



Legal Restrictions and Copyright Information

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GENERAL INFORMATION AND QUESTIONS TO ASK YOURSELF

Putting images of historical materials on MMN is a form of publication, or public distribution, and therefore a number of interesting legal questions arise.

The goal of MMN is to find a way for all Maine collecting organizations to share the state's historical heritage with the people of Maine. Every organization should exercise due diligence with respect to copyright and protection issues.

DO YOU HAVE THE RIGHT TO USE AN IMAGE ON MAINE MEMORY NETWORK?

The first question that arises is whether your organization has the legal right to reproduce, distribute (hence publish on the Web), or sell the images of materials in your collections. The fact that you own these objects, photos, documents, etc., does not mean you have the right to use images of these in any way you choose. If you use an image that you do not have the rights to, the rightful owner could bring an infringement action against your organization and MMN. Also, items may be protected whether they have been published or not.

In general, to determine whether an image is protected you need to know:

1. When it was created.
2. Who owns it (the object and the copyright).
3. Whether it was ever published, and if so, when.

The following is a simplified account of copyright and protection issues; you're encouraged to view the tables in Appendix D and to learn more about these matters by consulting the sites and sources also listed there.

You may digitize and distribute public domain items.

If a copyrighted work (for example a photograph, a film, a musical selection) enters the Public Domain it means that it is a property that no longer belongs to anyone and that is freely available to the public at

large to use, without any need to obtain permission. You may post items on MMN that are in the public domain. MMN does not give users access to the high resolution images, however, unless they contact the MHS image services department.

Much of the material owned by historical organizations falls into the public domain category, which is to say that copyright protections no longer apply. This category includes works:

1. Published before 1923,
2. Unpublished works whose authors died before 1933; and
3. Unpublished anonymous works or works made for hire that were produced before 1888.

You may digitize and distribute items to which you own the copyright.

Some organizations do own the copyright to things in their collections. The simple fact that an object was given to you, or bought by you, does not mean that you own the copyright. Neither does the existence of a deed of gift, unless that deed specifies the transfer of copyright to your organization and unless the donor owns that right and can therefore give it to you.

Be especially careful about unpublished works created before 1978 that may have been subsequently published between 1978 and the present, and works published between 1923 and the present. Their copyright might have been renewed.

Get permission from the rightful owner of the copyright.

This is perhaps the trickiest condition of all. Many works fall into categories that are still subject to copyright protection, whether they have been published or not. Photographs, personal letters, and diaries also present special cases (see Appendix D). Quite often the problem comes from an inability to identify the rightful copyright owner of a work that may still be under protection, either because they are dead or they or their heirs are unreachable, or the details of publication are unknown. There are various services and sites that can help, but the basic concept is that a documented search effort should be made before an organization decides to use an image that may be under protection.

Start with the charts in Appendix D. The U.S. copyright office circular #22 "How to Investigate the Copyright status of a Work" is also a good reference tool on how to search the Copyright Office catalogs and other records. <http://www.copyright.gov/circs/>. After you have conducted your own

research and still cannot determine the ownership of the material, you may wish to request that the U.S. Copyright Office conduct a search of its records for a fee.

Key points to remember

- Items are protected whether they have been published or not. This protection lasts for the life of the author plus 70 years.
- Works published prior to 1923 can be presumed to be in the public domain.
- Works published after 1978 may be protected if the copyright was renewed.
- For works published between 1923 and 1978, some research is necessary to determine whether the work was registered, by whom, and whether or not it was renewed.
- For works produced by state and local government employees, check with attorney general, county attorney, or city attorney's office.

Risks

As stated earlier, the goal of MMN is to find a way for all Maine collecting organizations to share the state's historical heritage with the people of Maine. We think it is worth taking some risks but we need to inform you of potential risks.

There are three levels of infringement: innocent, standard, and willful. Proof of an effort to determine copyright might cause a judge or jury to lean closer to innocent infringement. Also, the true copyright owner must prove ownership.

If a copyright dispute arises, the document under contention will be removed from the website immediately and will only be reinstated after clear copyright ownership is established.

The MMN staff will work with you and try to help you solve any dispute. Please refer to the Contributor Rights and Responsibilities Agreement for details of your rights and MHS's responsibilities. For more information, refer to your copy of the Contributing Partner Agreement.

SPECIAL CASES

Deeds of Gift

A deed of gift is the legal agreement between the archives and the donor documenting the terms of the donation. If a deed of gift was acquired, make sure that the donor gave and assigned all rights of copyright to the library. If not, you will need to receive permission from the donor or donor's family to distribute.

If a deed of gift was not acquired, you must contact the donor or donor's family to receive permission.

If the donor or donor's family does not hold the copyright, the University of Texas has generated a list of collective rights organizations that can be contacted for assistance in locating copyright holders. The list includes contact information for various formats of materials.

<http://www.utsystem.edu/OGC/IntellectualProperty/permisn.htm>

The Library of Congress also provides links to Copyright Internet Resources at:

<http://www.copyright.gov/resces.html>.

If a well documented search has been performed and the copyright owner still unidentifiable the organization may wish to take the risk.

Photographs

You need permission from the photographer and the subject(s) in the photograph to digitize and distribute the photograph. Again, see if the deed of gift assigned all rights to you. If you do not have such permission, you will need to make an effort to contact both parties or groups to obtain permission. Otherwise the copyright may be held by the heirs of the photographer, or someone else.

