

According to the legislation applicable, there are areas of freedom available to the public within which the artist's permission is not required : these are copyright exceptions.

Contained for the most part in article L. 122-5 of the intellectual property code, they only apply to the property rights of reproduction and public communication. The activities authorised under the exception must be carried out in accordance with the moral right (right of paternity, respect of integrity of work).

Furthermore, such exceptions must be implemented in accordance with three conditions, known as the "three stage test" :

1° The uses in question must come within the scope of one of the exceptions listed in article L. 122-5. This means that aside from the special cases defined by the legislation, it is only exclusive rights that apply. This also means that if the legislation has adopted precise wording, the beneficiary of the exception must strictly respect this to the letter (principle of strict interpretation).

2° Exceptions "cannot affect the normal use of the work".

3° Finally, they cannot "cause unjustified harm to the legitimate interests of the artist".

Three exceptions concern the field of graphic and plastic arts in particular: the private copying exception, the exception for instant information via the media and the exception relating to catalogues for sales by the court.

Private copying

According to the legislation applicable, when the work has been made public, the artist cannot prohibit "copies or reproductions made from a legal source and strictly for the private use of the copier and not intended for collective use, with the exception of copies of works of art intended to be used for purposes identical to those for which the original work was created [...]" (art. L. 122-5 2° of the intellectual property code).

This "private copying" exception is intended to allow private individuals, acting for non-professional purposes, to copy works for their own use.

However, the legislation applicable provides for a mechanism of financial compensation for artists (the "private copying levy"), intended to establish a fair balance between the interests of the public and those of the creators.

>> See also : private copying levy.

>> Find out more here: <http://www.copieprivee.org/> [1].

Instant information via the media

According to article L. 122-5 9° of the intellectual property code, the artist cannot prohibit "the reproduction or public communication, in full or part, of a graphic, plastic or architectural work of art, via print, audiovisual or online media, for the exclusive purposes of instant information directly related to the work, provided that the name of the artist is clearly mentioned".

The exception, which helps reconcile the right to information and copyright, is governed in its implementation by several cumulative conditions :

1° The work must be communicated or reproduced "via print, audiovisual or online media": this is not a general exception applicable to any informational website or brochure.

2° The work must be reproduced or communicated to the public "exclusively for the purposes of

instant information". It is the immediacy of the information that justifies, in particular, that the prior permission of the artist does not have to be obtained, as an exception to the general principles of copyright.

3° The article or report in which the image of the work is used must present information "directly related" to the work (e.g.: announcement of the start of an exhibition, article about the theft of a work of art etc.) ;

4° The work reproduced or communicated must not itself be intended to report the information (e.g.: photograph of an event taken by a reporter).

Furthermore, the legislation applicable states that "for reproductions or public communications which are not strictly in proportion with the exclusive objective of instant information sought, due in particular to their quantity or format, or which are not directly related with the latter, royalties are payable to the artists on the basis of the agreements or rates in effect in the professional sectors concerned".

>> See the terms of the royalty exemption applied by ADAGP for the instant information exception.

Court sale catalogues

Subject to mentioning the name of the artist and the source, the law allows "full or partial reproductions of graphic or plastic works of art intended to be included in the catalogue of a court sale in France for copies of the catalogue provided to the public before the sale, with the sole aim of describing the works of art for sale" (article L. 122-5 2° e).

Article R. 122-1 states that "the catalogue of a sale of graphic or plastic works of art means the copies of a list, illustrated or not, handed out before a public auction sale, describing for potential buyers the works that will be put up for sale, as well as the conditions of such sale, and provided for free or for payment to any person who asks the professional arranging the sale for one".

The exception only applies to court sale catalogues, not to catalogues published by private auction houses.

Furthermore, it can only be implemented for the purposes of describing the works offered for sale : the exception does not under any circumstances cover the publication of catalogues raisonnés, for example.

Links

[1] <http://www.copieprivee.org/>