

Photographic Rights and Creative Commons

Handout 2

Supplement of the Interreg project “Lichtbild/Argento vivo.
Cultural Treasure Photography”



The Interreg project “Lichtbild/Argento vivo. Cultural Treasure Photography” is a collaboration between the following partners: the Tyrolean Archive of Photographic Documentation and Art (TAP), the Municipality of Brunico as well as the Office for Film and Media and the Department of Museums of the Autonomous Province of Bolzano – South Tyrol.

The Lichtbild team consists of the following members: Martin Kofler, Rosemarie Bachmann and Helene Ladstätter (TAP), Sonja Hartner and Elisa Mair (Municipality of Brunico), Marlene Huber, Oscar La Rosa and Notburga Siller (Office for Film and Media) as well as Gertrud Gasser and Verena Malfertheiner (Department of Museums).

The team is supported by several representatives of the associated partners: Alessandro Campaner of the

South Tyrolean Provincial Archives, Roland Sila and Claudia Sporer-Heis of the Tyrolean State Museums and Bernhard Mertelseder of the Tiroler Bildungsforum – Association for Culture and Education in Innsbruck. Another associated partner is the European Region Tyrol–South Tyrol–Trentino.

In line with the motto “Professional handling, open access. Photography goes future,” the project defines guidelines for the competent handling of historical photographs in the project area of Tyrol and South Tyrol. These guidelines are developed within the framework of various workshops; the results will be presented on a website, in an app and as an e-learning program. Furthermore, for the first time ever, the project will make historical photographs available in Tyrol and South Tyrol as open data.

1. History of Photography in Tyrol and South Tyrol

2. Photographic Rights and Creative Commons

3. Archiving and Cataloging

4. Digitalization and Image Editing

5. Digital Long-Term Archiving

www.lichtbild-argentovivo.eu

info@lichtbild-argentovivo.eu

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Translations:

Article Aliprandi from Italian into German: Oscar La Rosa, Office for Film and Media, Bolzano

Articles Piock, Beck, Planötscher/Malfertheiner, Siller from German into Italian: Roberta Cattoni, Predaia

All articles into English: Matteo Da Col, Brunico

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Preface

The topic of “photographic rights” – as a generic term for legal issues concerning the use of pictures – is now more important than ever. As exploiters of rights, photographers, photo journalists, designers, photo and advertising agencies as well as archives have to acknowledge the issues related to this topic, including:

- Copyright
- Trademark rights
- Personality rights in the form of the “right to one’s own image”

In the digital age, these issues have gained new meaning. Picture taking as such has changed dramatically; first and foremost because new technical possibilities allow for an easier, faster and no longer locally restricted distribution of the end products, especially compared to the times of analog silver halide photography, where possession of the photo negative was more or less equal to having the rights of use.

It is particularly interesting to see that back in 1865 – as early as 30 years after the “invention” of photography – the copyright on photos was regulated by the “Law for the Protection of Photos and Photographic Works” in the Kingdom of Bavaria, and later, on January 10, 1878, by a law for the protection of photo copyright valid in the entire German Empire. It was incorporated almost verbatim in the Bern Convention for the Protection of Literary and Artistic Works dated September 9, 1886. For decades, the agreement of Bern represented the legal basis for most of the European states. The Bern Convention was later extended and further developed in the Uni-

versal Copyright Convention of 1952. It was then updated in 1972 and confirmed in 1995 as European Union law, but with a modified protection period. In Italy, the first reference concerning copyright on photos can be found in a decision of the Court of Cassation (*Corte di Cassazione*) of June 3, 1876, which recognized photography as an intellectual value worthy of protection. However, this decision was overturned by the Court of Appeals (*Corte di Appello*) a month later, saying that photography should be regarded as a purely “mechanical process.” It took until 1925 for the Royal Decree (*Regio decreto*) number 1949 to recognize photography as an intellectual work of art. This is the background on copyright of photos.

Regarding the personality right to one’s own picture, however, there are countless curious stories. When the two photojournalists Willy Wilke and Max Christian Priester took a picture of the dying Chancellor of the German Empire, Otto von Bismarck, on July 31, 1898 in Hamburg, a legal battle about the right to one’s own picture unfolded. They had entered the death chamber, shot a picture of the dying man in his bed and developed the image in the ice cellar of the neighboring hotel, expecting the “last” picture of the Chancellor to be in high demand. They sold the picture for 30,000 Reichsmark (RM), but the Chancellor’s family filed a complaint, and the local court of Hamburg (*Amtsgericht Hamburg*) prohibited the publication and distribution of the picture. Apparently, this was the first “paparazzi scandal” in history. As a conse-



quence, the right to one's own image was formalized and included in the still valid Law on Copyright in Works of Art and Photography (*Kunsturheber-Gesetz*), which was passed in 1907 and addresses the issue in Sections 22 and 23. This right has been confirmed in many rulings by different courts at various instances, including the European Court of Human Rights. Princess Caroline of Monaco had filed a complaint there, and the court ruled in her favor in accordance with the law.

In 2012, a selfie of a macaque named Naruto was taken on Sulawesi Island (Indonesia) with the camera of British photographer David Slater, who had arranged the setup. The picture was posted several thousand times and published on different media. Slater filed a complaint against its license-free publication by Wikimedia Commons, but a US court ruled that the photo was "free license", making it a public commons. The animal rights group PETA filed a suit against Slater in 2015, saying that Naruto, the monkey, was the legitimate copyright holder and had the right to his own picture and not the photographer – even though Slater's camera and instruction had made the selfie possible in the first place. In 2017, the trial ended with a settlement: 25% of the revenue was given to macaque protection organizations, even though a US court had previously stated that copyright extended to human beings only.

In the field of photography, photographic rights seem a never-ending story, and, as we can see, are still as relevant as ever.

During the early days of photography, there was what was then known as "knowledge commons," a highly modern concept at the time, which can be considered a precursor of the "open data," "open source" and "open content" of today's sharing economy: The photography patent applica-

tion by Daguerre and Niépce on August 19, 1839 was license free and released to the general public of the French state. This allowed for the rapid spread and triumphal march of photography as a documentation technology. Modern re-use of photo rights using free licenses such as "Creative Commons (CC)" follows the spirit of the release of the invention of photography: Especially the photos of the pioneering era between 1845 and 1870 – when the majority of the middle-class population could not afford such complex devices, and camera operation required professional know-how – would not have been accessible to the public in the archives of the museums of England, France and Switzerland (the pioneering countries of Alpine tourism) without this "open data" concept. Thanks to "Creative Commons," these pictures increasingly became part of the common cultural heritage and therefore part of the "social/national wealth" in the truest sense of the word.

The author

Dr. Richard Piock, born in Merano in 1947, studied Commercial Science at the University of World Trade (Hochschule für Welthandel) in Vienna – now Vienna University of Economics and Business. Managing Director of Euroclima Brunico/Sillian (1972–1984), General Manager of Durst Phototechnik AG (1984–2013), Landeskommandant of the South Tyrolean Schützenbund, Founding Member of the Tyrolean Archive of Photographic Documentation and Art TAP (2011), Chairman of TAP, Chairman of the association "Velatum" and of the association "Osttiroler Kulturspur – Kulturnetzwerk."

Photographic Rights in Austria

1. Basics

The rights regarding photography, internet and social media are embedded in the intellectual property rights. Intellectual property – unlike physical property – concerns all the things that “you cannot touch,” like inventions, creative work and also trademarks.

Copyright is also part of intellectual property, together with the fields of patent law, trademark law and competition law.

The Law on Copyright (*Urheberrechtsgesetz*) regulates not only copyright but also other issues, above all ancillary rights related to copyright and some aspects of personality rights.

In recent years, personality rights have become an increasingly sensitive matter: the right to one’s own name, the right to photograph people, the right to private and family life as well as the right to sensitive personal information and data related to private life. Some issues are closely related to data protection – now regulated by the European Union’s General Data Protection Regulation (EU GDPR) of May 2018.

2. Focus on copyright

In recent years, national copyright regulations have been harmonized at a European level thanks to mandatory directives; nevertheless, every country still has its own provisions. The Austrian Copyright Law dates back to the year 1936 and has been frequently amended in the meantime.

The core of the copyright is the so-called “*Werkbegriff*,” i.e. the concept of what constitutes a work. Only if a work is created in

accordance with Section 1 of the Law on Copyright does the legislation grant protection. If no such work is created, there is no protection in accordance with the law.

2.1. The work

A work is created by means of an “original intellectual production,” i.e. a new creation from the field of literature, visual arts/arts, music or cinematography. Against this background, photography is regarded as a branch of visual arts.

Protection also for: software, smartphone apps, databases, etc.

2.2. The author

The author of a work is the person who created it, regardless of whether he or she has been commissioned by a client. The purpose for which the work was created is also irrelevant here. As a consequence, corporations of any kind cannot be considered an author; an author must be a natural person, who can even be underage or without full legal capacity.

The concept of author and work gives rise to numerous rights the author holds for his work; these are known as exploitation rights and personality rights.

Important: If the work is created by a group of people and the result of the creation is an inseparable unit, the copyright is held by all of them together. Each person has a veto right regarding any kind of exploitation.



When the right to one's own picture was not as important as it is today... – Anton Wurnig, town and hospital doctor of Lienz, around 1910

(Photographer: Johann Unterrainer; collection Lienz Municipality, Bruck Castle Museum archive – TAP)

2.3. Exploitation rights

The author has exclusive exploitation rights for his or her work, giving the author the possibility to create value, i.e. to market the work and earn money.

The original core exploitation rights are the right of reproduction (i.e. to copy, hence the name “copyright”) and the distribution rights. During the early days of copyright, when the printing press was invented, these two rights helped manage all related publishing activities. The right of reproduction allows you to produce a certain number of copies, while the distribution right makes it possible to sell them. Therefore, these two rights are the fundamental elements of copyright.

Over time, the catalogue of rights has been extended to include the right of public performance (performances, presentations, etc.), the right to broadcast (radio, TV), the right to rent and to lend and most recently the “making available” right, i.e. what we know as online rights.

Originally, these rights were exclusively granted to the author. The author has the right to allow others to exercise these rights, which is known as a permission to use or right to use.

Copyright also for: posting, sharing, etc. on the internet and on social media.

2.4. Personality rights

Personality rights are tied to the concept that the author is personally involved in his/her work and thus include attribution, protection from unauthorized modifications, the right to adapt, protection from distortion and similar issues.

Attention: Personality rights are highly sensitive! Quoting the source is not sufficient; it is necessary to explicitly name the au-

thor, for example by giving the name of the photographer.

2.5. Protection duration

The duration of copyright protection has frequently been extended in recent decades and, more recently, was defined as ending 70 years after the author’s death.

2.6. License agreements

The author can authorize others to use his/her work by making use of license agreements. In this way, publishers, production companies, broadcasters, etc. are authorized to apply certain types of use.

These kinds of license agreements – if professionally drafted – include a precise definition of the permitted use, which regulates the temporal, the geographical and the content-related scope of use. Additionally, such agreements should indicate if the rights are granted on an exclusive or non-exclusive basis. Finally, further provisions are necessary in order to define whether editing or other modifications are allowed or not and whether the rights granted may be transferred to sublicensees (“third parties”) or not.

Pay attention to wording: The phrase “right to use the work” usually means that the rights granted are exclusive. If the rights granted are non-exclusive, the correct wording would be “permission to use a copyrighted work.” Exclusivity precludes any further granting of rights, whereas multiple permissions to use copyrighted material can exist simultaneously.

2.7. Standardized license agreements – Creative Commons

In recent years, standardized forms of license agreements – including Creative Commons – have been developed. Via the



The work as an “original intellectual production” of the creator, here of the photographer Alois Baptist – view from Lienz station towards Antoniuskirchl and post office, around 1965
(Photographer: Alois Baptist; collection Foto Baptist – TAP)

internet, this model offers licenses for the use of third-party intellectual property based on a standardized granting of rights.

