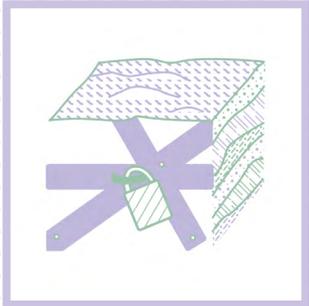




Groundwerk Copyright for Artists

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Intellectual property is one of the most important tools an artist has in their toolbox enabling creators to control how their work is reproduced and can provide additional income.

At the Artists' Collecting Society (ACS) we know the importance of protecting creators' intellectual property. Below, we have collated some of the most important points you should consider as your career and oeuvre develops.

Top Tips

Always agree to terms in writing, even when dealing with friends or family.

Double-check to ensure that you are happy with the terms of any contract you are about to enter into:
Will you be free to reproduce and profit from your work without clearing copyright or incurring additional fees?
Are you happy with the ways and length of time a company can use your work?

Clear copyright when using other creators' artwork as the basis for your own.

If in doubt, ask an expert!

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Intellectual Property

Intellectual property can be divided into several different categories. The two categories that tend to be of most importance to visual artists are copyright and Artist's Resale Right (ARR), but other categories also include trademarks, patents and designs.

What is copyright?

In the UK, copyright is an automatic intellectual property right that gives creators rights of control over the copying, adaptation, distribution of copies, performance and broadcasting of their original works of art.

The rights granted by copyright generally fall into two sections:

Moral – the right to be identified whenever a creator's work is reproduced, the right to prevent a third-party modifying the work.

Economic – the right to make a commercial gain from a creator's work (e.g. by licensing a reproduction in a publication).

What does copyright apply to?

Copyright applies to the following: paintings, sculptures, drawings, engravings, photographs, works of architecture, including buildings or models of buildings, and works of artistic craftsmanship.

It should be noted that names or titles, industrial articles and ideas are not protected under copyright. In addition, under 'fair dealing', as long as users credit the artist, the work can be reproduced in certain projects such as non-commercial research and private study, criticism and review, reporting current events and in educational exceptions without seeking permission.

What is ARR?

In the UK, ARR is an inalienable, automatic right that entitles all creators with British or EEA nationality to a royalty payment every time their work is re-sold by an Art Market Professional, such as an auction house or a gallery, for a price which reaches or exceeds the sterling equivalent of €1,000.

ARR was designed to ensure that creators benefit from the increase in the value of their work. For example, if a painting was sold for the first time for £500 and then that painting is re-sold for £5,000, the artist would be entitled to a percentage of its resale value.

What does ARR apply to?

Any work of art by an artist who is a British or EEA national and in copyright. Under current UK regulations, 'work' includes pictures, collages, paintings, sculptures, tapestries, ceramics, glassware and photographs. Limited editions of prints or multiple works may also qualify.

How long do ARR and copyright last?

In the UK, ARR and copyright last for the life of the creator plus 70 years following their death. Copyright originally lies with the creator but it can be bought or sold, inherited or otherwise transferred.



Fig.1

Who Owns What?

Who owns the copyright to a commission?

In the majority of cases, creators will still own the intellectual property connected to their work, even if that work was commissioned by someone else. However, it is always a good idea to include a line in your contract that states that you, the creator, retain the intellectual property connected to the work.

Who owns the copyright to the photography of my work?

You may not automatically own the copyright to the photography of your work, even if you have commissioned a photographer. Ownership tends to depend on the terms and conditions of your agreement. We always advise that you agree with your photographer, in writing, that ownership of the copyright for all photography they produce lies with you.

Who owns the copyright to work created under contract?

The copyright, and all affiliated intellectual property work created under contract, tend to be owned by the company you were employed by at the time of creation. This is why it is really important to check the terms and conditions of any contract you are entering into! Things to consider: reproduction rights, revenue from future reproductions, length of the contract. Will you be able to freely reproduce images of your work, or will you need to obtain permission from the company?

What if...?

What if someone wants to re-sell my work, or share a picture of my work?

It is important to remember that both copyright and ARR exist outside of the physical work itself.

The separation between the physical work and creators' intellectual property also means that creators' moral and economic copyright is not lost. Regardless of the physical location, the creators' moral right (the right that prevents modification, mutilation, distortion, or indeed any other amendments to their work) subsists, as does their economic right to profit from reproductions of the original piece.

Whilst this is the case, creators can still waive the rights granted to them by choosing not to enforce their right to make a profit for the use of their work, or by waiving their moral right to object to any usage of their work. Whereas copyright can be bought or sold, ARR can only vest in the creator whilst they are living and cannot be waived, sold or given away.

This means that whilst creators will typically not be able to contest secondary sales of their physical work, they can still benefit from both copyright and the resale right royalties generated from reproductions of their work and ARR.

What happens if I give away my copyright?

