



## When Copyright and Cultural Collections Converge Trailing Questions

*Same disclaimer as with the live webinar presentation, I am not a lawyer, nor do I play one on TV, and none of the answers below can be taken as specific legal advice. Please consult your own legal counsel for specific inquiries.*

**Kate Swisher [Chicago]:** *Oh, and one more question regarding the definition of a copyrightable work: where do designed objects like political campaign posters, event posters, commemorative coins, or housewares fall? Is copyright an issue for artifacts like this? particularly if the designer is unknown*

Design objects may still have copyright apply. What is tricky is who may hold those rights singly and/or jointly. Rights may be held by the designer/artist, the manufacturer/design house, or it could be held by both/all parties together. If a designer is unknown, but a design house or manufacturer is known, it may be a good start to research a rights holder with them.

**Brad Bredehft:** *Which copyright law applies to a work created in another country but the work is part of a collection in an Institution in the US?*

The copyright law applied will be in the context of the use and if a lawsuit for infringement is brought. For example, if a copyright lawsuit is brought against a party in the US by a party in another country, their chances of getting non-US copyright law to apply to a US individual or institution may be difficult. Typically, within the US, US copyright law will apply when assessing rights status of works in the collections of US cultural institutions.

**Christine Duarte [Gig Harbor]:** *Do you have a suggestion for a publication/paper about copyright when using something from your collection for profit? AKA reproducing for the gift shop*

Look at **Rights and Reproductions: The Handbook for Cultural Institutions**, Second Edition. There is an entire chapter about various uses of collection materials by an institution, including commercial retail products.

**Jennifer Moss [Walhalla, SC]:** *We have lots of scanned photographs that the previous curator neglected to get documentation. What rights do we have to use these in exhibits or on social media?*

Based on this information, likely very little rights. Scans of photographs, which I'm assuming the original photographs have remained with their owners, would still have the associated intellectual property retained by the owners. Documentation would be needed to show a transfer of rights (highly unlikely) or the granting of a nonexclusive licensing agreement to the institution granting permissions to utilize the scans for a variety of uses, including exhibitions and social media as you noted.

**Teresa Militello [St. Louis]:** *Does copyright apply for post-1920s anonymous works for hire if the company that commissioned the work and the company commissioned is out of business?*

Yes. Unlike physical property right, intellectual property rights cannot be completely lost. Even if the company that commissioned a work goes out of business, it is highly likely that their assets, including intellectual property, transferred to another entity. Unfortunately, the ability to track those transfers may be difficult to impossible. Thus, this is a big area of how we (the collective we) can end up with orphan works – remember with these that copyright is still present even if the rights holder cannot be found and/or the likely rights holder does not respond.

**Jacob Simpson [Jonesborough, TN]:** *What should our institution be aware of when dealing with photographic copies of older photographs (ie. a picture taken of a picture) when the copy is the only known version of the image? We have many examples of this in our collection.*

This gets to the idea of the underlying copyright in a work. These copy prints likely do not have a unique copyright, but the image represented in them likely still has its original copyright. That copyright would not change from the original print to a later copy print. So, this would be trying to track down the original photographer or studio to try to determine the copyright holder. These types of prints may also be a very likely candidate for being orphan works.

**Brenda Herren-Kenaga [St Helens Oregon]:** *What about a published book of private letters exchanged. The author copyrighted their work. Author and recipients are deceased.*

These letters would still have copyright in their original form of letters (the author and recipients each holding their own rights). The author copyrighting a published book of these letters would hold copyright then to the published order and contextualization of the letters. These having at least been published once means you likely wouldn't be dealing with rights around unpublished materials, but you would still need to consider copyright of all the parties as well as if there were any privacy rights to consider with future use(s) of the materials.

**Taylor McKeown [Brookings, SD]:** *If an artist dies, do you have to get copyright approval from all of the heirs, most of the heirs, or just one of the heirs?*

In true legal fashion, the answer to this is: it depends. Often there is a single descendant that is responsible for management of an estate, including intellectual property. Sometimes it is jointly shared by a number of individuals. Typically, signature of one can be deemed approval by all, but of course not always. It really is a case-by-case basis with an artist's estate.

**Laurel Watson [Hayden, CO]:** *We were donated numerous photos from the 1960s by the photographers family HOWEVER the photos were taken when he was a local newspaper reporter. The newspaper is no longer in operation was sold several times so how do we determine who has copyright?*

Copyright may have been retained by the photographer, although it is possible that his copyright transferred to the newspaper that he was working for. You could look at copyright registrations to see if that will help you track down any of the rights. Otherwise it is trying to track the sale and rights transfer(s) of the newspaper company. It sounds like this may be the case of orphaned works.