2.8. Protection exceptions – limitations to copyright

The Copyright Law itself provides numerous exceptions – known as “free use of works” – from the otherwise extensive protection of the author. These exceptions include the right to create copies for private purposes, but also the free use for school and teaching purposes and, relevant to the field of photography, the “freedom of the street scene.”

This “free use” allows for the creation and unlimited use – even for commercial purposes – of photographs of copyright-protected buildings which are located in places accessible to the public.

Attention: The “freedom of panorama,” thus the “freedom of the street scene,” applies only to pictures taken directly from a public space. Using climbing aids such as ladders or taking photos from the windows of an adjacent building is not allowed during the shooting.

2.9. Performance protection

The Copyright Law protects the author and his/her works but also other performances, which are not directly related to the creation of a work, such as those of performing artists (musicians and actors/actresses) and the performances of producers, broadcasters, event organizers, etc.

2.10. Right to one’s own image

This personality right is governed by the Law on Copyright and protects every identifiable person depicted in a picture or a film from any use that could harm his/her interests.

This kind of protection works differently compared to the protection of the copyright owner, where any use by third parties has to be permitted explicitly.

The right to one’s own image generally allows the use of photographs of persons, but use is prohibited if the “legitimate interests” of the person depicted are harmed. Commercial use harms those interests, just like when the personal living sphere of the depicted person is affected, e.g. their health, sexuality, family situation, political opinions or similar.

2.11. House rules

Sometimes copyright does not offer all provisions necessary to prevent undesired uses. House rules can be used to prevent a particular use of third-party intellectual property not covered by copyright. House rules often involve the use of pictograms.

Example: Museums do not allow visitors to take pictures of the exhibits, even though permissible under copyright law. House rules can also be used to prevent visitors from taking pictures and videos during concerts.

2.12. Actual copyright protection

Legal protection does not prevent all kinds of infringements on the part of unauthorized persons. It becomes harder for such infringements to occur, though, if certain barriers are set up to prevent any unauthorized use, including technological solutions for copy protection, copyright signs and alerts, presentations which do not display the entire work, and similar measures.



2.13. Requirements in case of infringement

Unlawful copyright infringements of third-party intellectual property rights are subject to civil and criminal law provisions. Pursuant to civil law, there are claims for injunctive relief, removal, adequate compensation, compensation for damage, information, financial provision and publication of court judgment.

In addition, intentional infringements are subject to criminal law. According to Section 91 of the Law on Copyright, these offenses are punishable with imprisonment of up to six months and, in case of commercial activity, of up to two years.

2.14. Data Protection Amendment Law 2018

The Austrian Data Protection Amendment Law 2018 came into force on May 25, 2018 as a result of the EU's General Data Protection Regulation.

In the section "Image processing," the regulation introduces new provisions for picture taking, encompassing both photography and video recordings.

According to Section 30 of the Amendment Law, which came into effect at the end of May 2018, taking pictures of people is generally prohibited and permitted only under certain conditions. Taking a picture of a person is permitted when the person depicted explicitly consents.

Otherwise, the law only permits photographing other persons in very specific cases, for instance if vital interests of these persons are concerned.

Furthermore, it should be noted that the use of a lawfully produced photo is still subject to consideration of all issues related to the personality rights of the persons depicted.

In the future, make sure to double-check, whether you are permitted to take the picture in the first place, and, on the other hand, whether the planned use is authorized or not.

The author

Dr. Rainer Beck MMag. art, born in 1964 in Graz (Austria), studied Music, Music Education and Law in Graz. Research residency at the Max-Planck-Institut Munich, Court-certified Expert for copyright issues and lawyers' fees; Lecturer at the *Kunstuniversität* Graz and the Technical College Campus02 Graz; Member of the executive board of various organizations in the artistic field.
www.anwaltbeck.com

Photography and the Right to One's Own Image in the Italian Legislation

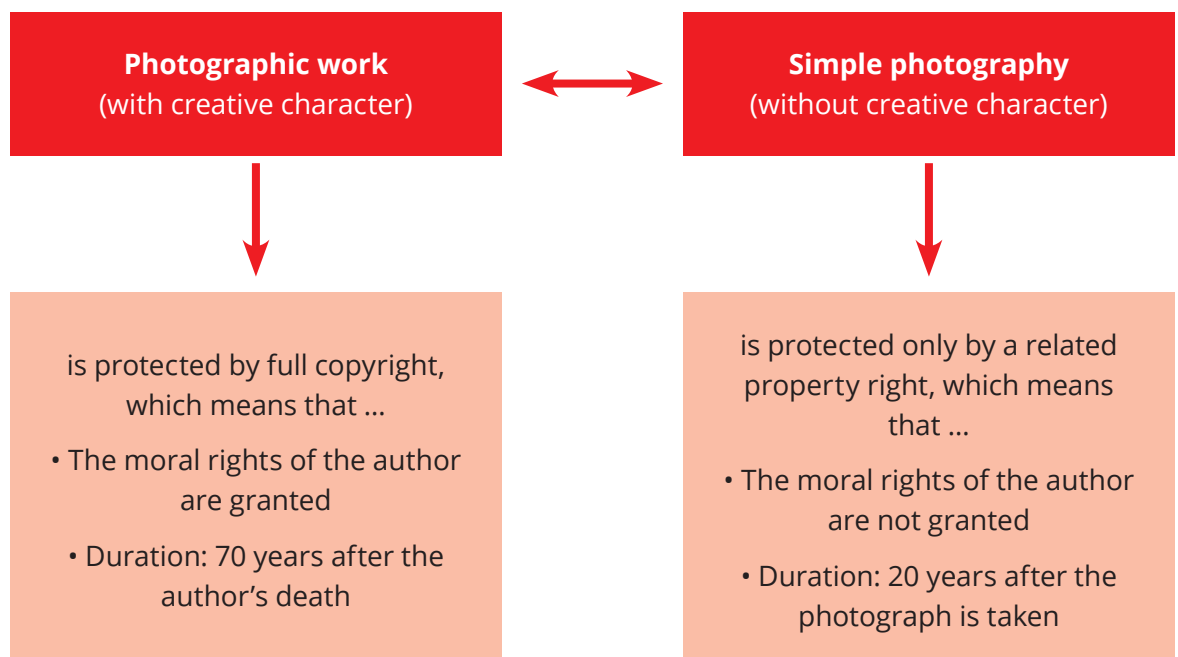
For a complete overview of the basic legal principles in the field of photography, we must take into consideration which actors are involved and which rights the legislation grants them. On the one hand, there are the rights of those who have taken a photograph, and, on the other, there are those persons who have been photographed – what we know as the right to one's own image.

1. The rights of those who take a photograph

In the field of photography, the Italian copyright legislation differs from the legislation of other countries in one particular issue. The law makes a basic distinction between “simple photography” (*fotografia*

semplice) and “photographic work” (*opera fotografica*) – a photographic work with a creative character.

The Italian copyright defines the photographic work as the result of an individual intellectual creation in every respect, and it is fully protected by copyright, i.e. by granting the moral rights of the author as well as rights of use valid until 70 years after the author's death. “Simple photography” on the other hand, does not have creative but only documentary character. As a consequence, simple photography is only protected by a related industrial property right, which does not last that long – only 20 years after taking the photograph – and does not grant the author's moral rights.





1.1. Italian legislation on “simple photography”

In order to better understand the differences between the two categories of photography, we must look to s. 87, para. 1 of the Italian Copyright Legislation (Legge 633/1941). This section defines “simple photography” as follows:

“For the purpose of applying the provisions of this chapter, photographs are images of persons or of life’s aspects, elements and events of life, both in nature and society, produced through a photographic procedure or similar process; this also includes the reproduction of works of the visual arts and photograms from film stripes.”

Paragraph 2 of this section makes clear that photographs (images) of writings, documents, commercial papers, material objects, technical drawings and similar products are not part of the photographs defined here and therefore not covered by protection. According to this, the Italian Copyright Law does not protect simple digitalization of writings and documents, because they do not possess a creative or a documentary added value – even though many people are of a different opinion.

The sections following s. 87 contain further “exceptions” and special provisions that apply to simple, non-creative photography. This kind of photography is less protected than photographic works, which enjoy the full protection of copyright. For example, s. 88 states that the employer or client has the exclusive rights for photographs taken in the context of an employment relationship or as commissioned work – unless otherwise provided in the contract. S. 91 stipulates that a reproduction of photographs that do not indicate author and production year is not unlawful.

1.2. How can we distinguish a “simple photograph” from a “photographic work”?

How do we determine whether a photograph has a creative character or not? Who has the final authority? The answer to these questions is easy to understand for someone with a legal background, but it can cause confusion among those not from the field. Law is not a perfect science and that is why we cannot determine a priori and with absolute certainty when a photograph is a “simple photograph” or a “photographic work”.

It is the judge who would have the final say in a dispute in court regarding copyright infringements. In this case, the judge and the parties to the dispute rely on experts from the fields of photography, art history and design appointed to determine the creative degree of a photograph. Before the experts have come to a decision, we can only work with some hypotheses based on court decisions from recent decades (rulings of well-respected courts) and theoretical considerations (articles and commentaries by legal experts). The matter is highly complex and difficult to outline in a few words.

But we can quote the following statement by Ubertazzi (CEDAM, 2012): “Creativity is characterized by the originality of the image detail, the image composition, the photographer’s ability to create a particular effect that goes beyond the reality depicted. These features characterize the personal style of the author.”

It is not about – as one might assume – the photographer’s technical expertise or his/her skills. “Even non-creative photographs can be professionally designed regarding the choice of image detail and the ability to effectively capture what is depicted – but



A photographic work by the artist Brigitte Niedermair: *The Last Supper*, Paris, 2004/2005

(Photographer: Brigitte Niedermair; advertising campaign M+F Girbaud)

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without reaching the level of an original and personal interpretation by the author." However, there are also cases where there is no doubt that the photo cannot be a "photographic work." A typical example is photographs generated by an automated system such as aerial photographs, which are used to document geographical areas and to produce maps. Since these photographs have a purely documentary character and are mere depictions of reality, it is even better that they are not considered and identified as creative work. Other examples of photographs where there is little doubt that they have no creative character are photographs that document archeological excavations, the progress of construction work or an accident.

2. The right to one's own image

The right to one's own image is both a personality right, laid down in Section 10 of the Italian Civil Code (see text of the section) and a related property right, regulated in Sections 96, 97 and 98 of the copyright legislation (Legge 633/1941). These sections specifically mention an "image right."

The law states that the use of an image is subject to the consent of the person depicted – with certain exceptions as indicated in Section 97:

"The consent of the person depicted is not required if the reproduction of the image is justified on the grounds of the prominence or the public office held, judicial or police



requirements, scientific, didactic or cultural purposes. This is valid even where the depiction is connected to events or functions which are of public interest or which have taken place in public.”

And even in such cases the photograph cannot be published if the honor, the dignity or decency of the person depicted are harmed.

On the other hand, in all other cases, the consent of the person depicted is required in order to publish the photograph. This can be contractually regulated and money can also be requested for that. Let us think about certain professional categories, such as models or testimonials in advertising campaigns, who earn money by transferring the right to use their own image.

In some cases, the right to one’s own image coincides with the protection of privacy (also known as “privacy law” and “data protection law”). In some cases, photographs may also be considered “personal data” – see the rulings of the Court of Cassation (*Corte di Cassazione*) no. 14346 of August 9, 2012 and no. 17449 of September 2, 2015. They are thus considered processing of personal data and are therefore protected accordingly.

If the person depicted is a minor, it is advisable to take into account some other recommendations related to the protection of minors. To this end, the rules of conduct and professional ethics of journalists are also of considerable importance, such as those contained in the so-called Carta di Treviso (1990).

