

MYTH-BUSTING: COPYRIGHT, LICENSING, & 3D DATA

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Harvard Library
Office for Scholarly Communication



@KyleKCourtney

I AM...

Not neutral
Completely favor open access
Embrace low risk
and
willing to say more than *“it depends”*

The “Left Shark” Incident of 2015




MakerBot Thingiverse

DASHBOARD EXPLORE CREATE

Enter a search term SIGN IN / JOIN


Left Shark

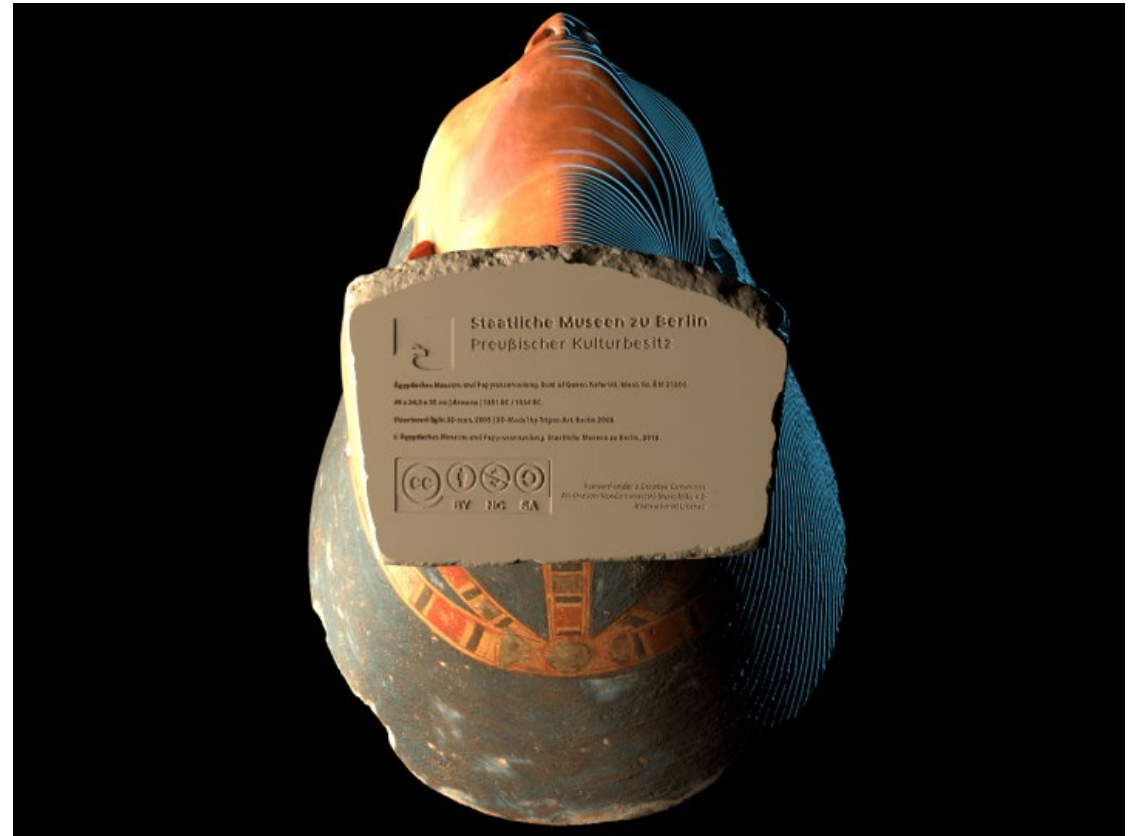
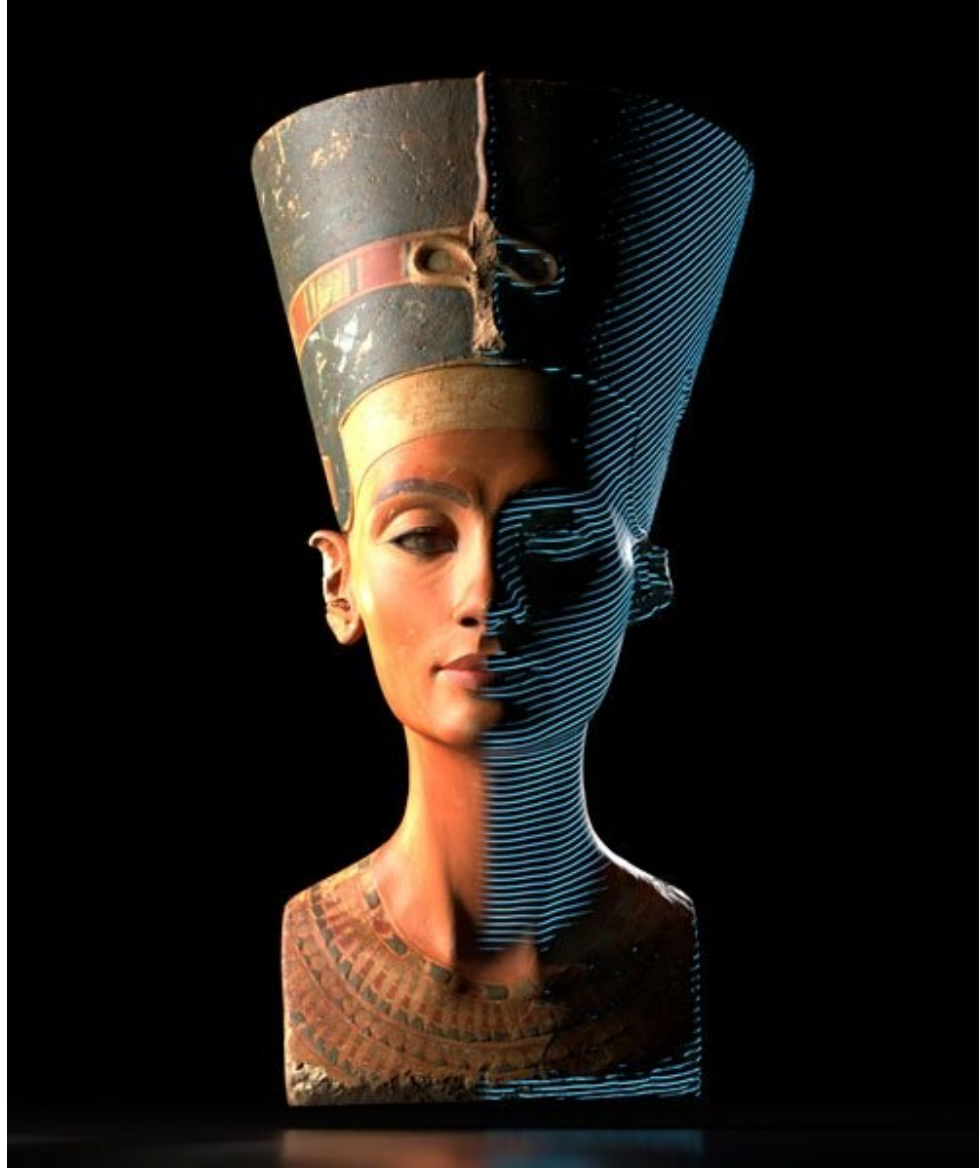
by mstyle183, published Feb 4, 2015



