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# Protecting Creative Expressions and Using the Creativity of Others in Business

Creating IP Culture Among Small and Medium-Sized Enterprises

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# Objectives

- What is **copyright and related rights**
- How to **protect** your works and related subject matter
- When can you **use** the works of others in your business
- How to avoid the **risk of infringing** the copyright or related rights of others

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# What is protected by copyright?

Copyright law grants creators legal protection for their **literary**, **artistic**, **dramatic** and other types of **creations** (“works”).

- **Literary** works (e.g., books, technical papers, catalogs)
- **Musical** works or compositions
- **Dramatic** works (e.g. plays, sales training program)
- **Artistic** works (e.g. cartoons, paintings, graphic interface)
- **Cinematographic** works
- **Computer programs**
- **Databases or compilations** that are selected, coordinated or arranged in a original way
- In some countries, works of **applied art** (e.g. chairs, jewelry)
- Etc.

# What is not protected by copyright?

In countries (EU) that protect databases with sui generis database right, the retrieval and reuse of bare facts from a database may be prohibited

## Ideas

- Idea, concept or discovery
- Method of operation or principle
- Procedure, process, or system

## Facts

- Bare facts or information – whether scientific, historical, biographical or news

## Short

- Names and titles
- Slogans and short phrases, unless highly creative

## Official

- Copies of statutes
- Judicial opinions
- Decisions

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## What criteria must a work meet to qualify for protection?

A work enjoys copyright protection **irrespective of its creative elements, quality or value**, and does not need to have any literary or artistic merit.

- **Originality**: originates' in its expression from the author, ie, was independently created and was not copied from the work of another or from materials in the public domain
- **Expression**: work must have a form of expression
- **Fixation** (in some countries): work must be fixed in some material form (written, painted, recorded)

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# What is originality?

Got to Give It Up  
(1977), Marvin Gaye  
vs  
Blurred Lines (2013),  
Robin Thicke  
(co-written by Pharrell  
Williams)



Robin Thicke - Blurred Lines VS Marvin Gaye - Got to Give it Up  
<https://www.youtube.com/watch?v=ziz9HW2ZmmY>

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# What is a form of expression?

Enfants (1975),  
Jean-François Bauret  
vs  
Naked (1988),  
Jeff Koons



Fotografia de Jean-François Bauret e escultura de Jeff Koons DR

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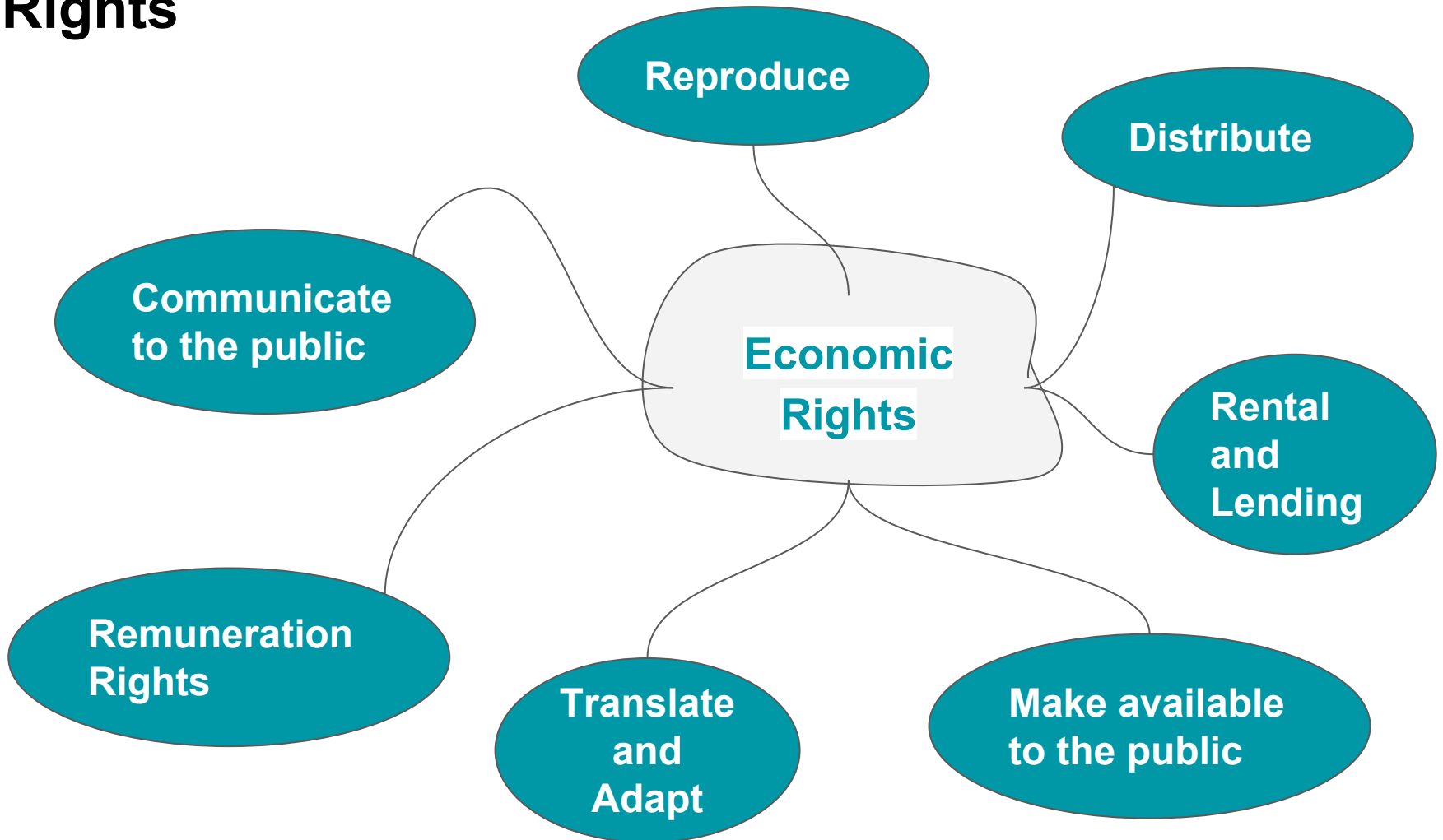
# What rights does copyright provide?