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The author

Dr. Simone Aliprandi, born in 1979 in Lodi (Italy). Research Doctorate in Information Society, Consultant Lawyer who trains and carries out research in the field of Copyright and Information and Communication Technology (ICT). He attends conferences and seminars on a regular basis and holds training courses; he has published numerous publications and articles as well as multimedia content under free license. He is a member of the specialist legal team Array (www.array.eu) and has an online blog at aliprandi.blogspot.com.

Making Historical Photographs Easier to Use

Open Data in the Cultural Sector

Introduction

Open data is freely available data which can be used, distributed, and reused by anyone without restrictions. This kind of data has great economic value and great potential for innovative growth. The provision of data opens up new opportunities for society. Through creative reuse, new solutions to common problems can be found. Directive 2003/98/EC (PSI Directive) and its revision by the Directive 2013/37/EU encourage public administrations to make the data they generate openly accessible. The only exceptions are data that are subject to special protection, such as personal data, data on public security and national defense, data protected by copyright, or data on criminal investigations. If these data are not subject to any of these restrictions, they should be able to circulate freely as open data, so that they can be reused by everyone.

In several European countries there are already initiatives for the free distribution of data from the cultural sector. In Germany, for example, the cultural hackathon “Coding Da Vinci” has provided a large amount of cultural data since 2014. These data can be used creatively within digital applications. Following this trend, the Interreg-V-A project “Lichtbild/Argento vivo. Cultural Treasure Photography” makes historical photographs owned by the project partners in Bolzano, Brunico, and Lienz accessible to the public. The database “Lichtbild/

Argento vivo” is an innovation in this field for Tyrol and South Tyrol. The project not only grants access to the high-resolution files of the photographs including the image descriptions, but also locates the photographs using georeferencing tools.

What is open data?

The Italian Digital Administration Code (Legislative Decree No. 82/2005) defines open data as data available free of charge or at most for a contribution towards the expenses for reproduction and which, in accordance with the terms of a license, can be used freely, even for commercial purposes. The data are accessible by means of information and communication technologies. This means that they are suitable for use by automated computer programs and accordingly equipped with the corresponding metadata. Metadata is structured information about data. They describe the actual data and are therefore the cornerstone of an open data catalog: Information such as title, description, link, type of license, validity period, and data size increases the interoperability of the data and thus makes it more networkable and more easily available. Without this information, it would not be possible to sort and find the right data.

Open data portals

Open data are primarily made accessible via open data portals, such as the Open Data Portal South Tyrol (daten.bz.it) or the

Katalog der historischen Fotografien (Interreg-Projekt "Lichtbild. Kulturschatz Historische Fotografie")

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Kompetent im Umgang, Offen im Zugang. Fotografie goes Future. Gemeinsam mit dem Verein Tiroler Archiv für fotografische Dokumentation und Kunst, der Stadtgemeinde Bruneck und... mehr erfahren

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Katalog der historischen Fotografien (Interreg-Projekt "Lichtbild. Kulturschatz Historische Fotografie")

Dieser Katalog der historischen Bilder wurde in Zusammenarbeit zwischen dem Verein **Tiroler Archiv für fotografische Dokumentation und Kunst**, der **Stadtgemeinde Bruneck** der **Landesabteilung Museen** und dem **Amt für Film und Medien** erstellt und somit allen Interessierten (Firmen, Nichtregierungsorganisationen, Privatpersonen und Verwaltungen) zur freien Weiterverwendung zur Verfügung gestellt.

Daten und Ressourcen

- Webservice Kulturschatz Lichtbild (Format JSON)**
Dieser Webservice gibt die Daten der des Kulturschatzes Lichtbild im... [Entdecke](#)
- Webservice Kulturschatz Lichtbild (Format XML)**
Dieser Webservice gibt die Daten der des Kulturschatzes Lichtbild im... [Entdecke](#)
- Webservice Kulturschatz Lichtbild (Format CSV)**
Dieser Webservice gibt die Daten der des Kulturschatzes Lichtbild im... [Entdecke](#)
- Institutionen mit historischen Fotoarchiven - DE**
Diese Tabelle gibt in deutscher Sprache die Namen all jener Institutionen... [Entdecke](#)
- Institutionen mit historischen Fotoarchiven - IT**
Diese Tabelle gibt in italienischer Sprache die Namen all jener... [Entdecke](#)
- Anleitung zur Verwendung des Webservice des ...**
Das Dokument in deutscher Sprache enthält die Anleitung zur Verwendung des... [Entdecke](#)
- Anleitung zur Verwendung des Webservice des ...**
Das Dokument in italienischer Sprache enthält die Anleitung zur Verwendung... [Entdecke](#)

[Foto](#) [Kulturschatz](#) [Lichtbild](#) [Photo](#) [historisch](#)

Standard-Metadaten

Dataset Identifier	p_bz:tyrolean-historical-photographs
Andere Bezeichnung	p_bz:456f4b5f-b96e-45ec-ae23-d93c37a2d069
Dataset-Designs	Bildung, Kultur und Sport, Bevölkerung und Gesellschaft
Dataset-Editor	Name: Projektteam Kulturschatz Lichtbild - Argento vivo IPA/IVA: p_bz
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Dataset Sprachen	Deutsch, Italienisch
Zeitliche Deckung	N/V
Frequenz	kontinuierlich
Version von	N/V
Entspricht	N/V
Rechteinhaber	Name: Projektteam Kulturschatz Lichtbild - Argento vivo IPA/IVA: p_bz
Schöpfer	Name: Projektteam Kulturschatz Lichtbild - Argento vivo IPA/IVA: p_bz
Datum der Erstellung	18-01-2018
Charakterset	UTF-8
Webseite	http://www.lichtbild-argentovivo.eu

Zusätzliche Informationen

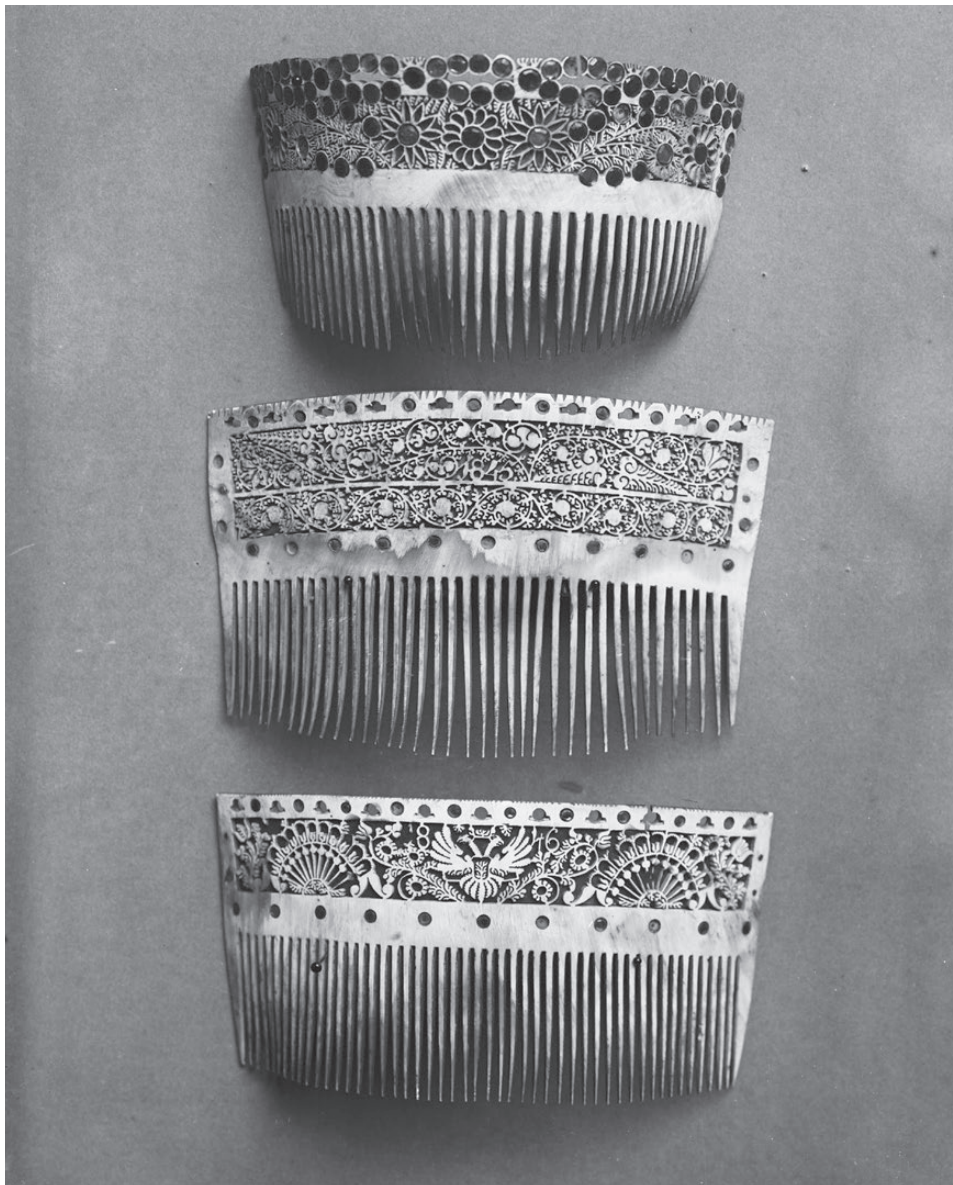
Autor	Projektteam Kulturschatz Lichtbild - Argento vivo
Quelle	http://www.lichtbild-argentovivo.eu
Kontakt	info@lichtbild-argentovivo.eu

The catalog of historical photographs of the Interreg project "Lichtbild/Argento vivo. Cultural Treasure Photography" on the Open Data Portal South Tyrol. Parameter and metadata of the interface are explained and presented.

(daten.buergernetz.bz.it/de/dataset/tyrolean-historicalphotographs)

This photograph is also going to be part of the “Lichtbild/Argento vivo” data pool of this Interreg project: Three combs, circa 1910, Bolzano

(Photographer: Studio Waldmüller; collection Studio Waldmüller, Office for Film and Media, Bozen/Bolzano)



Open Data Portal Austria (www.opendata.portal.at). These portals are catalogs that allow users to search, preview, access, and download the open data. The data and documents collected there are ready for reuse, because they comply with the standard of the national guidelines from a technological and legal point of view.

Licensing models for open data

Data available in the open data portal can be downloaded by anyone. No authentication procedure is required in order to

download the data. The user only agrees to keep the license conditions. The licenses used in the field of open data are “Creative Commons Zero (CC0)” and “Creative Commons Attribution (CC BY).” These are two of several licensing models which the non-profit organization “Creative Commons” – founded in 2001 – has developed to create a legal framework in order to enable the sharing of knowledge and creativity in a way that is easy and lawful. (For more information about Creative Commons, see p. 29 et seq. in this handout.)



The CC0 license allows completely free use for private and commercial purposes. The author waives all the rights related to the object, its content, and its data to the maximum extent permitted by law. The CC BY licensing model is a suitable solution especially for historical photographs, the value of which also lies in their function as a historical source. The CC BY license offers a legal tool which permits the distribution and modification of data sets and documents, on the condition that the respective author is mentioned every time the data is reused. That way, the source's origin and provenance remains traceable.

The potential of open data from the cultural sector

The decision of the public administration to make the data generated by them openly accessible follows an innovative approach and allows for the drawing of conclusions regarding the organizational changes occurring in data culture and our knowledge-based economy. Originating from the opening of databases, there are now other ways of thinking and working arising in both the public and the private sector. Data as a private resource for administrative purposes become a "public good" for public and social purposes.

The availability of cultural goods in digital form changes the relationship between cultural institutions and those interested in culture. Cultural consumers can become cultural producers when the digital counterparts of the physical originals are copied, slightly modified and extended, and made available everywhere via the internet. These people do not simply absorb knowledge but they actively disseminate it, introduce it into new contexts, work with it, and thus create new knowledge. For instance, historical and contemporary photo-

graphs are now more easily accessible for research thanks to open data and may be used more frequently for publications in various forms, thus reaching a broader audience. In the interconnected world of today, it becomes increasingly important for archives, museums, and libraries to provide satisfactory answers to the questions of how they interact with their digital visitors and in what way they want to make their collections digitally available and usable.

