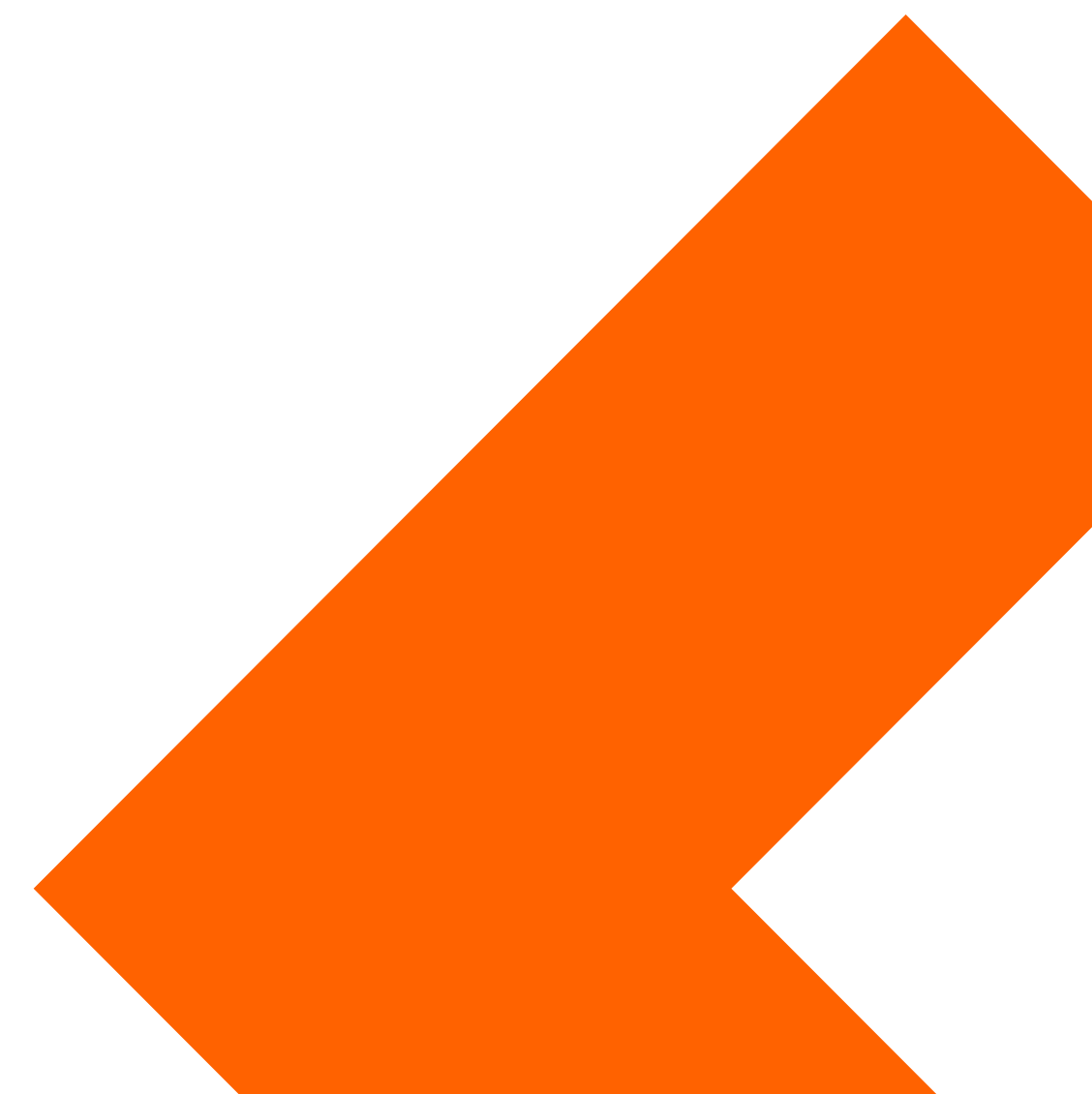
- Wikipedia / Wikimedia Commons
- Europeana
- Flickr
- Google Images (special settings)
- Through OER repositories
- ..... a lot more: [search.creativecommons.org](https://search.creativecommons.org)





# Assignment

1. Can you find an openly re-usable cat photo online?
2. Can you find an openly re-usable cat sound online?
3. If you made a derivative work out of these two, how would you license it?





