

# The Creative Shield: The Artist's Guide to Copyrights, Trademarks & Brand Monetization

11 obscure laws (related to copyright law) and legal exceptions in the artistic ecosystem that most people don't know about.

## 1. The Visual Artists Rights Act (VARA) – Moral Rights for Artists (U.S.)

- Protects artists' moral rights over visual works.
- Exception: Artists can prevent destruction or modification of their work even if they don't own the copyright.
- Obscure Fact: Murals and paintings attached to buildings cannot be destroyed without giving the artist 90 days' notice.

## 2. The Droit de Suite (Artist's Resale Right) (EU & Select Countries)

- Allows artists to receive a royalty on resales of their original artwork.
- Exception: Only applies in specific countries (e.g., UK, France, Germany, but not the U.S.).
- Obscure Fact: If a painting is resold at an auction for millions, the artist (or heirs) can still claim a percentage decades later.

## 3. The "Weird Al" Parody Exception (Fair Use for Music Parodies)

- Parody is generally protected as fair use under U.S. copyright law.
- Exception: Courts are more lenient on musical parodies than other types of derivative works.
- Obscure Fact: "Weird Al" Yankovic asks for permission, but legally, he doesn't have to.

## 4. The Termination Loophole for Pre-1972 Sound Recordings

- Federal copyright law did not cover sound recordings before February 15, 1972.
- Exception: These recordings are now covered under a patchwork of state laws and the Music Modernization Act (MMA) (2018).
- Obscure Fact: Some recordings from the 1920s-1950s are still controlled by record labels because of this legal gray area.

## 5. The Architectural Works Copyright Exception

- U.S. copyright law protects architectural designs.
- Exception: Anyone can photograph a protected building without permission.
- Obscure Fact: The owner of a copyrighted building cannot stop tourists from taking and selling photos of it.

## 6. The "Monkey Selfie" Copyright Loophole

- Exception: Copyright cannot be claimed on works created by non-humans.
- Obscure Fact: A monkey named Naruto took a selfie in 2011, leading to a lawsuit where courts ruled that animals cannot own copyrights.

## 7. The 25-Year Unclaimed Works Reversion (UK & Canada)

- In the UK and Canada, unpublished works held in archives can become public domain after 25 years.
- Exception: If the original author claims the work before the 25-year period, they retain full rights.
- Obscure Fact: Many unpublished letters, manuscripts, and lost recordings are claimed by archives after no one comes forward.

# The Creative Shield: The Artist's Guide to Copyrights, Trademarks & Brand Monetization

## 8. The "Scènes à Faire" Doctrine (Can't Copyright Common Themes)

- **Exception:** Copyright does not apply to elements that are considered "stock" or "standard" tropes.
- **Obscure Fact:** You can't sue someone for copying ideas like a "hero's journey" plotline, a detective solving a crime, or a love triangle.

## 9. The Compulsory License for Cover Songs (Mechanical License Rule)

- Musicians don't need permission to cover a song.
- **Exception:** They must pay a statutory fee (set by law).
- **Obscure Fact:** Any band can legally record a cover of a Taylor Swift or The Beatles song without permission, as long as they pay the fee.

## 10. The "Orphan Works" Copyright Limbo

- **Exception:** If the copyright owner of a work cannot be found, the work is trapped in legal limbo.
- **Obscure Fact:** Libraries, museums, and filmmakers avoid using "orphan works" because of potential lawsuits, even if no one is around to claim ownership.

## 11. Copyright Termination Law

- **Exception:** Authors (or their heirs) can reclaim rights to works previously assigned to publishers or companies after a set period.
  - **Obscure Fact:** Even if a contract says a transfer is "forever", U.S. law allows authors to terminate the grant after 35 or 56 years (depending on when the contract was signed).
  - **Loophole:** If the work was created as a "work made for hire", the original creator cannot reclaim the rights.
- 

## 10 obscure trademark laws and exceptions that most people don't know exist.

### 1. The "Zombie Trademark" Doctrine

- If a **brand or product is discontinued**, its trademark can **still be revived**.
- **Exception:** A company can argue that a trademark is still **alive** if there is lingering consumer recognition.
- **Obscure Fact:** Brands like **Pan Am, Woolworth's, and Atari** were revived years after they originally shut down.

### 2. The "Trademark Abandonment" Rule

- A trademark is considered **abandoned** if not used for **three consecutive years**.
- **Exception:** If a company can prove **an intent to resume use**, it can still hold onto the trademark.
- **Obscure Fact:** Sony **held onto the "Walkman" trademark** long after it stopped selling the product, preventing others from using it.

### 3. The "Naked Licensing" Rule

- A trademark must be actively controlled and monitored by its owner.

# The Creative Shield: The Artist's Guide to Copyrights, Trademarks & Brand Monetization

- Exception: If a trademark holder allows others to use it without quality control, the trademark can be invalidated.
- Obscure Fact: Playboy lost a trademark case because it allowed independent businesses to use its name without oversight.

## 4. The "Initial Interest Confusion" Loophole

- Even if a consumer eventually realizes a product isn't the brand they were looking for, it can still be trademark infringement.
- Exception: If the confusion only occurs briefly before purchase, some courts allow it.
- Obscure Fact: Google was sued for allowing ads that used trademarked terms in search results, even though users later realized the ad wasn't from the real brand.

## 5. The "Functional Features" Trademark Exception

- A trademark cannot protect a product feature that is purely functional.
- Exception: If a design is decorative rather than functional, it can still be trademarked.
- Obscure Fact: Coca-Cola can trademark the unique shape of its bottle, but Bic cannot trademark the shape of its pens because they're considered functional.

