Copyright and Permissions: Sometimes They're the Same

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COPYRIGHT & PERMISSIONS

...sometimes they’re the same

(Kopana Terry, UK Digital Programs, October 2008)
2 Important Acts in Copyright History

Copyright Act of 1976:

- the life of the author plus 50 years, or 75 years for a work of corporate authorship

1998 The Copyright Term Extension Act (aka Sonny Bono Act or Mickey Mouse Protection Act):

- life of the author plus 70 years and for works of corporate authorship to 120 years after creation or 95 years after publication, whichever comes first
works made in 1923 or later that were still copyrighted in 1998 will not enter the public domain until 2019 or later (depending on the date of the product) unless the owner of the copyright releases them into the public domain prior to that or if the copyright gets extended again.

works created before January 1, 1978 but not published or registered for copyright until recently are addressed in a special section (17 U.S.C. 303) and may remain protected until 2047.
## Copyright Chart

### Copyright Term and the Public Domain in the United States

**1 January 2008**

<table>
<thead>
<tr>
<th>Type of Work</th>
<th>Copyright Term</th>
<th>What was in the public domain in the U.S. as of 1 January 2008</th>
</tr>
</thead>
<tbody>
<tr>
<td>Unpublished works</td>
<td>Life of the author + 70 years</td>
<td>Works from authors who died before 1938</td>
</tr>
<tr>
<td>Unpublished anonymous and pseudonymous works, and works made for hire (corporate authorship)</td>
<td>120 years from date of creation</td>
<td>Works created before 1989</td>
</tr>
<tr>
<td>Unpublished works created before 1978 that were published after 1977 but before 2003</td>
<td>Life of the author + 70 years or 31 December 2047, whichever is greater</td>
<td>Nothing. The soonest the works can enter the public domain is 1 January 2049</td>
</tr>
<tr>
<td>Unpublished works created before 1978 that were published after 2002</td>
<td>Life of the author + 70 years</td>
<td>Works of authors who died before 1938</td>
</tr>
<tr>
<td>Unpublished works when the death date of the author is not known</td>
<td>120 years from date of creation</td>
<td>Works created before 1989</td>
</tr>
</tbody>
</table>

### Works Published in the U.S.

(For works published both inside and outside the U.S. by foreign authors, see the next section)

<table>
<thead>
<tr>
<th>Date of Publication</th>
<th>Conditions</th>
<th>Copyright Term</th>
</tr>
</thead>
<tbody>
<tr>
<td>Before 1923</td>
<td>None</td>
<td>In the public domain</td>
</tr>
<tr>
<td>1923 through 1977</td>
<td>Published without a copyright notice</td>
<td>In the public domain</td>
</tr>
<tr>
<td>1978 to 1 March 1989</td>
<td>Published without notice, and without subsequent registration within 5 years</td>
<td>In the public domain</td>
</tr>
<tr>
<td>1978 to 1 March 1989</td>
<td>Published without notice, but with subsequent registration within 5 years</td>
<td>70 years after the death of author, or if work of corporate authorship, 95 years from publication</td>
</tr>
<tr>
<td>1923 through 1963</td>
<td>Published with notice but copyright was not renewed</td>
<td>In the public domain</td>
</tr>
</tbody>
</table>

[www.copyright.cornell.edu/public_domain/](http://www.copyright.cornell.edu/public_domain/)
The visual arts category consists of pictorial, graphic, or sculptural works, including 2-dimensional and 3-dimensional works of fine, graphic, and applied art, photographs, prints and art reproductions, maps, globes, charts, technical drawings, diagrams, architectural works and models.
copyright (visual arts)

- Copyright protects an author’s specific expression in literary, artistic, or musical form.
- Copyright protects the particular way an author has expressed him/herself.
- Copyright protection does not extend to any idea, system, method, device, name, or title.
- Subject to certain limitations found in sections 107 through 118 of the Copyright Act.
in the case of photographs, it is sometimes difficult to determine who owns the copyright and there may be little or no information about the owner on individual copies.

Ownership of a “copy” of a photograph – the tangible embodiment of the “work” – is distinct from the “work” itself – the intangible intellectual property.

The owner of the “work” is generally the photographer or, in certain situations, the employer of the photographer.

Even if a person hires a photographer to take pictures of a wedding, for example, the photographer will own the copyright in the photographs unless the copyright in the photographs is transferred, in writing and signed by the copyright owner, to another person.

The subject of the photograph generally has nothing to do with the ownership of the copyright in the photograph.