Like	47
Collect	36
Comment	9
I Made One	2
Remix It	0
Share	

Download This Thing!



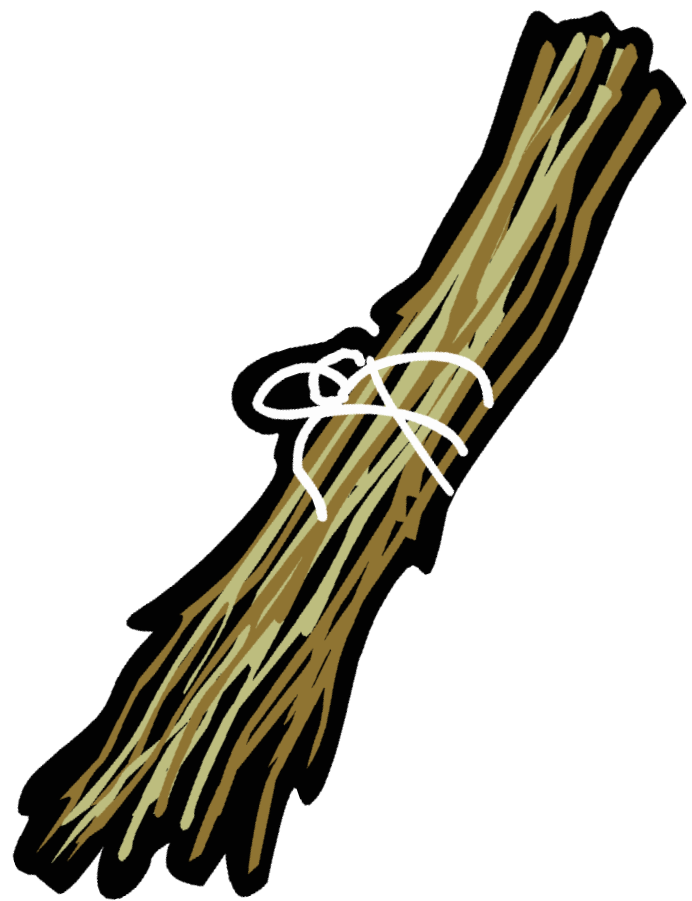


What is copyright, really?

A “Bundle of Rights”

Limited Economic Monopoly for Authors

A system to “promote the progress of science and the useful arts....”



