



- -- Copyright / Public domain
- Italy

1400 1500 1600

3 Mona Lisa

Andrea Wallace

FOR CENTURIES, BUSINESS models have been based on reproducing copyright-free works using the available technologies, often claiming new rights and commercializing the results. In part this is why the public domain exists: to copy or make new works that attract new copyrights, so long as they are sufficiently original. In the past two decades, however, new technologies have made this practice exponentially easier and its products much more available. Meanwhile, the role of copyright during the digitization of public domain works has become the focus of significant legal and social controversy.

There is no better artwork to illustrate how these phenomena have played out than Leonardo da Vinci's *Mona Lisa*, a painting recently valued at nearly one billion dollars, and said to be the most reproduced, written about, referenced, and parodied artwork in the world—a work that in its five centuries of existence has never once been protected by copyright.

When Leonardo set out to capture Lisa del Giocondo's likeness in 1503, copyright did not exist. Privileges, the precursor to modern copyright, were granted as a means to protect investment in the technologies necessary for reproduction in the book trade and printing industry. When modern copyright debuted in England with the 1710 Statute of Anne, it inherited its rationale for protecting reproducible subject matter from the privileges system. Yet, paintings lacked protection for centuries-not until the end of the 18th century in France, the 19th century in Italy, and in some countries like the Netherlands not until the 20th century. Similarly, no legal protection would have been awarded to Leonardo's sketches of Lisa del Giocondo, had any been made. The irony is, therefore, that printed reproductions generally received some form of copyright protection centuries before the masterpieces they reproduced.

For a work as captivating as La Joconde, as she is called in France, or La Gioconda in Italy, this meant anyone with access to da Vinci's painting could attempt its reproduction—attempt, of course, being the operative word. Leonardo's masterpiece possessed a je ne sais quoi which artists

On the left: Salvador Dali in the studio beside his gallery of mustached personalities, including his own "Self Portrait Mona Lisa" (1973). (Getty Images)





found difficult to capture due to his *sfumato* (smoke-like) technique of rendering light and darkness in her flesh and fabric. This did not stop court artists and others from trying. The production of high-quality surrogates was a respected and lucrative industry, one through which aspiring artists could become well known via their copies. With each copy's completion, a new source entered the world that could be used to make subsequent *Mona Lisa* reproductions. And though many of the artists' names have long been lost to history, at the time their painted reproductions similarly received no legal protection.

Unlike painted copies, print-based images could be reproduced in multiples and sold to many, fetching a greater profit than a single painting. As technologies developed and reproduction became cheaper and easier, new print houses emerged, dedicated to slavishly copying the engravings realized through the labor of others. By the 18th century, legislative measures sought to protect this effort—the 1735 Engravers' Act in Britain, for example, awarded a 14-year copyright on the basis of the work's design to the designer who also engraved it.

Technology has come a long way since Leonardo's time, reducing the cost and creative input required to make an accurate reproduction; but so has copyright. Today, an original work receives protection for 70 years from the author's death. And legal determinations of originality can hinge on a number of factors, including the geographical jurisdiction and the technology used—depending on where the reproduction is made, different treatment may exist for versions made with a copy machine, a scanner, or a camera.

But it was the absence of copyright coupled with technology—that created the cultural artifact that we know as the Mona Lisa. Leonardo kept the painting with him at the Castle of Clos Lucé until his death in 1519, after which King François I purchased it from his heir. It moved from room to room at Versailles until the monarchy was abolished in 1792, and it was subsequently selected for inclusion in a new public museum at the Louvre. There, the painting caught the eye of Napoleon, who reportedly removed it to his bedroom and enjoyed its company until 1804, before permanently reinstalling it on the Louvre's walls.

