

Art. 11 CopA: Integrity of the Work

Function and structure of the provision

Art. 11 CopA protects the author's control over the form in which the work exists and is presented. The three paragraphs set out three distinct rules **Art. 11 CopA**:

- Para. 1 confers an exclusive right to decide whether, when and how the work may be altered (lit. a), used to create a derivative work, or included in a collected work (lit. b).
- Para. 2 preserves a residual defence against distortion that violates the author's personal rights. It applies even where a third party is authorised by contract or by law to alter or adapt the work.
- Para. 3 permits the use of existing works to create parodies and comparable variations.

The case law treats the distinction between paras. 1 and 2 as decisive. Para. 1 is a broad exclusive right that the author can dispose of by contract. Para. 2 is a narrow, personality-based core. It operates once the para. 1 right has been given away, or where the law has removed it **ZK.2017.2 BGE 142 III 387**. Most disputes turn on where this line falls.

Art. 11 has kept its 1993 wording. The amendments of 5 October 2007 and 27 September 2019 did not touch it **BBI 2007 7149 BBI 2019 6585**. The 2007 revision confirmed that the provision prevails over the new broadcasting limitation, since Art. 24b(2) ends with "Article 11 remains reserved" **Art. 24b CopA**.

Decisions under the former Act still explain the integrity right's roots in general personality law under Art. 28 ZGB **BGE 69 II 53 BGE 96 II 409**. They must, however, be read in light of the present statutory structure, under which para. 2 operates without reference to Art. 28 ZGB (see below under para. 2).

Alteration under para. 1 lit. a

Any unauthorised change, whatever its extent

Cantonal courts read para. 1 lit. a strictly. The Basel-Stadt Court of Appeal held that the integrity right covers large and small changes: "Die Werkintegrität wird also grundsätzlich durch jede unbewilligte Änderung verletzt" (the integrity of the work is in principle infringed by any unauthorised change) **ZK.2017.2**. A newspaper had deleted five of an article's 23 sections and made smaller cuts before republishing it. This infringed para. 1, although it did not amount to a distortion under para. 2 **ZK.2017.2**.

The Ticino courts reached the same result for a commissioned tourism poster. The reprint changed the layout and typography of the slogan without consulting the author. This infringed the right to control modifications, regardless of the extent of the change and of the reviser's intention **10.1999.34**.

The Federal Supreme Court has taken a similarly broad view of what counts as an intervention. In the Chaplin case under the former Act, cutting damaged footage, translating intertitles and adding new music to a silent film were all relevant interventions. The added music was a "wesentliche Änderung" (substantial change) **BGE 96 II 409**.

Alteration or new derivative work

A change does not automatically create a new work. In a criminal case concerning a website, the Bern Superior Court accepted expert findings that the updates were mainly maintenance and technical adjustments. Such updates fell under Art. 11(1)(a): "Solche Änderungen würden Teil des bestehenden Werks" (such changes become part of the existing work). They did not found a separate copyright under Art. 3 CopA **BK 2018 295**.

At an earlier stage of the same case, the court had stressed the opposite risk. Programs altered more than trivially can be newly protected derivative works, so protection must be properly examined and not judged "relatively" by reference to the overall circumstances **BK 2016 484**.

Technical conversion, combination with other works and context

The Basel-Stadt court holds that a mere technical conversion of a work onto another medium is not an alteration **ZK.2017.2**.

The legislative materials show that para. 1 nonetheless reaches beyond physical intervention in the work's form:

- Combining works. The 2006 dispatch states that combining music with another work "betrifft nicht allein das Vervielfältigungsrecht sondern auch das Recht auf Werkintegrität gemäss Artikel 11 Absatz 1 URG" (concerns not only the reproduction right but also the integrity right under Art. 11 para. 1). For that reason the broadcasting limitation does not cover scoring a television film **BBI 2006 3389**.
- Accessible formats. The 2017 dispatch treats certain impairments of integrity as tacitly permitted where they are necessary to produce accessible formats under Art. 24c **BBI 2018 591**.