Public Domain

Know Your Copyright

Original/Creative
& Fixed*

No Registration
Required

Grant of Rights to
Owners (the
“bundle”)*

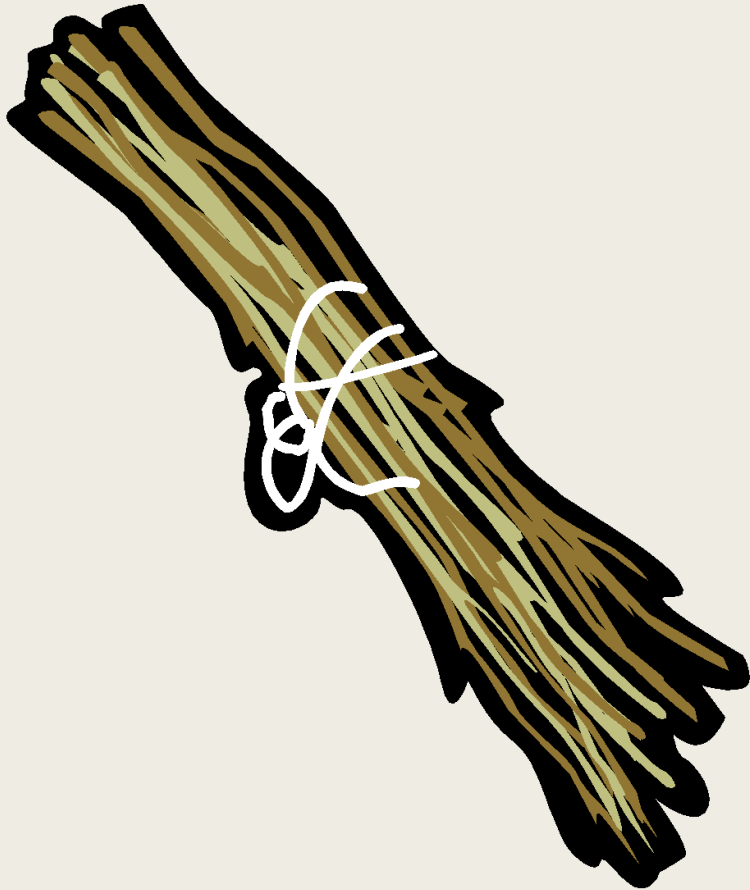
Wide Range of
Protected Works

Long Term of
Protection

Exceptions &
Limitations

- *Section 107: Fair Use*
- *And others...*

“Bundle of Rights” (Exclusive Rights 17 U.S.C. §106)



- (1) To reproduce the work copies;
- (2) To prepare derivative works
- (3) To distribute copies
- (4) To perform the copyrighted work publicly
- (5) To display the copyrighted work publicly



What you create...

Lab notebooks

Dissertation

Doodles

Authored (your) research articles

Graphs & charts

Photographs you take

Maps you make

Videos you record

Algorithms & coding

What's not protected by ©.....



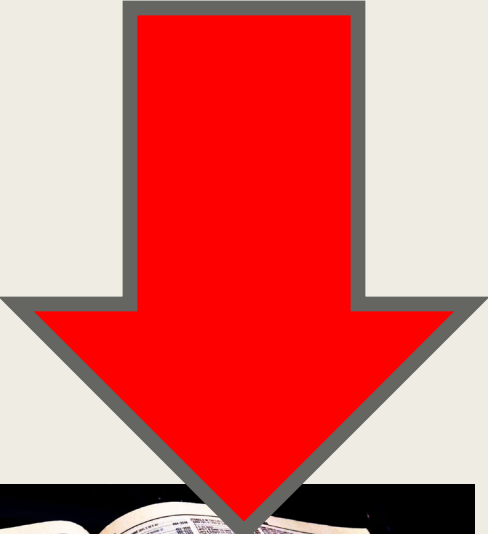
COCA-COLA
SYRUP & AND & EXTRACT.

For Soda Water and other Carbonated Beverages.

This "INTELLECTUAL BEVERAGE" and TEMPERANCE DRINK contains the valuable TONIC and NERVE STIMULANT properties of the Coca plant and Cola (or Kola) nuts, and makes not only a delicious, exhilarating, refreshing and invigorating Beverage, (dispensed from the soda water fountain or in other carbonated beverages), but a valuable Brain Tonic, and a cure for all nervous affections — SICK HEAD-ACHE, NEURALGIA, HYSTERIA, MELANCHOLY, &c.

The peculiar flavor of COCA-COLA delights every palate; it is dispensed from the soda fountain in same manner as any of the fruit syrups.

J. S. Pemberton,
Chemist,
Sole Proprietor, Atlanta, Ga.

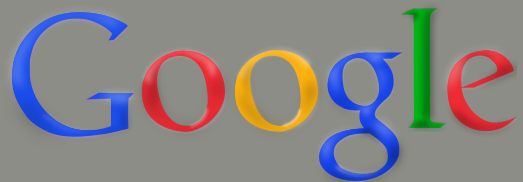


Work Must
be...

Original
Creative
Fixed

“Copyright
protects
original works
of authorship
that are fixed
in a tangible
medium of
expression”

- **Original** - not copied, but an independent work
- **Creative** - a new expression of the idea (not the idea itself)
- **Fixed**

The Oracle logo, consisting of the word "ORACLE" in a bold, red, sans-serif font, is centered within a white rectangular box.The Google logo, featuring the word "Google" in its characteristic multi-colored font (blue, red, yellow, blue, green, red), is positioned in the bottom left corner of the slide.

Copyright and Facts

- Copyright protection is not available for a mere "idea, procedure, process, system, method of operation, concept, principle, or discovery, regardless of the form in which it is described, explained, illustrated, or embodied in such work." [§102(b)]
 - *Google LLC v. Oracle America, Inc.* now at SCOTUS ...*whether copyright protected API program elements (2 lines of code shortcuts) necessary for interoperability*
- Similarly, © protection not available for “mere statements of facts”

FEIST PUBLICATIONS, INC., V.
RURAL TELEPHONE SERVICE,
499 U.S. 340 (1991)

ENIRO

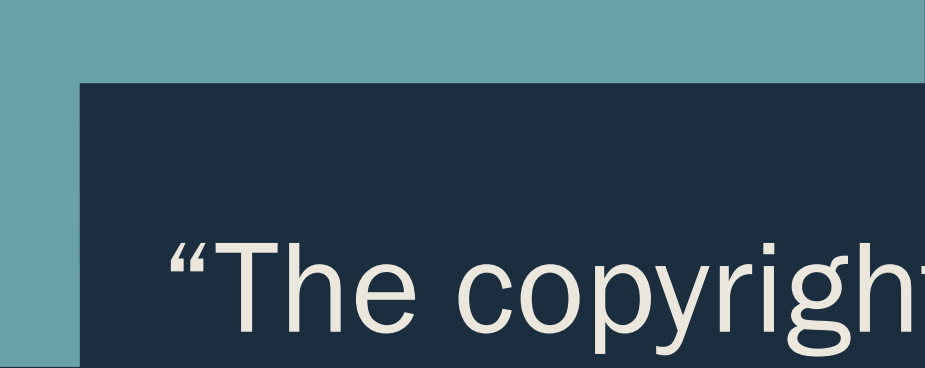
Din vejviser på nettet - www.eniro.dk

find it easy - www.eniro.dk

ENIRO

Feist teaches us...

