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FREEDOM OF PANORAMA AND WIKIMEDIA COMMONS

What is Wikimedia Commons?

- “Wikimedia Commons is a media file repository making available public domain and freely-licensed educational media content (images, sound and video clips) to all” – [Commons:Project scope](#)
- “Public domain” – Not copyrighted at all
- “Freely-licensed” – More complicated

What does “freely-licensed” mean?

- ⦿ [Fixed definition](#) used by the Wikimedia Foundation
- ⦿ To be free, the copyright holder must allow anyone:
 - to use and redistribute the media, including commercially
 - to create derivative works from the media
 - ...but still optionally allowing the author to demand:
 - attribution
 - share alike
- ⦿ Definition does not mention individual countries
- ⦿ The author may grant such freedoms by either:
 - Simply providing written permission
 - Releasing the media under a free licence such as CC-BY or CC-BY-SA

Architectural and artistic copyright law

- [Berne Convention](#)
- Over 160 countries have ratified it
- Mentions that:
 - Architecture and art works are considered “literary and artistic works”
 - Authors of “literary and artistic works” have the “exclusive right of authorizing the reproduction of these works, in any manner or form”
- Meaning that:
 - Any image featuring buildings or art work are derivative works
 - Copyright of the architect or the artist is “inherited” into any photo
 - Prevents author of the image releasing the photograph under a free licence
 - So he/she can't upload it Commons

Exceptions to architectural and artistic copyright law

- ◎ Four main exceptions:

1. Freedom of panorama
2. Expiry of copyright
3. Not meeting the threshold of originality
4. Trivial inclusion – *de minimis*

- ◎ Fair use images are not allowed on Commons

- ...but can be used as “non-free content” on the English Wikipedia and some other projects

Exception 1: Freedom of panorama

- Abbreviated as FoP
- From German [Panoramafreiheit](#)
- German copyright law: Permits paintings and photographs depicting buildings or sculptures
 - ...if they are “permanently located in a public place”
- A positive exception to copyright law
 - Term is often misunderstood and misused
- Usable FoP exists in many countries:
 - Israel: Architecture, sculptures, and applied art
 - United States: Buildings only
 - United Kingdom: Does not cover “2D works”
- FoP is too limited to be useful in some countries:
 - Former Soviet Union: Non-commercial use only
 - Greece: “Occasional reproduction” by “mass media” only
 - United Arab Emirates: Broadcasts only
- Other countries have no FoP at all:
 - France
 - Italy
 - Qatar

Exception 2: Expiry of copyright

- ⦿ Authors rights over their work eventually expire
- ⦿ Works with expired copyright are in the [public domain](#)
- ⦿ Countries free to set their own terms but some are bound by required minimums:
 - Berne Convention signatories: Life + 50 years
 - European Union members: Life + 70 years
- ⦿ Life + 50 years and life + 70 years are most common
- ⦿ Frequently different terms for anonymous works and photography
- ⦿ United States is very complicated
 - Published pre-1923: Public domain
 - Published from 1923 to 1977: 95 years after publication
 - Published post-1977: Life + 70 years

Exception 3: Not meeting the threshold of originality

- ⦿ An object must be “original enough” in order to be copyrighted
- ⦿ About complexity, not existence
- ⦿ Frequently applied to logos
- ⦿ Can be applied to architecture and artwork
- ⦿ Variation between countries
 - United States: Low threshold
 - Germany: High threshold

Exception 4: Trivial inclusion – de minimis

- ⊙ *De minimis* is a Latin expression for “about minimal things”
- ⊙ Legal concept that allows trivial copying to be ignored
- ⊙ Sometimes mentioned in statutory law
 - ...such as in Germany, Israel, and the United Kingdom
 - Usually exempts “incidentally” inclusion
- ⊙ Sometimes entirely case law
 - ...such as in the United States
- ⊙ Always presumed to exist in some form on Commons

Legal obligations for the Wikimedia Foundation

- The Wikimedia Foundation's main server farm is in Tampa, Florida, United States
- All content must observe the laws of the United States
- Different projects implement this differently
 - Wikimedia Commons: Content must be free both in the United States and in the country of origin - [Commons:Licensing](#)
 - English Wikipedia: Content only needs be free in the United States – [Wikipedia:Non-U.S. copyrights](#)

Three categories of copyright status

- Effectively three categories of images
- **Red images: Copyrighted in the United States**
 - Example: Sculptures in the United States
 - Wikimedia Commons: Not permitted
 - All other projects: Not permitted (except under fair use as “non-free content”)
- **Amber images: Not copyrighted in the United States; copyrighted in the country of origin**
 - Example: Buildings and sculptures in France
 - Wikimedia Commons: Not permitted
 - All other projects: Permitted (if allowed to upload locally)
- **Green images: Not copyrighted in the United States nor in the country of origin**
 - Example: Buildings in a public place in Germany
 - Wikimedia Commons: Permitted
 - All other projects: Permitted

Precautionary principle

- Core policy of Commons on dealing with copyright
- “The precautionary principle is that where there is significant doubt about the freedom of a particular file it should be deleted.” - [Commons:Project scope/Precautionary principle](#)
- Need “significant doubt” not “absolute proof” for deletion
- Makes deletion easier

