

# OUT OF THE ARCHIVES

## Copyright follow-up questions and answers

STORY

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PHOTOGRAPHS

Collection of the Center

IN OUR WINTER ISSUE OF *Railroad Heritage*, 2017:1, we introduced the basics of intellectual property and delved into some of the details and issues involved with copyright. We received extensive feedback that led to further discussions on the matter. In order to clear up some common questions, in this installment of “Out of the Archives,” we are going back to intellectual property, specifically photography copyright, to address and reiterate some of the more complicated issues. Copyright is a complex property right with many legal aspects—every case is unique and may provide different interpretations. If you have lingering questions, comments, or concerns, please get in touch with me by email, [jordan@railphoto-art.org](mailto:jordan@railphoto-art.org). The Center offers this column as a guideline and starting point for intellectual property discussion. For legal guidance, we recommend consulting with a lawyer with expertise in copyright law.

### Copyright questions and answers

**Q:** What exactly is involved in registering a copyright?

**A:** The U. S. Copyright Office Circular 1, “Copyright Basics,” states in the “Registration Procedures” section:

*An application for copyright registration contains three essential elements: a completed application form, a non-refundable filing fee, and a nonreturnable deposit—that is, a copy or copies of the work being registered and ‘deposited’ with the Copyright Office.*

*When the Copyright Office issues a registration certificate, it assigns as the effective date of registration the date it received all required elements in acceptable form, regardless of how long it took to process the application and mail the certificate of registration.*

There are two ways you can register your copyright; either with a paper application or online. The paper application must be done using the correct forms (found online) and mailed to the Copyright Office along with the fee and deposit. The online application is done electronically through the Copyright Office (eCO) and is the preferred method for visual arts works. Advantages of registering online include a lower filing fee, faster processing time, easy online status tracking, and ability to upload certain electronic files. Be sure to check out the U.S. Copyright Office website, [www.copyright.gov](http://www.copyright.gov), for more information

and even an eCO electronic application tutorial. The United States Copyright Office Circular 1, “Copyright Basics,” also states that:

*Basic claims include (1) a single work; (2) multiple unpublished works if the elements are assembled in an orderly form; the combined elements bear a single title identifying the collection as a whole; the copyright claimant in all the elements and in the collection as a whole is the same; and all the elements are by the same author or, if they are by different authors, at least one of the authors has contributed copyrightable authorship to each element; and (3) multiple published works if they are all first published together in the same publication on the same date and owned by the same claimant.*

**Q:** What if no photographer is identified on the print? Is there an obligation to try to find out? What would those steps be? What if the photographer is known but is deceased and you have no idea what happened to the original negative/slide or how to contact any heirs?

**A:** There will always be a risk with publishing a photograph if you do not own the copyright. You can diminish that risk by doing your due diligence and trying to contact the original copyright owner or his or her heir(s).

**Q:** How do I find out who owns a copyright?

**A:** The U.S. Copyright Office can be a resource for tracking down registered copyrights. The Catalog of Copyright Entries (CCE) is a publication containing all registered works for a given year. According to the Copyright Office website, “a search of registrations, renewals, and recorded transfers of ownership made before 1978 requires a manual search of our files.” There is a fee for any request because the staff will perform a search of the records, but there is no fee if you search the records in person at the Copyright Office. A number of libraries throughout the U.S. also have copies of the CCE. The Copyright Office website also states, “copyright registrations made and documents recorded from 1978 to date are available for searching online.” Visit the U.S. Copyright Office website to learn more.

**Q:** What if a photographer sends you a print and says in a letter that you can use it in a book, but then

Editor’s note: While the basics of Copyright and other issues surrounding intellectual property are relatively straightforward, individual cases can be complex. The Center offers the guidelines in this column as a starting point but is not in the position to offer legal opinions. You should always consult with a lawyer for legal guidance.

the photographer dies and his or her family gives the collection to an institution? The institution claims copyright ownership and demands permission and publication payment, even for prints that had been authorized when the photographer was still living.

