



Copyright

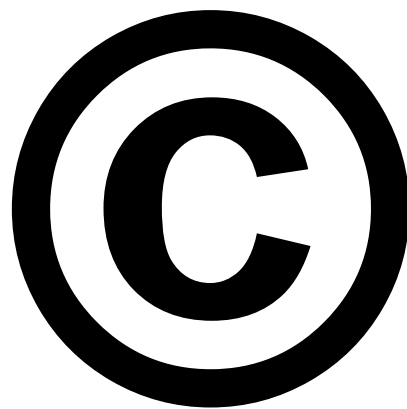
Copyrightable Subject Matter: Fixation, Authorship, Originality, Creativity, and the Fact/Expression Dichotomy

Eric E. Johnson

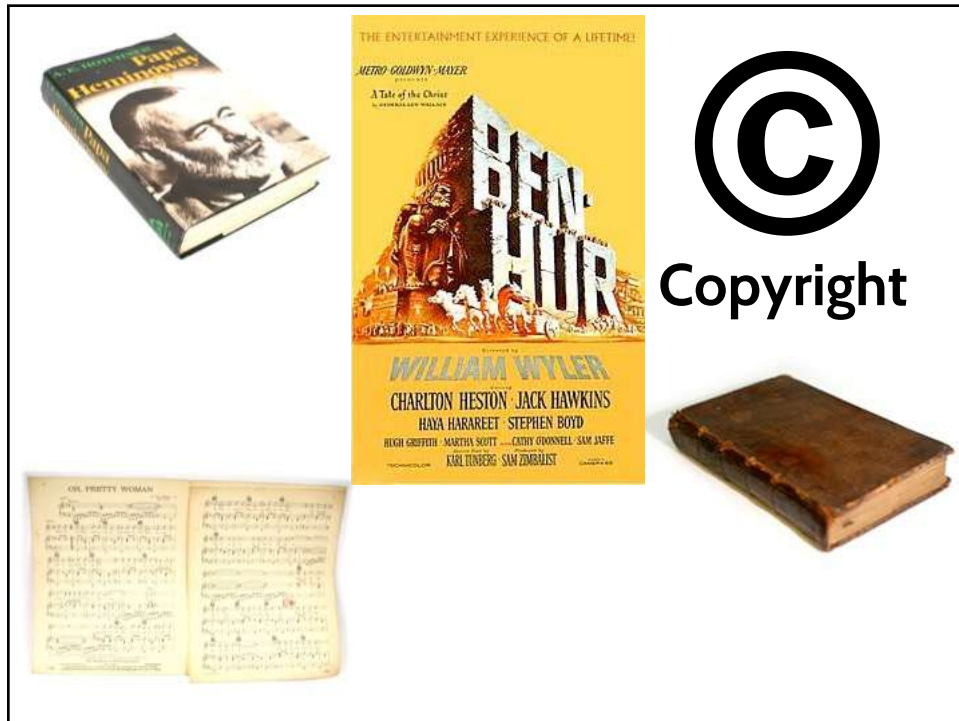
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Copyright



Copyright

- Books
- Poems
- Movies
- Computer software
- Photographs
- Paintings
- Sculptures

Copyright

- original works of authorship fixed in any tangible medium of expression from which they can be perceived, either directly or with the aid of a machine

Let's see where we are in the broader scheme of things ...

PART I: Preliminaries

1. About the Course**
2. Blackletter Overview, Basic Framework and Initial Questions
3. Theoretical Justifications**

PART II: Expression

4. Copyright Law Orientation
5. Copyrightable Subject Matter: Fixation, Authorship, Originality, Creativity, and the Fact/Expression Dichotomy
6. Copyrightable Subject Matter: Distinguishing Expression from Ideas, Methods, Systems, Etc.
7. Copyright Registration, Notice, Duration, and the Public Domain
8. Copyright Ownership (Works Made for Hire, Joint Authorship, Assignment)
9. Copyright Infringement Analysis
10. Limits on Copyright Infringement (First Sale, Fair Use)
11. Copyright and Music *◇
12. Copyright and [a special topic] *◇

Let's see where we are in the broader scheme of things ...

Now, let's get a little ahead of ourselves, and mention infringement, because that helps us understand why we're learning what we're learning.

—

Elements of prima facie case for copyright infringement (for reproduction right)

1. it's a copyrighted work



(copyrightable subject matter)

2. that the plaintiff owns

– I don't know if this is really an
element, but it's analysis you
might need to do

3. copying

4. substantial appropriation

Copyright subject matter – what's included (requirements)

- “original works of authorship fixed in any tangible medium of expression, now known or later developed, from which they can be perceived, reproduced, or otherwise communicated, either directly or with the aid of a machine or device”
17 U.S.C. § 102(a)

**Copyrightable subject matter –
here's three requirements from § 102(a)**

- 1. originality**
 - independently created by the author
 - possesses some minimal degree of creativity (“some creative spark”)
- 2. work of authorship**
- 3. fixed in a tangible medium of expression**

Fixation

I whispered to you a secret – the lottery numbers I am mentally planning to pick when I buy a ticket tonight.