- **Economic Rights:** bundle of exclusive rights over a work that enable the author or creator of the work to control, ie. to authorize or prohibit the use of his/her work in a number of ways and to receive payment, for a limited but lengthy period of time
- **Moral Rights:** rights that protect, amongst other things, an author's reputation and integrity



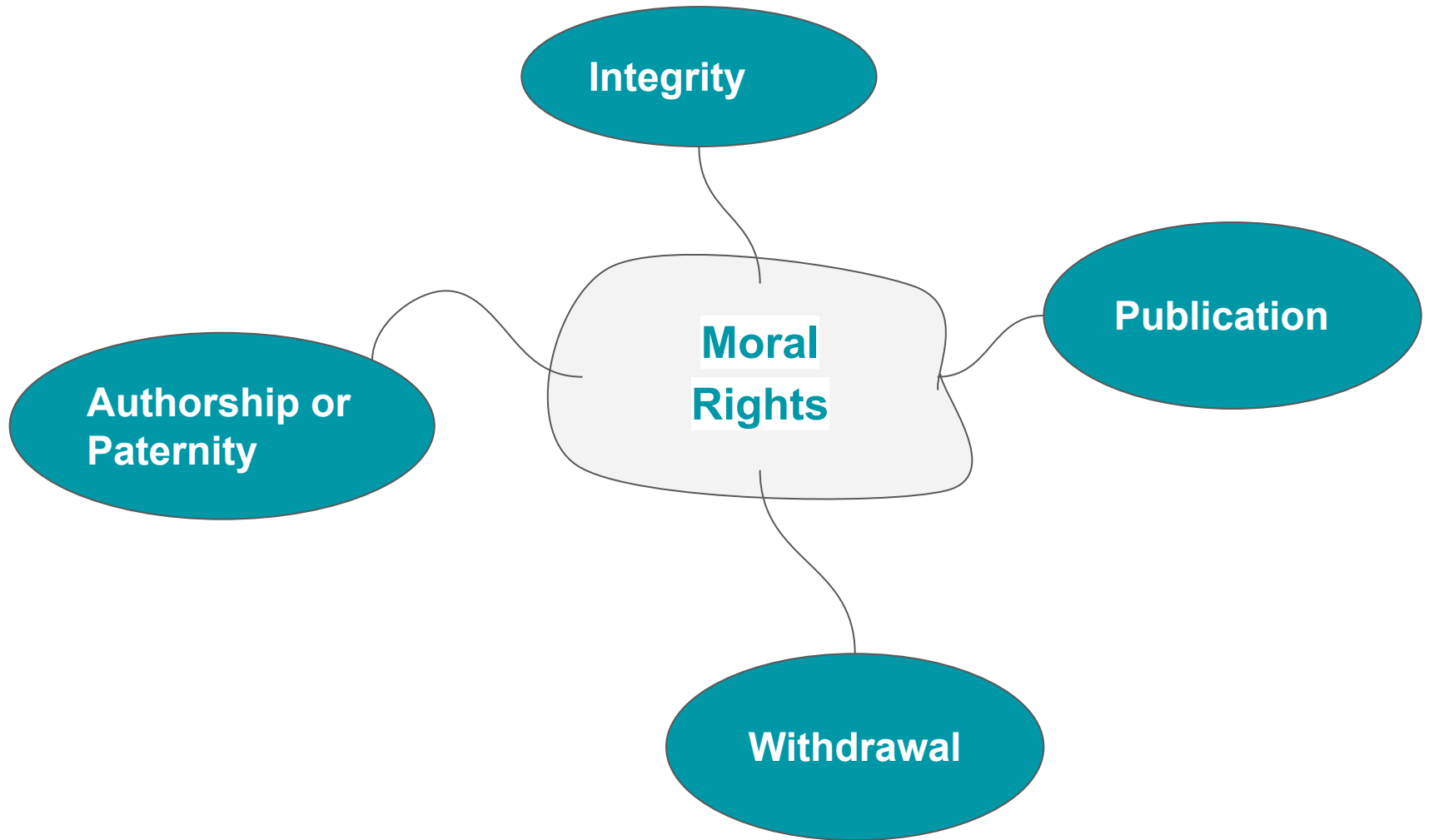
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# Economic Rights



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# Moral Rights



## Economic Rights

- ❑ Protect the author's or owner's economic interests in possible commercial gain
- ❑ Not necessarily owned by the creator
- ❑ Are not personal to the creator and thus can be transferred
- ❑ In general, can be waived
- ❑ Limited in time
- ❑ Subject to exceptions and limitations

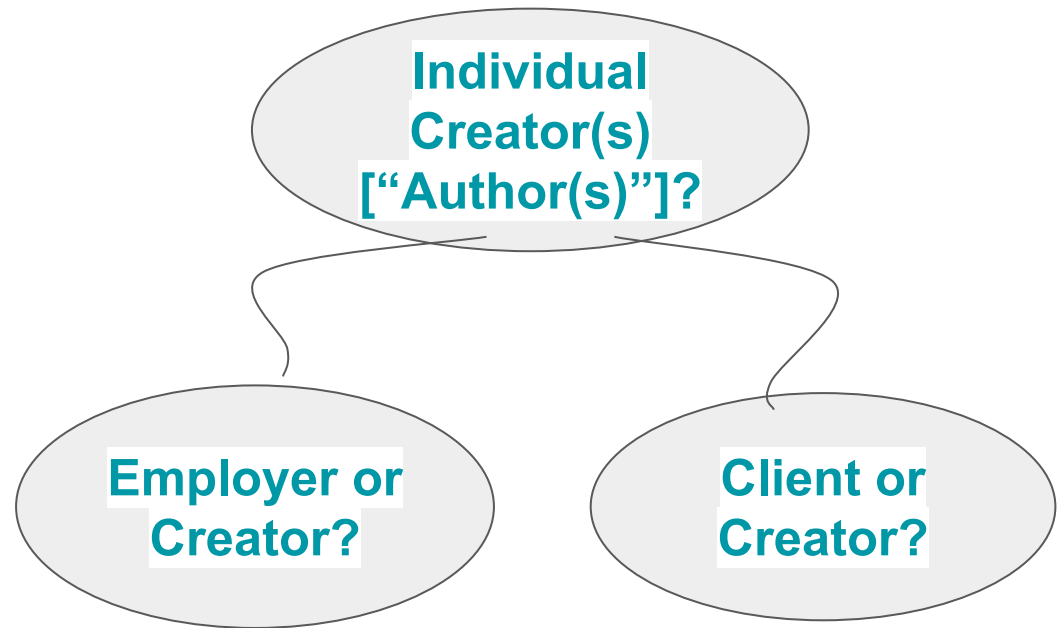
## Moral Rights

- ❑ Protect an author's creative integrity and reputation as expressed through the work
- ❑ Always owned by the individual creator
- ❑ Are personal to the creator and thus cannot be transferred
- ❑ In some countries, can be waived
- ❑ In some countries are perpetual
- ❑ Are not subject to exceptions and limitations

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# Who owns the rights on the copyrighted work?

