

Copyright & Cultural Heritage

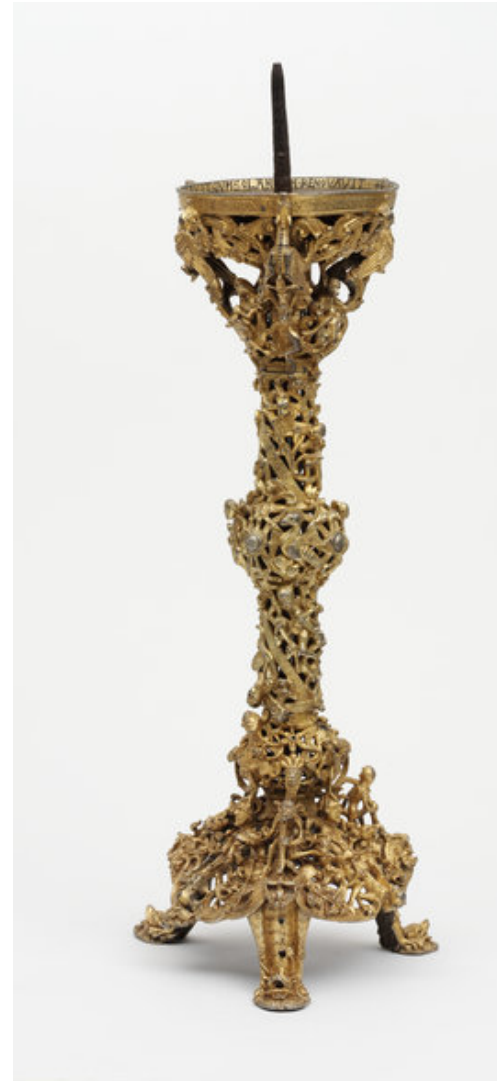
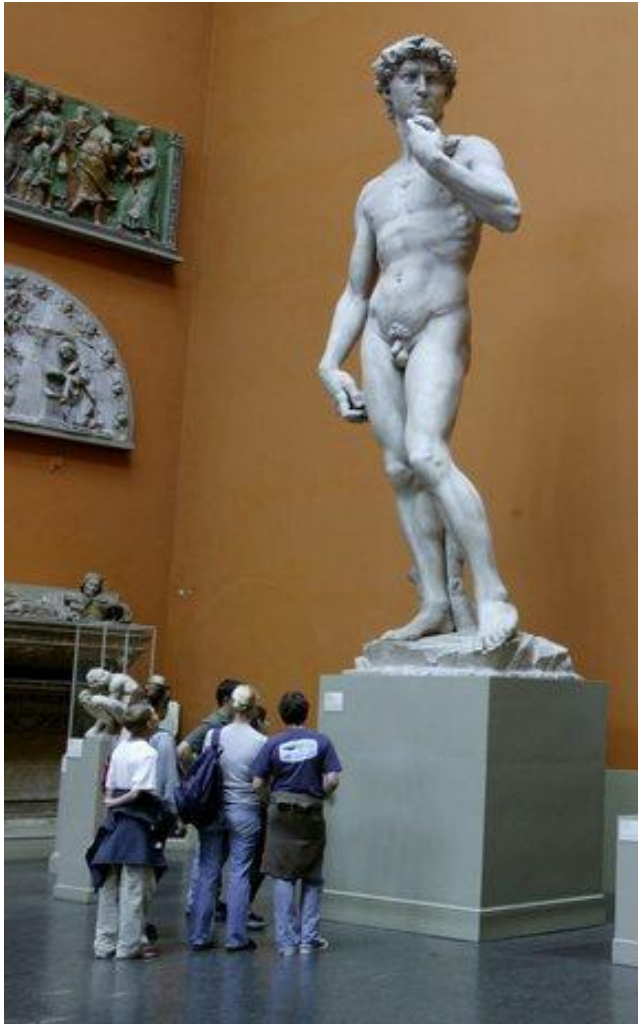
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KEYSTONE LAW





BRIDGEMAN V. COREL

Bridgeman Art Library v. Corel Corp., 36 F. Supp. 2d 191 (S.D.N.Y. 1999), was a decision by the United States District Court for the Southern District of New York, which ruled that under US law, exact photographic copies of public domain images could not be protected by copyright in the United States because the copies lack originality. The Judge went on to say that under UK law, the position was the same!

NATIONAL PORTRAIT GALLERY V. WIKIMEDIA COMMONS (UNREPORTED)

REISS ENGELHORN MUSEUM (REM) V. WIKIMEDIA FOUNDATION

In 2015, the museum filed a lawsuit against the [Wikimedia Foundation](#) and [Wikimedia Deutschland](#) over the use of photographs of [public domain](#) artworks on the [Wikimedia projects](#).^[8] In June 2016, a Berlin court ([Landgericht Berlin](#)) ruled that digitizing paintings that are in the public domain can create new copyrights, even if the intent is to create a faithful image of the public domain work.

On 20 December 2018 the German federal court upheld the decision of the lower court. Having made decisions about a number of creative circumstances, including location, distance, viewing angle, exposure, and cropping, the photographer was entitled to enjoy copyright in her photographs.

EU CASE LAW

- 2009 Infopaq case (paragraph 37), the ECJ concluded that copyright “*is liable to apply only in relation to a subject-matter [such as a photograph] which is original in the sense that it is its author’s own intellectual creation*”.
- 2011 Painer case (paragraph 99) the ECJ concluded “*it is for the national court to determine in each case, [if] such photograph is an intellectual creation of the author reflecting his personality and expressing his free and creative choices in the production of that photograph. Since it has been determined that the portrait photograph in question is a work, its protection is not inferior to that enjoyed by any other work, including other photographic works.*”

EU COPYRIGHT DIRECTIVE

Chapter 4

Works of visual art in the public domain

Article 14

Works of visual art in the public domain

Member States shall provide that, when the term of protection of a work of visual art has expired, any material resulting from an act of reproduction of that work is not subject to copyright or related rights, unless the material resulting from that act of reproduction is original in the sense that it is the author's own intellectual creation.



COPYRIGHT/DESIGNS OVERLAP

Before 28 July 2016: > 50 copies made of an artistic work: © lasts 25 years

After 28 July 2016: all artistic work: © lasts 70 years p.m. (irrespective of manufacture on an industrial scale)




Frida Kahlo

Making Her Self Up

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16 June – 4 November 2018

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