Is that copyrightable? (I.e.: Is it within copyright subject matter? Is it capable of being protected by copyright law? Can I prove the first element of an infringement case?)

I whispered to you a secret – the lottery numbers I am mentally planning to pick when I buy a ticket tonight.

Is that copyrightable? (I.e.: Is it within copyright subject matter? Is it capable of being protected by copyright law? Can I prove the first element of an infringement case?)

No.

Why not?

The easiest reason is that it's not fixed in a tangible medium of expression.

Authorship



Image created in 2022 by Midjourney A.I. Prompt was: "swimming pool filled with a galaxy on a moonlit night"

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English Add a one-line explanation of what this file represents

Summary [edit]

Description: English: An AI-generated image by Midjourney from the prompt "swimming pool filled with a galaxy on a moonlit night". Uploaded.

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Author: Midjourney

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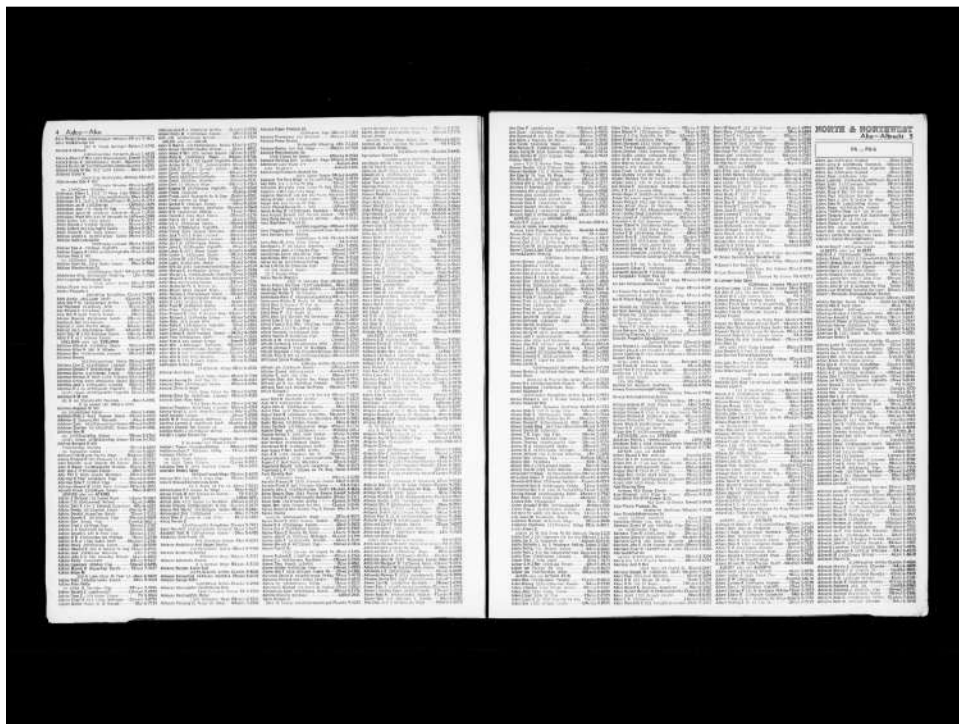
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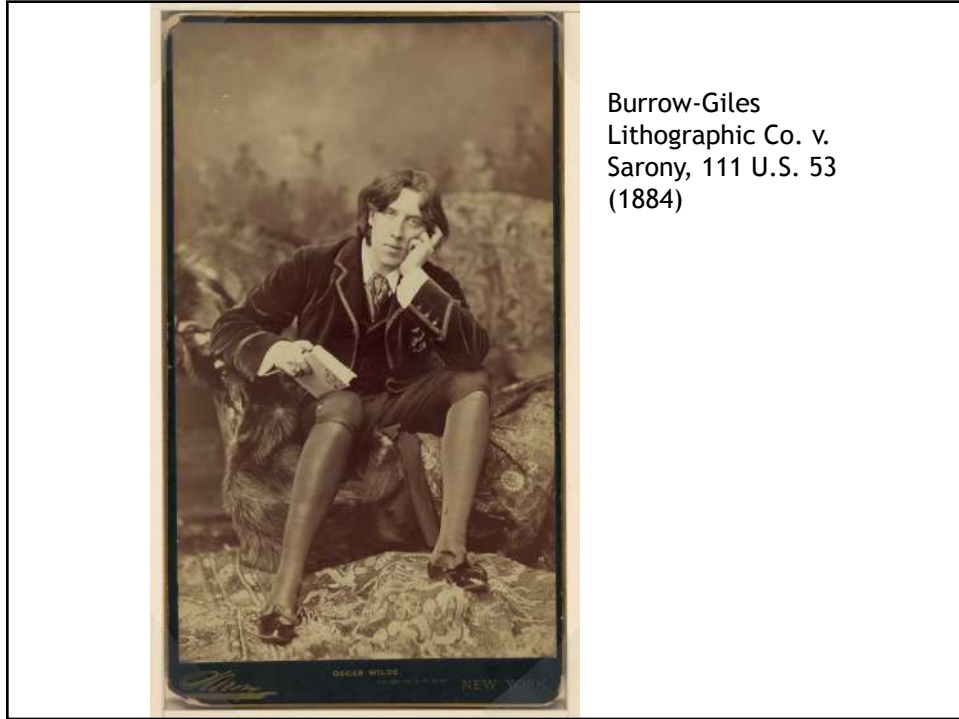
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Greenwd Evnsta-----Unirsty 4-2657	Akins Lloyd R 192Fulton Elgn-----SHerwd 2-7078
5Bonita MtPrspct-----CLebrk 5-6411	Akins Richard G 1109 Himman Evnsta-----UNvrsty 4-5421
Grant Evnsta-----DAvis 8-6119	Akins Richard L 608Sundrn Wgkn-----CHery 4-0051