Whilst you are able to waive or sell your copyright, we recommend considering each agreement you enter into. If you give away or sell the copyright to your work, you will forfeit both your economic and moral rights to have a say on how it will be used in the future. Know what you are signing!

What if I want to use other people's work?

It is important to remember that in addition to protecting your own intellectual property, UK copyright protects the intellectual property of

other creators too. Creators who wish to use other artists' work in, or as the basis of, their own, should ensure that they clear copyright with the artist or artist's estate in question.

There are a number of limited instances where, as long as users credit the artist, a creator's work can be reproduced without prior permission. These include non-commercial usages, research, private study, criticism and review, parody and pastiche, reporting current events and educational exceptions. However, it is important to remember these exceptions are only permissible within the parameters of 'fair dealing'.

The only other exception to this rule is if the work or artist is out of copyright. However, regardless of whether the work is in or out of copyright, it is good form and good practice to credit the original creator. When ACS members Rob & Nick Carter animated a John Constable painting, they ensured that their caption referenced both the artists and the original artwork: Transforming Landscape Painting, 2013-17, 2.5-hour looped film, monitor with player, frame, after John Constable (1776-1837) | Study for the Cornfield, c.1817 oil on canvas



Fig 2

Do I have to register to protect my copyright or benefit from ARR?

Intellectual property law varies from country to country, so unfortunately there is no universal rule. In the UK, it is not currently necessary to register or apply for copyright as it is an automatic right.

ARR works in a similar fashion, in that it is, in the UK, treated as an inalienable right. This means that the royalty must legally be generated on the completion of an eligible sale. However, under UK law, creators must be registered with a collecting society in order to receive any monies owed to them.

What if I need help with copyright and ARR?

You can find out more about copyright and ARR through some of the further reading at the end of this resource. You can also speak to an organisation that supports artists in this area, such as the Artists' Collecting Society (ACS). ACS is the only not-for-profit, Community Interest Company dedicated to the collection of ARR and copyright on behalf of artists and artists' estates in both the UK and the EEA. As a Community Interest Company, ACS operates solely for the benefit of member artists, and membership is free to join.

Further Reading

- Walter Benjamin, [The Work of Art in the Age of Mechanical Production](#), translated by Harry Zohn, from the 1935 essay. In: Illuminations, edited by Hannah Arendt. New York: Schocken Books, 1969.
- Graham P. Cornish, Copyright: Interpreting the Law for Libraries, Archives and Information Services. 1st ed. London: Library Association Publishing, 1990 / Revised 6th ed. London: Facet Publishing 2020. Print.
- Gillian Davies, Copyright Law for Artists, Photographers and Designers. 1st ed. London: A & C Black Publishers Ltd, 2012. Print.
- Hito Steyerl, [In Defence of the Poor Image](#), e-flux, Journal #10, 2019.
- Simon Stokes, Art and Copyright, 1st ed. Oxford: Hart Publishing, 2001. Print.

Image Credits

You may have noticed that there are few images in this resource, and those that are included are not of contemporary artworks. If we wanted to reproduce copyrighted works in this booklet, we would need to clear copyright with the creators and pay them a licence fee. The images included in this document are courtesy of Bridgeman Images.

Fig 1: The Painter's Easel, 1686, Antonio Forbera, Musee Calvet / Courtesy of Bridgeman Images

Fig 2: The Lecture, William Hogarth, Private Collection / Courtesy of Bridgeman Images

ACS was set up by Lady Bridgeman in 2006 to support artists and their estates. ACS represents a diverse range of over 1,000 artists and artists' estates for both their Artist's Resale Right and copyright administration. Members include seminal artists such as Lucian Freud, Barbara Hepworth, Paula Rego, Frank Auerbach, Leon Kossoff, Maggi Hambling and Eileen Cooper, as well as burgeoning artists such as Rebecca Ackroyd and Pablo Bronstein. ACS has been proudly assisting members and non-members alike with their intellectual property for over 15 years, ever since the introduction of ARR. To find out more, or if you have any questions about your intellectual property, visit the ACS website:

artistscollectingsociety.org

Founded in 2013 by Croydon locals, Turf Projects is the first entirely artist-run contemporary art space in Croydon, South London. A registered charity (#1160527), Turf has supported the work of over 400 artists to date through a programme of free public exhibitions, workshops and events.

turf-projects.com // [@turfprojects](https://www.instagram.com/turfprojects)



This resource was developed with support from Arts Council England by Kimberley Ahmet on behalf of the Artists' Collecting Society, for Turf Projects as part of the Groundwerk artist development series, 2020. This introduction is intended as a helpful summary to copyright and ARR and is not exhaustive, nor can it be used to substitute legal advice. The facts contained within these pages are true as of January 2021. Design by B Atherton, layout by Phoebe Russel & facilitated by Holly Graham.