

# Works of Art in the Public Domain (article 14 CSDM Directive)

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ECS Versailles, 29 May 2026

Public domain due to expiration of copyright



Free reproduction and communication by anyone

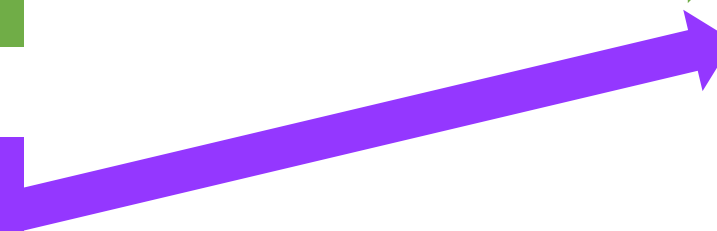
A new copyright



Another IP right (eg trade mark)



Another form of legal control



A renewed reservation by an exclusive right or a requirement for authorisation

Focus on cultural heritage

## A new copyright

German Federal Supreme Court, 20.12.2018 (I ZR 104/17):

*Reiss-Engelhorn museum v. Wikimedia* and other websites for use of digital reproductions of public domain paintings: copyright in non-original photographs

### Media in category "Images subject to Reiss Engelhorn Museum lawsuit"

The following 17 files are in this category, out of 17 total.



Kurfürst Karl Theodor  
(Bayern).jpg  
918 KB



H C Brandt Pfalzgräfin  
Maria Amalie Auguste  
1769.jpg  
2.72 MB



Seligmann Ladenburg  
1863.jpg  
563 KB



Alexander Coosemans  
Früchtestilleben mit  
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Alexander Coosemans  
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Carl Theodor by Brandt  
1781.jpg  
40 KB



Portrait Carl Eckhard.jpg  
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Ferdinand Kobell  
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of Astronomy.jpg  
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Mannheim Paradeplatz  
1815.jpg  
3.26 MB



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Soldatentrost.jpg  
2.48 MB

*Article 14 EU CDSM Directive - Works of visual art in the public domain*

Member States shall provide that, when the term of protection of a work of visual art has expired, any material resulting from an act of reproduction of that work is **not subject to copyright or related rights**, *unless* the material resulting from that act of reproduction is *original* in the sense that it is the author's own intellectual creation.

## Recital 53

The expiry of the term of protection of a work entails the entry of that work into the public domain and the expiry of the rights that Union copyright law provides in relation to that work. In the field of visual arts, **the circulation of faithful reproductions of works in the public domain contributes to the access to and promotion of culture, and the access to cultural heritage.** In the digital environment, the protection of such reproductions through copyright or related rights is inconsistent with the expiry of the copyright protection of works. In addition, differences between the national copyright laws governing the protection of such reproductions give rise to legal uncertainty and affect the cross-border dissemination of works of visual arts in the public domain. **Certain reproductions of works of visual arts in the public domain should, therefore, not be protected by copyright or related rights.** All of that should not prevent cultural heritage institutions from selling reproductions, such as postcards.

# A limited solution

- No reconstitution of a copyright or related right
  - Other private or public right ?
- Except if the reproduction is original: “unless the reproduction constitutes its author’s own intellectual creation” (v. faithful reproduction - recital 53)
- Is an assertion of copyright prohibited ? NO – only a defensive remedy
- Only works of visual art
  - Sculpture or pieces of furniture? Art. 2(1) Berne Convention and some MS
  - Photographs ?
  - NOT documents, maps, books, archives, music sheets, ...



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**Comment of the European Copyright Society on the  
Implementation of Art.14 of the Directive (EU) 2019/790 on  
Copyright in the Digital Single Market**

**Date:** 26 April 2020



## ONCE A PALACE, NOW A MUSEUM

Containing over 60,000 works, the collections of the Palace of Versailles span a very broad period. The collections reflect the dual identity of the Palace, as both a palace occupied by the kings of France and the royal court, and later a museum "dedicated to the glories of France," inaugurated by Louis-Philippe in 1837.