If the photographer is no longer living, the rights in the photograph are determined by the photographer’s will or passed as personal property by the applicable laws of intestate succession.
Generally, the paper owns the photos

Very likely, the photographer retained the rights to these wedding pix

Olin Mills owns this one
can I be sued for using somebody else's work?

if you use a copyrighted work without authorization, the owner may be entitled to bring an infringement action against you.

there are circumstances under the fair use doctrine where a quote or a sample may be used without permission.
Probably OK (at least it’s not a tabloid shot)

Photographer of shot at right sued Apple for infringement (Apple’s shot below)
advertising, fashion, interior design and lifestyle photographers frequently include paintings, sculptures, craft items, architectural works, jewelry, clothing, toys or other artistic works in their photographs.

Often, such items are protected by copyright. Only the owner of a copyright has the exclusive right to reproduce the copyright work. Photographing a copyright work amounts to reproducing it.
How much of someone else's work can I use without getting permission?

Under the fair use doctrine of the U.S. copyright statute, it is permissible to use limited portions of a work for purposes such as commentary, criticism, news reporting, and scholarly reports.

There are no legal rules permitting the use of a specific number of words, a certain number of musical notes, or percentage of a work.

Whether a particular use qualifies as fair use depends on all the circumstances.
fair use

various purposes for which the reproduction of a particular work may be considered “fair,” such as criticism, comment, news reporting, teaching, scholarship, and research

- the effect of the use upon the potential market for or value of the copyrighted work
- the nature of the copyrighted work
- the amount and substantiality of the portion used in relation to the copyrighted work as a whole
- the purpose and character of the use, including whether such use is of commercial nature or is for nonprofit educational purposes
activities that only copyright owners have the exclusive right to do:

- making prints of a work, scanning it into digital form, photocopying it, copying digital works, etc.
- making a collage from several different photographs or images
- adding new artistic elements to an existing work (e.g., colorizing a black and white picture)
- photographing someone’s work and then displaying the photo to the public (e.g., exhibiting the photo in a gallery, supplying copies to the public in postcard form, putting it on a website, sending it to customers via e-mail, etc.)
how much do I have to change to claim copyright in someone else's work?

only the owner of copyright in a work has the right to prepare, or to authorize someone else to create, a new version of that work.

accordingly, you cannot claim copyright to another's work, no matter how much you change it, unless you have the owner's consent.
some of the most common situations in which you may be free to photograph copyright material by an exception from copyright protection
architectural works are protected by copyright to some degree, but in most countries you may photograph a building, if the building is located in a public place or is visible from a public place. You may also publish and distribute the photo without permission.
Copyrighted works in public places

usually limited to three-dimensional works, such as sculptures and craft - you may still need prior permission to take a photo of a painting or a mural in a public place.

if the work is displayed in public: to photograph a sculpture in a private house, a permission will usually be required.

if the work is displayed in public permanently: if you want to photograph a sculpture which is only temporarily sited in a public place, you would usually need permission.
to accompany news reports

you could take a photo of a sculpture which won a major art prize, if that photo is to be used in a news report on TV or in a media article discussing or announcing the award-winner.

however, you will usually have the obligation to identify the name of the creator, and maybe also the name or title of the work that you have captured in your photo.
as a background in a photo

in most countries, you will not need permission if you want to include a work in a photograph if its merely a part of the background or otherwise incidental to the principle object /subject represented in the photograph. However, it may be difficult to assess what is “incidental”

example: you publish a photograph in a newspaper to illustrate an article concerning some official gathering. The photograph incidentally contains a sculpture in which copyright subsists. Such use is likely to be allowed since the sculpture adds no meaning to the main subject matter. Conversely, if you would photograph that very same sculpture to print it on postcards and sell them, this would normally be a copyright infringement
purely private use

in most countries, you are allowed to take photos without authorization if you use them purely for private purposes.

For example, taking a photo of a painting to post on your home refrigerator will generally not constitute copyright infringement.
do I need to identify the author of the copyright works I capture in my photographs?

copyright law provides some additional legal rights to the authors - called “moral rights.” (“authorship right” or “paternity right”, which is the right to be named as the author of the work)

if your photos include paintings, buildings, sculptures or other copyright works, and you will be exposing them to the public (publishing, using on websites, exhibiting, etc.), then you must make sure that the author’s name appears on, or in relation to, the work, whenever feasible and considered reasonable

if you don’t want to give an attribution, it would be prudent to get the prior permission of the author or artist.
Table: Legal Considerations

<table>
<thead>
<tr>
<th>Issue</th>
<th>Detail</th>
</tr>
</thead>
<tbody>
<tr>
<td>Downloading works from peer-to-peer networks</td>
<td>Uploading or downloading works protected by copyright without the authority of the copyright owner is an infringement.</td>
</tr>
<tr>
<td></td>
<td>Anyone found to have infringed a copyrighted work may be liable for statutory damages up to $30000 for each work infringed.</td>
</tr>
<tr>
<td></td>
<td>Since any original work of authorship fixed in a tangible medium is protected by federal copyright law.</td>
</tr>
<tr>
<td></td>
<td>Since the files distributed over peer-to-peer networks are primarily copyrighted works, there is a risk of liability for downloading material from these networks. To avoid these risks, there are currently many &quot;authorized&quot; services on the Internet that allow consumers to purchase copyrighted works online.</td>
</tr>
</tbody>
</table>
permissions

there is no general legal requirement to obtain someone’s authorization to take his or her photograph

however, there are situations where photography can infringe on important social interests such as national security, protection of children, right of privacy, etc.

most of these situations are strictly controlled by national laws and regulations

there are also some things a photographer should not photograph for ethical reasons - exploiting the persons concerned or misrepresenting the truth

often, you may be free to take a photograph of a person, but the way the image is used may give the person shown in the photograph a right to take legal action
when is permission particularly recommended?