The Federal Supreme Court has also held that Art. 11 protects against presenting the work in a misleading or distorting context **BGE 131 III 480**. This indirect interference is analysed below under para. 2, because the courts apply the distortion threshold to it.

Derivative works, collected works and free use (para. 1 lit. b)

Lit. b gives the author control over whether the work may be used to create a derivative work or be included in a collected work **Art. 11 CopA**. BGE 125 III 328 sets out three possible outcomes when a later work draws on an earlier one **BGE 125 III 328**:

1. Plagiarism. Mere reuse or copying infringes the exploitation rights.
2. Derivative work. Qualitative modifications produce a new work through which the first work "transparaît" (still shows through). This is a derivative work under Art. 3 CopA and requires consent under Art. 11(1)(b).
3. Free use (libre utilisation). The borrowings are so modest that they "s'effacent devant l'individualité de sa nouvelle oeuvre" (fade before the individuality of the new work).

The Court held that free use "doit cependant être interprétée restrictivement" (must however be interpreted restrictively) **BGE 125 III 328**. It nevertheless found free use on the facts. A successor architect had borrowed three groups of flat-roofed

buildings, features of weak individuality, and reworked them substantially until they receded entirely behind the new project **BGE 125 III 328**.

Two points follow:

- Distance depends on individuality. How far a later author must move away depends on how individual the borrowed elements are.
- Only protected elements count. In the Sherlock Holmes case under the former Act, the play took over the characters, the detective method and parts of the structure. This was free use, because those elements lacked originality and the play was "eine freie, selbständige Geistesschöpfung" (a free, independent intellectual creation) **BGE 85 II 120**.

The Chaplin version, built on the original film strip, shows the contrasting outcome: it was partly an unlawful adaptation **BGE 96 II 409**.

The same test applies to functional works. The Aargau Superior Court held that whether new source code is a derivative work under Art. 11(1)(b) read with Art. 3(1) depends on whether the earlier code remains recognisable in its individual character. Answering that question normally requires an expert comparison of the two codes **SBK.2025.97**.

Contractual authorisation, transfer and the inalienable core

Disposing of the para. 1 right

Para. 2 presupposes that a third party may be "authorised by contract or law" to alter or adapt the work **Art. 11 CopA**. The para. 1 prerogatives can therefore be transferred or licensed. Two rules of Art. 16 CopA limit the scope of a transfer **Art. 16 CopA**:

- Assigning one partial right does not include other partial rights unless this was agreed (para. 2).
- Transferring ownership of a copy, even of the original, does not transfer the right to exploit the copyright (para. 3).

The scope of an alteration licence is a question of contract interpretation. Cantonal decisions show the possible outcomes:

- Licence covering the changes. In a Valais case, later contracts expressly granted the right to adapt, modify and create derivative works. This covered renaming a series and changing its scripts, dialogues and music, so no integrity violation was established **C1 19 210**.
- Rights limited to the purpose. In the Ticino poster case there was no specific agreement. The commissioner acquired only the rights indispensable for the agreed campaign, and a later altered reprint fell outside them **10.1999.34**.
- Protection above the statutory level. The Zug Superior Court enforced a contractual veto over transfer, destruction and exhibition of an artwork. It held that the agreement prevailed over the dispositive URG provisions the owner relied on, and it left the statutory claims open **Z2 2024 69**.

Art. 17 CopA is not a general rule for works created in employment or on commission. It concerns only computer programs created under an employment contract, for which the employer alone may exercise the exclusive rights of use **Art. 17 CopA**.

For architects, a Geneva court in interim proceedings took into account that under SIA 102 the client acquires use rights once the fees are paid. It still examined separately whether a personality-violating alteration had been made plausible **ACJC/665/2024**.

The core that cannot be transferred

Under the former Act, the Federal Supreme Court held that the right to alter could be assigned only within the limits of Art. 27 ZGB. An assignment does not cover a change that amounts to distortion or

mutilation, or that harms the author's honour or reputation **BGE 69 II 53**.

The Court has since stated that "le droit moral ne peut pas être cédé" (moral rights cannot be assigned) and that the author cannot renounce them. That case concerned paternity, and the Court expressly left room for "droits moraux transmissibles" (transferable moral rights) **4A_638/2009**.