This text is based on content from the Open Data Portal South Tyrol (daten.buergernetz.bz.it/de/) and on information from the CodingDaVinci (codingdavinci.de) and the Creative Commons websites (creativecommons.org), both under the CC BY 4.0 license.

The authors

Ivo Planötscher (Master of Advanced Studies in Geographic Information Systems), born in 1956 in Bozen/Bolzano, university degree in Geoinformatics; Director of the Office for Spatial Informatics (*Amt für Raumbezogene Informatik*) of the Autonomous Province of Bozen/Bolzano from 1996 to 1999; responsible for the open data field in the Südtiroler Informatik AG since 2014, head of the local competence center OpenData since 2017. Participated in numerous meetings and conferences on geoinformatics and open data.

Mag. Verena Malfertheiner, born in 1982 in Bolzano, studied History of Art and Art Education in Innsbruck and Zurich; worked on various cultural projects in South Tyrol; responsible for open data in the "Lichtbild/Argento vivo" project.

Photographic Rights and Creative Commons

Some Remarks on Photography and Law

Photographic rights are very complex. Copyright, the right to one's own image, the protection of both children and minors, and other sources of law play a central role. Certain basic principles apply across legal systems, while others vary from country to country. This text is based on the legal situation in Austria and Italy (as of spring 2018) and makes explicit note of these differences. The EU's General Data Protection Regulation (EU GDPR) that entered into force on May 25, 2018 is not taken into account here. At the workshop held on January 24, 2018, the authors gave an overview of the topic in the form of an exhibition. This text is a more detailed version of the contents. It takes up some aspects of the subject area, but it is not exhaustive. The references are not to be understood as a legal opinion.

Copyright

Law 633 of April 22, 1941 (Italy) as amended.

Federal Law Gazette (BGBl) 111/1936 (Austria), last amended by BGBl 99/2015.

1. What is protected by copyright?

Copyright protects works that are the result of a singular (personal, individual, original) intellectual creation.

Works from literature, music, visual arts, architecture, theater, film, photography, information technology (computer programs, databases) are protected. The protected

works also include photographic works and works produced by a process similar to photography.

Copyright in Italy distinguishes between photographic works and simple photographs. Simple photographs are pictures of persons as well as photographs documenting landscape, nature, and everyday life. These kinds of photographs also include reproductions of visual art works and single frames from films. Photographs of writings, documents, commercial papers, material objects, and technical drawings are expressly excluded.

Austria distinguishes between photographs that are subject to full copyright protection as works and other photographs that do not meet this work quality. Such photographs are subject to performance protection rights (related rights) under Sections 73 and 74 of the Copyright Law (*Urheberrechtsgesetz*). However, according to Austrian judicature, almost all photographs are protected by copyright.

However, copyright does not apply to ideas, facts, recipes, and customs.

2. Who is the author according to the law?

Anyone who creates something new in a creative way is an author. It cannot be a simple reproduction of an existing work. Photographers and owners of photographic studios count as authors.

3. Who can be a copyright holder?

The author of a photograph is usually the one who took it. There are some legal exceptions.

The owners of the rights are primarily the author or his/her descendants, secondarily the co-authors, the owners of a photographic studio, the client, or the public administration.

In principle, civil servants of the public administration who are tasked to take photographs in the context of their work could be granted the moral right. Attribution in this case would be a sign of recognition and courtesy towards the employee.

4. What is copyright?

Copyright refers to the legal provisions which protect “intellectual works” and regulate their use. There are two levels:

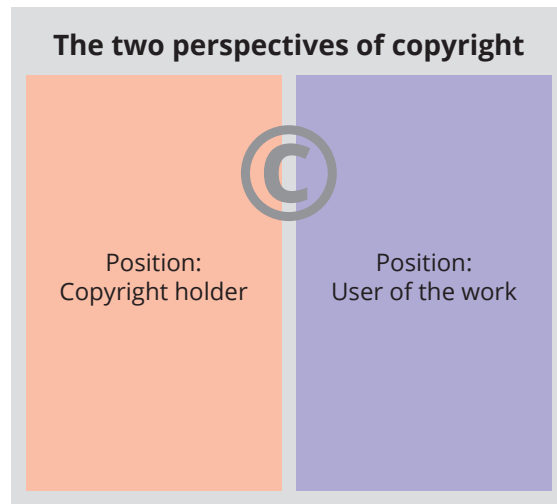
- the personal level, which protects the author as the creator of the intellectual work (author’s moral rights);
- the level of property, which regulates the economic use of the intellectual work (right to use the work). In Austria, the author has the “exploitation rights,” which become the “right to use the work” if a third party, i.e. not the author, is entitled to use the work.

There are numerous other rights implicitly associated with the taking and the use of a photograph (Civil Code, European conventions and law, international laws).

5. What are the moral rights of the author?

The moral right of the author is extensive. The author alone has the right

- to claim the authorship of the work for himself or herself and to be named as the author or to be listed as an anonymous author under a pseudonym;



The two perspectives of copyright

(Image taken from “Diritto e Creative Commons in fotografia,” Bolzano, January 24, 2018, by Simone Aliprandi, <https://de.slideshare.net/simonealiprandi/diritto-e-creative-commons-in-fotografia-bolzano-gen-2017>)

- to oppose any distortion, corruption, or alteration of the work that could harm his/her honor or reputation.

The moral right of the author is inalienable. It always remains with the author or falls to his/her heirs. It never expires.

There is also the right to unpublished works, the right to disclose their identity, and the right to withdraw the work from circulation.

6. What are exploitation rights (rights to use the work)?

There are different exploitation rights which are independent from each other. They relate to control over the commercial exploitation of a work:

- the right of publication;
- the right of reproduction (i.e. digitization);
- the right to transcription;
- the right to public performance (right to lecture and right to perform);
- the right to adapt;
- the right to rent and lend the work;
- the right to transmission/notification (even if it is free or for a cultural purpose);
- the right to distribution (sale);
- the right to broadcast.

7. What are related rights?

Related rights have to do with activities which are similar or related to the copyrighted works but at the same time lack creative character. Simple photographs without creative character are protected by related rights. The photographer has the exclusive right to reproduction and distribution.

8. When do the terms of protection expire?

Photographic works are protected in Austria and Italy for 70 years after the death of the author.

Simple photographs are protected in Italy for 20 years from the date of their creation. In Austria, for works whose author is not known, the copyright ends 70 years after the creation of the works. The protection term for ancillary copyright (related rights) on photographs in Austria expires 50 years after publication of the photographs and, if the photograph has not been published within this period, 50 years after the photograph was taken. The total duration of protection may therefore amount to a maximum of 100 years if the photograph is published in the fiftieth year after it is taken.

The exploitation rights may be sold by the author: fully or in part, free of charge or for a fee, and for a specific, contractually stipulated period.

9. What other legal requirements need to be observed when taking photographs and using photos?

- The right to one's own image;
- the protection of children and minors;
- data protection provisions.

10. What happens when all terms of protection have expired?

After the expiry of the protection terms, photographs are in the public domain and can therefore be used freely. The obligation to name the author (attribution) continues to apply. Moreover, the work may not be processed or edited in any way that harms the intellectual creation.

11. What do I need to do to be legally regarded as the author?

It's very simple: For each photo, indicate your name or pseudonym or the manufacturer designation (name, company's designation) and year of origin.

12. Is the photographer always the owner of the rights?

The moral rights of the author always belong to a natural person.

If the photographs are taken by a worker or employee in the context of a working relationship, the employer has the exclusive rights to use the photographs (i.e. reproduction, distribution, and sale). This will apply in particular if the photographs are not taken autonomously, but under the guidance of an artistic director or coordinator. Currently, there are so many different work contracts with photographers that it is not possible to make a universally valid statement on this subject. The right to publication may remain with the client if the commissioned photographer takes photographs of objects owned by the client. In the case of simple photographs of works, it is mandatory to indicate the author of the work as well.

13. Am I allowed to publish every photograph I own?

Whoever owns the negative image (analog or digital) or a similar means of reproduction of the photograph acquires at the same time the right to reproduce, distribute, and sell it, unless proven or agreed otherwise.

A photograph (paper print) is actually a copy of a negative image. Possession of a copy does not necessarily include the permission to use the photograph.

For example, I may not distribute or use a photograph commercially which I have purchased at a flea market, received as a gift from a relative, or downloaded from the internet without the permission of the copyright holder.

14. For what purposes may I publish photographs on the internet?

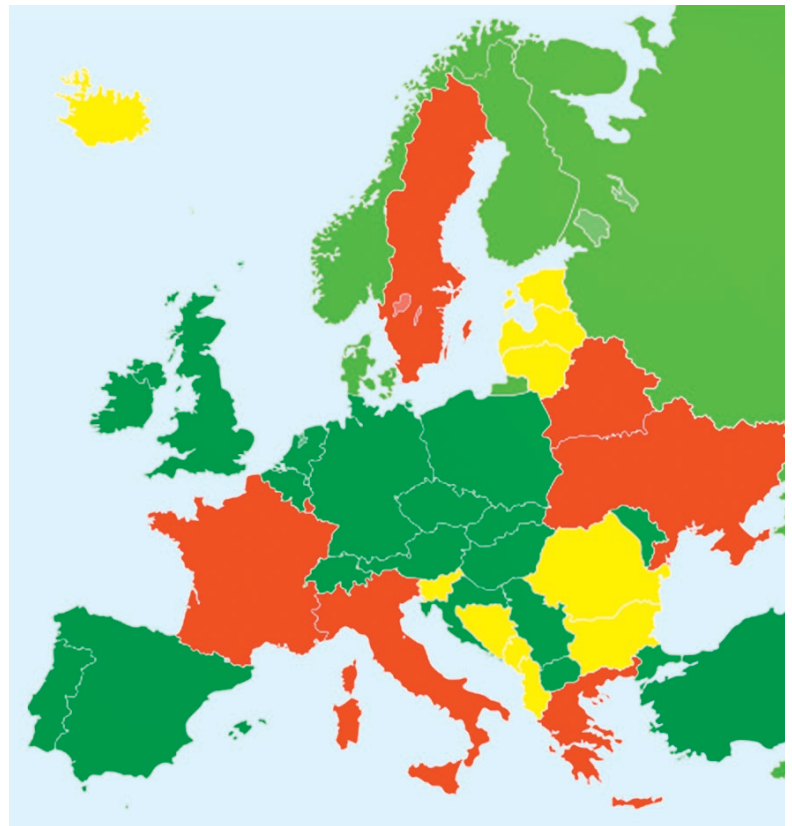
According to Italian copyright law, low-resolution images and music can be published free of charge on the internet for didactic and scientific purposes, without the intention of making a profit.

15. What is the freedom of panorama?

Freedom of panorama means that photographs of copyright-protected buildings, works, etc. can be taken in public and used without the author's consent.

However, they must be taken without the use of any aids (e. g. ladder, drone). It is not allowed to break any barriers or violate privacy.

The freedom of panorama is regulated differently from country to country. In some countries there are appropriate copyright law provisions, while others are lacking the norms which guarantee the freedom to take photographs in the public space. Italy does not have any such norms.



Map of the freedom of panorama in Europe

- Freedom of panorama, even including works of art.
- Freedom of panorama only for buildings.
- Freedom of panorama only for non-profit purposes.
- There is no freedom of panorama.
- Unknown (Andorra, San Marino, Monaco and Malta).

(SPQRobin et al., via Wikimedia Commons, https://commons.wikimedia.org/wiki/File:Freedom_of_Panorama_in_Europe_NC.svg, CC BY SA 3.0)

However, photographs of protected works can be used for didactic and scientific purposes in Italy, too, provided there is no intention of making a profit.