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Castings Co Div of Harco Corp	AI Dexter Custom Brake Serv&Tune Up
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1500WKenney-----LkForest-3758	406 Green Bay Highwd IDIwd 2-3576
711Brook Elgn-----SHerwd 1-6958	AI-Lan Electronic Sales Inc
Mt Ptk Up	1511 Greenwd Rd Glenwv PA 4-9373
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Heating Inc	7039Keatng Lincwvd ORchrd 3-0510
123Lake Wgkn-DEita 6-4128	Ala-Dore Lamp 1128 Florence Av Evnsta DAvis 8-6222
ch Natl Airline	Ala John B 573 5th Des Plains-----Vandrbit 4-3850
F 22 S Michigan Chgo State 2-1250	Alabek W C 1042 Glenwv Glenwv-----PA 4-6371
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75Oaktn DesPlains-Vandrbit 4-4136	Aladdin Fix-It Shop 917 S KnightPkRldg TAlcot 5-1570
GreenBay Wlnetka-----Hlcrst 6-2717	Aladdin Flower Shop 1705Grand Wgkn MAjestic 3-2155
668Vernon Glenco-VERnon 5-2710	Aladdin Tile Co 657NLake GrayLk-----BAlden 3-4861
Church Evnsta-----DAvis 8-6800	Alamo Francis
Wn-----ONtario 2-2150	2905 Genese Ln Bolon Mdwn-CLbrk 9-3398
	Albert Jas 245Prairie Highwd-----IDIwd 2-6085
	Albert Jerry D 1009Midwy Northbrk-----CRstwd 2-2370
	Albert John Earl 450Woodlnd HighldPk IDIwd 2-3666
	Albert Jos 245Prairie Highwd-----IDIwd 2-4665
	Albert Kuno 656StJohn Elgn-----SHerwd 2-2072
	Albert Ladislav 306MacArthur-MtPrapct-CLebrk 5-1803
	Albert Louis 7335Laverne Skokie-----ORchrd 4-0618
	Albert Mary 1228Lake Wilmet-----ALpin 1-4528
	Albert Mary K Mrs 471Hill Elgn-----SHerwd 1-5382
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Let's do some
hypotheticals
and some
realotheticals



