

# The quick copy

## When is it safe to copy a photo?

**Q: I've heard several versions on how old a photo has to be before it is not covered by copyright laws. Please share the details.**

**A:** The United States Constitution and the Federal Copyright Act provide copyright protection to "authors" for "original works," such as photographs. These protections include exclusive rights to:

1. Make copies of the work.
2. Prepare other works based on the original.
3. Distribute copies of the work to the public by sale, rental, lease or lending.
4. Publicly perform and display the work.

These rights are protected by laws that provide for damages and criminal penalties for violations. Both the customer and the photo lab are subject to the requirements of this law.

According to the regulations, the author is the person who created the image. For example, if the image was created by a professional photographer, then he or she owns the copyright to that image, even though the subject of the image may be you. If you created the image, then you own the copyright for that image. If the photographer is working for a studio or other person who is in the business of making photos, however, then the employer is considered the author of the image.

Now, let's cover the details of copyright duration as outlined in the *PMA Copyright Guidelines*.

In accordance with the 1998 copyright law amendments, protection now runs for the life of the author plus 70 years. In the case of works for hire created by employees or certain contracted workers, copyright lasts 95 years from the date of first publication, or 120 years from the date of creation, whichever

ends first. To figure the duration of new works is easy, as you can assume everything is protected and will be for the rest of your life and that of your children (and, perhaps, your grandchildren).

Figuring out the protected life of older works is more complex. Due to the overlap between old and new laws, during the last 20 years Congress kept extending the protection for works created before Jan. 1, 1978. The works published and still protected as of Jan. 1, 1978, now have a copyright protected life extending 95 years from the date of original copyright.

Old works not published or registered before 1978 were protected until at least the end of 2002. By registering those works before then, protection will continue until at least 2047. There is no safe haven for users unless the photo created in the United States was unprotected by being in the public domain before Jan. 1, 1978.

### Public domain

How do you know if something was available to the public? You don't, for sure. Some believe if it is found on the Internet, it is free for use and in the public domain. That is a false and dangerous assumption. For works created in 1949 or earlier, the normal copyright term would have expired by 1978. What is unknown is if the copyright was renewed, keeping the protection alive. To be sure all copyrights have expired, publication of the work would have to go back to 1921.

Another complicating factor is not all those old works kept their protection. Prior to March 9, 1989, intentionally publishing a copy of the photo without a proper copyright notice could have put the work into the public domain right away, becoming free for anyone to reproduce. Since then, a notice is no longer required to keep copyright pro-

tection alive.

Whether the photo you want to copy was published before March 9, 1989, may be uncertain. While such photos could be lawfully reproduced, making a copy without verifying the date of creation and publication and intentional distribution is risky. If you are wrong, you could be liable to the copyright owner.

### Permission

Only the copyright owner can give permission to copy. On Jan. 1, 1978, the law drastically changed concerning who owned the copyright for commissioned photos. The customer (absent any other agreement between the customer and the photographer) owns commissioned photos taken before that date. Requests made by the customer to copy those photos can be honored.

A complication exists, however, if the photographer had taken the photo on a freelance basis and then sold it to the customer. In those circumstances, the photographer owns the copyright. Since the 1978 change, the photographer is the default owner for all these photos. Of course, the owner is the studio or other employer if the photographer was an employee or signed a work for hire agreement.

These are U.S. copyright rules, and may or may not apply to photos taken in other countries or copied in other countries.

PMA has a brochure explaining in greater detail the copyright rules, with release forms, an example of a store copyright policy, information cards to help explain the copyright process to customers, and a summary of the other 1998 copyright rule changes.

Contact **PMA Business Resources** for a copy. PM

— By Steve Noble  
e-mail: [snoble@pmi.org](mailto:snoble@pmi.org)