Nature and landscapes

May I photograph any landscape without any restrictions?

Yes. Nature and landscapes can be photographed freely.

Bear in mind:

- defense facilities (barracks, shooting ranges);
- strategic infrastructures (power plants, dams);
- cultural monuments (see freedom of panorama, p. 21).

The protection of cultural goods and freedom of panorama are regulated differently in Italy and Austria. The issues of cultural goods protection and the lack of freedom

of panorama in Italy are a complex subject and are not further discussed here.

May I publish any landscape photographs without any restrictions?

Yes, provided that I took the photograph myself.

Bear in mind: Certain buildings, objects, or facilities require additional approval.

Yes, provided that all terms of protection have expired.

No. In the case of photographs of defense facilities, strategic infrastructures, and cultural monuments, written authorization or the permission of the copyright holder will be required if the photograph originates from someone else.

Refuge Pius XI, 2012 (Il rifugio Pio XI/Weißkugelhütte, 2012)

(Photographer: Leonhard Angerer; photo archive Leonhard Angerer, South Tyrolean Provincial Archive)



Panorama with a view of the power plant of Tell, circa 1897

(Photographer: unknown; photo archive Consortium Electricity Company (Azienda elettrica consorziale), South Tyrolean Provincial Archive)



Public spaces

Am I allowed to take pictures in public spaces without any restrictions?

Yes, everywhere where photography is not expressly forbidden and the predominant subject is the landscape.

It is recommended to use a tripod to make it absolutely clear that a photograph is being taken. If someone does not want to be photographed, he or she can walk away. For all others, tacit consent is assumed.

Pay attention to minors and persons of public interest outside their field of activity.

In Italy, there is no freedom of panorama.

May I publish photographs of the public space without any restrictions?

Yes, provided that I have taken the photograph myself and do not violate any legal provisions.

Bear in mind: In cases of photographic works created by others, the copyright holder's permission is required. The source and author must always be indicated correctly.

Bear in mind: If the photograph identifiably shows recognizable persons, their right to their own image and the protection of children and minors must be respected.

Bear in mind: If all terms of protection have expired, the photographic work can be published, but the photographer must be named.

*"Return to life":
Opening of
the exhibition,
Lake Braies,
April 30, 2004*

(Photographer: Margot
Pizzini; South Tyrolean
Provincial Archive)

*Training course
for reporters,
Castle Rechten-
thal, January 28,
2006*

(Photographer: unknown;
South Tyrolean Provincial
Archive)



Private spaces accessible to the public

May I take photographs without restrictions in a train station, on a train or bus, at school, in a theater, or in a museum during an event?

No. These are private spaces (gallery, power plant) in which a public service is offered. I need to obtain written permission from the owner or operator and inform the people present that I am photographing. I also need to respect the right to one's own image and need their approval.

Bear in mind: In kindergartens and schools, written permission from the school management as well as the parents' consent are required.

In Austria, photography is generally permitted unless expressly forbidden under the householder's rights, e.g. as indicated by pictograms. The photographs may only be used if the required consent has been granted and no rights of the depicted persons are violated.

In some cases, Italian law does not allow architectural works to be photographed

freely, as they are protected by copyright, such as the Calatrava Bridge in Reggio Emilia. Whenever a photograph depicts persons, it is always important to respect the right to one's own image.

May I publish such photographs without restriction?

Yes, if I have all the permissions and I don't harm any related rights.

No, if the persons depicted are clearly recognizable. In this case I need their permission and must take into account the right to one's own image and the protection of children and minors (or it is sufficient to make their faces unrecognizable).

Bear in mind: If all terms of protection have expired, the photographic work can be published, but the photographer must be named.

Bear in mind: In cases of photographic works by others, I must ask permission from the photographer, the copyright holder, or the owner of the facilities. The source and author must always be indicated correctly.

Education Fair
"Futurum,"
Bolzano,
November 25,
2007

(Photographer: Martin
Crepaz; South Tyrolean
Provincial Archive)

Inauguration
of the photo
exhibition
"Alberto Melloni
(1888–1967).
3D travel memo-
ries," foto-forum
Gallery, Bolzano;
February 25,
2014

(Photographer: Katha-
rina Kolakovsky; foto-
forum Gallery)



Private space

May I take pictures in a private room without restriction, for example during a working lunch at a restaurant?

Yes, if I have rented the room or if it is a private party with invited guests and all guests know that photographs are being taken. In any case, I need to obtain the consent of those present.

No, if these requirements are not met, I will have to obtain the permission of the operator and guests. External guests and minors should not be photographed.

No, if the owner or the operator does not grant permission.

May I publish such photographs without restriction?

Yes, if I have the approval of the persons depicted and do not harm their honor, dignity, decency, and interests.

Yes, if the owner or the operator have granted permission.

No, if I received the photographs from someone else. Possession of a photograph does not automatically grant the right to publish it.



At the Kneuß family home in Schwaz, Christmas 1914

(Photographer: unknown; collection Kneuß – TAP)

Project team "Lichtbild/Argento vivo," Lienz, August 3, 2017

(Photographer: unknown; TAP)

The right to one's own image

1. What is meant by the “right to one’s own image”?

The right to one’s own image protects the person depicted. It is a distinct personality right. It is neither alienable nor transferable or dispensable and there is no statute of limitations. Without the consent of the person depicted, the photograph cannot be published, reproduced, or distributed. An exception is made for special agreements between the portrayed persons and the photographer. Once consent is obtained, the photograph may be published only for the agreed purposes. The photograph and the accompanying text must not harm the honor, dignity, decency, and interests of the person, at any rate.

In Austria, the right to one’s own image consists in the fact that the person’s por-

traits may not be made public if this were to harm the legitimate interests of the person depicted (or possibly of a close relative). In order to assess the admissibility of an image’s publication, firstly, it is important to ask whether the interests of the person depicted are to be regarded worthy of protection after an objective analysis.

Austrian law is particularly strict about the use of a person’s image for advertising purposes, which is always inadmissible without consent.

2. Who has the right to one’s own image and when does it expire?

The right to one’s own image is the exclusive right of the person depicted in the image. It does not expire. After the death of the person, their relatives can exercise this right to protect the dignity and decency of the deceased person.

Albin Egger-Lienz, circa 1900

(Photographer: Georg Egger; collection Lienz Municipality, Bruck Castle Museum archive – TAP)

Maria Mattiuzzi, Sinigo, circa 1939

(Photographer: Sisto Sisti; photo archive Sisto Sisti, South Tyrolean Provincial Archive)



3. May I take a portrait of just anyone?

No. Some groups of persons are particularly protected by the law: minors, hospital patients, defendants and witnesses, law enforcement, and armed forces.

In order to take and use a portrait, consent of the person depicted or his/her legal guardian or parents is always required. There is no need for consent for outdoor photography, where the landscape and not the people are in the foreground, and for photographs of persons of public interest exercising their office outside their private sphere.

4. May I publish my portraits of other people without their consent?

No. A portrait may only be published with the consent of the person depicted or their legal guardian or parent (for minors).

Bear in mind: Photographs showing a public figure in a private situation may not be published without their consent. Only the photographs depicting this person in the exercise of his/her office may be published without any need for consent.

Bear in mind: In the case of a commissioned work, the person may publish and reproduce the photo by himself/herself without the consent of the photographer – if the photographer has received appropriate remuneration.



Day of the Armed Forces, Bolzano, November 4, 1951

(Foto Excelsior; South Tyrolean Provincial Archive)



Unknown children, Brunico, circa 1970

(Photographer: Irmgard Kootsch Crepaz; Kootsch Crepaz Collection, Office for Film and Media)
(Used with friendly permission of the rights holders)

5. In which cases is the consent of the person depicted not required in order to publish a portrait?

According to the law, consent will not be required if certain reasons justify the publication of the photograph. These include:

- the prominence of the person;
- the public office held by the person;
- necessities of the justice system or the public order;
- scientific, didactic, or cultural purposes;
- if the photograph depicts events or celebrations which are of public interest or which have taken place in the public sphere.

Under no circumstances may the honor, dignity, or decency of the person depicted be harmed.

The right to one's own image is pushed to the background if the photograph is taken during events of public interest or in public. The right to information and/or freedom of the press apply here, but only when fulfilling the information purpose.

Visiting the
"iceman,"
Innsbruck,
circa 1992

(Photographer: Bettina Ravanelli; Press and Communication Agency, Bolzano)



Maria Cingolani
Guidi gives the
opening speech
at the 5th Trade
Fair, Bolzano,
September 1952

(Foto Excelsior; South Tyrolean Provincial Archive)



The following pages are adapted from chapter 5, “Il diritto d’autore e le licenze open nell’attività didattica,” from Simone Aliprandi’s book “Didatticaduepuntozero. Scenari di didattica digitale condivisa” (Ledizioni, 2017). The original work is available on the website <https://aliprandi.org/books/didatticaduepuntozero/> under the Creative Commons Attribution 4.0 license (CC BY 4.0).

Free licenses (Creative Commons and similar)

Copyright law provides for some cases of free use. However, it may also be that the author himself or herself wants his/her work to be circulated free of some, or all, copyright restrictions. In this case, he/she can attach special licenses based on models such as open content and copyleft. The best-known form is the Creative Commons licenses. Below we present the basic principles of these licenses and explain how they work.

Origin of the Creative Commons

The idea of using a tool such as a license to free a creative work from the stranglehold of copyright emerged in the 1980s as part of the GNU project by Richard Stallman, a researcher at MIT in Boston. At that time, a law came into force in the USA that also placed computer programs under copyright protection. This paved the way for proprietary software and closed source codes.

Stallman and his community of hackers wanted to counteract this, so that freely available and modifiable computer programs with an open source code could still be possible. Hence the term “open source.” That was how the idea to write the text for the GNU General Public License (GPL for short) was born. It is the origin of all free licenses and still the most-used license for free software.

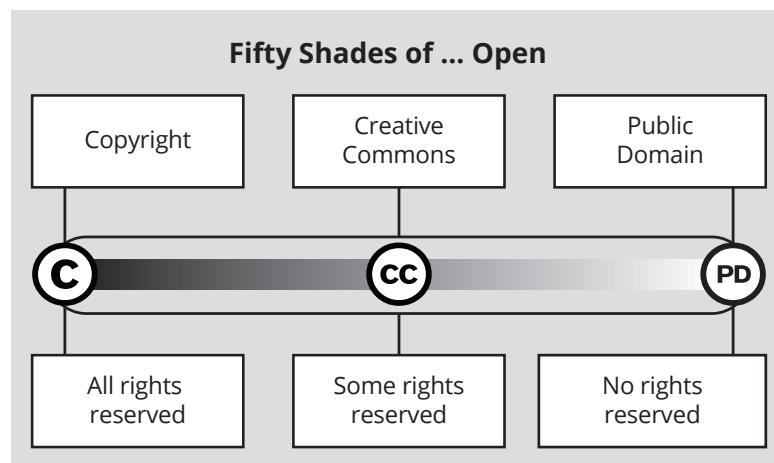


Figure taken from "Creative Commons: Manuale operativo," Simone Aliprandi, www.aliprandi.org/manuale-cc

It was not until the turn of the millennium approached, when the internet became a mass phenomenon, that someone came up with the idea of developing a group of licenses which would apply to all creative works (with the exception of computer programs). These licenses would have to be particularly intuitive and easy to use even for laypeople. In 2002, the first version of Creative Commons was created; the current version is the fourth. Creative Commons are the free licenses most used by the digital creative community. Although there are other free licenses, Creative Commons is the most popular and widely used model. Many projects for the promotion of an open culture use precisely these licenses.