Two women find a cornflake shaped like Illinois. Can they “copyright it”?

[cornflake picture omitted]

No.

What if it were shaped like Abraham Lincoln?

[cornflake picture omitted]

No.

What if they owned the automatic
cornflake producing machine, and then
found it?

[cornflake picture omitted]

No.

**Scientists using the Gemini North 8.1 meter
telescope on Mauna Kea in Hawaii take this
image of galaxy NGC 3359. Is the image
protected by copyright?**





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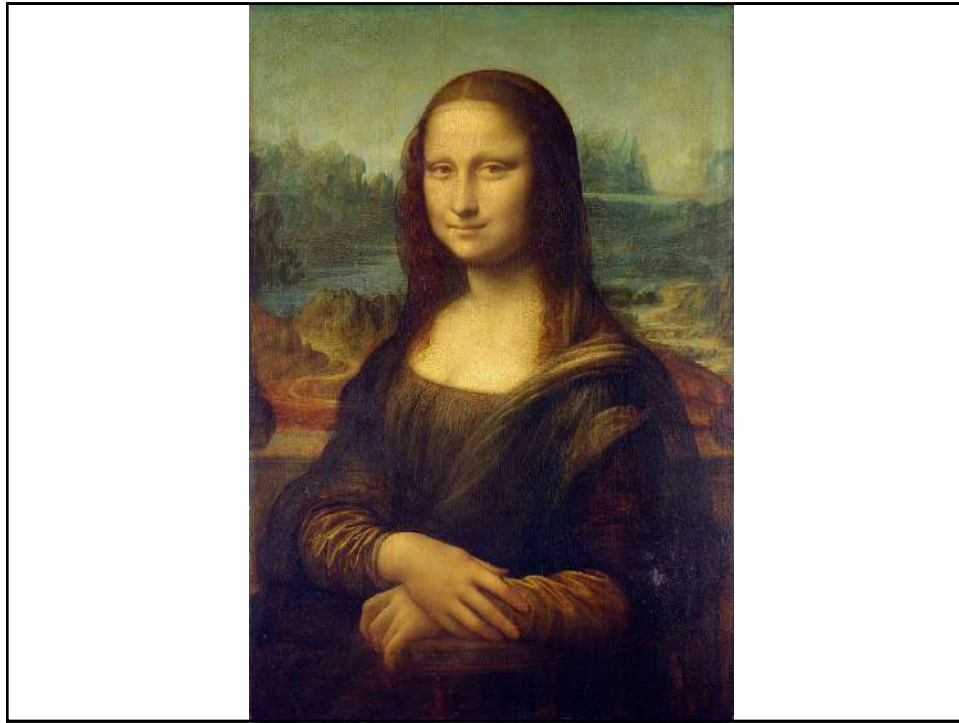
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25 *Attorneys for Plaintiff*

26 UNITED STATES DISTRICT COURT
 27 NORTHERN DISTRICT OF CALIFORNIA

28 NARUTO, a Crested Macaque, by and) Case No.: 15-cv-4324
29 through his Next Friends, PEOPLE FOR)
30 THE ETHICAL TREATMENT OF) COMPLAINT FOR COPYRIGHT
31 ANIMALS, INC., and ANTIJE) INFRINGEMENT
32 ENGELHARDT, Ph.D.) DEMAND FOR JURY TRIAL
33 Plaintiff,)
34 vs.)
35 DAVID JOHN SLATER, an individual,)



Mona Lisa – Portrait of Lisa ...

www.louvre.fr/en/oeuvre-notices/mona-lisa-portrait-lisa-gherardini-wife-francesco-del-giocondo

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Department of Paintings: Italian painting

Next work

All works



Portrait of Lisa Gherardini, wife of Francesco del Giocondo, known as the *Mona Lisa* (the *Joconde* in French)
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Paintings
Italian painting

Author(s):
Cécile Scaillet

This portrait was doubtless started in Florence around 1503. It is thought to be of Lisa Gherardini, wife of a Florentine cloth merchant named Francesco del Giocondo - hence the alternative title, La Gioconda. However, Leonardo seems to have taken the completed portrait to France rather than giving it to the person who commissioned it. After his death, the painting entered François I's collection.

Technical description

Leonardo di ser Piero da Vinci, known as LEONARDO DA VINCI (Vinci, 1452 - Amboise, 1519)
Portrait of Lisa Gherardini, wife of Francesco del Giocondo, known as the Mona Lisa (the *Joconde* in French)

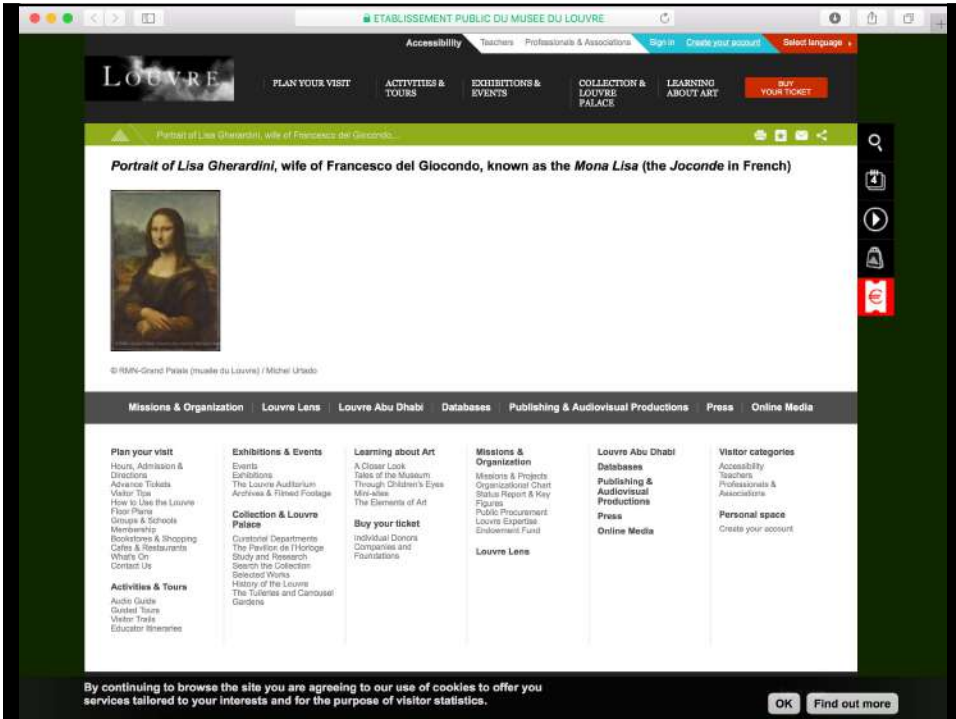


Portrait of Lisa Gherardini, wife of Francesco del Giocondo, known as the Mona Lisa (the Joconde in French)
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This portrait was doubtless started in Florence around 1503. It is thought to be of Lisa Gherardini, wife of a Florentine cloth merchant named Francesco del Giocondo - hence the alternative title, La