Authorship is different from ownership. The owner of the copyright in a work is the person who has the exclusive rights to exploit the work, e.g. to use, copy and sell the work.



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# Works created by several authors

## Joint Works

e.g. Textbook

2 or more authors intend to create a joint work, and agree to merge their contributions into an inseparable or interdependent combination of the individual contributions. They are joint owners of the entire work.

## Collective Works

e.g. Newspaper

If the authors do not intend the work to be a joint work and would like their contributions to be used separately. Each one owns the copyright in the part created.

## Derivative Works

e.g. Dramatization

Work based on one or more pre-existing works, created with or without the collaboration of the authors of the earlier works.

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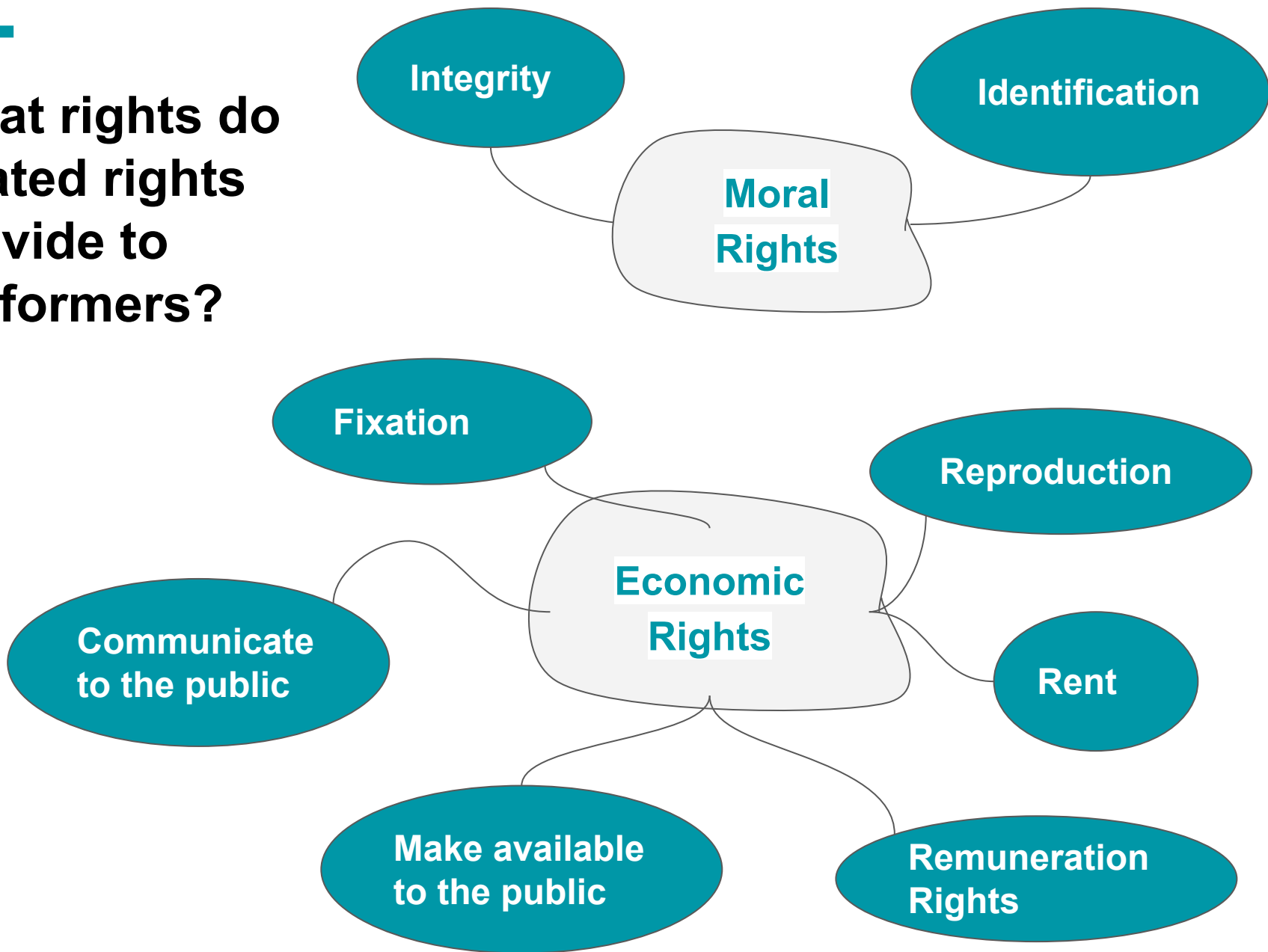
## What are related rights?

Rights granted to certain people or businesses that **perform, communicate** or **disseminate** works to the public that may or may not be protected by copyright.

- Rights of **performers** (e.g., actors, musicians) in their **performances**
- Rights of **producers of sound recordings** (or “phonograms”) in their recordings
- Rights of **broadcasting organizations** in their radio and television programs transmitted over the air and, in some countries, rights in the transmission of works via cablesystems