A: If the copyright owner gives you permission to use a photograph, then you have the right to use said photograph. But if that copyright is legally transferred to another party, then it is up to the new copyright owner to give permission. If you use the photograph before the transfer of copyright, then the new owner cannot do anything—they can only take action on photographs from the instant ownership is transferred to them.

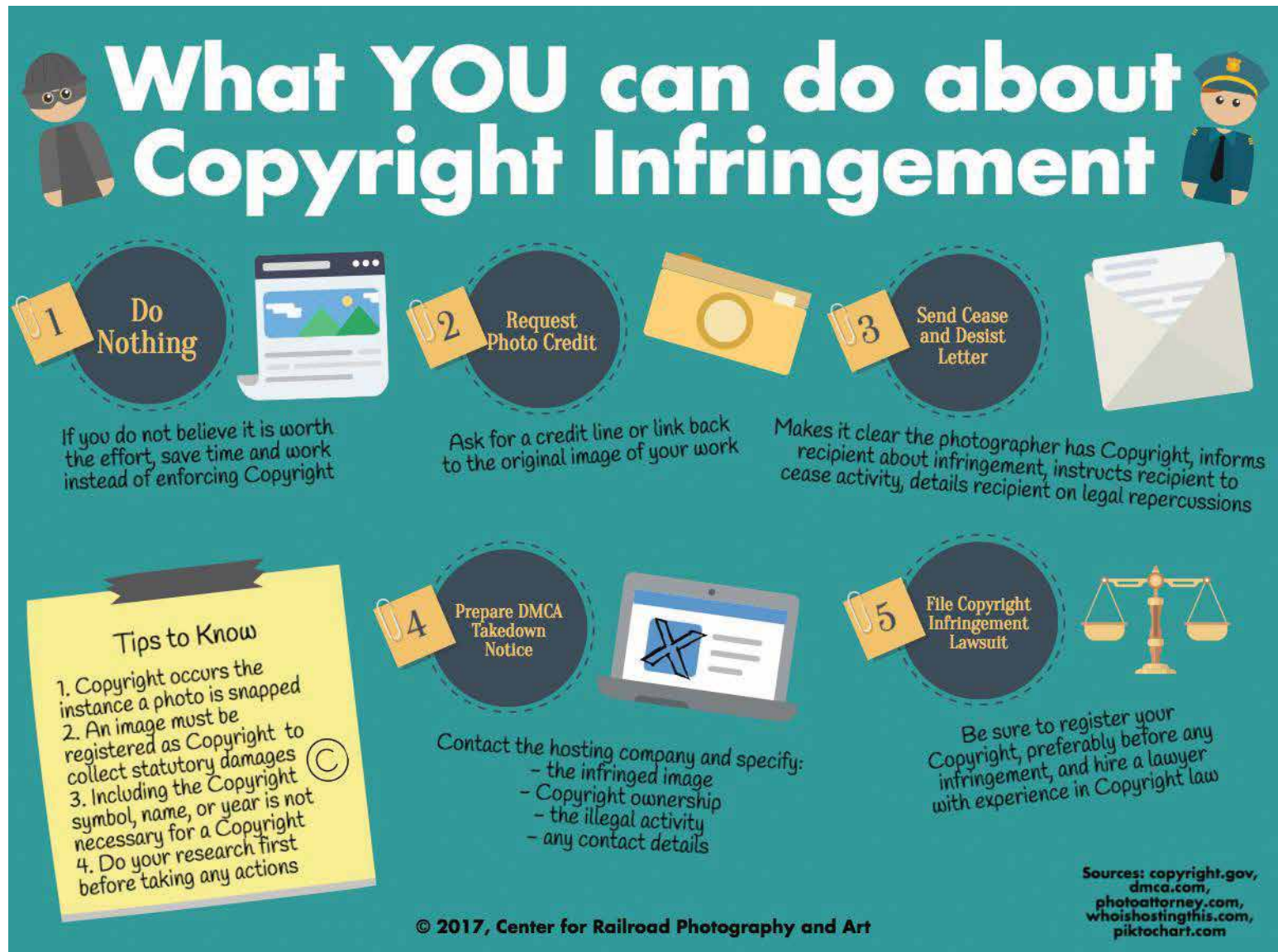
Q: Someone is illegally using my photograph to sell prints/use digitally; what can I do?