It may be difficult to trace the subjects of group photographs; if the subjects are unidentifiable it will probably be okay to distribute the image. You must be able to provide detailed documentation of your effort to contact the holders of the copyright. This documentation is for your protection if you decide to digitize an item after an unsuccessful attempt to contact the copyright holder(s).

Personal Letters

You must have permission from the author of the letter and the addressee to distribute the document. Check the deed of gift. If you do not have such permission, you will need to make an effort to contact both parties to obtain permission.

If there is any personal or sensitive information in the letter, it is best to contact legal council with questions concerning such content.

You must be able to provide detailed documentation of your effort to contact the holders of the copyright. This documentation is for your protection if you decide to digitize an item after an unsuccessful attempt to contact the copyright holder(s).

Diaries

You must have permission from the author and the owner of the diary to distribute the work. If you do not have such permission, you will need to make an effort to contact both parties to obtain permission.

If there is any personal or sensitive information that may be harmful to distribute in the diary, it is best to contact legal council with questions concerning such content.

COPYRIGHT CHARTS**CHART I: When Works Pass Into the Public Domain**

Date of Work	Protected From	Term
Created 1-1-78 or after	When work is fixed in a tangible medium of expression	Life + 70 years ¹ (or if work of corporate authorship, the shorter of 95 years from publication, or 120 years from creation ²)
Published before 1923	In public domain	None
Published from 1923 - 63	When published with notice ³	28 years + could be renewed for 47 years, now extended by 20 years for a total renewal of 67 years. If not so renewed, now in public domain
Published from 1964 - 77	When published with notice	28 years for first term; now automatic extension of 67 years for second term
Created before 1-1-78 but not published	1-1-78, the effective date of the 1976 Act which eliminated common law copyright	Life + 70 years or 12-31-2002, whichever is greater
Created before 1-1-78 but published between then and 12-31-2002	1-1-78, the effective date of the 1976 Act which eliminated common law copyright	Life + 70 years or 12-31-2047 whichever is greater

1. From <http://www.unc.edu/~uncInlg/public-d.htm>
2. Term of joint works is measured by life of the longest-lived author.
3. Works for hire, anonymous and pseudonymous works also have this term. 17 U.S.C. § 302(c).

**CHART 2: When Works Pass Into the Public Domain in the United States:
Copyright Term for Archivist¹**

Published in Peter B. Hirtle, "Recent Changes To The Copyright Law: Copyright Term Extension,"
Archival Outlook, January/February 1999.

Unpublished Works		
Type of Work	Copyright Term	What will become public domain on 1 January 2003
Unpublished works	Life of the author + 70 years	Works from authors who died before 1933.
Unpublished anonymous and pseudonymous works, and works made for hire (corporate authorship)	120 years from date of creation	Works created before 1883.
Unpublished works created before 1978 that are published before 1 January 2003	Life of the author + 70 years or 31 December 2047, whichever is greater	Nothing. The soonest the publications can enter the public domain is 1 January 2048.
Unpublished works created before 1978 that are published after 31 December 2002	Life of the author + 70 years	Works of authors who died before 1933.
Unpublished works when the death date of the author is not known ²	120 years from date of creation ³	Works created before 1883. ³
Published Works		
Time of Publication in the U.S.	Time of Publication in the U.S.	Public Domain Status
Before 1923	None	In public domain
Between 1923 and 1978	Published without a copyright notice	In public domain
Between 1978 and 1 March 1989	Published without notice, and without subsequent registration	In public domain
Between 1978 and 1 March 1989	Published without notice, but with subsequent registration	70 years after death of author, or if work of corporate authorship, the shorter of 95 years from publication, or 120 years from creation
Between 1923 and 1963	Published with notice but copyright was not renewed ⁴	In public domain
Between 1923 and 1963	Published with notice and the copyright was renewed ⁵	95 years after publication date

Between 1964 and 1978	Published with notice	95 years after publication date
After 1 March 1989	None	70 years after death of author, or if work of corporate authorship, the shorter of 95 years from publication, or 120 years from creation

2. These two charts are from the Cornell Institute for Digital Collections (<http://cidc.library.cornell.edu/copyright/>) which is based in part on Laura N. Gasaway's chart, "WHEN WORKS PASS INTO THE PUBLIC DOMAIN," at (<http://www.unc.edu/~unclng/public-d.htm>), and similar charts found in Marie C. Malaro, *A Legal Primer On Managing Museum Collections* (Washington, D.C.: Smithsonian Institution Press, 1998): 155-156.
3. These works may still be copyrighted, but certification from the Copyright Office is a complete defense to any action for infringement.
4. Presumption as to the author's death requires a certified report from the Copyright Office that it's records disclose nothing to indicate that the author of the work is living or died less than seventy years before.
5. A 1961 Copyright Office study found that fewer than 15% of all registered copyrights were renewed. For textual material (including books), the figure was even lower: 7%.
6. A good guide to investigating the copyright and renewal status of published work is Samuel Demas and Jennie L. Brogdon, "Determining Copyright Status for Preservation and Access: Defining Reasonable Effort," *Library Resources and Technical Services* 41:4 (October, 1997): 323-334.

INTERNET RESOURCES

- Determining the Copyright Status of a Work
<http://palimpsest.stanford.edu/byauth/oakley/scheme-e.html>
- United States Copyright Office
<http://www.copyright.gov>
- Copyright Infringement and Remedies
<http://www4.law.cornell.edu/uscode/17/ch5.html>
- Copyright Slider
<http://librarycopyright.net/digitalslider/>

MORE INFORMATION

Visit the [Share YOUR Local History](#) section of the Maine Memory Network website,
www.MaineMemory.net.