

Photographs: copyright guidelines

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Photographs are subject to copyright protection

Photographs are protected by copyright as 'artistic works', but with special rules in comparison to other artistic works such as paintings, drawings or diagrams.

If a photograph is digitised, it is then classified as a literary work, and protected by copyright under the same terms as other literary works, such as books or journals.

However, if the digitised image is printed out, it then becomes an artistic work again.

Ownership of copyright

Copyright is automatic on creation of an original work.

Usually the "author" or creator of the work is the copyright owner.

An exception is when a person is employed to create the materials, in which case their employer would be the copyright owner.

Where freelancers are paid to create a work, they are not an "employee" of the person or organisation commissioning the work; therefore they usually retain ownership of the copyright.

The person who commissions the work must get a letter from the photographer assigning all rights to them before they can make any further use of the work themselves.

A freelance photographer may licence the use of the work rather than assign away his or her copyright.

Copyright can be sold, assigned or bequeathed and may not rest with the original creator.

Since 1 August 1989, the first owner of copyright in a photograph is the photographer.

Prior to this date, the law was more complex and used different criteria to determine the identity of the photograph's "author" or creator.

The author could be the photographer, or the commissioner of the photograph, or the person who owned the film on which the photograph was taken. In general:

- Photographs taken before 1 July 1912 or after 1 August 1989
the "author" is the person who created the photograph, usually the photographer
- Photographs taken between 1 July 1912 and 31st July 1989
the "author" is the person who owned the material on which the photograph was taken (e.g. the negative)

Only the copyright owner is legally allowed to make copies, issue copies of the work to the public, perform, show or play the work in public or communicate the work to the public i.e. by broadcast or electronic transmission.

Only once a work is positively identified as being out of copyright, may it be freely used.

Duration of copyright

It is important to know the status and origins of a photograph or slide before deciding whether it is out of copyright.

The duration of copyright in a photograph is dictated by when it was taken, by whom and whether it was published or not.

Any photographs made in the UK or by a UK citizen since August 1989 will be in copyright for the life of the photographer plus 70 years.

Prior to this date, the situation is more complicated, particularly as some works will be subject to revived copyright.

Copyright duration in photographs where the "author" is known

Copyright expires 70 years after the end of the year of the author's death, whether the photograph was published or not, except in the case of photographs taken between 1 June 1957 & 31 July 1989.

The copyright in photographs taken between 1 June 1957 & 31 July 1989 expires on 31 December 2039, if the photograph was not published before 1 August 1989 and the author died before 1 January 1969.

If the photograph was published before 1 August 1989, and the author died more than 20 years before publication, the copyright expires 50 years after the end of the year in which the work was published.

Pre-1912 photographs of known authorship may be subject to revived copyright, if for example the author died after 31 December 1924 and was a member of an EEA country.

Copyright duration in photographs where the “author” is unknown

Copyright expires 70 years after the end of the year in which the photograph was taken or was made available to the public. If the identity of the author becomes known before the copyright expires, the rules in the previous section then apply.

Copyright in photographs created between 1 June 1957 and 1 January 1969 expires on 31 December 2039, if the photograph was not published before 1 August 1989 and if it is not made available to the public before 1 January 2040.

However, if such photographs have been published before 1 August 1989, the copyright expires 70 years after the end of the year in which the work was published.

Copyright duration in photographs subject to Crown Copyright

- Photographs taken before 1 June 1957 whether published or unpublished - copyright expires 50 years from the end of the year in which the photograph was taken
- Photographs taken after 1 June 1957 and published before 1 August 1989 - copyright expires 50 years from the end of the year in which the photograph was first published
- Photographs taken between 1 June 1957 and 1 August 1989 but not published before 1 August 1989 – copyright expires 31 December 2039
- Photographs taken after 1 August 1989 and not published - copyright expires 125 years from the end of the year in which the photograph was created
- Photographs taken after 1 August 1989 and published more than 75 years later - copyright expires 125 years from the end of the year in which the photograph was first published
- Photographs taken after 1 August 1989 and commercially published less than 75 years after the year it was created - copyright expires 50 years from the end of the year in which the photograph was first published
- Photographs taken after 1 August 1989 and non-commercially published less than 75 years after the year it was created - copyright expires 125 years from the end of the year in which the photograph was first created

For further details on copyright duration in photographs, a useful text is:

Tim Padfield (2010) *Copyright for Archivists and Records Managers*, 4th Edition

Copyright in the content of photographs

If a photograph is of an artistic or literary work, there are two levels of copyright in the work:

- copyright in the subject of the photograph,
- and copyright in the actual photograph itself.