Cantonal courts have drawn the consequence for Art. 11:

- Valais. The court treated integrity as non-transferable "à tout le moins" (at the very least) under para. 2 **C1 19 210**.
- Vaud. The court described a contractor as "un tiers contractuellement autorisé à modifier l'oeuvre au sens de l'art. 11 al. 2 LDA" (a third party contractually authorised to modify the work within the meaning of Art. 11(2)). It held that the author nonetheless kept the hard core of the integrity right. Insulation and technical works were found not to be a mutilation **CCIV cm10-024416-1152010pmr/2010**.
- St. Gallen. The Commercial Court denied an architects' company standing to invoke para. 2, because the personality right in issue is "der Übertragung nicht zugänglich" (not open to transfer) **DZ.2009.3**.

The result is a two-tier structure. Para. 1 is at the parties' disposal. Para. 2 stays with the natural person who created the work, whatever the contract provides.

Distortion violating personal rights (para. 2)

The threshold

In BGE 142 III 387 the Federal Supreme Court framed the test as exclusively "si une modification est attentatoire à la personnalité" (whether a modification is harmful to the personality). The author "doit démontrer l'existence d'une altération de l'oeuvre qui porte atteinte à sa personnalité" (must show an alteration of the work that harms his personality) **BGE 142 III 387**. The term Entstellung "suppose une modification d'une certaine importance allant dans un sens négatif" (presupposes a modification of some importance in a negative direction) **BGE 142 III 387**.

The assessment is objective. It turns on four factors: the work's individual character, its function, the extent and purpose of the change, and whether the change can be reversed. The central question is "à quel point l'oeuvre est l'expression de la personnalité de l'auteur et le résultat de son activité créatrice individuelle" (to what extent the work expresses the author's personality and results from his individual creative activity) **BGE 142 III 387**. This criterion goes back to the Chaplin case. There, the closer the link between author and work, the more readily changes by third parties were held to violate personality **BGE 96 II 409**.

The threshold is high. In BGE 120 II 65 the Court excluded minor changes that the author can reasonably be expected to accept, and required "eine grobe Entstellung" (a gross distortion) **BGE 120 II 65**. The Basel-Stadt court applied that standard and required a "krasse Verfälschung" (gross falsification) of the intellectual content expressed in the work. A cut article kept its original character and attributed no false statements to the author, so para. 2 was not met **ZK.2017.2**.

A Graubünden judgment shows that the threshold can be met. Assessing the work from the objectified viewpoint of an average user or observer, the court found that a reflective, opaque link building distorted the architect's work, because it concealed the sacred volume of a church and competed with it **ZFE 2005 3**.

No reference to Art. 28 ZGB

The 1989 dispatch had described the protection of personality under Art. 28 ZGB as reserved. The Federal Supreme Court held that this remark has no basis in the wording the legislature adopted for Art. 11(2), and that it cannot lead to a different interpretation

BGE 142 III 387. Para. 2 is therefore a self-contained copyright standard, even though it grew out of general personality law under the former Act **BGE 69 II 53**. In BGE 131 III 480 the claimant had dropped his Art. 28 ZGB argument, so the Court did not rule on cumulative protection **BGE 131 III 480**.

Indirect interference through context

The Federal Supreme Court holds that Art. 11 protects the author against his work being presented "in einem Kontext oder in einer Art und Weise präsentiert wird, die im Publikum einen falschen Eindruck des Werkes erweckt" (in a context or manner that creates a false impression of the work among the public) **BGE 131 III 480**. This applies whether the infringer holds use rights, believes it does, or "sich um die Urheberrechte gar nicht kümmert" (disregards copyright altogether). The standard is objective and ignores any oversensitivity of the particular author **BGE 131 III 480**.

In that case, an article first published in a newspaper's polemical opinion forum was reprinted in full by a politically opposed weekly. The Court found no indirect interference, for two reasons. The author had himself entered an aggressive public debate, and the reprint did not suggest that he was taking part in a debate in the second paper **4C.393/2004**.