The collections of the museum founded by Louis-Philippe, and still active today, offer a chronological overview of the history of France from the Middle Ages up to the late 19<sup>th</sup> century. The museum was intended to provide both historical and iconographic insight into the great figures and events which shaped the history of France, and the collections primarily comprise sculptures and paintings dating from the 16th through to the 19th centuries. They include originals and copies, specially-commissioned pieces, and regular purchases.

Public domain



# TERMS AND CONDITIONS OF USE

## Sales Manual Digital Media Library

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○ PREAMBLE

○ PART 1 - DIGITAL  
MEDIA LIBRARY  
ACCESS

○ PART 2 - USAGE OF  
THE DIGITAL  
MEDIA LIBRARY

○ PART 3 - GENERAL  
PROVISIONS

## PREAMBLE

These general terms and conditions of use (hereafter referred to as “TCU”) aim to define the terms and conditions under which Users defined in Article 3.1 below may, on the one hand, access a range of photos, images and videos of the Public Establishment of the Palace, Museum and National Estate of Versailles (hereafter, “the EPV”), accessible via internet at [www.chateauversailles.fr](http://www.chateauversailles.fr) (hereafter, the “Digital Media Library”), and, on the other, use the photographs/images/videos (hereafter, “Visuals”) originating from it.




Conditions d'utilisation ▾

© Château de Versailles, Dist. RMN / © Christophe Fouin

Pour toute utilisation commerciale ou éditoriale d'images des collections du Château et du domaine national de Versailles, [contacter l'Agence photographique de la RMN](#).

Certaines photos ont été prises dans le cadre d'une opération de contrôle interne. Elles ne peuvent pas être diffusées ailleurs que sur ce site.