If the subject of the photograph was in copyright at the time the photograph was taken, then the photograph is an infringement of copyright if permission was not first granted by the subject's copyright owner.

A photographer may own the copyright in the actual photograph, but is unable to do anything with it without infringing the copyright of its content.

Copyright is not infringed however, if the photograph is of a work which is on permanent public display, such as a building, a statue in a park, or a work on permanent display in a building open to the public, such as a museum.

Data Protection

If the subject of a photograph is a living person, it is important to be aware of the Data Protection Act 1998 which aims to ensure that personal data is dealt with in a responsible way.

Personal data could include photographs and digital images of photographs.

If a photograph enables a living person to be identified and may possibly be of a sensitive nature such as identifying someone's religion, disability, or racial or ethnic origin, it may be necessary to consider the principles of the Data Protection Act.

These principles include:

- That where necessary, the person who is the subject of the personal data is made aware that their data has been processed. It may be that their explicit consent is required.
- That the data is processed in lines with the rights of the person who is the subject of the personal data (such as their right to access that data).
- That systems must be in place to prevent unlawful use or accidental loss or damage of the data.

Photographs taken purely for personal use are exempt from the Data Protection Act.

Further information on the Data Protection Act can be found at the Information Commissioner's website:

<http://www.ico.gov.uk>

Copyright exemptions

There are certain exemptions to the exclusive rights of the copyright owner where copying is allowed for specific purposes. These include for the purposes of:

- Non-commercial research or private study
- Criticism or review (not illustration)
- Examination
- Educational/instructional purposes as long as a reprographic process is not used

Copying photographs or slides under these exemptions must be accompanied by sufficient acknowledgement where possible. The copies made cannot then be used for any other purpose without permission.

NB Photographs can not be copied to report current events or for interlibrary loan.

Moral rights

As well as copyright, a photograph or slide may also have moral rights attached to it. Moral rights consist of:

- The right of paternity
the right of the “author” to be identified as such. This right has to be asserted, for example written on the back of a photograph or on the mounts of transparencies or slides. This right does not apply if the work was created in the course of employment.
- The right of integrity
the right of the author to prevent or object to derogatory treatment of the work, such as distorting or altering the original, or the manipulation digital works.
- The right to prevent false attribution
the right of an author not to have a work falsely attributed as his/hers, if it is someone else’s.
- The right of disclosure
the right of the author to withhold photographs from publication, for example if a person commissions a work but then decides not to use it.

Moral rights can not be assigned, like copyright and remain with the author. However the author may wish to waive their moral rights.

Archive collections

Libraries and archives may hold collections of photographs and slides for which they do not own the copyright.

If the items were donated, the terms and conditions of the donation should be recorded in writing. If the donator holds the copyright, they may wish to assign all their rights to the archive or they may wish to licence the use of their material.

Libraries cannot copy artistic works without permission for the purposes of preservation or replacement as they can with other types of work.

In order to make any copies of the archive collection, whether digital or in print, an archive must be sure either

- that they hold the copyright, or
- that the work is out of copyright, or
- that they have the rights holder's permission (copyright & moral rights)

Infringing copyright

An infringement of copyright is when a person carries out a restricted act such as copying or digitising without permission from the rights owner.

As well as directly infringing copyright, it is an offence to authorise infringement. For example, if an organisation allows an infringement to take place or permits a client or employee to copy without permission.

Infringement of copyright is both a civil and criminal offence. For an educational institution, most infringements will be a civil offence and the person at the top of the institution may be held liable.

All efforts to clear copyright must be documented as proof of your intention to gain the required permission.

If a work is anonymous or the author cannot be traced, and it is decided to go ahead and copy the work without permission, this documented proof may be beneficial in preventing prosecution or reducing any penalties if the rights holder reappears and objects to the use of their work.

A rights holder may wish you to remove or desist from using the work, or may demand a fee.

Copying without permission is risky and should not be undertaken without legal advice.

Further help

- **JISC Digital Media** (was TASI)

<http://www.jiscdigitalmedia.ac.uk/>

This site contains very useful information on the digitisation of images, copyright and the Data Protection Act.

- **Library Online – Guides and Tutorials**

This section contains guidelines such as:

‘Copyright guidelines for the use of images and artistic works’

- **Copyright Clearance Service** (Libraries and Learning Innovation):

Contact Rachel Thornton 0113 81 27472

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