By the end of the 19th century, Lisa Gherardini had returned the gaze of royalty, emperors, politicians, artists, authors, musicians, and many, many others. Her image had been reproduced and referenced in culture countless times by those enjoying her company personally or publicly. Yet, the image was not thus far the icon of public consumption it is today. It was *fin-de-siècle* technological advancements that were responsible for making this possible; but it

Above, left: A woman examines "Thirty Are Better Than One" (1963) by Andy Warhol. (Alberto Pizzoli / AFP / Getty Images)

Above, right: A woman examines "Double Mona Lisa, After Warhol (Peanut Butter and Jelly)" (1999) by Vik Muniz. (Gerard Julien / AFP / Getty Images) was the remarkable theft of the painting in 1911 that has been credited for catapulting the *Mona Lisa* to international recognition. At 7:30 am on Monday, 21 August 1911, Vincenzo Peruggia walked through the Louvre's back door wearing a white smock, entered the gallery exhibiting the *Mona Lisa*, and unhooked it from the wall. He then slipped into a stairwell, removed the frame, and tucked the painting under his smock. Peruggia attempted to exit through the service door at the foot of the stairs, but it was locked. Along came a workman who, rather than catch the thief red-handed and become a hero, helped open the door.

It took two days for the Louvre to notice. Newspapers reported her disappearance, speculating on the motive. It must have been a blue-eyed visitor, who had been seen gazing at the painting, enamored. No, it was a wealthy American who took it to make a copy but would later return it. Suddenly everyone was an expert on the painting, spinning tales of the dancing jesters that the strikingly-handsome Leonardo had employed in his studio to keep Lisa's face in a perpetual smile. On the front pages of newspapers worldwide that smile could be admired; but on her wall at the Louvre *La Joconde*'s place remained empty. A larger number of visitors than ever came to witness her absence, including Franz Kafka. Postcards and reproductions exploded through Parisian streets. Musicians wrote songs of her theft. A reward was offered, arrests were made—even Pablo Picasso was a suspect.

The mystery continued for two years, until Florence antique dealer Alfredo Geri received a letter signed by "Leonardo." The sender claimed to have the painting and wanted to discuss a price. Inviting Leonardo to Florence, Geri and Uffizi Gallery curator Giovanni Poggi met with Peruggia and verified the painting's

authenticity using photographic reproductions. Peruggia was arrested.

Once again, front pages around the world reported Mona Lisa's recovery, the trial, and the painting's Italian tour, until she was restored to her wall in the Louvre. Another vandalism attempt in 1956 and subsequent world tours provided more reportable content in the following years. In 1963, the Kennedys paid homage to Lisa at the National Gallery of Art during her first trip outside Europe; afterward she traveled to the Metropolitan Museum of Art to greet more than one million visitors in less than a month. Ten years later, she visited Japan and Russia, accompanied this time by a massive merchandizing campaign, before returning to France to retire behind the bulletproof glass where she remains today.

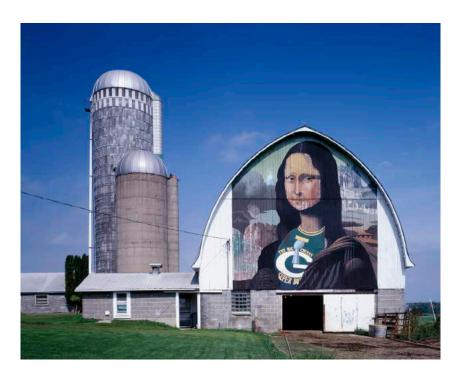
Like the artists Marcel Duchamp, Salvador Dali, and Andy Warhol, we may all use the Mona Lisa without paying a copyright fee, just as we may use the majority of the historical reproductions of the painting fee-free. However—public domain or not—one cannot simply walk into the Louvre and remove the Mona Lisa from the wall to make a reproduction, and it remains no small feat to make one within the gallery. Those who travel to Paris and pay the admission fee will find difficulty getting close enough to capture her with any fidelity. Regardless, under the Louvre's visitor photography policy, any photograph is restricted to *private* use only.

Without the ability to make our own reproduction, we must rely on stewards of public domain works to make and release surrogates for others to use. This endeavor is easier than ever to accomplish, due to advancements in digital technologies and industry guidelines that have not only simplified the process but also eliminated many of the creative choices once

On the following pages:
"Mona Lisa Mural,
Columbus Ohio"
(2009) by Carol M.
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recognized as bestowing originality on the surrogate. Despite this, a new copyright is usually claimed during the transition from analog to digital, potentially restricting use of the surrogate unless permission is granted by the alleged rightsholder.