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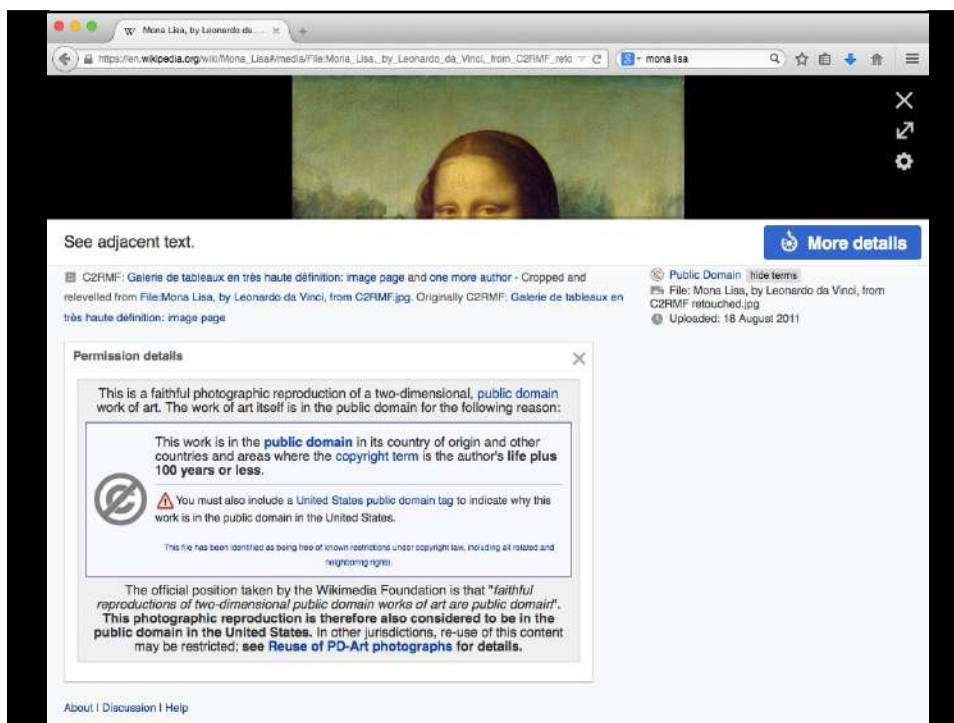
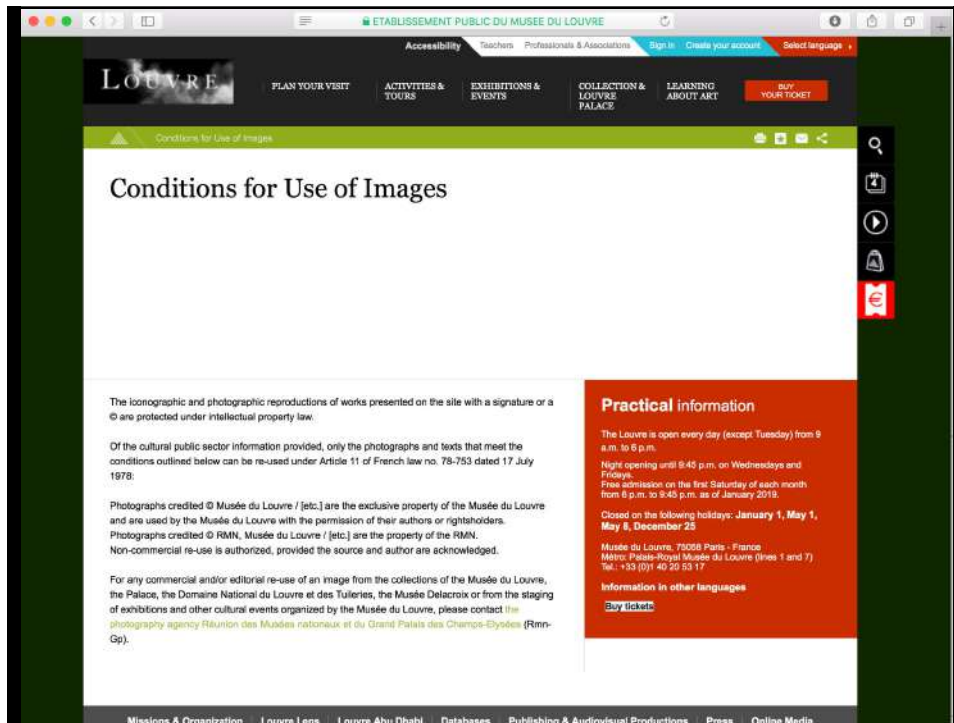
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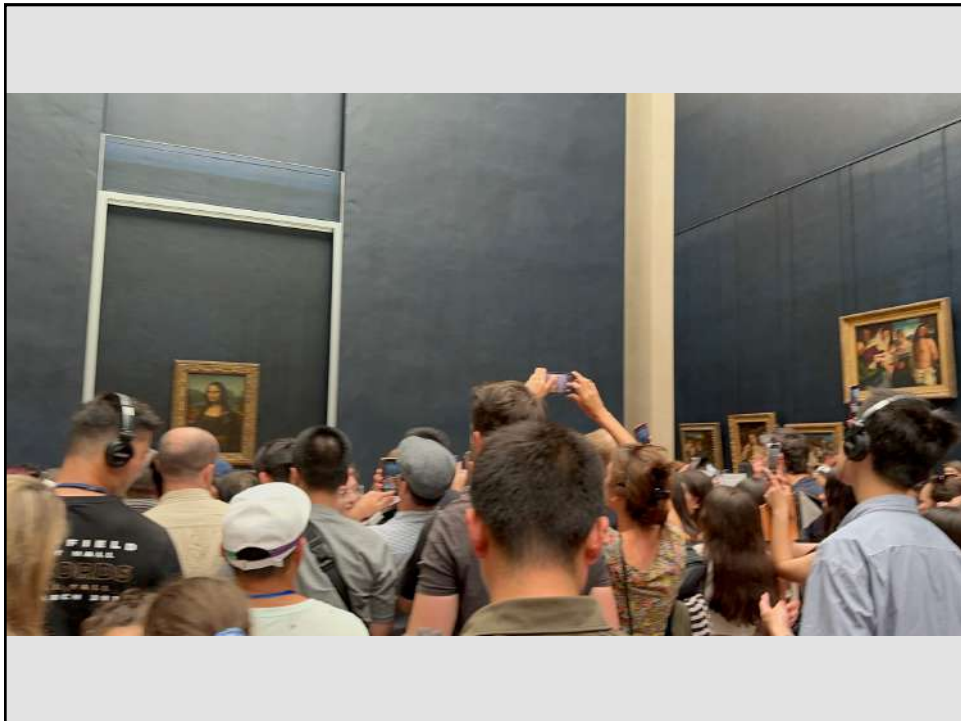
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Portrait of Lisa Gherardini, wife of Francesco del Giocondo, known as the *Mona Lisa* (the *Joconde* in French)
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A First Look



