



Copyright and Use of Archival Materials in the Presidential Libraries

Materials in the presidential libraries that were created and produced by United States federal agencies, or by an officer or employee of the United States Government as part of that person's official duties (including the President), are considered works of the United States Government. These works are not eligible for copyright protection, in the United States, and are treated as though they are in the public domain. However, not all materials in the holdings of the presidential libraries operated by the National Archives and Records Administration (NARA) are in the public domain. Some materials may contain, in whole or in part, material which is restricted by federal copyright law, state common law or state statutes that protect intellectual property, contract law, deed restrictions, or publicity rights in the United States or in other countries.

The Copyright Law of the United States (Title 17, United States Code) governs the making of photocopies or other reproductions of copyrighted material (<http://www.copyright.gov/title17/>). This law provides that under certain conditions, libraries and archives are authorized to furnish reproductions of materials, allowing that the reproduction is not to be "used for any purpose other than private study, scholarship, or research." Commercial or other uses without permission, beyond what may be considered in excess of "fair use" exemptions under Title 17 of the Copyright Law, may make the user liable for copyright infringement.

Where obvious copyright or donor imposed restrictions apply, written permission from the rights holders may be required before NARA approves a reproduction request. Where the status of an item that is part of NARA's holdings is unknown or cannot be determined, NARA will generally make it available for reproduction with a warning to the user that the responsibility for the subsequent use of the materials lies solely with the end user per NARA regulations at 36 C.F.R. 1254.62. This responsibility includes determining, for each of the items provided, whether all or part of the work has been copyrighted, and whether that protection has lapsed. This responsibility also includes determining whether any performance-based or other rights are claimed in the items provided.

NARA does not confirm copyright status for any items, indemnify the user from legal or other action, or provide a definitive statement of public domain status, copyright, or other intellectual property or proprietary rights. Further, NARA does not license its content, or grant exclusive or non-exclusive publication privileges or usage rights to records. NARA can provide users with any information that was acquired with the material, such as accession files, agency catalogs, scripts and production files, and deed of gift agreements.

NARA reserves the right to refuse to fill any reproduction request if, in NARA's judgment, fulfillment of the order might violate copyright law, or is not accompanied by permission from the copyright holder or collection donor. NARA maintains a Source and Permissions Contact List for some motion pictures, sound and video sources, available at: <http://www.archives.gov/research/order/film-sources-contact-list.html>

NARA recommends that researchers contact the United States Copyright Office at The Library of Congress to search currently copyrighted materials, or seek guidance from an outside intellectual property rights clearance specialists. For more information about copyright law in the United States, please visit the United States Copyright Office: <http://www.copyright.gov/>

For more information and exceptions to Copyright in US Government works, please see: <http://www.usa.gov/copyright.shtml#>

Collections with significant copyright issues

There are particular types of collections with a much higher prevalence of copyrighted material in them. These collections include:

- Commercially produced television or film footage, such as news broadcasts;
- Audio recordings, including many oral history collections where the individuals speaking were not, at the time of the recording, government employees acting in their official capacity;
- Unpublished manuscripts donated by individuals other than the author.

Researchers are encouraged to seek additional information from reference room staff about these types of materials.

Credit of NARA Materials used in Audiovisual Productions and other Publications

To credit the use of NARA special media material obtained from our holdings in an audiovisual production, such as a film, broadcast documentary, or online presentation, we ask that you provide the general credit line:

Courtesy: National Archives and Records Administration

Publicity Rights

Publicity rights reflect separate and distinct interests from copyright interests. Researchers desiring to use archival materials in presidential libraries bear the responsibility of making individualized determinations as to whether publicity rights are implicated by the nature of the materials and how they use such materials.

While copyright protects the copyright holder's property rights in the work or intellectual creation, publicity rights protect the interests of the person(s) who may be the subject(s) of the work or intellectual creation. Issues pertaining to publicity may arise when a researcher contemplates the use of letters, diary entries, photographs or reportage in visual, audio, and print formats found in library collections. Because two or more people are often involved in the work (e.g., photographer and subject, interviewer and interviewee) and because of the ease with which various media in digital format can be reused, photographs, audio files, and motion pictures represent materials in which issues of privacy and publicity emerge with some frequency.

The distinctions among publicity rights and copyright are best illustrated by example: An advertiser wishes to use a photograph for a print advertisement. The advertiser approaches the photographer, who holds the copyright in the photograph, and negotiates a license to use the photograph. The advertiser also is required to determine the relationship between the photographer and the subject of the photograph. If no formal relationship (e.g., a release form signed by the subject) exists that permits the photographer to license the use of the photograph for all uses or otherwise waives the subject's, sitter's or model's rights, then the advertiser must seek permission from the subject of the photograph because the subject has retained both privacy and publicity rights in the use of their likeness. The publicity right of the subject is that their image may not be commercially exploited without his/her consent and potentially compensation.

While copyright is a federally protected right under the United States Copyright Act, with statutorily described fair use defenses against charges of copyright infringement, publicity rights are not the subject of federal law. Note also that while fair use is a defense to copyright infringement, fair use is not a defense to claims of violation of privacy or publicity rights.

Publicity rights are the subject of state laws. What may be permitted in one state may not be permitted in another. Note also that related causes of action may be pursued under the federal Lanham Act, 15 U.S.C. § 1125 (a), for example, for unauthorized uses of a person's identity in order to create a false endorsement.

While an individual's right to privacy generally ends when the individual dies, publicity rights associated with the commercial value connected with an individual's name, image or voice may continue. For example, many estates or representatives of famous authors, musicians, actors, photographers, politicians, sports figures, celebrities, and other public figures continue to control and license the uses of those figures' names, likenesses, etc. Researchers should contact library

staff to determine who may be responsible for clearing publicity rights on behalf of a former president.

Although the risks for using an image in a periodical's "editorial" pages may be less than for use in advertising or for other commercial purposes, the risk can still be high if the person depicted is held up to ridicule or presented in a libelous manner. While it is true that famous or public figures who seek recognition have thereby surrendered some privacy, they may have the right to control the commercial use of their image (likeness, voice, signature, etc.). This principle recognizes that a celebrity's image can be an asset in trade.