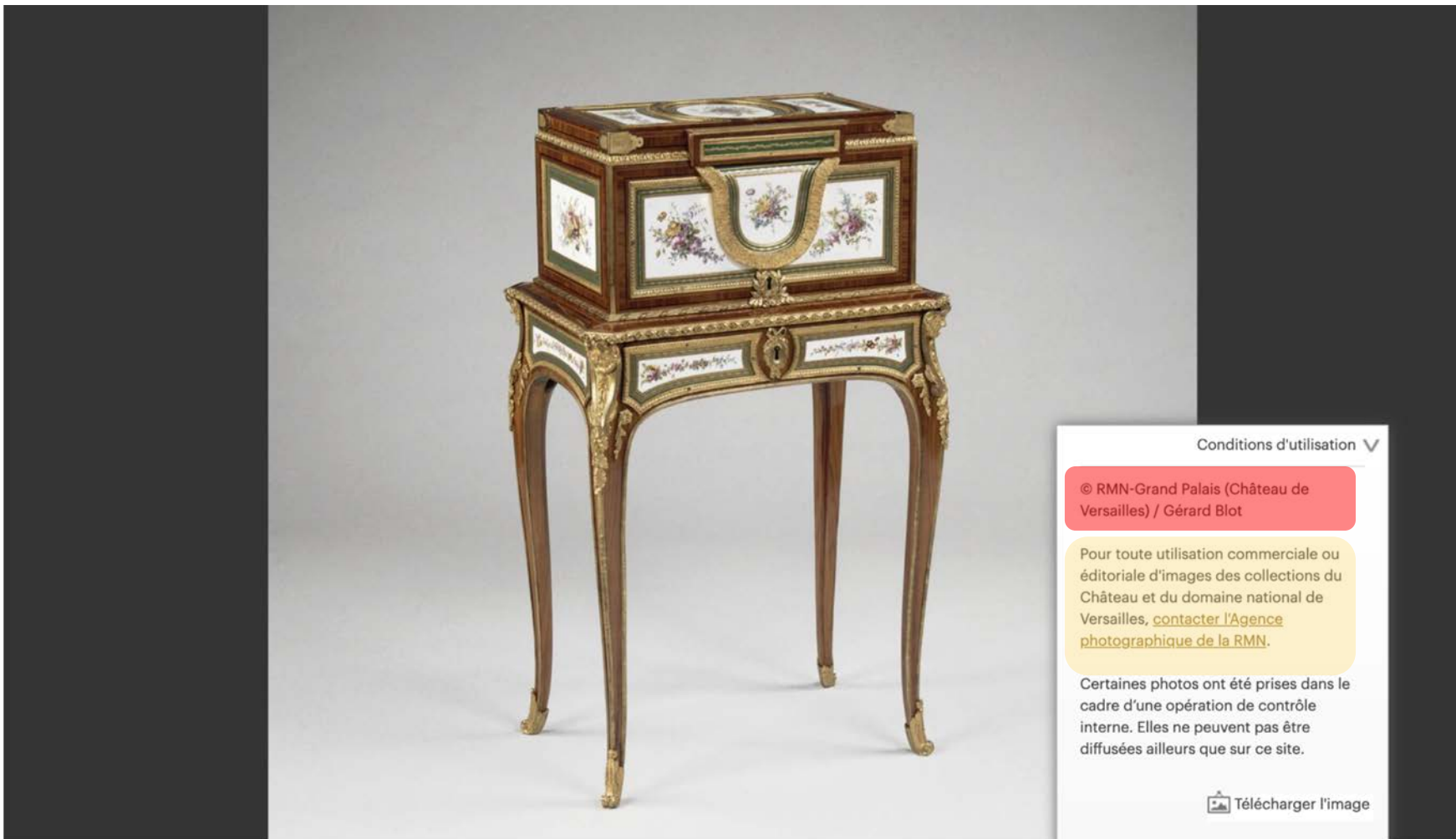
 Télécharger l'image

**Copyright  
assertion**

**Contract and  
remuneration**

Marie-Antoinette, reine de France (1755-1793)  
Elizabeth-Louise Vigée Le Brun (1755-1842)

**Is it a reconstitution of copyright?**




Coffre à bijoux de Marie-Antoinette, dauphine

Conditions d'utilisation ▼

© RMN-Grand Palais (Château de Versailles) / Gérard Blot

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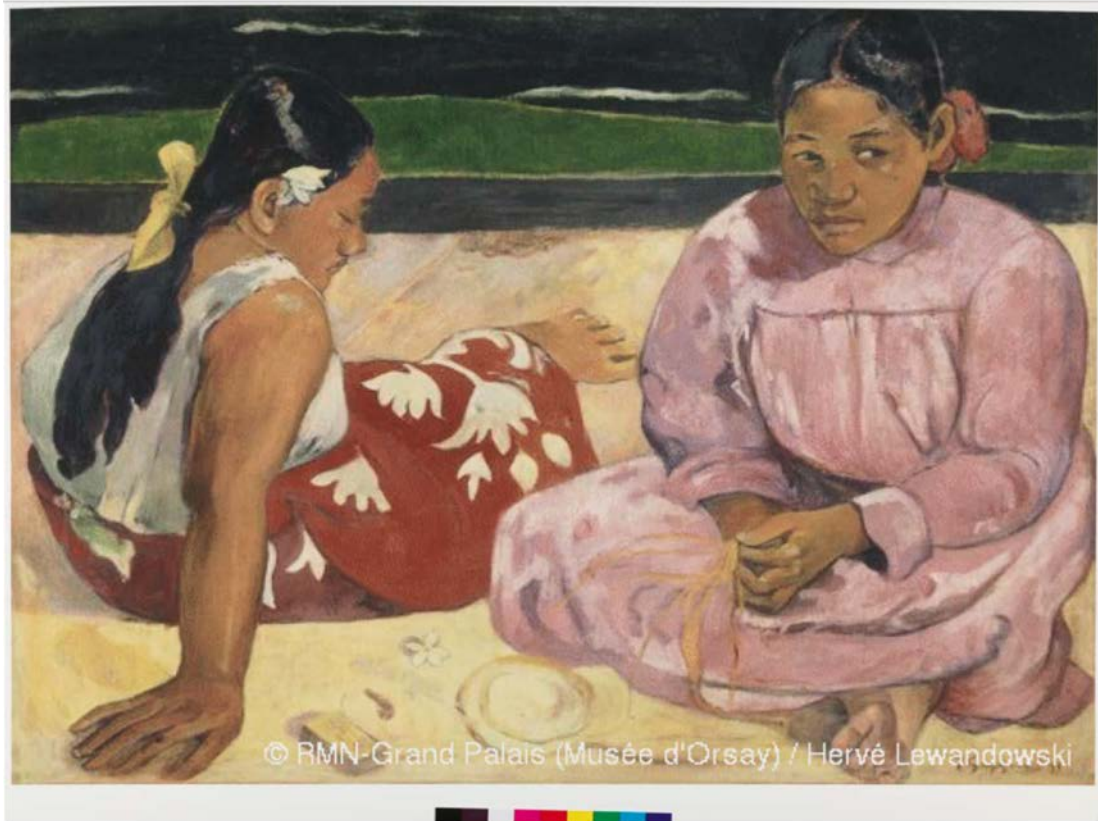
Certaines photos ont été prises dans le cadre d'une opération de contrôle interne. Elles ne peuvent pas être diffusées ailleurs que sur ce site.