## 6. The "Geographic Descriptiveness" Rule

- Exception: You can't trademark a brand name if it directly describes a geographic location.
- Obscure Fact: "Napa Valley Wines" can't be trademarked by a single company, but "Kentucky Fried Chicken" is allowed because it has gained secondary meaning beyond geography.

## 7. The "Foreign Trademark Priority" Rule

- If a brand is well-known internationally but hasn't registered in the U.S., it might **still** have rights in the U.S.
- **Exception:** The **"Well-Known Marks" Doctrine** allows famous global brands to protect their trademarks even if they don't officially operate in the country.
- **Obscure Fact:** The Japanese clothing brand **"BAPE" (A Bathing Ape)** won a case against a U.S. company trying to register the trademark in the U.S.

## 8. The "Trademark Tacking" Rule

- A company can modify its logo or brand **without losing its original trademark date**.
- **Exception:** The change must be **minimal** enough to preserve brand recognition.
- **Obscure Fact:** Pepsi has changed its logo **multiple times** but still claims **1898** as its first use.

## 9. The "Parody Protection" Exception

- Satirical versions of trademarks can be **legally protected** as free speech.
- **Exception:** The parody **must clearly not mislead consumers**.
- **Obscure Fact:** South Butt, a parody of North Face, won a lawsuit because its branding was clearly a joke.

## 10. The "Color as a Trademark" Rule

- Companies can **trademark a specific color** if it is distinctively linked to their brand.

# The Creative Shield: The Artist's Guide to Copyrights, Trademarks & Brand Monetization

- **Exception:** The color **must not be functional**.
  - **Obscure Fact:** Tiffany Blue, UPS Brown, and Louboutin Red Soles are all legally trademarked colors.
- 

## 10 obscure intellectual property (IP) laws and exceptions

### 1. The "Reverse Engineering" Exception (Patent & Trade Secrets)

- **Exception:** A company can legally **reverse-engineer** a competitor's product **if done independently**.
- **Obscure Fact:** This is how IBM **cloned** early PCs without infringing patents, and how companies create **generic drugs** after patents expire.

### 2. The "Patent Evergreening" Loophole

- **Exception:** A company can extend a drug's patent **by making minor changes** (e.g., modifying dosages or delivery methods).
- **Obscure Fact:** Pharmaceutical companies use this to **delay generic competition**, keeping drug prices high.

### 3. The "Fair, Reasonable, and Non-Discriminatory" (FRAND) Licensing Rule

- **Exception:** Owners of **standard-essential patents** (like 5G or Wi-Fi technologies) must license them at **reasonable rates**.
- **Obscure Fact:** Tech giants like **Apple and Samsung** often battle over what qualifies as "reasonable" under FRAND.

### 4. The "Trade Secret Theft in Foreign Jurisdictions" Rule

- **Exception:** Under the **Defend Trade Secrets Act (DTSA)** in the U.S., companies can sue even if trade secrets were stolen **outside the country**.
- **Obscure Fact:** The FBI has pursued Chinese companies accused of stealing U.S. trade secrets under this law.

### 5. The "Work-for-Hire" Doctrine (IP Ownership in Employment)

- **Exception:** If an employee creates something **within their job duties**, the employer owns the IP.
- **Obscure Fact:** **Steve Wozniak's early work at HP** on personal computers was technically owned by HP—but they rejected it, allowing him to start Apple with Steve Jobs.

### 6. The "First-to-File" vs. "First-to-Invent" Patent Rule

- **Exception:** The U.S. switched from **first-to-invent** to **first-to-file** in 2011 under the **America Invents Act**.
- **Obscure Fact:** Before 2011, if you invented something **first** but didn't file a patent, you could still claim priority in court.

### 7. The "Right of Publicity" vs. Free Speech Conflict

- **Exception:** Celebrities can control their **name, likeness, and image**, but not if it's for **news, parody, or creative works**.

## The Creative Shield: The Artist's Guide to Copyrights, Trademarks & Brand Monetization

- **Obscure Fact:** This is why movies **can** portray real people without permission, but a company **can't** sell a Michael Jordan sneaker without his approval.

### 8. The "Patent Exhaustion" Doctrine

- **Exception:** Once a patented product is **sold legally**, the patent holder **loses control** over how it's used or resold.
- **Obscure Fact:** This is why **you can legally resell your PlayStation or iPhone** without Sony or Apple stopping you.

### 9. The "Geographical Indications" (GI) Protection Rule

- **Exception:** Some names are **protected by international law** and can't be used outside their origin.
- **Obscure Fact:** **Champagne must come from Champagne, France**, and **Parmesan cheese** is a legally protected term in Europe.

### 10. The "Non-Obviousness" Patent Requirement

- **Exception:** An invention **must be non-obvious** to someone skilled in the field to qualify for a patent.
- **Obscure Fact:** The **Amazon "One-Click" patent** was controversial because some argued it was too obvious—but it was still granted.

---

#### Disclaimer:

This document is provided as a sample template/guide for educational purposes only, as part of The Creative Shield: The Artist's Guide to Copyrights, Trademarks & Brand Monetization. It is not intended to constitute legal advice, consultation, or professional services. Use of this document does not create an attorney-client relationship, and readers are advised to consult with a qualified legal professional for advice about their specific legal needs. The author and publisher disclaim any liability arising from the use of this sample template.