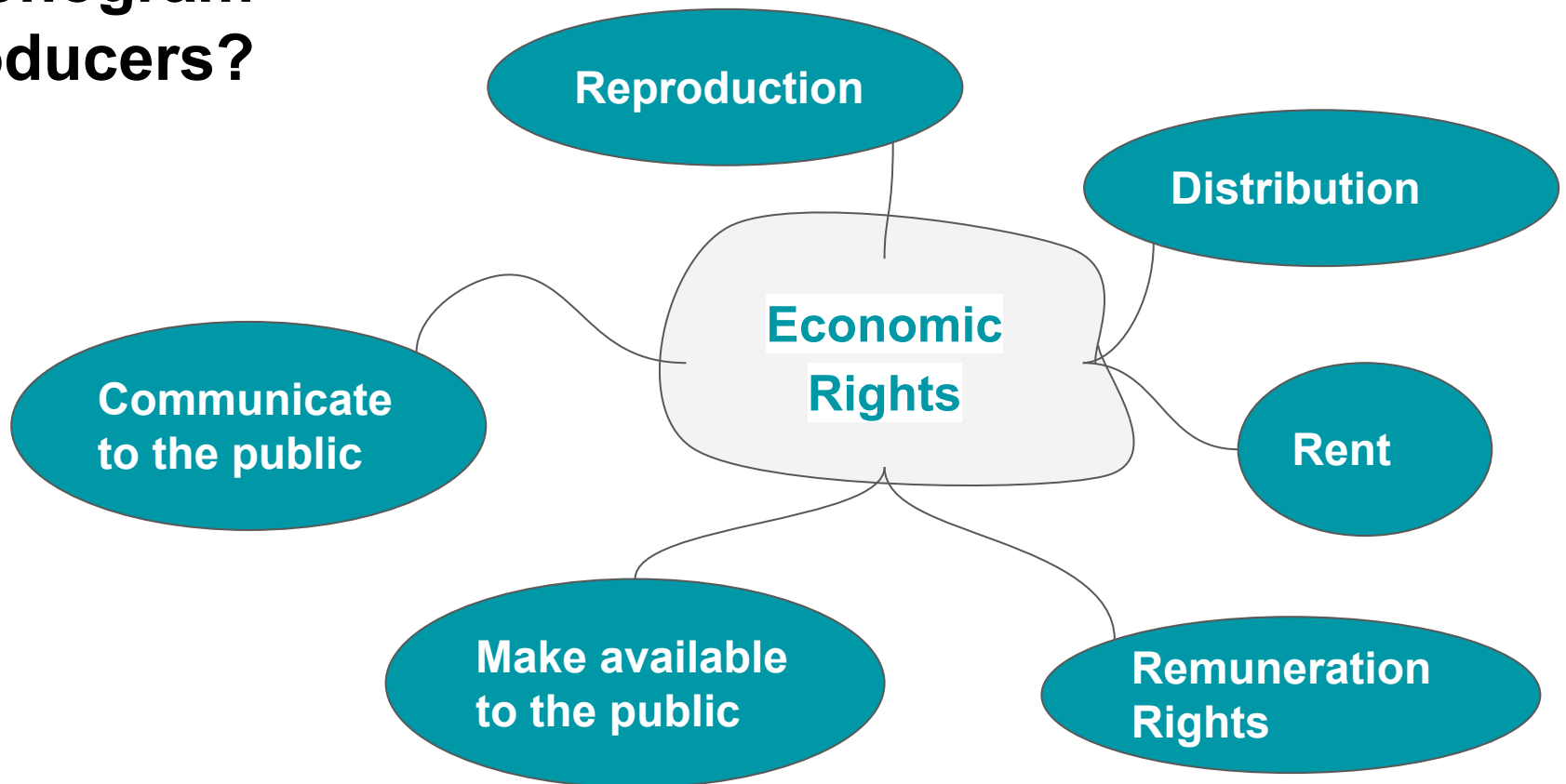
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# What rights do related rights provide to performers?



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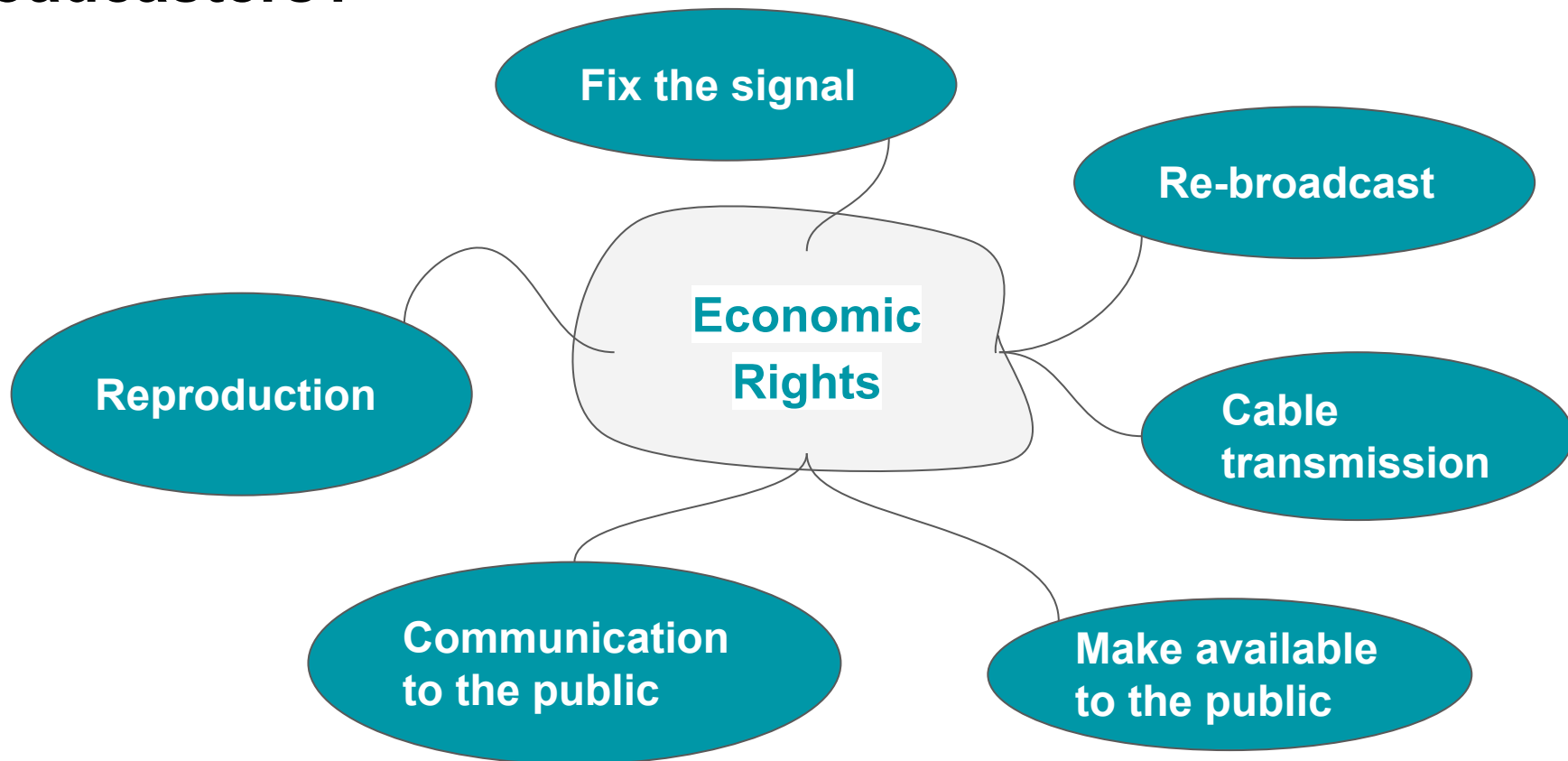
**What rights do related rights provide to phonogram producers?**





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# What rights do related rights provide to broadcasters?