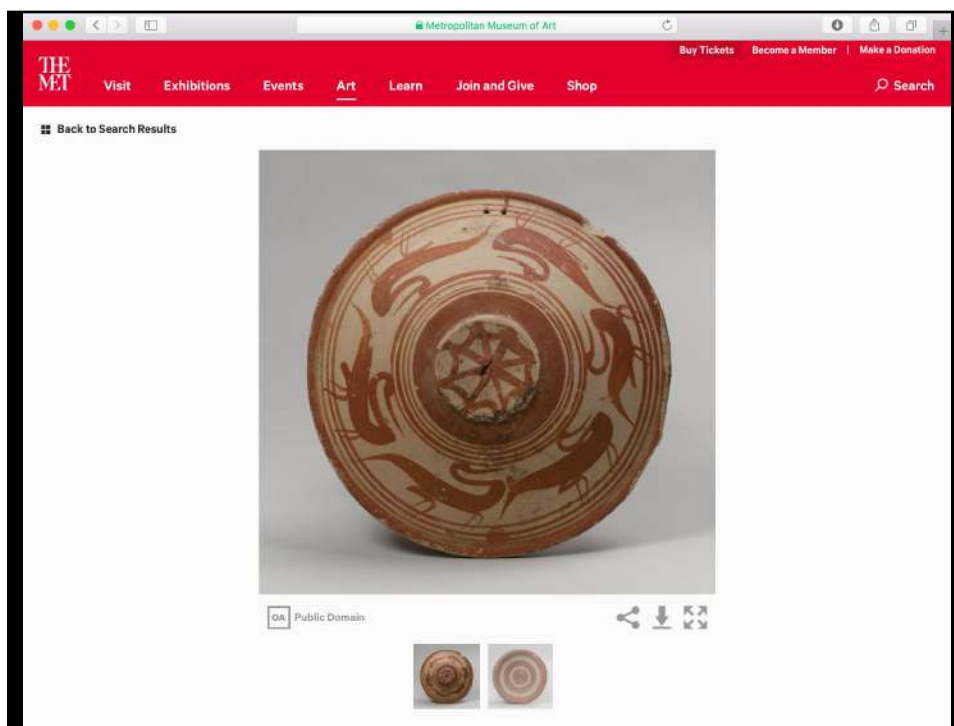
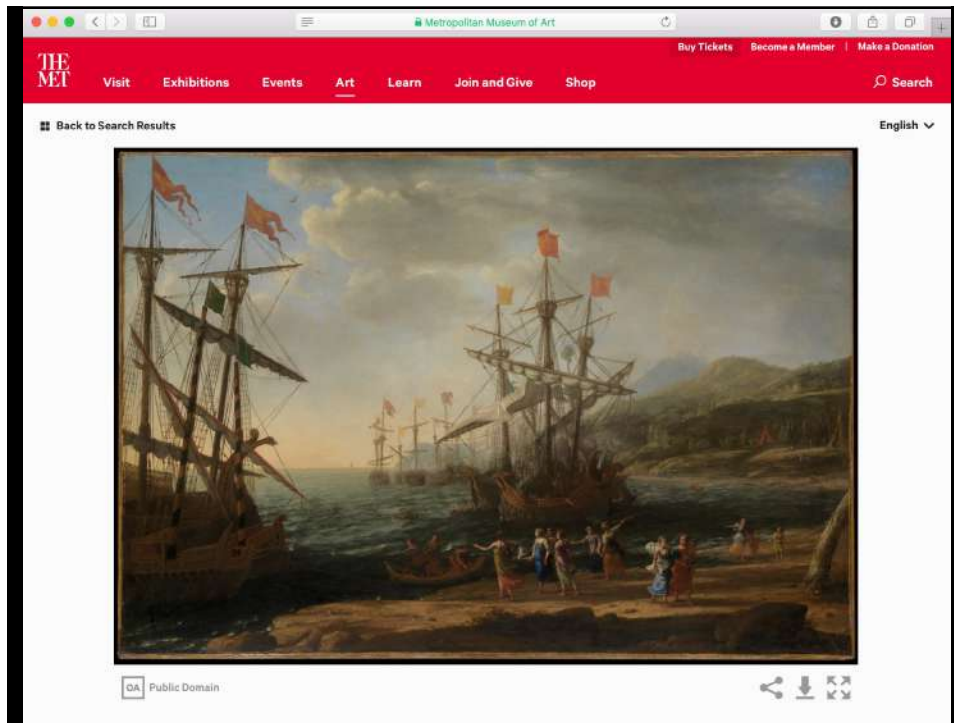
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