The term “license” and the licensing mechanism

In law, a license is generally understood as a permission, the granting of a license. “License” comes from the Latin *licere*, which means “allow” or “approve.” In the case of intellectual property, a license is hence the legal action whereby the holder of the exclusive rights of one work (licensor) grants permission to another subject (licensee) to use that work. In doing so, he or she lays down a number of restrictions and conditions. Failure to comply with these terms of

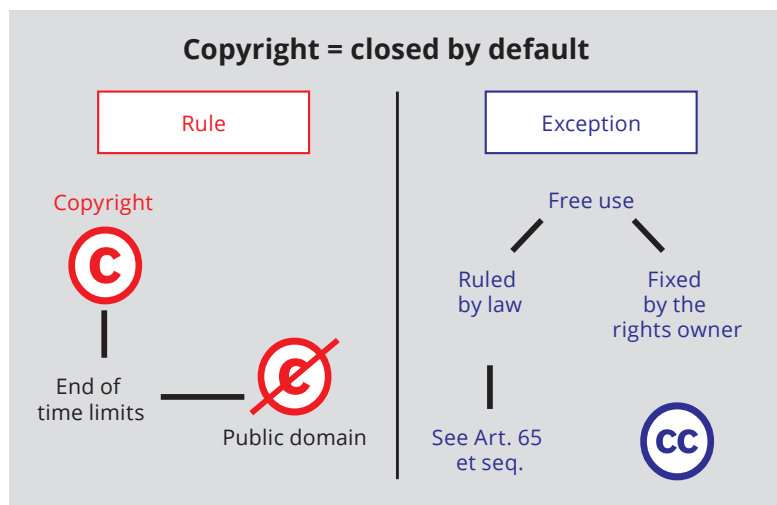


Illustration from "Diritto e Creative Commons in fotografia," Simone Aliprandi, January 24, 2018 (<https://www.slideshare.net/simonealiprandi/diritto-e-creative-commons-in-fotografia-bolzano-gen-2017>)

use results in the infringement of the legal transaction, and the permission expires.

In the open licensing model, only the licensor is clearly defined, while the licensee is not. The licensor is usually the one who owns the rights to the work. Usually, this is the author himself or herself or another copyright holder (publisher, record label, etc.). The licensor grants a license to use for the work when he or she distributes it. He/she clearly points out that anyone who wants to use the work is obliged to comply with the license terms as well as all other legal basics of copyright law, of course. By using the work, the undefined subject becomes part of the contractual business and thus the licensee. Now it is also clear why the licensee remains undefined. In short, we can state that a license is a permission to use a work, issued a priori, and tied to some conditions.

The six (+1) Creative Commons licenses

As already mentioned above, Creative Commons licenses should be applicable to all kinds of creative works, so that they can be translated and adapted into different legal systems. They are also designed in such a way that the terms and conditions

resemble a modular system. The author can thus decide which uses he or she wants to allow, under which conditions, and in which context. In short: The Creative Commons licenses allow the author to grade the freedom of use, with a clear indication of the conditions. Currently, there are six Creative Commons licenses. They are named according to the conditions contained therein.

Like most other free licenses, the CC licenses are divided into two parts: The first part defines what freedom the author wants to allow for his/her work; the second part defines the terms of use.

As far as the first part (freedoms) is concerned, all licenses allow the reproduction and distribution of the work. In detail:

Sharing allowed – the material may be reproduced, distributed, publicly disseminated, publicly exhibited, presented, and performed by any means and in any format.

Editing allowed – the material can be remixed, transformed, and one's own work can build upon it.

With regard to the conditions laid down in the second part, it should be noted that there are four basic conditions for Creative Commons licenses from which the author can choose and which he/she can combine according to his or her needs.

Each condition has a graphic symbol so that it is easy to recognize. Below are the conditions in detail:

Attribution: You must give appropriate credit, provide a link to the license, and indicate if changes were made. You may do so in any reasonable manner, but not in any way that suggests the licensor endorses you or your use. This condition is included by default in all licenses. Every time the work is used, the author must be clearly named in order to avoid any misuse.



NonCommercial: You may not use the material for commercial purposes. This means that no private economic advantage or monetary compensation can be obtained from the distribution of copies of works. For commercial purposes, the author's permission is required.

NoDerivatives: If you remix, transform, or build upon the material, you may not distribute the modified material. Therefore, if derivative works are produced and the changes or the works based on them are to



Published under Creative Commons license: "In the hall of the mountain king," Lagundo, April 11, 2009

(Photographer: Notburga Siller, CC BY 4.0)





Elisa Mair, Bolzano, August 9, 2017

(Photographer: Konrad Faltner; Office for Film and Media, CC BY 4.0)



be distributed, the author's permission is required.

ShareAlike: If you remix, transform, or build upon the material, you must distribute your contributions under the same license as the original. This condition guarantees that the freedoms that the author has granted for the source material are also applied to the derivative work. The same applies to derivative works based on the derivative work, in the sense of a domino effect.





Summary of terms and conditions

Symbol	Short form	Condition	Description
	BY	Attribution required	It is allowed to reproduce, make copies of, exhibit, and perform the work and to adapt the work, provided that the author is named and the conditions specified by him/her are met. For example, the author may request that a link to his/her website or to the website of the work be provided in addition to his/her name.
	NC	Non-commercial	Reproduction, distribution, making it publicly available, and editing are allowed, but not for commercial purposes.
	ND	No derivatives	The original work may be reproduced, distributed, and made publicly available. It may not be modified or adapted.
	SA	Share-alike	The distribution of a derivative work is allowed, but only with the same license (i.e. not with a more restrictive license) or a license which is compatible with the original license.

The combination of the four conditions creates the six Creative Commons licenses. In addition, there is the CC0, which allows the release of works without any conditions.

Symbol	Designation	Description
	CC BY	It is allowed to distribute and adapt the work, even for commercial purposes. The following conditions must be complied with: appropriate credit to the author, a link to the license is provided, and any possible modifications are indicated.
	CC BY SA	It is allowed to distribute and adapt the work, even for commercial purposes. The following conditions must be complied with: appropriate credit to the author, a link to the license is provided, and any possible modifications are indicated. The new work must have the same license as the original work (every modification may be used for commercial purposes). This license is linked to the copyleft licenses of free software and open source.



Symbol	Designation	Description
	CC BY ND	<p>It is allowed to distribute the work without adaptation, even for commercial purposes.</p> <p>The following conditions must be complied with: appropriate credit to the author, a link to the license is provided.</p> <p>This license prohibits the distribution of adapted or remixed works or new works built on the original work.</p>
	CC BY NC	<p>It is allowed to distribute and adapt and modify the work, but not for commercial purposes.</p> <p>The following conditions must be complied with: appropriate credit to the author, a link to the license is provided, and any possible changes are indicated.</p> <p>Anyone who adapts the original work is not obliged to use the same license for the adapted work.</p>
	CC BY NC SA	<p>It is allowed to disseminate and to adapt and modify the work, but not for commercial purposes.</p> <p>The following conditions must be complied with: appropriate credit to the author, a link to the license is provided, and any possible changes are indicated.</p> <p>Anyone who adapts the original work is obliged to apply the same license to the modifications. This means that a derivative work may not be used for commercial purposes.</p>
	CC BY NC ND	<p>This license is the most restrictive. It is only allowed to download and share the work. It may not be changed. It may also not be commercially used or exploited. The author must be named.</p>

The right to share and/or adapt the work cannot be revoked by the licensor, provided that the license terms are complied with.

CC zero



CC0, also called CC zero, is a tool that allows the right holder to waive the exercise of his/her rights – or at least those rights he/she can waive. This tool is technically not a license but a form of complete and irrevocable release. It releases the work into the public domain before all protection periods have expired.

It is important to point out that some legal systems do not allow this waiver of copyright, or only do so in very complicated ways, because copyright is non-waivable and unalienable by definition.

Another special feature of the Creative Commons licenses is the fact that their content is available in three different forms. The actual license is called “Legal Code.” This is a long text, full of legal terminology and basically only comprehensible to persons with legal training. This text is used by judges when a dispute arises over the use of licensed work. Creative Commons also provides summaries of the basic concepts, the “Commons Deed.” These are also easy to understand for regular users and are accompanied by descriptive symbols that graphically illustrate the meaning of the conditions. In addition, each license includes some lines in a programming language (“Digital Code”), which act as meta-data. This is digital information written into the files, which enables search engines to recognize and find the works equipped with it.

In addition to the six licenses mentioned above, CC0 is an appropriate tool provided

by Creative Commons to release creative works into the public domain. We know that a creative work usually becomes part of the public domain 70 years after the author’s death or when the copyright cannot be applied. The CC0 tool (CC zero) allows the author of a work to determine that it enters the public domain immediately. This is done by attaching to the work the text or a link stating the waiver (the same as for the licenses). The author thus publicly and irrevocably undertakes not to exercise his/her rights.

Applying a Creative Commons license on one’s own work

As explained above, the basic principle is to attach a license to the work so that the user can recognize the freedoms and the terms of use which have been defined by the licensor. It is recommended and widespread to attach a clear disclaimer together with the full name of the license and the website URL to the full license text. This is very simple in the case of digital works distributed on the internet: It is sufficient to make a reference on the website which is the home of the creative work in question. It is to be noted that Creative Commons does not take charge of the works and does not track the use of the licenses. The correct indication of the license is the licensor’s responsibility. The official Creative Commons website provides a useful guide which can help the author in the selection of the right license by guiding him/her with useful questions. The website automatically generates the HTML code with the disclaimer and the link to the license. And that is not all: The code provided by Creative Commons also functions as a metatag. The source code contains additional information about license type, the author, and the type of work. This information complies



Krampus
parade, Lienz,
December 5,
2017

(Photographer: Alessandro Campaner, CC BY SA)



Zombie cookies,
Lagundo,
December 21,
2009

(Photographer: Notburga Siller, CC BY SA)

with the standard of the semantic web, allowing search engines to find the works more easily and efficiently.

So far, we have talked about the application of Creative Commons licenses to works which are distributed digitally on the internet. This is the original habitat of licenses such as Creative Commons. However, if a work is distributed via an analog medium, the disclaimer may be placed where the information about the edition and publisher is usually located. For exam-

ple, in the imprint of the book, in the booklet of a music CD, or on the cover of a DVD ... or in the caption of a photograph.

Searching for works with a Creative Commons license

If the licensor has proceeded correctly, all search engines that are able to react to metatags, i.e. meta elements (which means most of them), will find the work according to the search parameters (including the license). In Google's advanced search there

is a setting to search by usage rights. As an alternative, you can use the Creative Commons search engine (<https://ccsearch.creativecommons.org/>) or Creative Commons Korea (<http://eng.letscn.net/>). There are also websites that offer various services such as hosting, distribution, and cataloging works under CC licenses; searching through these databases could be an alternative. Popular databases are Jamendo for music; Flickr for photographs; Wikimedia Commons for images, films, and texts in general; Vimeo for videos; SlideShare for presentations. YouTube only allows the use of one of the six CC licenses. On the platform "Lichtbild/Argento vivo" (www.lichtbild-argentovivo.eu), the pictures provided by the project partners are made available for free download in high resolution under the CC BY license.

Workflow for the use of creative works

Based on the principles explained, it is now possible to design a workflow of questions and answers that helps an interested user to act appropriately when using creative works.

When it is clear which work is to be used, the following questions arise:

Step 1) Is it a work that is public domain by law?

Yes: It can be used without any problems.

No: Before using it, a legal textbook or a lawyer should be consulted.

Step 2) Have the copyrights and the related rights already expired?

Yes: The work can be used without any problems.

No: Before using it, a legal textbook or a lawyer should be consulted.

Step 3) Does the planned use fall under "fair use" or "free use," which the law provides as an exception to copyright?

Yes: The work can be used on a case-by-case basis within the limits provided by the law.

No: Before using it, a legal textbook or a lawyer should be consulted.

Step 4) Does the work come from a platform that has specific terms of use for the creative content?

Yes: After reviewing the terms of use, the work can be used pursuant to them.

No: Before using it, a legal textbook or a lawyer should be consulted.

Step 5) Has the work been provided with an open license which allows certain uses, such as Creative Commons?