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# How copyright and related rights apply to a song?

Copyright

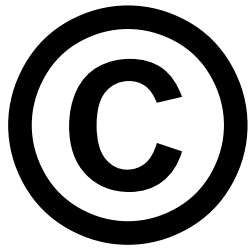
- **Music** of the composer
- **Words** of the lyricist and/or writer

Related Rights

- **Performances** of the musicians and singers who perform the song
- **Sound recording** of the producer in which the song is recorded
- **Broadcast program** of the organization that produces and broadcasts the program containing the song

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# What's the relevance of copyright and related rights to business?



- **Exclusivity**: control copies and commercial exploitation of original works and related subject matter
- **Generate income**: sell copies, assign or license rights
- Obtain **funding or mortgage**
- **Enforcement**: take legal action against infringers
- **Use works created by others** to enhance the value or efficiency of your business (e.g. music in a restaurant or in a commercial)

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## How are copyright and related rights obtained?

A large number of countries are signatories to international treaties that have helped to harmonize the level of copyright and related rights protection.

### Copyright

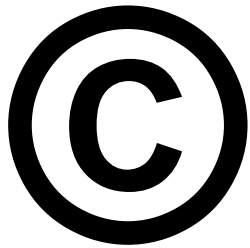
Automatic protection from the moment of creation without any registration, publication or formalities, but some countries require that the work be fixed in material form

### Related Rights

Automatic protection from the moment of:  
Performance  
Recording (phonograms, videograms and films)  
Broadcast

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# How do you prove that you own the copyright?



- **Optional deposit/registration** with the copyright office, for a fee
- **Deposit a copy** of the work with a bank/lawyer
- **Send yourself a copy** in a sealed envelope
- Mark the work with **copyright notice**: “copyright”, “copr.” or “©” + year + name
- Mark your work with specific **standard identification numbering systems**, e.g. International Standard Book Number (ISBN) for books and the International Standard Recording Code (ISRC) for sound recordings

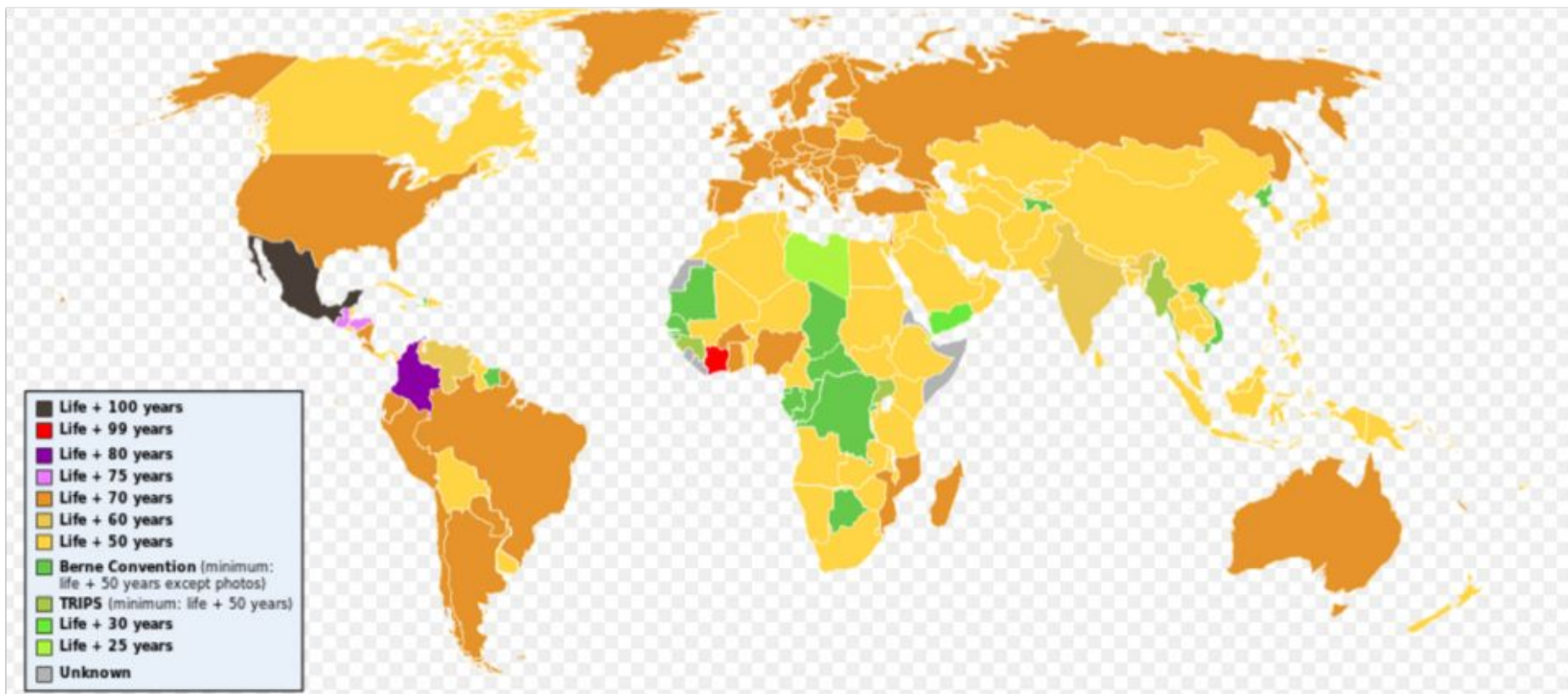
# For how long is copyright (economic rights) protected?

Death of the (last  
surviving) Author

Public  
Domain

50 - 70  
years

Depending on the country, moral rights can (a) be perpetual, (b) expire at the same time as the economic rights, (c) expire on the author's death.