- a telephone utility's white-page directory was **not copyrightable** because the names, towns, and telephone numbers of the utility's subscribers were **uncopyrightable facts/data** that were merely listed alphabetically (not original)
 - *Eliminated the older “sweat of the brow” test*



“The copyright laws only protect the work, not the amount of effort expended.”

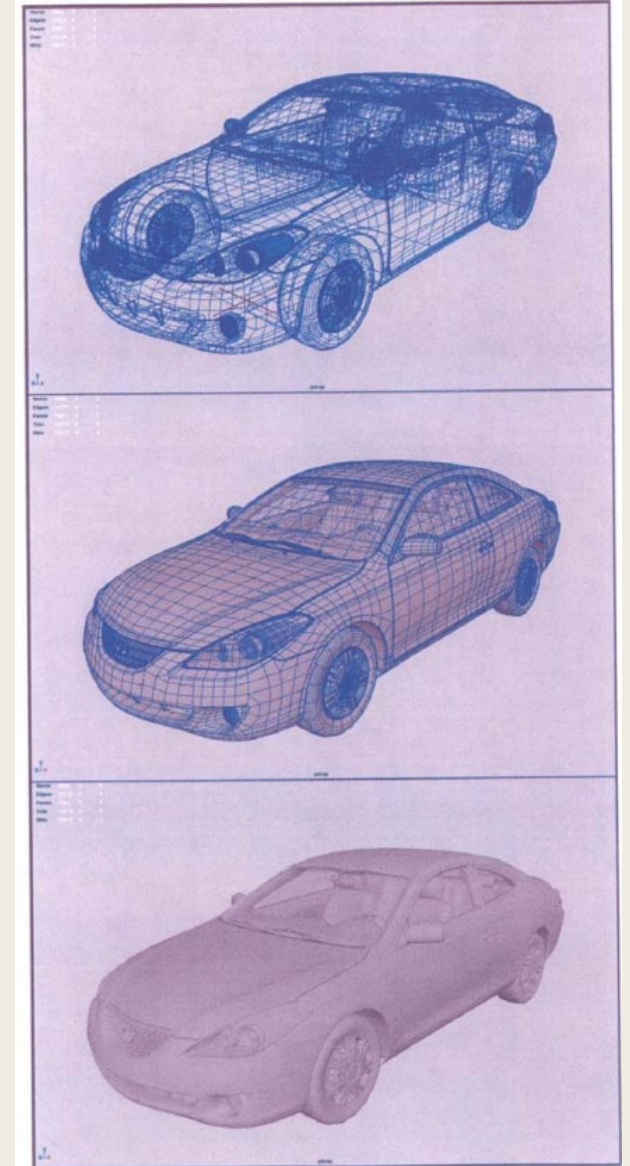
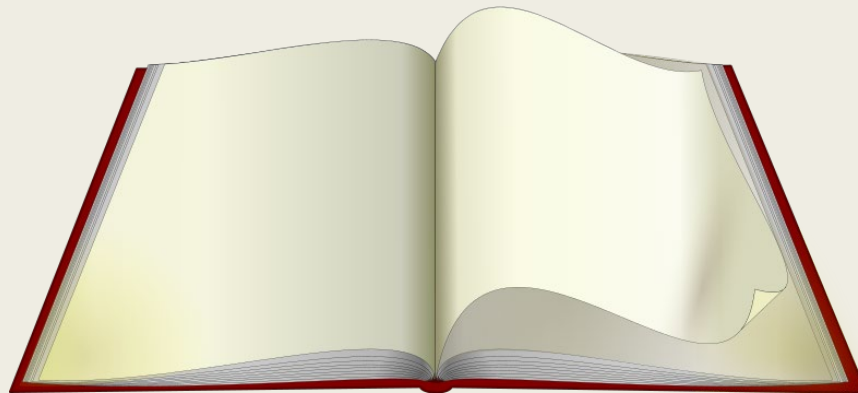
- Judge Easterbrook



“In 14 hours Mozart could write a piano concerto, J.S. Bach a cantata, or Dickens a week's installment of *Bleak House*. The Laffer Curve, an economic graph prominent in political debates, appeared on the back of a napkin after dinner, the work of a minute.
All of these are copyrightable.”

3D Data Applications of Feist

- Copyright?
- Meshwerks v. Toyota, 528 F.3d 1258 (10th Cir. 2008)



Can Data be Copyrightable? No.

