

A PRACTICAL COPYRIGHT QUESTION

One of our member organizations has a photographic print by Asahel Curtis, which it would like to enlarge and display. I have been asked would the organization be violating anybody's copyright. For a museum to make one copy of a copyrighted work for display purposes (which also has the effect of preserving the original) would be a "fair use" under the current copyright law.¹ However, if the museum made multiple copies for distribution, either by sale or as promotional gifts it would indeed violate the author's copyright.

Asahel Curtis had a photographic studio in Seattle from around the turn of the last century until his death in 1941. He employed developers and colorists. It seems likely that he was careful about registering copyrights on his works.

Under the Copyright Act of 1976, as amended in 1998,² a copyright exists from the moment a work is created and is in effect for the life of the author plus seventy years. Asahel Curtis lived from 1874 to 1941.

If the photograph has not heretofore been published, the copyright will exist until the year 2011 (1941 plus 70 years).

Note: If the photograph had been previously copyrighted under the Copyright Act of 1909, such copyright would have a term of 28 years and could be renewed for an additional 28 years. If the copyright were in effect in 1978, its total term would be 95 years measured from the date of the original copyright registration. If the photograph had been copyrighted in 1922 and had been renewed after 28 years (i.e. in 1950), it would have been in effect in 1978 (the effective date of the current law) and its term would have been automatically extended to the year 2017. Note: the 28 year renewal was not automatic; if the copyright were not renewed, the work would have come into the public domain. I would suggest that Asahel Curtis would in all probability not let the copyright expire.

If the work had been copyrighted prior to 1922, the copyright has expired and the photograph is in the public domain.

Under the Copyright Act of 1909, if a work was published without a copyright being registered, it fell into the public domain.

The Washington State Historical Society in Tacoma holds about sixty thousand Asahel Curtis photographs "in trust." After learning this on the Internet, I called the State Historical Society and asked if the works of Asahel Curtis in their collection were copyrighted. I was advised that they do *not* consider the works covered by copyright. If a print from their collection is used they ask that the credit line indicate it came from the State Historical Society collection. I was further advised that the University of Washington Library has a substantial collection of Asahel Curtis works. They likewise do not claim any copyright on any of such works in their collection. These organizations charge for copies of works in their collection but not for a license to use any copyright.

So much for a careful profound legal analysis of the issue. *If you own a copy of a picture (print or negative) taken by Asahel Curtis and want to make a copy, go ahead, for all practical purposes it is the public domain.*

As a practical matter, if a museum wishes to publish a photograph in its collection, *and knows the name of the photographer*, reasonable diligence should be taken to ascertain whether someone claims a copyright in the work. Unless of course we know that the work had been copyrighted before 1922. If the museum does *not know the name of the photographer and has no reasonable way of learning the identity of the photographer, and there is no*

¹ 17 US Code 107

² Title 17, U.S. Code

copyright notice on the work, I think risks are very slight to none that there will be anyone to claim copyright infringement. In the very remote possibility that the photographer or one of his or her heirs should come forward and claim copyright infringement it will be deemed an "innocent infringement" and all that the museum needs do is not make any further distribution of the copyrighted work. But by all means be sure that no one has overlooked the "C in a circle" or the words "Copyrighted 1952 by John Doe".

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