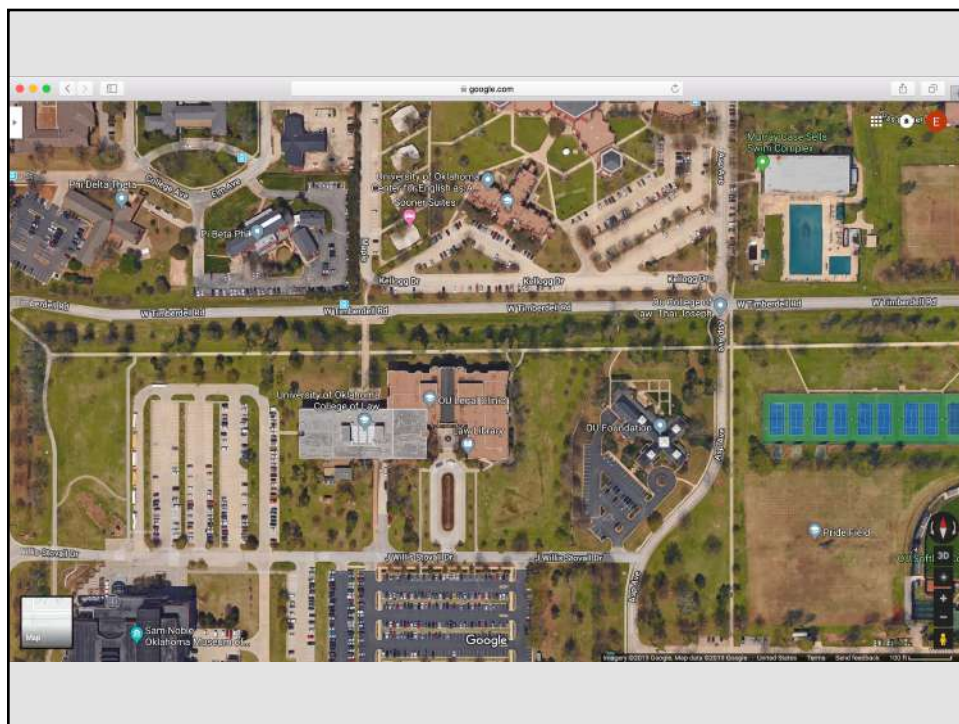
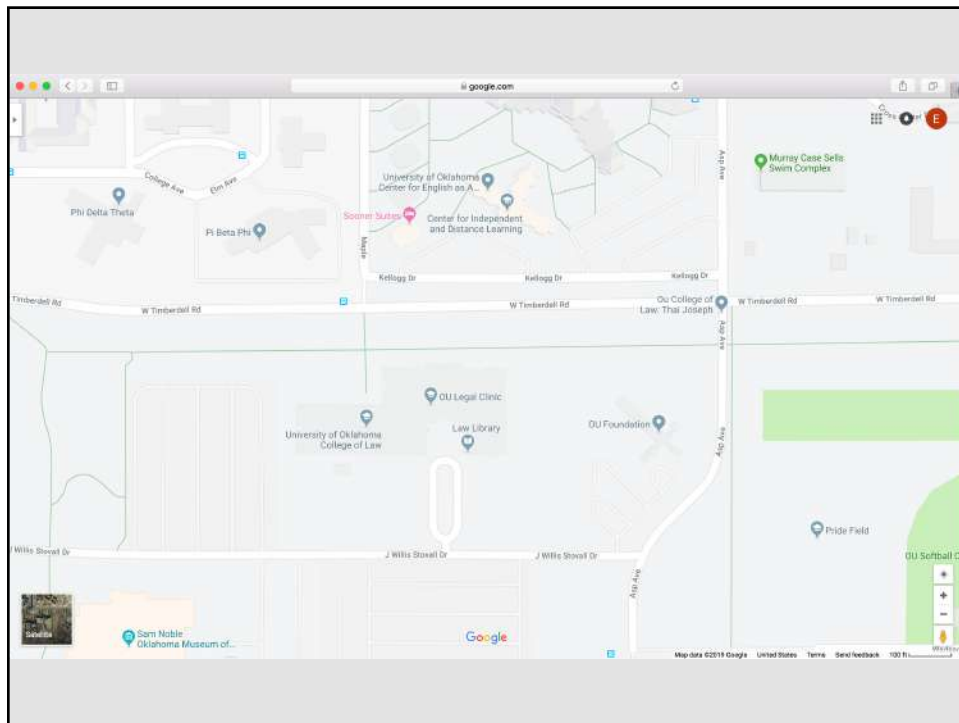