- Raw Data
- “Discovered” Data (through scientific process)
- 3-D Data Scans

Application of Feist and copyright law to data

YEAR	JAN	FEB	MAR	APR	MAY	JUN	JUL	AUG	SEP	OCT	NOV	DEC	D-J-F	M-A-M	J-J-A	S-O-N	metANN
1893	1.2	-1.4	2.3	7.5	999.9	19.6	22.6	20.5	16.6	999.9	1.4	1.4	-0.1	7.4	20.9	9.1	9.33
1894	-4.1	-6.5	3.5	10.1	15.2	18.4	999.9	21.3	16.0	11.5	5.2	-2.8	-3.1	9.6	20.6	10.9	9.50
1895	-4.0	-5.3	2.4	10.5	12.9	16.5	19.7	20.7	16.9	9.3	1.7	-1.3	-4.0	8.6	19.0	9.3	8.21
1896	0.9	1.6	1.8	9.2	15.0	19.7	22.4	21.5	15.8	9.7	0.0	1.8	0.4	8.7	21.2	8.5	9.69
1897	-3.2	-1.3	0.9	8.7	16.0	18.4	20.5	20.4	18.7	10.3	2.7	-3.1	-0.9	8.5	19.8	10.6	9.49
1898	-2.9	1.9	1.1	9.6	12.1	18.9	21.7	22.1	15.7	8.8	-0.5	-4.1	-1.4	7.6	20.9	8.0	8.78
1899	-3.3	-11.4	0.1	8.2	13.3	18.7	20.6	20.8	17.2	8.8	5.4	-1.6	-6.3	7.2	20.0	10.5	7.86
1900	0.0	-3.6	4.7	7.2	15.4	20.7	21.1	21.0	15.7	11.0	3.4	0.4	-1.7	9.1	20.9	10.0	9.58
1901	-1.5	-3.8	2.3	7.6	15.0	18.5	23.6	21.5	15.9	10.6	4.9	-2.1	-1.6	8.3	21.2	10.5	9.58
1902	-3.9	0.6	2.5	8.5	14.4	18.6	19.9	21.3	14.9	10.1	2.6	-2.3	-1.8	8.5	19.9	9.2	8.95
1903	-0.7	-9.3	-0.1	7.4	12.2	16.2	21.3	20.8	14.6	10.5	2.6	0.7	-4.1	6.8	19.4	9.2	7.85
1904	-1.8	-2.5	5.0	7.9	13.0	15.6	19.7	20.4	15.0	10.3	4.6	0.5	-0.1	8.0	18.9	10.3	9.57
1905	-4.1	-1.8	1.2	7.3	19.1	17.7	21.1	16.1	7.1	3.2	-2.2	-2.2	-2.2	3.1	20.0	9.1	8.78
1906	-0.6	0.7	2.7	9.3	13.1	17.7	19.1	20.4	5.1	8.1	1.7	2.4	0.3	6.1	18.0	8.7	8.55
1907	-2.3	3.1	7.2	7.0	10.5	16.8	20.7	20.3	15.7	10.8	1.4	0.0	1.1	8.2	19.3	9.3	9.47
1908	-1.3	-0.3	5.5	9.7	12.3	17.2	20.7	19.5	17.8	9.0	0.9	-3.1	-0.5	9.2	19.1	9.2	9.25
1909	-0.5	-0.8	2.8	6.3	12.0	18.8	22.2	22.1	15.7	10.8	4.1	-7.0	-1.5	7.0	21.0	10.2	9.20
1910	-2.8	-2.5	9.2	10.9	12.8	19.1	22.6	20.3	17.2	11.6	5.5	0.3	-4.1	11.0	20.7	11.4	9.74
1911	1.7	-1.7	6.5	9.2	14.5	20.1	20.2	20.2	16.6	8.5	6.6	-3.5	-0.0	10.1	20.2	9.2	9.86
1912	2.1	-2.1	-1.1	7.8	11.9	16.1	19.9	20.6	11.9	10.2	1.9	-1.8	-2.7	5.5	18.7	8.0	7.27
1913	3.1	-5.1	1.9	9.0	13.8	18.5	21.5	21.4	4.1	8.1	3.2	-1.1	-3.7	8.2	20.4	9.3	8.33
1914	-0.1	2.6	4.1	10.2	10.7	19.7	21.3	20.6	17.1	11.0	5.5	-1.9	-3.5	8.7	20.2	11.3	9.17
1915	-3.0	1.2	0.6	11.2	11.3	16.5	19.3	18.3	15.1	10.7	4.7	-0.8	-2.2	7.7	18.0	10.2	8.42
1916	-6.8	0.9	7.4	8.2	12.2	17.7	21.9	19.8	15.3	8.6	0.1	-4.6	-2.2	9.3	19.8	8.0	8.71
1917	-4.4	-0.2	-1.0	6.7	9.4	18.1	22.3	19.5	16.6	9.2	6.9	1.2	-3.1	5.0	20.0	10.9	8.21
1918	-5.1	1.6	7.0	5.7	13.4	20.6	20.6	20.2	13.6	11.4	1.1	-1.0	-0.8	8.7	20.5	10.7	9.26
1919	-0.6																9.11
1920	-0.3																8.57
1921	-1.4																8.16
1922	-5.4																9.11
1923	2.0																8.78
1924	-5.0	2.0	2.0	8.2	11.9	18.9	21.3	21.3	14.0	11.2	3.0	-3.0	-1.3	3.0	20.3	10.3	8.77
1925	-3.4	3.3	6.0	11.3	15.2	19.9	22.7	20.3	17.2	5.6	2.6	-1.8	-1.9	10.8	21.0	8.5	9.59
1926	-3.0	2.6	3.0	8.6	14.1	18.7	20.6	21.2	15.3	11.2	5.0	-4.3	-0.7	8.6	20.2	10.5	

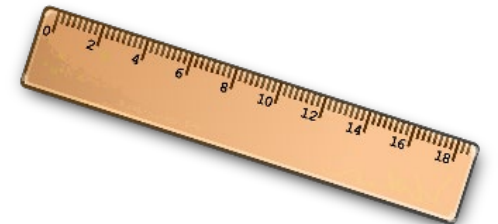
Data! Raw, processable, glorious, data!!!