[https://en.wikipedia.org/wiki/List\\_of\\_countries%27\\_copyright\\_lengths#/media/File:World\\_copyright\\_terms.svg](https://en.wikipedia.org/wiki/List_of_countries%27_copyright_lengths#/media/File:World_copyright_terms.svg)

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# For how long are related rights protected?

Performance  
Recording  
Broadcasting

Publication

Termination

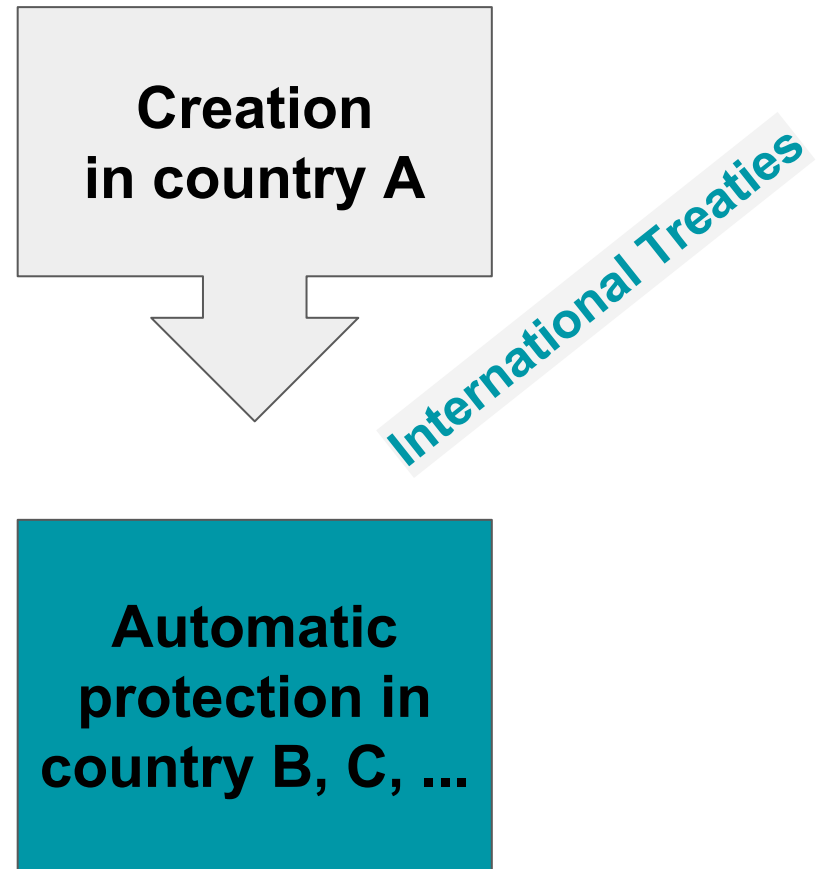
20 - 70  
years



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## How can you obtain protection abroad?

Copyright protection remains **territorial** in nature. Thus your work will only enjoy protection if it meets the legal requirements of the copyright law of the relevant country.



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## Other legal instruments available to protect original creation

- **Industrial Design:** works of art or applied art may be registered as designs
- **Trademarks:** if a work functions as a trademark in the marketplace, then it may be protected as a trademark
- **Trade Secrets:** you may wish to keep your copyrighted work confidential prior to disclosure
- **Unfair Competition:** a work may be protected against acts of unfair competition, e.g. slavish copying and acts that may lead to confusion, acts of imitation or use of a third party's reputation
- Cumulative protection

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# When can you use the works of others in your business?

WORKS PROTECTED BY  
COPYRIGHT

WORKS NOT/NO LONGER  
PROTECTED BY COPYRIGHT

- **Permission:** when the owner or the CMO gives you permission
- **Public License:** when the owner has included a license in the work
- **Fair use/ Fair Dealing/ Exception or limitation to copyright:** when you can use the work without permission of the rights holder
- **No longer protected:** when the term of protection of the copyright and related rights has expired, everyone can use it
- **Dedicated to the public domain:** when the author waived the rights
- **Never Protected:** aspects of works not protected by copyright, such as facts and information

# Copyright limitations

## Exceptions and Limitations

## Fair Use

Specific provisions that limit the scope of copyright protection, and allow either free use of works under certain conditions, or use without permission but against a payment.

General clause that allows for the use of copyrighted material without permission under certain conditions (US: four-factor test).