- intruding on one’s privacy
- publicizing private facts
- using someone’s image for commercial benefit
- suggesting that someone is authorizing or endorsing a product or service
- putting someone in a false light or defaming them
intruding on one’s privacy

Photographers may be liable for violating the privacy rights of others when they intentionally intrude in an offensive way upon someone’s private domain.

You can usually photograph someone in a public place.

But if you surreptitiously or without permission view and photograph people inside their homes, business or other private areas, then you are likely to violate their privacy rights.

An offensive intrusion can be anything from entering an individual’s house under false pretense to setting up hidden cameras in order to spy.
publicizing private facts

Photographs revealing sexual affairs, private debts, criminal records, certain diseases, psychological problems, etc. are likely to violate privacy rights.

Example: Suppose a beer brewery is selling a calendar that depicts an unknown person driving a car with a refreshing pint in his hand. This could raise issues of privacy because it discloses private or sensitive matters about the person.

However, in most countries, the right of privacy does not protect against disclosure of matters of legitimate public concern such as newsworthy events. This means that politicians, celebrities and other newsworthy persons may lose their right to privacy to the extent that their private facts are relevant to legitimate news.
Using Someone's Image for Commercial Benefit

Example: A photographer who displays someone’s portrait, without having first obtained the permission, in his shop window or on his website to advertise portrait services, may in some countries be liable for violating the privacy rights of the portrayed person.

The right of publicity is the direct opposite of the right of privacy. It recognizes that a person’s image has economic value that is presumed to be the result of the person’s own effort and it gives to each person the right to exploit their own image.

Although the right of publicity is frequently associated with celebrities, every person, regardless of how famous, has a right to prevent unauthorized use of their name or image for commercial purposes.

Under this right, you could be liable if you use a photograph of someone without their consent to gain some commercial benefit.

However, as a matter of practice, right of publicity suits are typically brought by celebrities, who are in a better position than ordinary individuals to demonstrate that their identity has commercial value.
Farms yield bounty of beauty

The World Equestrian Games 2010 Foundation is unveiling eight murals of photos shot by photographer Doug Prather. The murals are along a concourse wall at Blue Grass Airport.

Passengers arriving at Lexington’s Blue Grass Airport are seeing a new wall of murals promoting the Alltech FEI World Equestrian Games in 2010. The photos were taken by Doug Prather, the games’ official photographer, at Lexington-area horse farms and the 2006 World Equestrian Games in Aachen, Germany. Some photos will be changed every three months. Airport Executive Director Michael Gobb said more than 1 million passengers arrive each year at the airport. Similar displays are planned for other airports around the state, and some of the photos may be used on posters, said Jack Kelly, CEO of the World Games 2010 Foundation.

Jim Jordan
suggesting that someone is authorizing or endorsing a product or service

The presence of a celebrity seems to be an effective tool of quickly attracting consumer attention to a product or service and creating high-perceived value and credibility.

Example: if you put the face of Tiger Woods on the packaging of golf balls, you are suggesting that he endorses the golf balls. Thus, you are capitalizing on his reputation.
After a long day on the set there's just nothing I love more than Scientology and a cold Budweiser Beer.

Tom Cruise - CrazeD Actor
for instance, when a picture is airbrushed or altered in a way that exposes the subject to hatred or ridicule

when a photo is used to illustrate text in a way that it creates a false impression. This often happens when significant information about someone is either omitted from or added to a story such that the person is portrayed in a false light

never use photographs in a way that exposes someone to hatred, ridicule or contempt, or reflects unfavorably upon one’s personal morality or integrity – could cause damages, such as humiliation, the loss of a job or the ability to earn a living
acknowledging the source of the copyrighted material does not substitute for obtaining permission
forms and more

U.S. Copyright Office forms www.copyright.gov/forms/

World Intellectual Property Organization

Copyright Term and the Public Domain in the United States 1 January 2008 www.copyright.cornell.edu/public_domain/

UK's Image Consent Form www.uky.edu/PR/Photo-image_consent_form.pdf

Universal Photographic Digital Imaging Guidelines (UPDIG)
www.updig.org/guidelines/resolution.php