Copyright in the article about the data



Public Domain Exists...

- U.S. published works (prior to 1925)
- U.S. Federal Government Works
 - Most other governments copyright their work
 - Not U.S. States....
- Things that are not copyrightable
 - Rulers, height charts, **data**, calendars, etc.





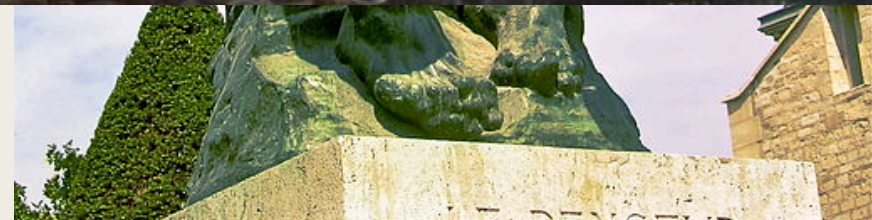
Public Domain?

The Birth of Venus
(Italian: *Nascita di Venere*) created in
1486

But what about
this?

The Thinker
("Le Penseur")
by Auguste Rodin
Created in 1904

Public Domain?

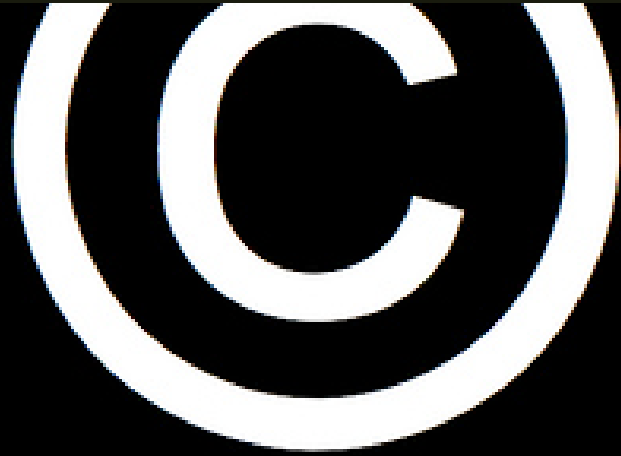


Public Domain and “Slavish Reproductions”

Slavish reproductions of two-dimensional works warrant special mention:

A photograph or digital reproduction of a two-dimensional work (e.g., a painting) **lacks the minimal creativity for U.S. copyright protection** if its aim is to reproduce the work faithfully.

- Bridgeman Art Library v. Corel, 36 F. Supp. 2d 191 (S.D.N.Y. 1999)



copyright

LICENSES & CONTRACT

Do not abuse!

"Bundle" of rights of the © holders



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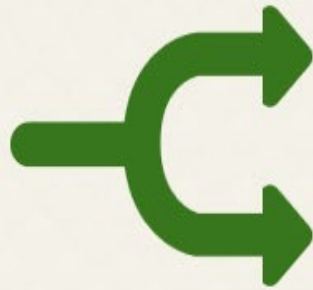
AGREED BY CREATOR: Kyle K. Courtney, Esq.

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Your
"Bundle of
Five Rights"



You can
transfer any
one (or all) of
the bundle of
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publisher



This is done
through a
contract or
agreement



Read the publisher's
contract carefully

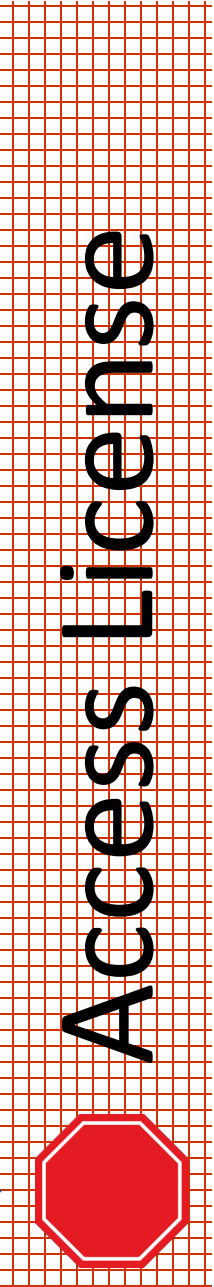
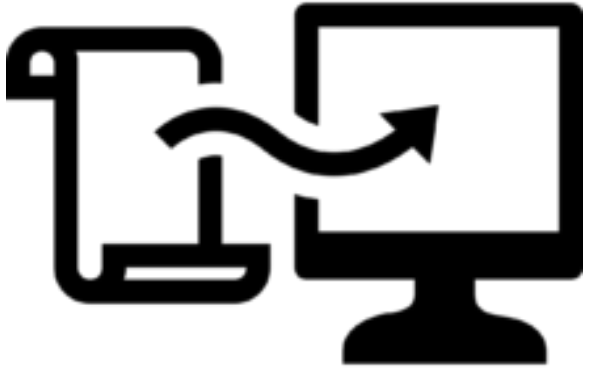


*Some contracts request
exclusive rights to your work!*

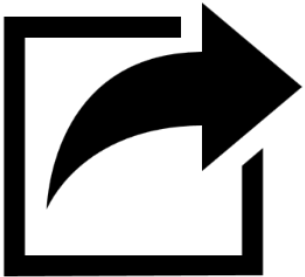
Which means that the publisher, not you, would
own the right to make copies, prepare derivative
works, etc. *+You no longer own the bundle+*



However....