The internet provides few reliable alternatives. An extensive online search for copyright-free surrogates of the Mona Lisa and her reproductions made available by legitimate sources reveal that the majority come with copyright-strings attached, sometimes hidden among the many reproduction layers that a single image can hold. Even the image in Wikipedia's Mona Lisa entry is taken from a surrogate that is subject to a copyright claim, a detail that potentially exposes users to secondary infringement. Few institutions openly license the digital surrogates in their collection an image that, in some cases, might be a surrogate of a surrogate of a surrogate. A visualization of this relationship and the difficulty in finding copyright-free surrogates online is illustrated across pages 44-51. In truth, the reproduction timeline should follow not a linear path, but that of a family tree with each off-shoot spawning its own lineage of surrogates. Considering the lack of information about many reproductions—early and contemporary—such a reconstruction is likely impossible.

Despite this difficulty and uncertainty, it is impossible to escape the image of the Mona Lisa in modern culture. Over the years, reproductions have appeared on playing cards, cigarettes, coffee mugs, postcards, t-shirts, in advertising, and in various corners of pop culture. She provoked Théophile Gautier's cult of the femme fatale, and surfaced among the writings of authors like Oscar Wilde, Marcel Proust, Henry James, D.H. Lawrence, Jean-Paul Sartre, and Mary McCarthy. Sigmund Freud theorized Lisa's smile was Leonardo's attempt to reproduce his mother's. The film The Theft of the Mona Lisa (1931) follows Vincenzo Peruggia's saga, and a fictional theft occurs in GOOD MORN-ING BOYS (1937). She makes a cameo in The Prime of Miss Jean Brodie (1969) during an art history lesson with Maggie Smith. Both Lucile Ball in the I Love Lucy Show ("Lucy Goes to Art Class," 1963)

Above: "Mona Lisa Barn Art, Wisconsin" (1990) by Carol M. Highsmith. (Carol M. Highsmith Archive, Library of Congress, Prints and Photographs Division)



Above, left: The "Mona Lisa" handbag from Jeff Koons' collection entitled "Masters" (2017) made in collaboration with Louis Vuitton. (Alamy)

Above, right: Marlon Brando sitting before Mona Lisa portrait in a scene from ONE-EYED JACKS (US 1961, Dir. Marlon Brando). (Getty Images)

On the following pages: "Mona Lisa: A Reproduction Timeline, ca. 1503–2017," by Andrea Wallace.

and Elizabeth Montgomery in *Bewitched* ("Mona Sammy," 1970) transform into Lisa del Giocondo before audiences. She has been serenaded by Nat King Cole, Bob Dylan, The Fugees, and will.i.am; her face has been plastered across surfaces from barns to luxury handbags.

Regardless of how far technology has come, the Mona Lisa cannot yet be cloned to satisfy public consumption—nor can we accurately predict how such a thing might be treated by copyright law. Still, imagine what we might learn by analyzing the historical, technological, and geographical path taken by Leonardo's image, a task potentially achieved via meaningful online access to her surrogates (and their surrogates). A champion in the pursuit of knowledge, Leonardo gave us the ideal opportunity to study not only the generation of knowledge over five centuries from a single painting, but also an ideal example of the public domain's potential once truly freed from copyright claims. ◆



Further Reading

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Susan M. Bielstein (2006) Permissions, A Survival Guide: Blunt Talk about Art as Intellectual Property. Chicago: University of Chicago Press.

Michael Burrell (2006) "Reynolds's Mona Lisa," *Apollo*, Vol. CLXIV, No. 535.

Martin Kemp and Giuseppe Pallanti (2017) Mona Lisa: The People and the Painting. Oxford: Oxford University Press.

Darian Leader (2002) Stealing the Mona Lisa: What Art Stops Us From Seeing. London: Faber & Faber.

Donald Sassoon (2006) Leonardo and the Mona Lisa Story: The History of a Painting Told in Pictures. London: Duckworth.