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Not a work of visual art

# Assertion of copyright



## Prelude

by J.S. Bach  
BWV 999

Prelude

© Copyright 2014 Dorsey Brothers Music Limited  
All Rights Reserved. International Copyright Secured.

# Licensing, including open licensing

Media Metadata

**Titre** **Triumph of Emperor Maximilian I, King of Hungary, Dalmatia and Croatia, Archduke of Austria**

Triumph of Emperor Maximilian I, King of Hungary, Dalmatia and Croatia, Archduke of Austria

**Description** This manuscript has the form of a splendid album of 87 vellum pages, in which we can find rich miniatures which represent the entourage of Emperor Maximilian, made up of his family, princes and princesses from the House of Austria and Court employees in general (jesters,

**EN SAVOIR PLUS**  
Europeana is displaying this item via National Library of Spain


**PUIS-JE L'UTILISER?**  
Oui avec des restrictions  
CC BY-NC-SA

**TÉLÉCHARGER**

**LANGUE**

**NOS SITES**

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# EU Directive 2019/1024 on open data and reuse of public sector information

## Recital 49:

Where an exclusive right relates to digitisation of cultural resources, a certain **period of exclusivity might be necessary** in order to give the private partner the possibility to recoup its investment. That period should, however, be limited to as short a time as possible in order to comply with the **principle that public domain material should stay in the public domain once it is digitised**

Another form of legal control

## Cultural Heritage Laws

- France, Code du Patrimoine, L.621-42:
  - The **use for commercial purposes** of the image of national domains, in any form, requires an authorisation, with or without financial conditions
  - Except for use for public interest service, or for cultural, artistic, pedagogical, teaching, research, information purposes or news reporting.
- 21 national domains including....  
Chateau de Versailles



# Cultural Heritage Laws



- Court of Appeals of Nantes, Chambord v. Kronenbourg, 2015
- Constitutional court, 6 February 2018: law challenged by Wikimedia and Quadrature du Net
  - The law pursues public interest objectives and does not extend copyright in works



# Cultural Heritage Laws

Italy, Codice dei beni culturali

- art. 106-108: authorisation of the cultural institution + remuneration for reproduction and use
- art.178: criminal sanctions for unlawful reproduction of works or objects of archaeological or historical interest
  - Many court decisions
  - And recently , personality rights ascribed to an artwork !



Velasquez, Portrait of Fancesco I d'Este



**How to protect the freedom to use public domain works**

**and ensure respect (and valorisation ?) of cultural heritage ?**

Can you generate an image of the Palace of Versailles for a publicity for electronic cigarettes in an elegant style?