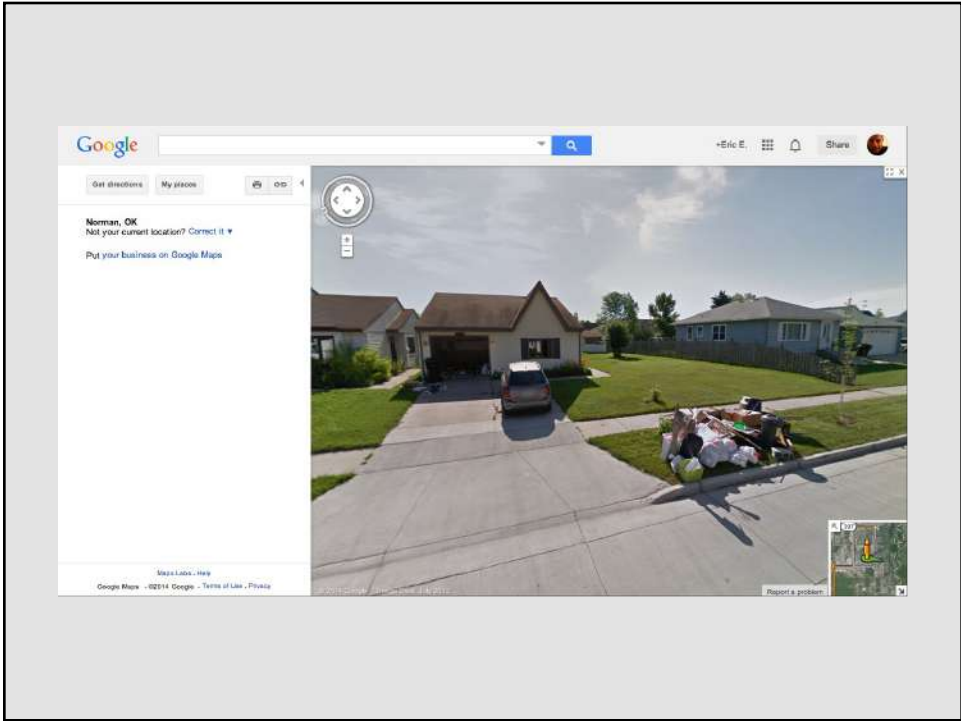
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The Associated Press has sportswriters from various organizations rank college football teams and publishes the result as the AP Top 25 College Football Poll. Does AP have a copyright in the list of 25 teams such that unauthorized people cannot reproduce the list?



Does an association of universities and bowl game organizers need the permission of the AP to use the AP poll in determining who should play in the national championship game (or playoffs)?



Do the Cubs have a valid copyright claim against rooftop bleacher owners?

[picture of rooftop bleachers omitted]