The Basel-Stadt court lists the prohibited forms of contextual misuse: a falsifying quotation, a quotation torn from context that puts the author in a false light, and use in a context the author rejects **ZK.2017.2**.

For architecture, indirect effects face a stricter test. Where neighbouring buildings change a work's surroundings without altering the work itself, the protected scope is still defined by the prohibition of distortion. However, in addition to a gross distortion, "einer sittenwidrigen Inanspruchnahme eigenen Urheberrechts des Zweitschaffenden" (an exercise of the second creator's own copyright contrary to public morals) is required **BGE 120 II 65**. The architect's moral right is limited spatially to the built site and radiates beyond it only in exceptional cases. Copyright gives no claim to architectural conformity of neighbouring buildings or to keeping the surrounding landscape free, and no extra-contractual right to be commissioned for follow-up projects **BGE 120 II 65**. The additional morality requirement was formulated for buildings and their spatial context. It was not applied to the text in BGE 131 III 480.

Works of architecture: the owner's right to alter

Statutory displacement of para. 1

Art. 12(3) CopA allows the owner to alter a constructed work of architecture, with Art. 11(2) reserved **Art. 12 CopA**. The Federal Supreme Court called that paragraph "mal placé" (misplaced) in the exhaustion provision. Its effect is that the architect loses the Art. 11(1) prerogatives to the owner, and only para. 2 and the prohibition of abuse of rights remain as limits **BGE 142 III 387**.

No weighing of interests

BGE 117 II 466, decided under the former Act, allowed the owner of a purpose-built building to adapt it to changed needs. The Court rejected any duty to choose the mildest intervention. In an abstract conflict of interests, "im Zweifelsfall die letzteren die Oberhand gewinnen müssen" (in case of doubt the latter, i.e. the owner's interests, must prevail) **BGE 117 II 466**.

The Vaud cantonal court later expressly weighed the interests. It prohibited the glazing of a villa terrace, stressing that the owners had shown neither changed needs nor technical or ecological reasons **CCIV co11-049217-322015phc/2015**.

The Federal Supreme Court reversed that judgment: "Contrairement à ce qui se fait en Allemagne, il n'y a pas lieu d'entreprendre une pesée des intérêts" (unlike in Germany, no weighing of interests is to be

undertaken) **4A_675/2015**. The enclosure was functional and reversible, and the villa did not show an intense link with its author's personality. The cantonal court had therefore violated Art. 11(2), and the architect's claim was dismissed entirely **BGE 142 III 387**.

Since that decision, the owner does not have to justify a change by changed needs. The decisive questions are how strongly the work expresses its author's personality and how serious the change is. The building's function and the purpose of the change enter only as factors in that assessment **BGE 142 III 387**.

Restoration of a lawful state

Para. 2 protects against changes by a third party authorised to alter a lawfully constructed work. The architect cannot use it to resist restoration of a building that contravenes public law: "Die blosse Befolgung einer Rückbauverpflichtung zur Wiederherstellung des baurechtskonformen Zustandes fällt nicht unter Art. 11 Abs. 2 URG" (merely complying with a restoration obligation to re-establish conformity with building law does not fall under Art. 11(2)). The legality and proportionality of the restoration cannot be re-examined in the copyright proceedings **4A_423/2011**.

The St. Gallen first instance gave the underlying reason. The owners were not "befugt" (authorised) within the meaning of para. 2 but "gerichtlich dazu gezwungen" (compelled by the court), and para. 2 applies only where the intervening party acts by its own free will **DZ.2009.3**.

Destruction

Destruction is governed by Art. 15 CopA rather than Art. 11. For works of architecture, the author only has the right to photograph the work and to require copies of the plans at his own expense **Art. 15 CopA**.

Parody and comparable variations (para. 3)

Para. 3 permits the use of existing works to create parodies or comparable variations **Art. 11 CopA**. A 2021 judgment of the Zurich District Court illustrates its scope. Relying on the 1989 dispatch, the court held that the concept of parody "im Einklang mit der bundesrätlichen Botschaft und der Lehre weit auszulegen" (is to be interpreted broadly, in line with the Federal Council's dispatch and legal doctrine) **GG210077-L**.