Yes: The work can be used as long as the terms of the applied license are complied with.

No: The rights owner must be contacted and a (written) permission to use the work must be obtained from him/her.



Technical terms

English	Italian
simple photography	fotografia semplice (non creativa)
photograph reproduction	riproduzioni fotografiche
photographic work	opera fotografica
public domain	dominio pubblico
protection of children and minors	tutela dei minori
attribution	attribuzione
freedom of the press	diritto di cronaca
the right to one's own image	diritto all'immagine
right of information	diritto di informazione
term of protection	scadenza della tutela
author	autore
moral rights of the author	diritti morali
copyright	diritto d'autore
distribution	comunicazione al pubblico
publication	pubblicazione
reproduction	riproduzione
right related to copyright, ancillary copyright	diritti connessi
exploitation rights, right to use the work	diritti patrimoniali = diritti di utilizzazione economica dell'opera

Authors

Alessandro Campaner, born in 1961 in Bolzano; further training in conservation and archiving; head of the Provincial Archive of South Tyrol as well as part of the IT division of the Department of Monument Preservation of the Autonomous Province of Bozen/Bolzano – South Tyrol; several publications and exhibitions in the field of archives and museums.

Dr. Marlene Huber, born in 1976 in Merano. She studied “Lettere moderne” in Trento; apprenticeship as an archivist at the State Archive in Bolzano. 2003–2006 archivist at the Merano City Archive; since 2006 archivist at the Office for Audiovisual Media of the South Tyrolean administration, Bolzano.



A decorative graphic on the left side of the page. It features two black film reels at the top left, with one partially unspooled. Below them is a large, tilted, sepia-toned photograph of a person, possibly a woman, in a historical or theatrical costume, lying down. The background of the entire page is a light, textured surface.

Photo Rights Issues in Everyday Life

As illustrated by this handout, photographic rights are a complex subject involving several areas of the law and regulated differently in Austria and Italy. It is therefore difficult to provide clear guidelines for action.

The following infographics simulate questions like “May I take pictures?”, “Is someone allowed to publish a photograph depicting me?” and “Can I publish a photograph?” to highlight relevant issues. However, the infographics cannot replace legal advice and do not claim to be legally complete and valid. They are meant as a useful tool.

Based on the information provided in this handout by:

MMag. Notburga Siller, born in 1984 in Meran/Merano, studied History as well as Mass Media and Communication Sciences in Vienna. Collaboration on social science research projects and experience in the field of museums and communications, collaborator on the “Lichtbild/Argento vivo” project at the Office for Film and Media of Bozen/Bolzano.

(Photographer: Jasmeen Farina; South Tyrolean Provincial Archive, CC BY 4.0)

May I take a picture?



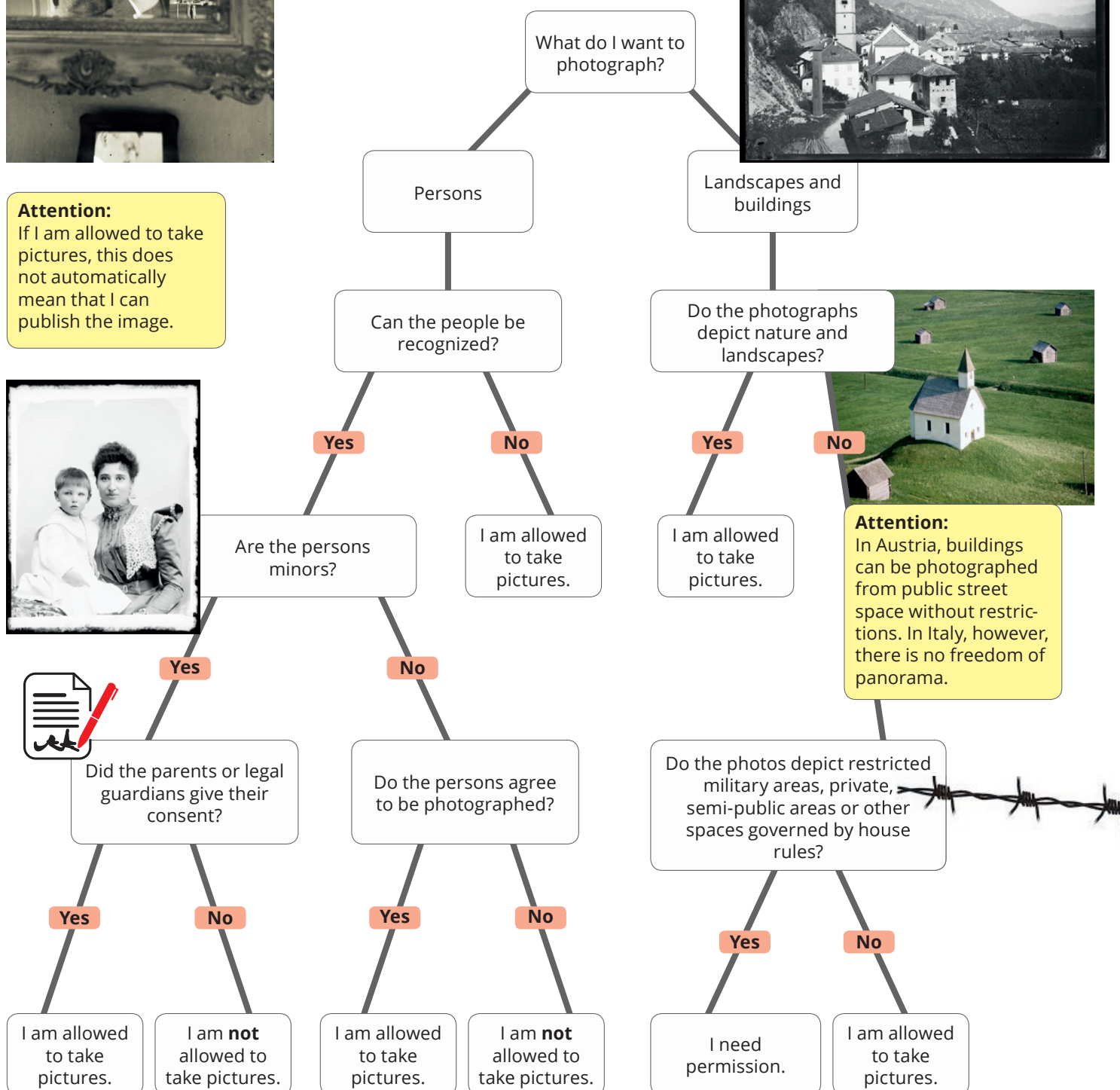
Attention:

If I am allowed to take pictures, this does not automatically mean that I can publish the image.



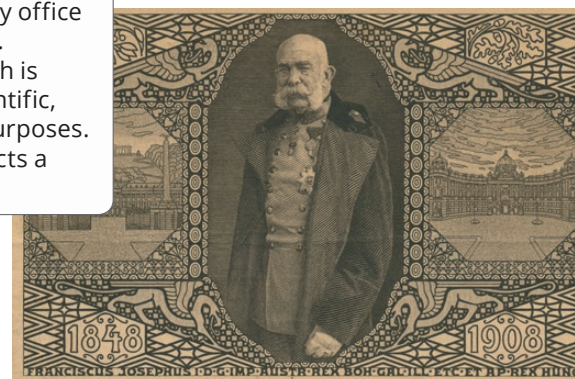
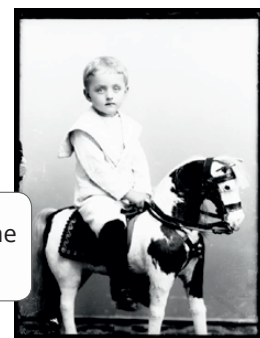
Attention:

In Austria, buildings can be photographed from public street space without restrictions. In Italy, however, there is no freedom of panorama.



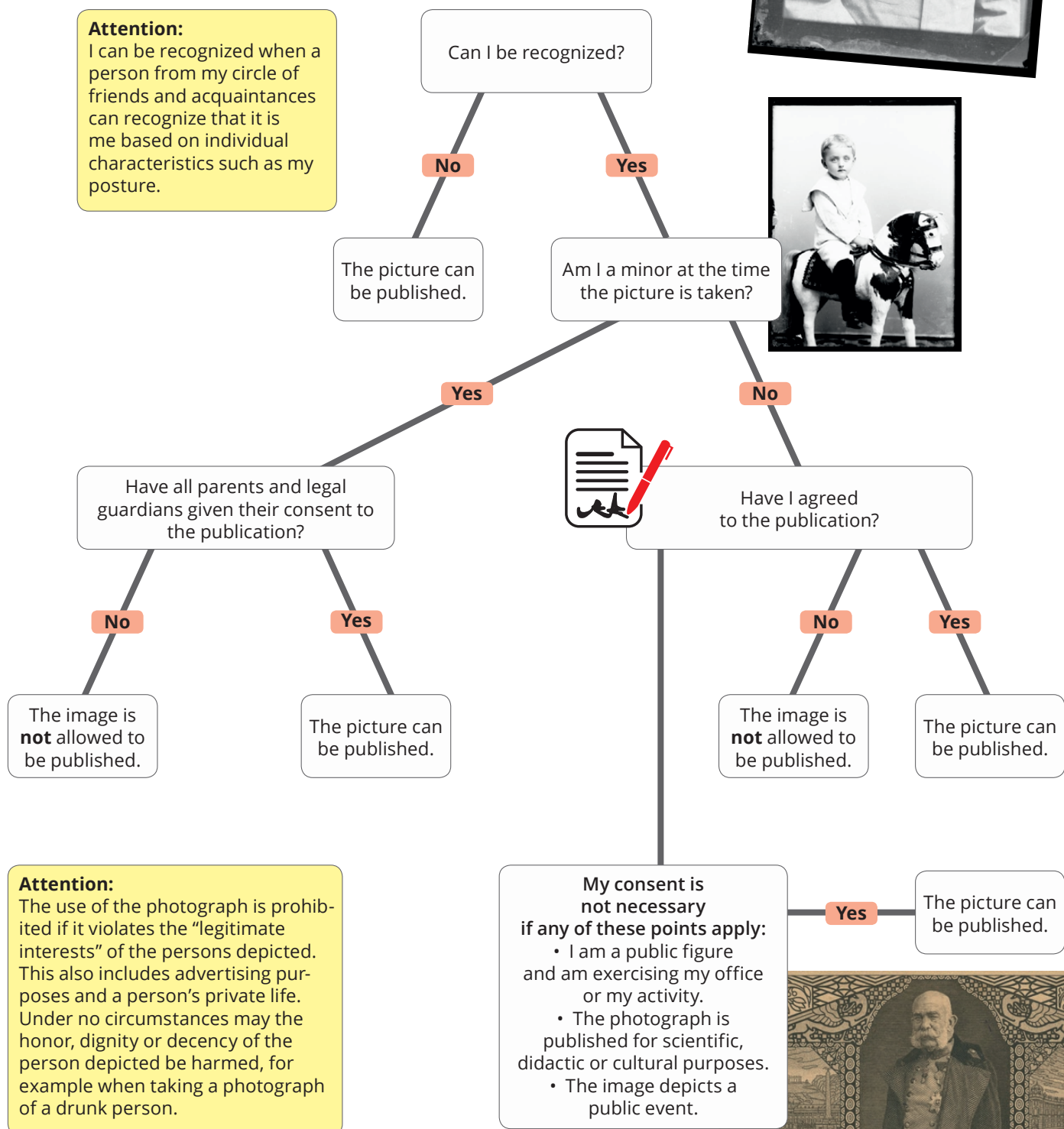
The “right to one’s own image”

or: Can a photograph depicting me be published?



Attention:

I can be recognized when a person from my circle of friends and acquaintances can recognize that it is me based on individual characteristics such as my posture.