3D Data Project



BY

BY

NC

SA



BY

SA



BY

ND



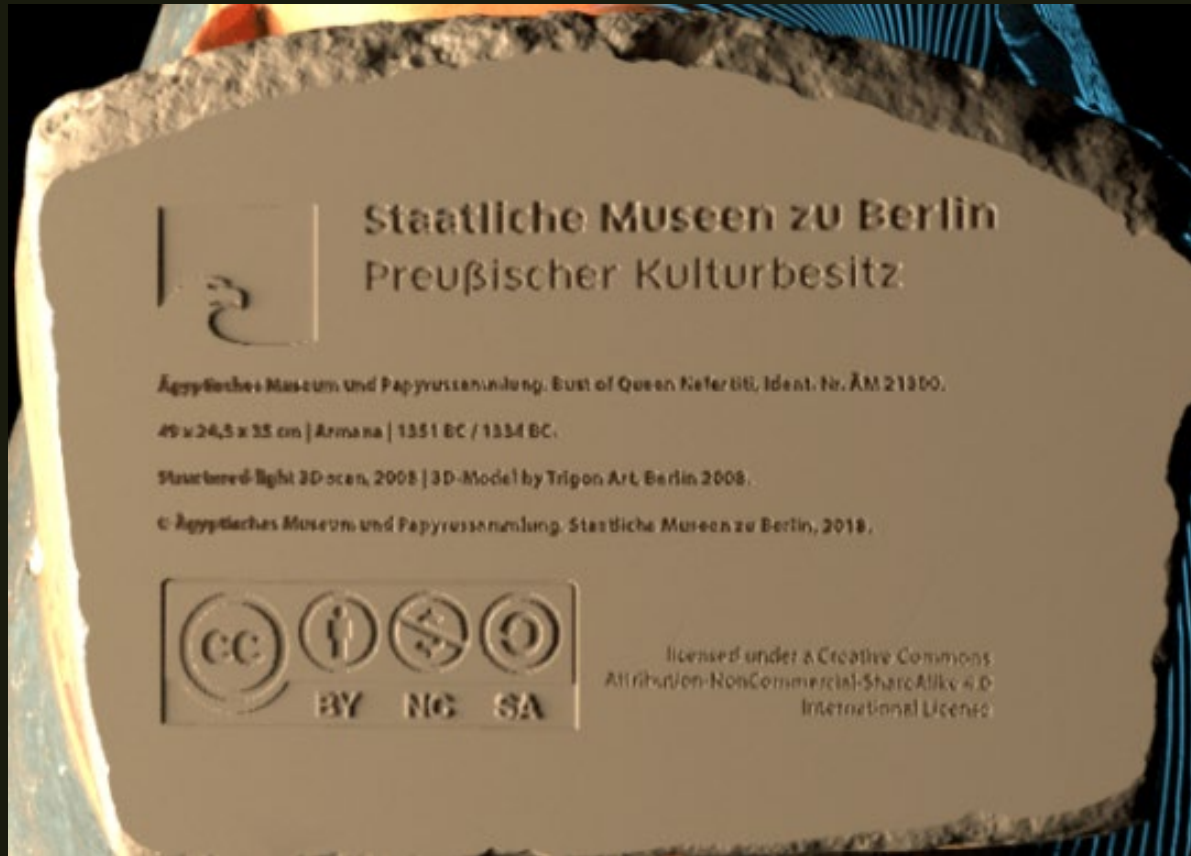
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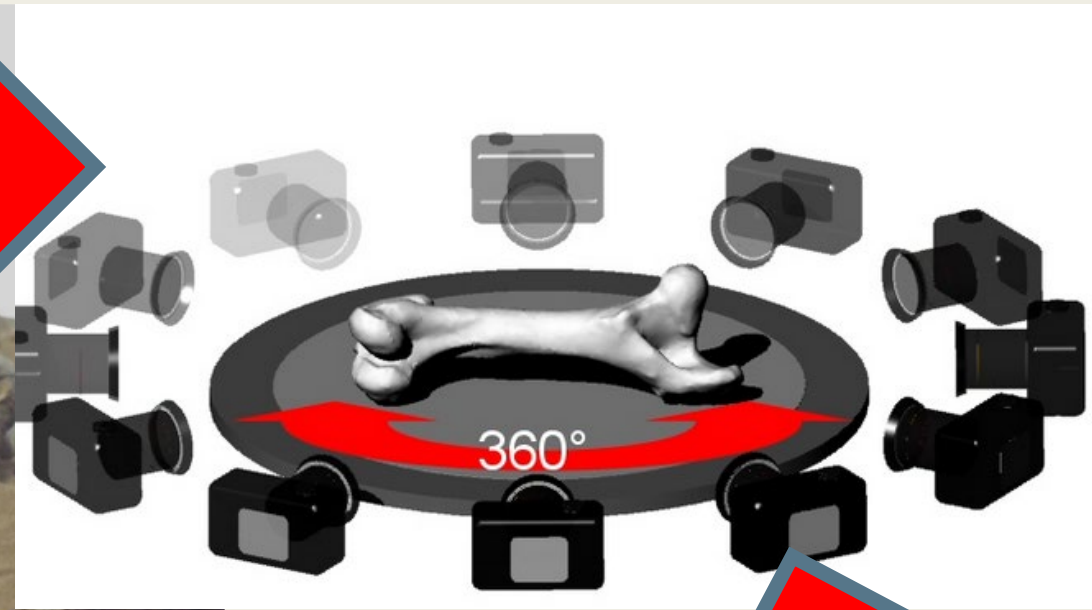
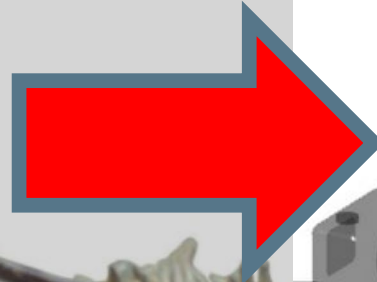
YOU CAN'T CC
LICENSE
WHAT IS NOT
COPYRIGHTED