# Potential answer

## File:Meow.ogg

From Wikipedia, the free encyclopedia

[File](#) [File history](#) [File usage](#) [Global file usage](#) [Metadata](#)

0:00





MENU

Meow.ogg (Ogg Vorbis sound file, length 0.8 s, 147 kbps)



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### Summary [\[edit\]](#)



Description	English: My cat Silas meowing. by Dan Crosby.
Date	29 October 2006 (original upload date)
Source	Transferred from <a href="#">en.wikipedia</a> to Commons by <a href="#">FSII</a> using <a href="#">CommonsHelper</a> .
Author	The original uploader was <a href="#">Dcrosby</a> at <a href="#">English Wikipedia</a>

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- **to share** – to copy, distribute and transmit the work
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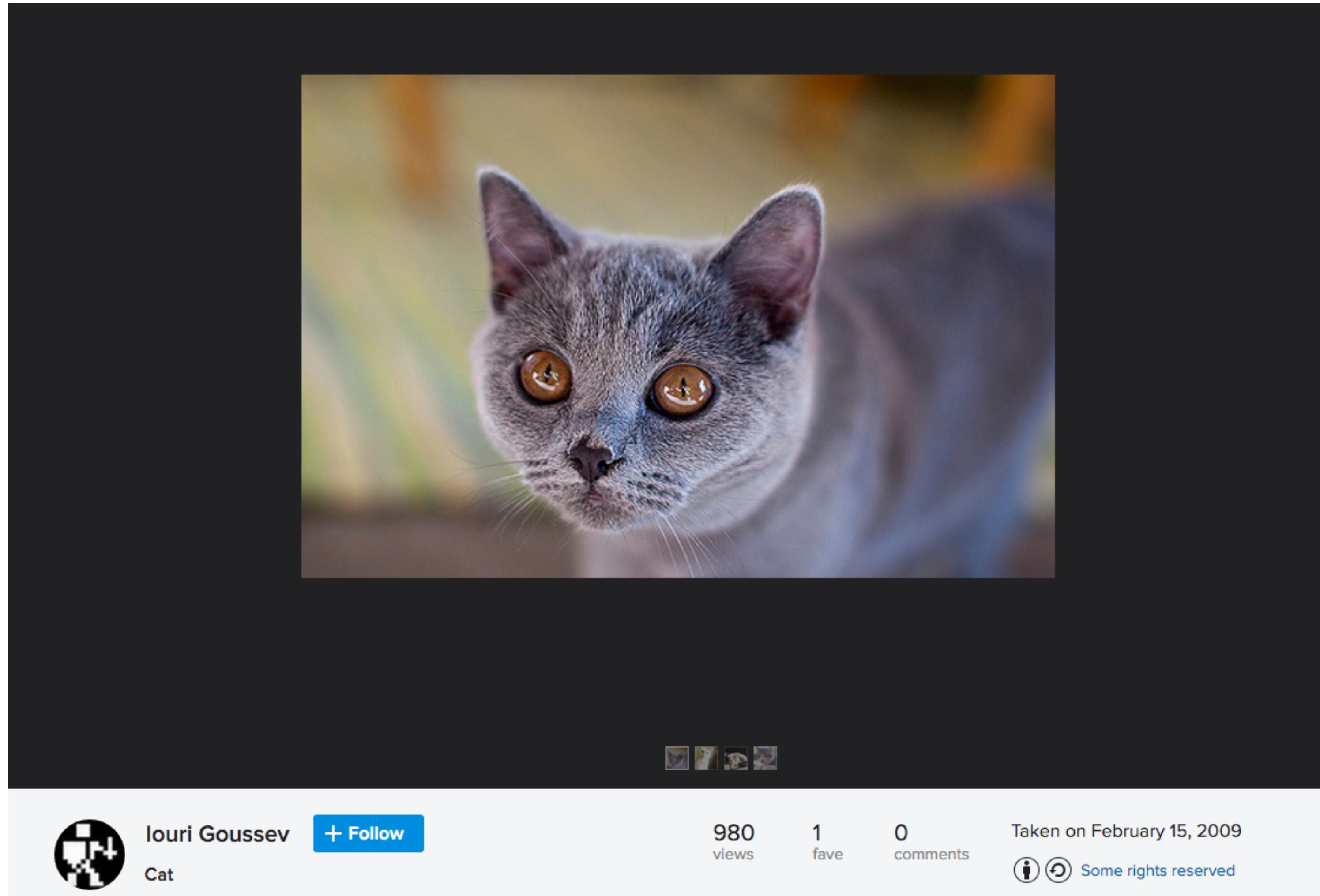
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# Potential answer





# Questions?





# Thank you!

Kennisland advocates for modern copyright rules that support access to information and culture. We help organisations with opening up their collections, data and other information in a structured way.

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