The court described the purpose of para. 3 as allowing, without consent, variations made for criticism or in the interest of politics and art. It required the following elements **GG210077-L**:

- a humorous effect;
- criticism, which may be directed at the work, at the author, or at unrelated situations or persons, and which must be perceptible in the parody itself;
- no risk of confusion with the original, but no excessive distance from it either. The original must remain recognisable, so that the new work is a work of second hand;
- no impairment of the normal exploitation of the original.

Para. 3 does not suspend para. 2. A parody needs no consent, but it may not "böswillig entstellen" (maliciously distort) the work **GG210077-L**.

On the facts, the court held two uses to be permitted variations: partly altered and shortened song lyrics in a satirical revue about Zurich society, and an altered song performed at a funeral. The accused was acquitted of the commercial offence under Art. 67 CopA **GG210077-L**. Because this is a first-instance cantonal decision, its list of requirements carries limited precedential weight.

Interaction with other limitations and with fundamental rights

Only some limitations expressly reserve Art. 11. Art. 24b does **Art. 24b CopA**. Art. 24c (accessible formats) and Art. 25 (quotation) contain no such reservation **Art. 24c CopA Art. 25 CopA**. For Art. 24c, see above on the tacit permission of impairments necessary for accessibility **BBI 2018 591**.

A quotation must serve as explanation, reference or illustration, and its extent must be justified by that purpose. It must also indicate the source and the author **Art. 25 CopA**. The Zurich Commercial Court therefore refused to treat an almost complete takeover of a reworked text as a quotation or as reporting on current events, and ordered removal **HG210105**. Even a quotation that is otherwise permitted may breach para. 2 if it falsifies the work or tears it from its context **ZK.2017.2**.

Fundamental rights do not create a further exception. The Federal Supreme Court held that a general licence for participants in public political debate "fehlt im schweizerischen Recht und kann nicht einfach durch ein Gericht unter Berufung auf die verfassungsmässigen Grundrechte der Meinungs- und Medienfreiheit eingeführt werden" (is lacking in Swiss law and cannot simply be introduced by a court invoking the constitutional rights of freedom of expression and of the media) **4C.393/2004**. The statutory limitations already embody the legislature's resolution of colliding fundamental rights **BGE 131 III 480**. Constitutional arguments therefore operate only through the interpretation of the statutory limits, including para. 3.

Performers and general personality protection

Art. 11 protects authors only. Performers' protection against derogatory treatment of their performances is governed by Arts. 28-28I ZGB (Art. 33a(2) CopA) **Art. 33a CopA**. The 2006 dispatch confirms that performers' protection against "Entstellung oder Verstümmelung" (distortion or mutilation) was deliberately left to general personality law **BBI 2006 3389**.

Two earlier decisions mark the limits of that route:

- BGE 129 III 715. Using an actor's recorded performance in advertising for a foreign product violated Art. 28 ZGB, even though related rights carry no specific personality right. Satisfaction under Art. 49 OR was available in principle but was refused because the violation was not serious enough **BGE 129 III 715**.
- BGE 110 II 411. Art. 28 ZGB cannot fill gaps in copyright protection. Orchestra musicians could not prevent recordings of public opera performances, because the mere risk of poor or misused recordings did not affect their personal link with the performance **BGE 110 II 411**.

Civil enforcement

Standing and burden of proof

The para. 2 claim belongs to the natural-person author, who benefits from the presumption of authorship in Art. 8(1) CopA. It cannot be acquired by assignment (see above on the St. Gallen architects' company) **DZ.2009.3**. The Zurich Commercial Court likewise relied on the Art. 8 presumption to confirm a journalist's standing **HG210105**. Under Art. 62(3), an exclusive licensee may sue separately unless the licence excludes this **Art. 62 CopA**. That route concerns the transferable exploitation side, not the core protected by para. 2.

The author bears the burden of proving a distortion that violates personality **BGE 142 III 387**. A defendant who relies on technical necessity may, however, have to prove it. In the Graubünden case the defendant had to show that the alleged technical impossibility could be overcome only by the interventions affecting the core of the moral right. Expert evidence showed that less intrusive solutions existed, so the defence failed **ZFE 2005 3**.

