
Article 14

Visual Artworks

in the Public Domain




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“...a remarkable provision which, for the first time in the EU, grants a positive status to works belonging to the public domain, by prohibiting any regaining of exclusivity therein.”

European Copyright Society on Art 14



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.

Breaking down Article 14: Visual artworks

Article 14 only applies to reproductions of “works of visual art”.

- **This is not a defined term in EU law (or any member state law that we are aware of).**
- **The concept should be interpreted broadly.**
- **It clearly does not include works of literature or musical compositions.**

Breaking down Article 14: Original reproductions

Article 14 only applies to reproductions that are not original original “in the sense that it is the author's own intellectual creation”

- This is the standard originality threshold defined by the CJEU (so this is nothing new).
- Important to consider that originality is not related to effort.
- Original reproductions are not affected (2D reproductions of 3D works)

Breaking down Article 14: Original reproductions

Originality tends to be
inversely correlated to efforts
to make reproductions as
faithful as possible

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Breaking down Article 14: No new rights

Article 14 only states that reproductions are “not subject to copyright or related rights”

- **The copyright part is nothing new (copyright only applies to original works).**
- **The new bit are the neighbouring rights which means that existing protections for un-original photography will not be compatible with EU law anymore.**

Member State implementations

- Currently only **Austria, Germany, Italy, Spain, Denmark, Sweden, Finland, Iceland, and Norway** grant protection to non-original reproductions.
- Changes to national laws are only required in Member States where national law provides for some form of protection of non-original reproductions.



Member State implementations

- **Implementation can take a number of different forms:**
 - **Standalone implementation of the article (positive statement)**
 - **Modification of provisions granting neighboring rights (carving out exceptions).**



Implementation scenarios

- **Baseline:** provision limited to works of visual art that are out of copyright.
- **Better:** Provisions that applies to all public domain works (not only visual artworks). This approach leads to more coherence of the system.



Application in time

- **If the reproduction was made while the original work was still protected, the resulting non-original material can be protected for as long as the protection in the original work subsists.**

Thank you!

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