“CC-BY
WITHOUT THE
CC?”





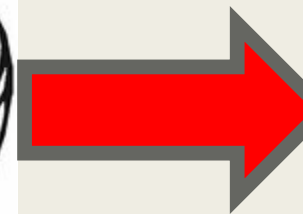
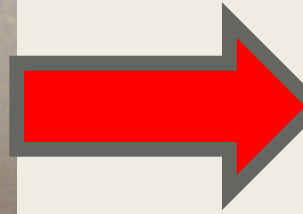
ZERO



Data Hypothetical #1 Copyright in....

- *Photo?*
- *3D Data?*
- *3D Print Out?*

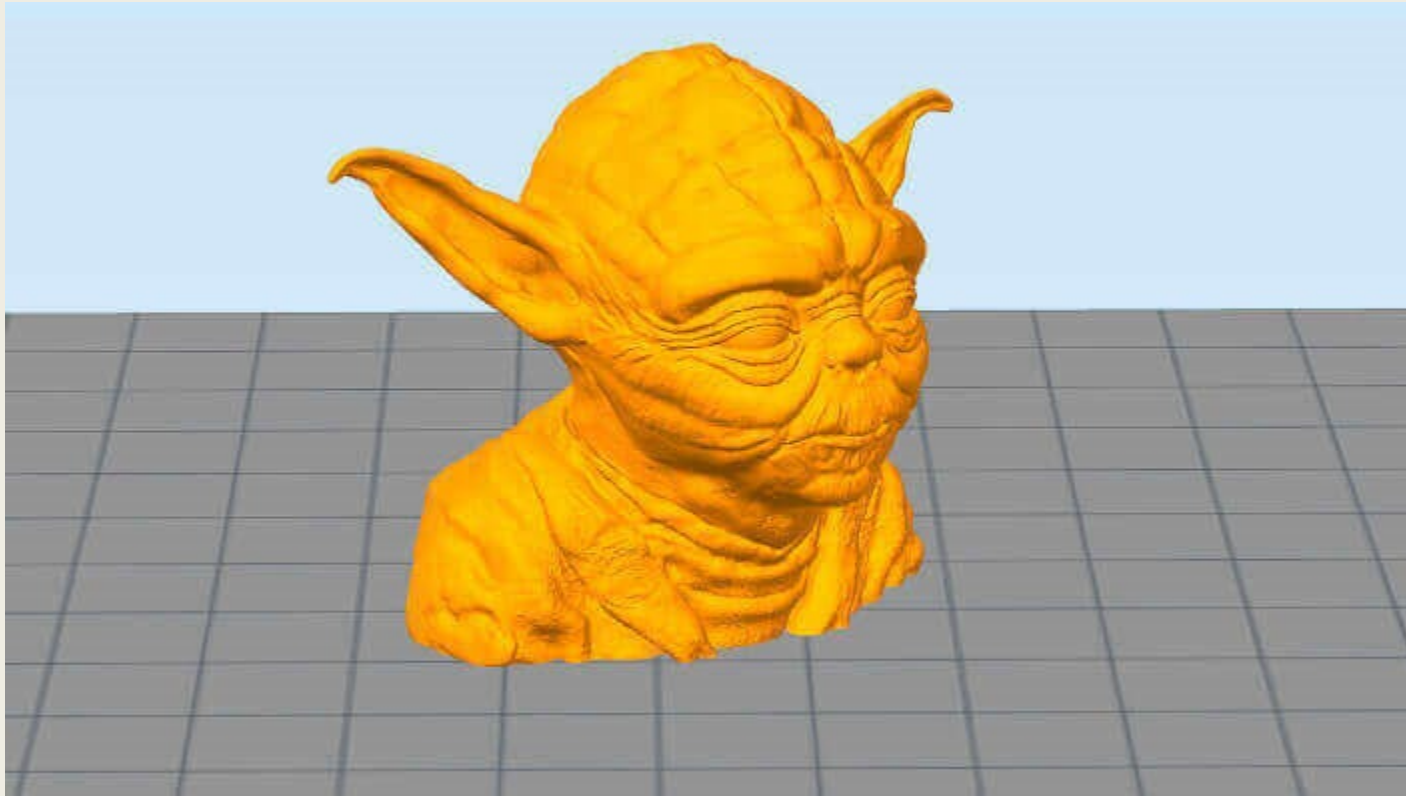
Data Hypothetical #2: Incan Vase (12th Century)



- *Vase (artifact)?*
- *Photo?*
- *Sketch?*
- *3D Data?*

Data Hypothetical #3

Copyright in....



- *Photo?*
- *3D Data?*
- *3D Print Out?*