Remedies

The available civil actions are:

- a declaratory action, for anyone with a legal interest (Art. 61 CopA) **Art. 61 CopA**;
- actions to prohibit an imminent infringement or remedy an existing one (Art. 62(1));
- claims under the Code of Obligations for damages, satisfaction and handing over of profits, which remain available (Art. 62(2)) **Art. 62 CopA**.

Cantonal decisions show how these remedies are applied to integrity violations:

Situation	Outcome
Distortion of a church by a link building	Declaration of infringement and publication of the judgment granted. Demolition and reconstruction refused, as there is no duty to execute the author's plans and rebuilding was unreasonable. Injunction against a future tower refused, because a remote possibility of infringement is not enough **ZFE 2005 3**
Cut newspaper article (para. 1 only)	Publication refused, as no confusion among readers was shown. Satisfaction refused, as there was no serious violation **ZK.2017.2**
Altered poster reprint	Declaration, confiscation and destruction of altered copies, and CHF 1,500 damages granted. Moral damages and a general injunction refused **10.1999.34**
Reworked online article	Deletion ordered within ten days under Art. 62(1)(b) **HG210105**

The pattern is consistent. A para. 1 violation supports declaratory, removal and pecuniary relief. Satisfaction and publication of the judgment depend on the seriousness of the violation and on a concrete interest in publication.

Time limits and delay

According to the Graubünden court, claims based on the author's personality rights for a declaration, removal and injunction do not become time-barred, and these powers cannot be forfeited. A defendant acting in bad faith could not rely on delay where the author had sued about a year after completion **ZFE 2005 3**.

Under the former Act, the Federal Supreme Court refused to treat long silence as consent or forfeiture, because the personality right cannot be waived. It nonetheless held that asserting the claim years after knowing of the revised editions was incompatible with good faith **BGE 69 II 53**. The Court has also held that a declaratory action concerning moral rights is subject to no time limit, although delay may be read as approval or as a lack of interest **4A_638/2009**.

Criminal liability

Two acts are punishable on complaint (Art. 67(1) CopA): wilfully and unlawfully modifying a work (lit. c), and using a work to create a derivative work (lit. d). Commission for commercial gain is prosecuted ex officio and carries a higher penalty (para. 2) **Art. 67 CopA**.

The three-month complaint period of Art. 31 CP runs separately for each act. Successive modification works on different parts of a building over more than a year do not form a legal unit of action. A complaint filed long after the first works began was therefore late **6B_1275/2019**.

Three further constraints on the offence appear in the case law:

- Authorised acts. Modifications authorised by provisional civil court orders were not "sans droit" (without right) **CREP pe19-009625-804/2019**.
- Transferred rights. Where the rights to a website had passed to the customer and then to the accused through a bankruptcy sale, continued use and alteration were lawful **BK 2018 295**.

- Proof of derivation. Under lit. d, the intentional and unlawful use of a work to create a derivative work is punishable regardless of any profit. A dismissal in a software case was annulled because an expert comparison of the code was required **SBK.2025.97**.

A use covered by para. 3 is not unlawful and leads to acquittal **GG210077-L**.

Practical decision points

- Separate the two levels. A contract can authorise changes under para. 1. It cannot authorise distortions under para. 2, and only the natural-person author can assert them **C1 19 210 DZ.2009.3**.
- Define alteration rights expressly. Where there is no specific clause, courts limit the rights acquired to what the purpose of the contract requires **10.1999.34**.
- In architecture disputes, argue on personality. Owners need not justify a change by changed needs. Architects must prove a significant negative change to a work with strong personal individuality, and functional or reversible interventions weigh against them **BGE 142 III 387**.
- In media reuse, rely on a statutory limitation. Check whether a statutory limitation actually covers the use, because fundamental rights add no further exception **4C.393/2004 HG210105**.
- For parody, make the purpose visible. The critical and humorous purpose must be apparent in the work itself, and the original must remain recognisable without being confusable with it **GG210077-L**.
- In criminal matters, mind the complaint deadline. It runs separately for each act of modification **6B_1275/2019**.