Attention:

The use of the photograph is prohibited if it violates the “legitimate interests” of the persons depicted. This also includes advertising purposes and a person’s private life. Under no circumstances may the honor, dignity or decency of the person depicted be harmed, for example when taking a photograph of a drunk person.

My consent is not necessary if any of these points apply:

- I am a public figure and am exercising my office or my activity.
- The photograph is published for scientific, didactic or cultural purposes.
- The image depicts a public event.

May I publish a picture?

Attention:

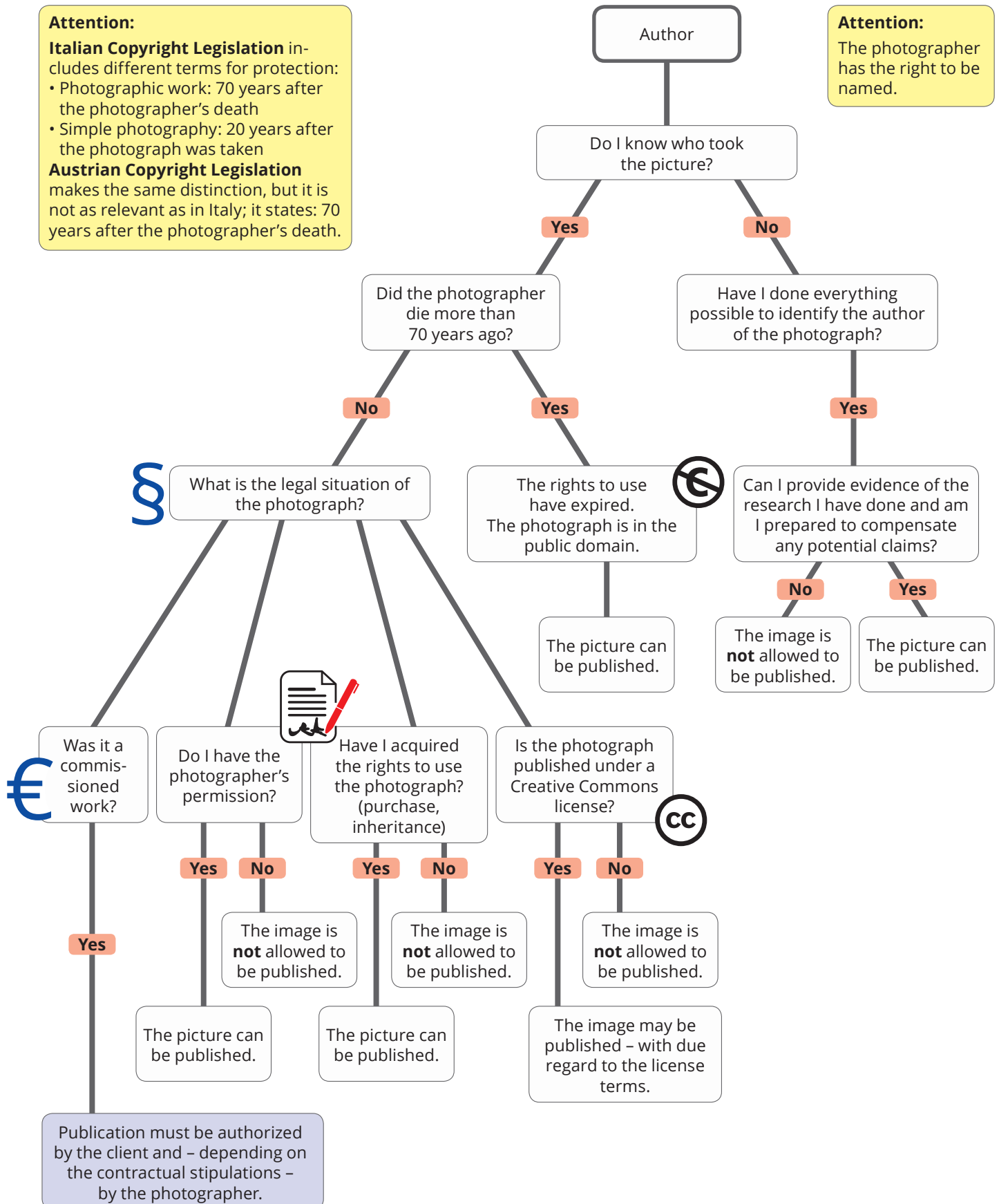
Italian Copyright Legislation includes different terms for protection:

- Photographic work: 70 years after the photographer's death
- Simple photography: 20 years after the photograph was taken

Austrian Copyright Legislation makes the same distinction, but it is not as relevant as in Italy; it states: 70 years after the photographer's death.

Attention:

The photographer has the right to be named.

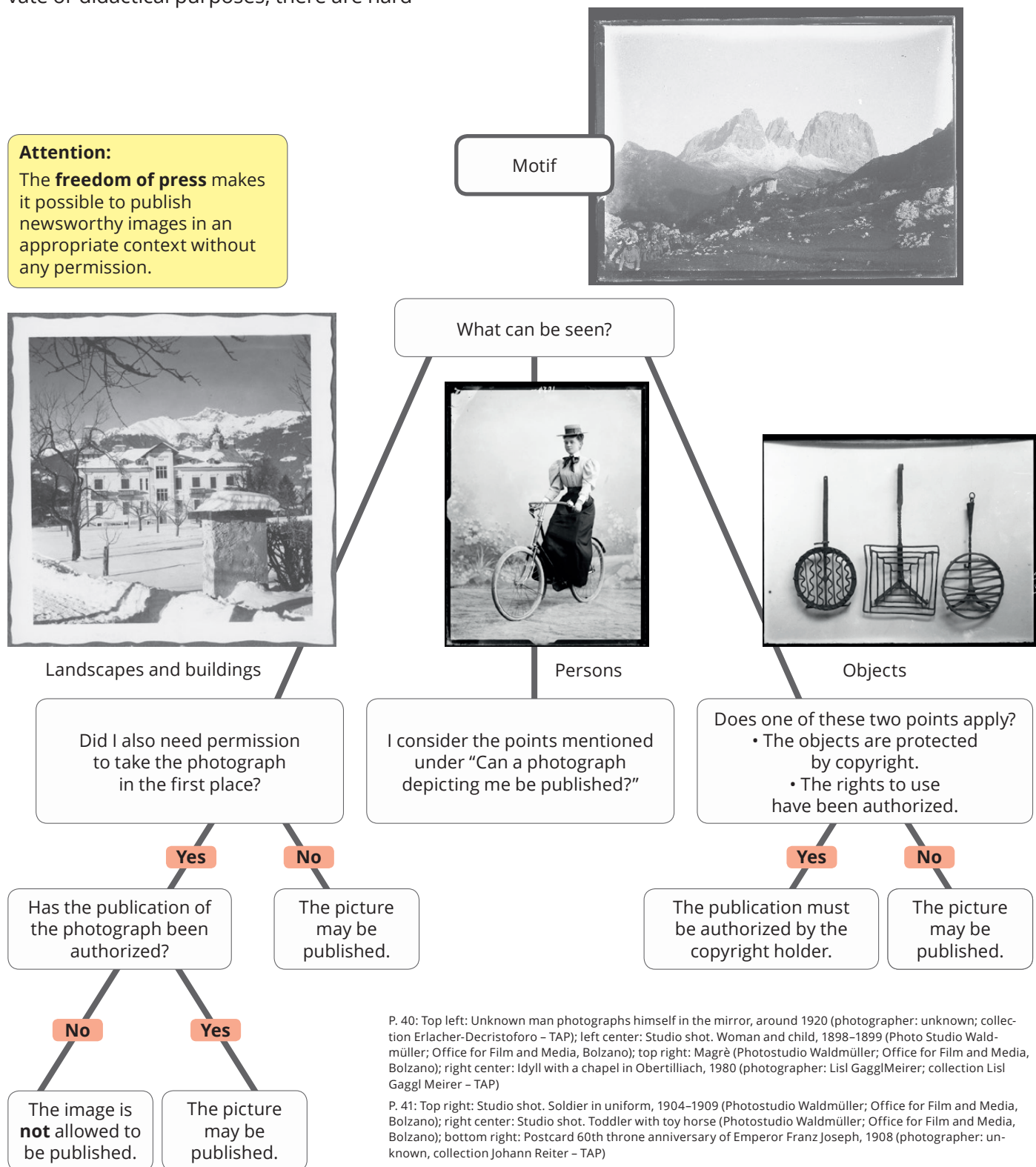


There are three things to take into account when you consider publishing a photograph. The author, the publication purpose and the motif of the picture itself. One thing should be clear from the start: If I want to use a photograph for purely private or didactical purposes, there are hard-

ly any restrictions. But if other purposes are involved – especially commercial ones – I need to have the permission from both sides of the camera: regarding the motif of the photograph, and on the other side, from the author or potential client.

Attention:

The **freedom of press** makes it possible to publish newsworthy images in an appropriate context without any permission.



P. 40: Top left: Unknown man photographs himself in the mirror, around 1920 (photographer: unknown; collection Erlacher-Decristoforo – TAP); left center: Studio shot. Woman and child, 1898–1899 (Photo Studio Waldmüller; Office for Film and Media, Bolzano); top right: Magrè (Photostudio Waldmüller; Office for Film and Media, Bolzano); right center: Idyll with a chapel in Obertilliach, 1980 (photographer: Lisl GaggliMeirer; collection Lisl Gaggli Meirer – TAP)

P. 41: Top right: Studio shot. Soldier in uniform, 1904–1909 (Photostudio Waldmüller; Office for Film and Media, Bolzano); right center: Studio shot. Toddler with toy horse (Photostudio Waldmüller; Office for Film and Media, Bolzano); bottom right: Postcard 60th throne anniversary of Emperor Franz Joseph, 1908 (photographer: unknown, collection Johann Reiter – TAP)

P. 43: Top: Soldiers in front of Langkofel, Fünffingerspitze and Plattkofel, 1896–1919 (Photostudio Waldmüller; Office for Film and Media, Bolzano); center left: Amlacherhof in Amlach near Lienz, 1965 (photographer: Alois Baptist; collection Photo Baptist – TAP); center: Studio shot. Portrait of Mrs. Tschurtschenthaler with hat on a lady's bicycle, 1898 (Photostudio Waldmüller; Office for Film and Media, Bolzano); center right: Pan spoons made of metal, 1909 (Photostudio Waldmüller, Office for Film and Media, Bolzano)

Recommended Literature and Links

Literature

- Aa. Vv. (by G. Bianchino), *Di chi sono le immagini nel mondo delle immagini?*, Skira 2013.
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- Idem. (Ed.), *Europäisches Urheberrecht. Kommentar*, Vienna–New York 2001.



Links (June 6, 2018)

Aliprandi, Simone, Il copyright sui social network: alcuni miti da sfatare (available online at <http://www.mysolutionpost.it/blogs/it-law/piana/2015/01/copyright-social-network.aspx>)

Office for Language Issues of the Autonomous province of Bozen/Bolzano – South Tyrol: Law of April 22, 1941, no. 633. Copyright protection and related rights (see http://www.provinz.bz.it/politik-recht-aussenbeziehungen/recht/sprachangelegenheiten/uebersetzte-staatsgesetze.asp?someforms_page=2&someforms_action=0#download-area-idx8)

Coding Da Vinci: URL: codingdavinci.de/about

Creative Commons: URL: creativecommons.org/

Open Data Portal South Tyrol: URL: daten.buergernetz.bz.it

Open Data Portal Austria: URL: www.opendataportal.at

Open GLAM: URL: openglam.org/

Santini Matteo, Il diritto allo sfruttamento dell'immagine altrui (available online at <http://www.altalex.com/documents/news/2013/05/09/il-diritto-allo-sfruttamento-dell-immagine-altrui>)

Research and Competence Center Digitalization Berlin URL: <https://www.digis-berlin.de/>

www.fotomagazin.de/fotorecht

www.rechtambild.de/2011/07/die-entstehung-des-„rechts-am-eigenen-bild“/



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