Quotations

Incidental Inclusion

Freedom of Panorama

Parody

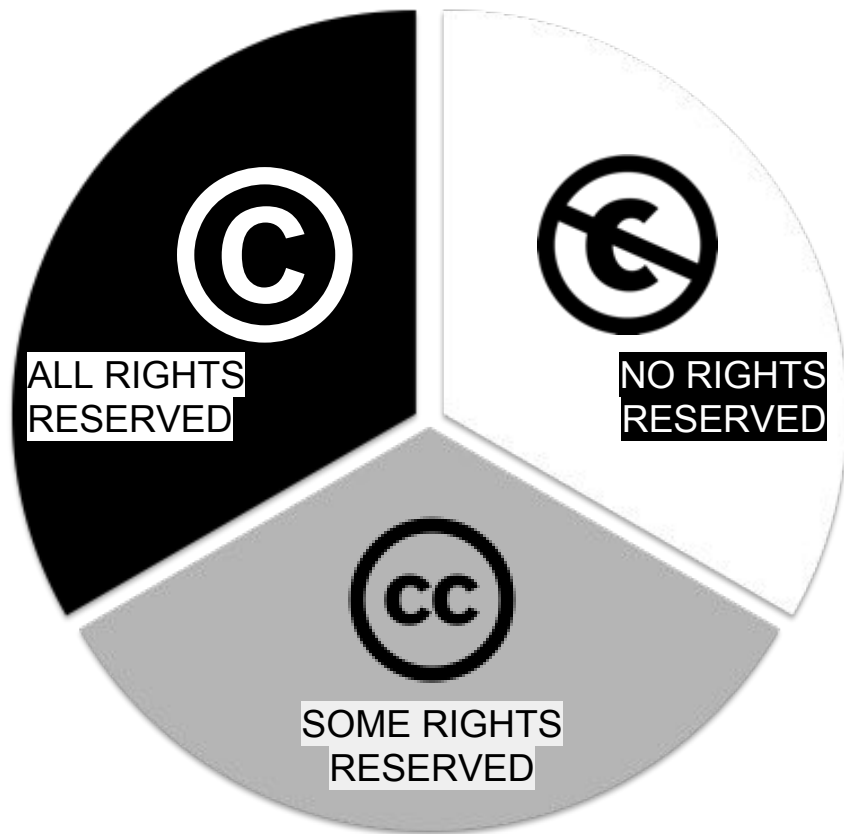
Commentary

Parody

Search Engines

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# License Conditions



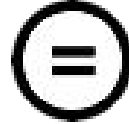
**Attribution (by)**



**ShareAlike (sa)**

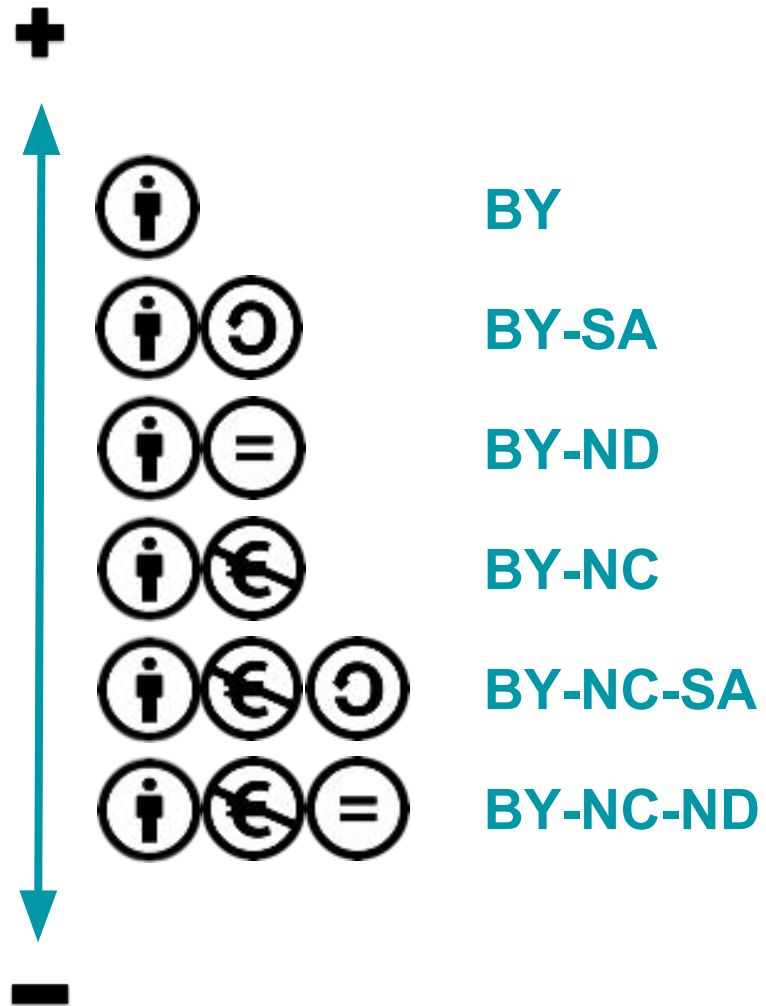


**NonCommercial (nc)**



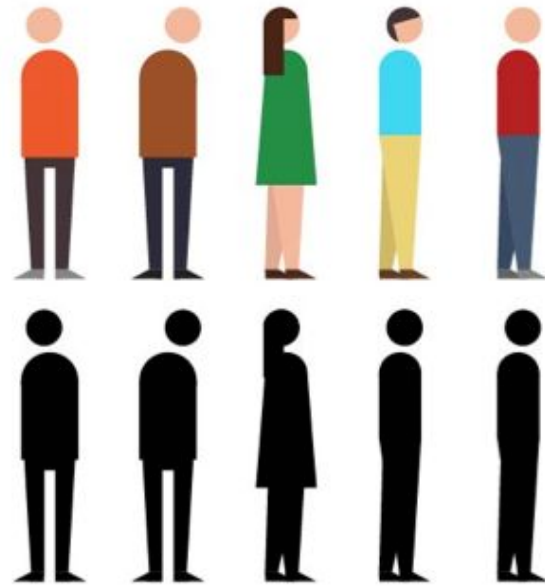
**NoDerivatives (nd)**

# Licensing Types



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# For everyone





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**For ever**

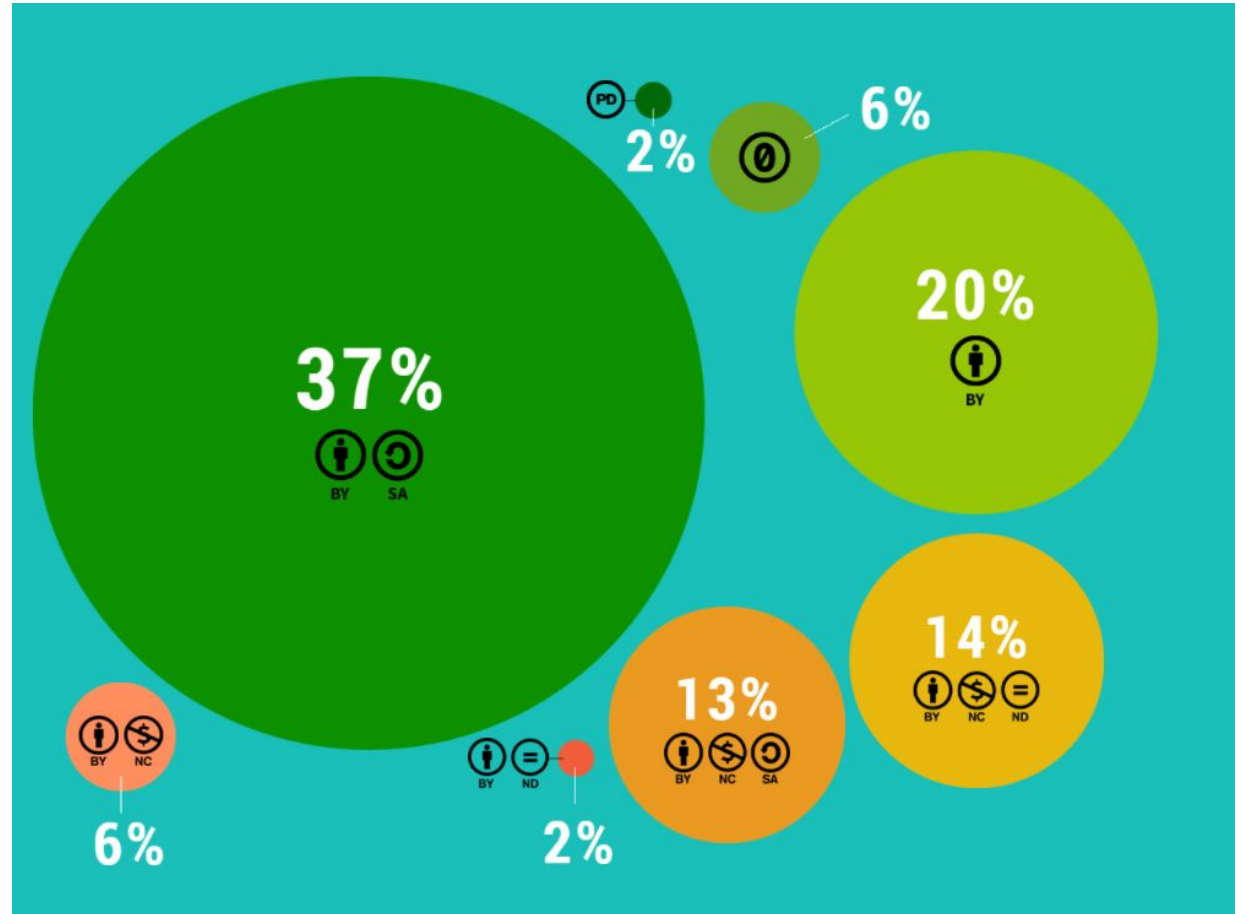


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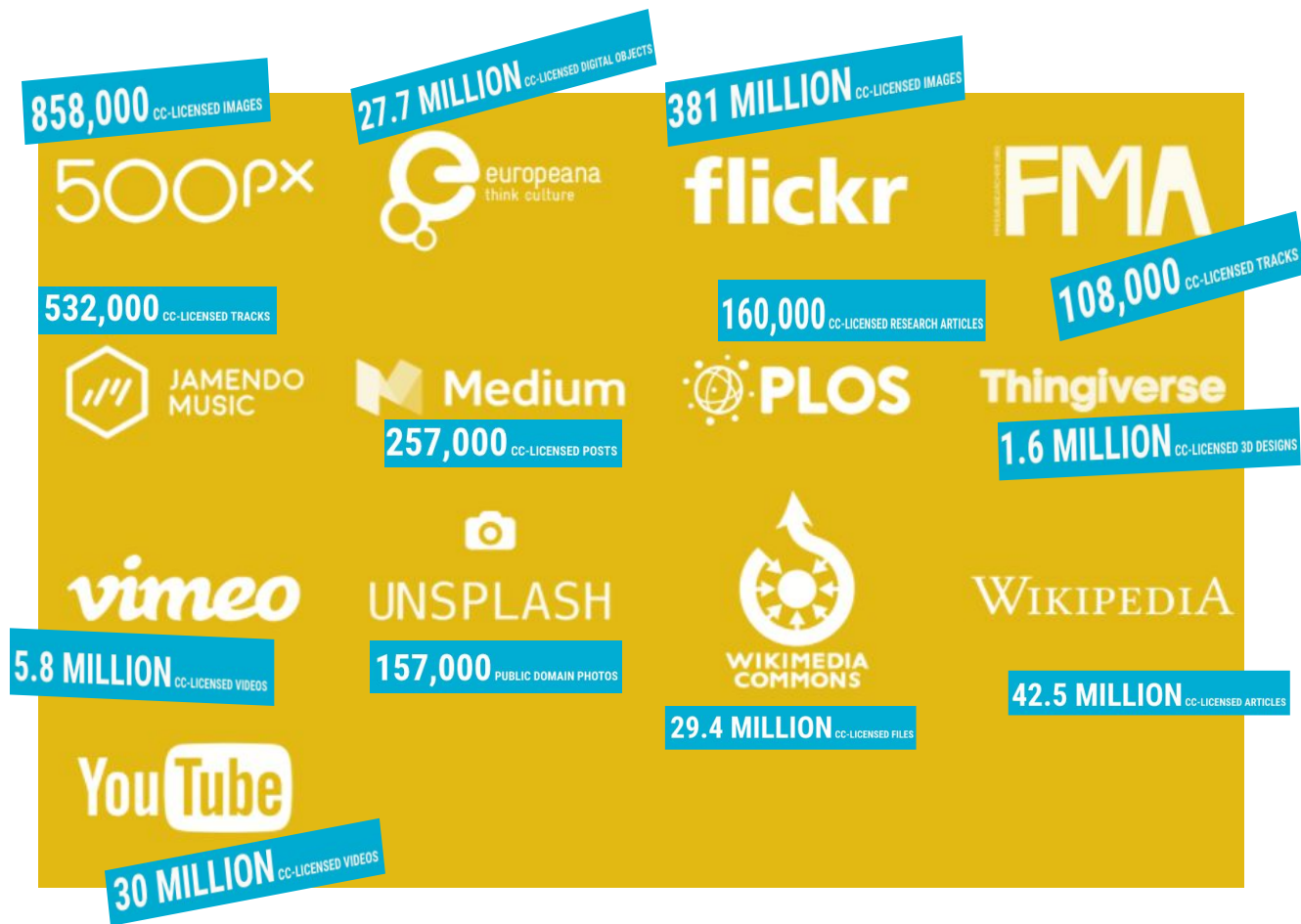
# 1.2 billion works licensed with CC



**65% of CC works are under licenses that allow commercial uses**



# Finding works in CC Platforms



# MET dedicates 375,000 digital works into the public domain


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THE MET

Visit Exhibitions Events Art Learn Join and Give Shop

SEARCH

Back to Search Results



Share Print Link

Public Domain Download Enlarge

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## How can your business reduce the risk of infringement?

- **Educate the staff** employed by your company
- Obtain **licenses or assignments**, and ensure that staff know the scope of such licenses
- **Mark any apparatus** that could be used to infringe copyright (e.g. photocopiers) with a clear notice that the apparatus must not be used to infringe copyright
- **Prohibit your staff** from using infringing material in the office/ downloading infringing material on office computers
- **Develop policies** to ensure that employees do not circumvent TPMs



## Credits

**This presentation is partially based upon Creative Expression: An Introduction to Copyright and Related Rights for Small and Medium-sized Enterprises:**

<http://www.wipo.int/publications/en/details.jsp?id=152&plang=EN>

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# Thank you!

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and Medium-Sized Enterprises

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