Problems with enforcement on Commons

- ⦿ Problems that have occurred include:
 1. Disagreement on speedy deletion
 2. Inconsistency
 3. Lack of past enforcement
 4. Impact on other projects

Problem 1: Disagreement on speedy deletion

- ⦿ Speedy deletion is deletion by an administrator without discussion
- ⦿ Not “codified” on Commons
- ⦿ Images were/are speedy deleted for a lack of freedom of panorama
- ⦿ “The subject of FOP is far too complex for speedy action.” – [Commons:Deletion requests/Template:FOP-cv](#)
- ⦿ [Commons:Criteria for speedy deletion](#) proposal – “no freedom of panorama” criterion removed
- ⦿ No community wide consensus yet

Problem 2: Inconsistency

- ⊙ Most individual images are discussed at [Commons:Deletion requests](#)
- ⊙ Frequently backlogged
 - ...but many requests closed with little discussion
- ⊙ Inconsistencies on:
 - Where to set the threshold of originality
 - What passes as *de minimis*
- ⊙ Aggravated by a lack of case law
- ⊙ Makes deletion requests less efficient
- ⊙ United Arab Emirates freedom of panorama related deletion requests recorded:
 - 180 did result in deletion
 - 165 did not result in deletion

Does this building pass the threshold of originality?



Does this building pass the threshold of originality?



Does this building pass the threshold of originality?



Is this photograph acceptable
under *de minimis*?



Is this photograph acceptable
under *de minimis*?



Is this photograph acceptable
under *de minimis*?



Problem 3: Lack of past enforcement

- [Commons](#) was launched on 7 September 2004
- [Commons:Freedom of panorama](#) didn't appear until 25 May 2006
- Evolved over time
- [User:LoverofDubai](#)
 - Uploaded hundreds of images of buildings in Dubai from 19 August 2007 to November 2008
 - No usable FoP in the United Arab Emirates but no warnings or enforcement until...
 - ...a flood of deletion requests from 1 January 2010 onwards
 - Is this fair on a contributor?

Problem 4: Impact on other projects

- ⦿ Large scale image deletions on Commons negatively impact on other projects
- ⦿ Wikipedia projects have varying approaches:
 - English Wikipedia: Apparent confusion
 - [Template:Non-free architectural work](#) confuses Common's policy with that of the English Wikipedia
 - Talks about “country of origin”
 - Images free in the United States incorrectly uploaded as “non-free content”
 - [Wikipedia:Public domain](#) policy not clear enough that only the United States matters locally
 - Simple English Wikipedia: No image uploads allowed
 - No **non-free images**; **free images** go on Commons – [Wikipedia:Image use policy](#)
 - What about the **amber images**?
 - Current policy dates from 2006

Possible solutions

- ⦿ How should architectural and artistic copyright is dealt with on Commons?
- ⦿ No clear consensus on changes
- ⦿ Some support for the *status quo*
- ⦿ Also support for minor to major changes

Minor changes

- ⦿ Focus on resolving specific concerns
- ⦿ Disagreement on speedy deletion:
 - Discuss it!
 - Speedy deletion not allowed
 - Speedy deletion allowed only in “blatant cases”
- ⦿ Inconsistency:
 - Create clearer guidance for administrators on *de minimis* and threshold of originality issues with architecture and art work
- ⦿ Lack of past enforcement:
 - Ensuring it does not happen again
 - Better use of freedom of panorama related templates
- ⦿ Impact on other projects:
 - Better communication
 - Clarify policy on the English Wikipedia
 - Allow image uploads for **amber images** on the Simple English Wikipedia

“Ignoring it”

- Amend policy to apply only United States copyright law to images depicting architecture or art work
- Exemption from current Commons policy
 - ...on grounds that enforcement as written compromises the educational mission of the project
- Similar proposal at [Commons:Photographs of modern buildings](#)
- Some precedent:
 - [Personality rights](#) are only subject to a template warning on image uploads
 - ...but independent of copyright
 - Photographic reproduction of public domain art work is [allowed](#) regardless of potential copyright in the source country
 - ...but this has Wikimedia Foundation backing
- What about a more selective approach?
 - Only apply this exemption in countries with no freedom of panorama and no case law or enforcement, such as the United Arab Emirates
 - Countries with case law, such as France, keep the *status quo*

A new Commons?

- Commons was created to avoid duplicate uploads across projects
- Commons policy means this is only succeeding with **green images**
- **Amber images** have to be uploaded repeatedly across projects...
 - ...which includes many pictures of buildings and sculptures where there is no freedom of panorama
- A possible solution would:
 - Keep a “purist” Commons for **green images**
 - Create a new project for **amber images** where only United States copyright law would apply
- Problems:
 - Recovering and transferring images
 - Potential file naming conflicts
 - Time and effort required

Conclusions

- ⦿ The current approach is not working well
- ⦿ Greater consensus and better consistency is needed on Commons
- ⦿ More attention is needed from other projects
- ⦿ Time to re-think the purpose of Commons?
- ⦿ Should the Wikimedia Foundation get more involved?

Image attribution

In order of appearance

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Image attribution

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Any questions?