Andrea Wallace and Ronan Deazley (2016) Display at Your Own Risk: An Experimental Exhibition of Digital Cultural Heritage. Available at: displayatyourownrisk.org



Musée du Louvre, Paris Leonardo da Vinci (1452 - 1519)Mona Lisa £11 1503-1516

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Mona Lisa: A Reproduction Timeline ca. 1503-2017

1500

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1924, The Outline of Art, Sir William Orpen (ed.), George Newnes Limited, London, copyright unclear

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Museo Nacional del Prado

Workshop of da Vinci, after Leonardo da Vinci, Earliest known copy

1503-1519

Based on extensive web research, this timeline depicts the online availability of digital surrogates of the Mona Lisa and her reproductions.

The timeline divides the source Mona Lisa from her surrogates: above the timeline is a representation of the painting, which cannot be accessed without visiting the Louvre in Paris and paying an €11 admissions fee. Below the timeline are her surrogates, starting with the earliest known copy, believed to have been painted alongside da Vinci by an unknown artist in his workshop.

Notably, each host institution or licensing organization maintains different information about each material surrogate and most claim copyright in the digital surrogate they make available online.

1503-1519. Anonymous, public domain

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painting 15th century, Leonardo da Vinci, public

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painting 1503-1516, Apprentice of Leonardo da

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huile sur bois 1503-1516. Vinci Léonard, atelier de, public domain

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oil on walnut 1503-1516.

Leonardo da Vinci (workshop), public domain

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16th century

oil on canvas unknown date, before WWI. Unknown, public domain

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3

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Unknown, after Leonardo da Vinci, Flemish School Mona Lisa

16th century

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The State Hermitage Museum

Unknown, after Leonardo da Vinci, State Hermitage Mona Lisa

16th century

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Château du Clos Lucé

Ambroise Dubois, after Leonardo da Vinci

16th century

oil paint and canvas XVIth century-2009, Ambroise Dubois, public

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1600 6

Unknown, after Leonardo da Vinci, Walters

ca. 1635-1660

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Mona Lisa

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Charles Errard (1606-1689), after Leonardo da Vinci

1651

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17th century

probably early 17th century, French School. public domain

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copyright unclear | Saatchi Gallery Website / Courtauld Photographic Survey



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Walker Art Gallery

Unknown, after Leonardo da Vinci

17th century

oil on poplar date unknown, Leonardo da Vinci (after), public domain

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16th-17th century

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11

Portland Art Museum

Unknown, after Leonardo da Vinci, Portland Mona Lisa

16th-18th century

oil on canvas on panel 16th to 18th century, After Leonardo da Vinci, public

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Although a material surrogate may exist as a single copy, multiple digital surrogates of the work may be found online, as with The Walters Mona Lisa (no. 6). The research revealed three organizations that make digital surrogates of the Walters painting available online, with two claiming copyright in their version.

Other institutions may permit reuse of a digital surrogate through the website terms and conditions or via an open license, yet continue to claim copyright in the digital versions (no. 4 & no. 12).

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late 18th to early 19th century, Massard. public domain Victoria and Albert Museum

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Multiple

Constant Louis Antoine Lorichon (1800-1855), after Leonardo da Vinci

1804-1816

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Gustave Le Gray (1820-1884), after Aimé Millet (1819-1891),Millet's Drawing of the Mona Lisa

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1854-1855

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Luigi Calamatta (1801-1869), 1857 engraving of 1825-1826 drawing, after Leonardo da Vinci

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Laurent Hotelin, after Claude Ferdinand Galliard (1834-1887), Galliard's Drawing of the Mona Lisa

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21

The J. Paul **Getty Museum**

Goupil & Cie (1839-1860s), Leonardo da Vinci's Mona Lisa

ca. 1870



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Rijksmuseum, Amsterdam

Pompeo Pozzi (1817-1888), after Leonardo da Vinci

1850-1880



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Claude Ferdinand Galliard (1834-1887). after Leonardo da Vinci

1886-1887

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1881-1900

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after Leonardo 19th century

da Vinci

(1800-1843).

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Harvard University Albert Teichel (1822-1873), after Leonardo

da Vinci 19th century

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Léon Boisson (1854-1941),after Leonardo da Vinci

19th century

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Saint-Denis Augustin Bridoux (1813-1892). after Leonardo da Vinci

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Antoine-François Dezarrois (1864-1949), after Leonardo da Vinci

19th century

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Timothy Cole (1852-1931), after Leonardo da Vinci

1914

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