**Karen Schlenker [Milaca, Minn]:** *How explicit is transfer of rights? our local prolific hobbyist painter (we have a couple dozen of his works) probably didn't explicitly include rights to his work in his estate. Are those rights inherited by his estate?*

Transfer of intellectual property rights to a party outside of familial descendants has to be explicit. Without an explicit transfer stated to a specific party outside of familial inheritance, rights will follow either an estate plan (will, trust, foundation or other transfer mechanism) or if there is now will devise, the rights will follow intestacy laws, which by default usually go first to a spouse or partner and then to descendants (children or grandchildren). Intestacy laws vary by state. Default transfer of rights to descendants happens even if there is no will or explicit transfer. The explicit transfer has to be stated when turning over to another entity like an institution, trust, or foundation.

**Dave Broman [Kokomo, IN]:** *We have a series of photos of a historic event in the 1960's. The photographer is unknown. They were found in a dumpster and sold on eBay and then given to us. Do those qualify as orphans? Do we have any rights to use them?*

Yes, those are pretty much the textbook definition of orphan works. Your institution likely does not hold specific copyright to those works, as that copyright would still be with the photographer and/or their descendants now. Use of these orphan works will be dependent on the risk analysis and liability that the institution is willing to assume. I would suggest a fair use analysis in this instance to determine if the institution thinks that a proposed use of these materials would be covered by fair use.

**Hillary Sullivan [Hopkinsville]:** *What are your suggestions for assessing copyright when the date of creation is unknown?*

I would look for clues that may be able to date the work to a broader time period. For instance, the materials or methods used in the creation of the work, or even the life dates, if known, of the creator. Sometimes there will be clues like this to help point you to at least a certain century or decade to then have a broad guess as to whether the work has moved to the public domain or if it is possibly still under copyright.

**Cathi Taylor [Indianapolis, IN]:** *We have photos put in our magazines that come to us from our members. The organization is looking to include a miniature copy of some photos in a shadow box to celebrate our centennial. Do we need to obtain permission from the member who submitted the photo? Yes, I would suggest seeking their permission and approval for this; likely also a good member/donor support tool as well as they would feel included in something occurring at the institution. Also, the shadow box is to include miniature copies of photos of our national presidents. Each president selects their own photographer. Do we need to obtain permission from each photographer? Maybe. This gets into the area of works that may or may not be protected by copyright. Depending on how the photographer functioned in taking images of the president, they may or may not be considered federal government works. That would take some research to determine if the photographer retained copyright or not. You may also have to consider publicity rights of the presidents in these images too. Also, is there an issue in having brochures, etc. given to our members of the shadow box containing these miniatures? This would likely require a separate permission vs. reproductions created for display in an exhibition. Depending on the intent of the brochure, it could require different permissions as more of marketing tool vs. and educational tool to accompany the exhibition itself.*

**CELESTE WILEY [Charleston]:** *As copyright transfers to the heirs of the creator - does the copyright expire 70 years after the death of the artist if the heirs do not formally renew the copyright?*

In the US, registration and re-registration are no longer required for a work to be copyrighted. Copyright lasts for the life of the creator plus 70 years. There may be cases where works the artist produced were registered and may or may not have had re-registration required to maintain the copyright. In those instances there is the case that specific individual works may have passed into the public domain while the overall body of works by the artist remains under copyright. This would take quite a bit of research on an item-level basis to determine explicit copyright status.

**Kim Sissons [Champaign, IL]:** *I would like to get a answer to the second part of Kate Swisher's question that had to do with multiples: "regarding the definition of a copyrightable work: where do designed objects like political campaign posters, event posters, commemorative coins, or housewares fall? Is copyright an issue for artifacts like this? "*

See answer to the first question on this list.

**Leslie Mio [Bloomfield Hills, MI]:** *What about a piece of furniture created in the 1930s. This work is in a Museum's collection. Can another person create a copy of this work if they got permission from the family of the original maker?*

I would think that if an individual was able to get permission from the estate of an original maker and/or original manufacturer that they would be able to create modern-day versions of the furniture. I would guess that if this permission was granted it would come with the stipulation that it acknowledge the original maker and that it was created "in the style of" or "based on designs by" or something to that nature.