A: If you know your photograph is being infringed, you have five main options (see flowchart below):

1. Do nothing.
2. Request photo credit or send a statement to request removal.
3. Send a cease and desist letter, or have a lawyer send one on your behalf.
4. Prepare a DMCA takedown notice (see the next question for more on DMCA).
5. File a copyright infringement lawsuit.

Q: What is the Digital Millennium Copyright Act (DMCA)?

A: The Digital Millennium Copyright Act, commonly referred to as DMCA, was enacted in 1998 from the treaties signed two years prior at the World Intellectual Property Organization (WIPO) Geneva conference. The DMCA ([www.dmca.com](http://www.dmca.com)) addresses many issues, with one particularly focusing on photographers. The DMCA states, “that while an Internet Service Provider (ISP) is not liable for transmitting information that may infringe a copyright, the ISP must remove



materials from users' websites that appear to constitute copyright infringement." It is important to note that a copyright does not have to be registered in order for the DMCA to take effect. For a website that is using one of your images without your permission, you can contact the hosting ISP and report the infringement with the proper notice. The DMCA protects the copyright owner from certain damages if a work is used without permission. Based on Section 1202(b) in the DMCA, an infringer cannot remove any "copyright management information," such as the photographer's name, contact information, or copyright notice, from any work in an attempt to conceal the infringement. It states, "No person shall, without the authority of the copyright owner or the law—(1) intentionally remove or alter any management information...knowing, or, with respect to civil remedies...having reasonable grounds to know, that it will induce, enable, facilitate, or conceal an infringement of any right under this title."

Fall leaves cover Conrail's former Erie Railroad main line at Gulf Summit, New York, on October 19, 1985. Photograph by John F. Bjorklund, Bjorklund-29-23-04



## About this column and our collection

"Out of the Archives" brings to light the world of professional archiving, providing a regular forum to share selections from the Center's collections and tips for maintaining your own photographs. Whether you are a photographer, collector, or avid fan, it is important to organize and preserve the materials you create or collect. Please get in touch with Jordan Radke, [jordan@railphoto-art.org](mailto:jordan@railphoto-art.org), if there are any topics you would like us to cover in the future.

The Center's Railroad Heritage Visual Archive includes more than 200,000 photographs. The team in Madison, Wisconsin, consists of Jordan Radke, archives manager, graduate archival intern Erin Rose, graduate intern Hailey Paige, intern Aviva Gellman, and volunteer John Kelly. We also partner with Lake Forest College, working with Anne Thomason, archivist, along with graduate archival intern Colleen O'Keefe, to process and maintain Center materials housed in the college's Archives & Special Collections in the Donnelley and Lee Library. Scott Lothes, Center president and executive director, and the Collections & Acquisitions Committee of the board of directors provide oversight.

In keeping with the Center's mission of preserving and presenting significant images of railroading, with the Railroad Heritage Visual Archive we seek to securely house collections and make their contents accessible for others to view and use. We adhere to established archival principles to ensure safety and accuracy. Our work as archivists includes:

*Preservation.* One of the Center's main objectives is properly preserving our collections. This includes appropriately caring for and handling our materials by using archival-safe supplies, and providing a controlled environment where our collections are housed.

*Processing.* Processing materials is a long, tedious, and detailed endeavor. Organizing a collection appropriately sets up the rest of the processing work that includes any digitization and metadata entry. This work is essential to the long-term care and future accessibility of a collection.

*Arrangement and Description.* To maintain quick and easy retrieval of our materials, we organize every collection down to its individual items, if possible, given the time and resources available to us.

*Accessibility.* Finally, the Center will make sure that users have access to our processed collections. We create detailed finding aids to describe each collection and its contents and share images electronically via our websites and many social media outlets.

## Railroad Heritage Visual Archive updates

In our Madison office, Jordan Radke, archives manager, is selecting and editing photographs from several collections to post on our website and share on our social media accounts. Graduate intern Hailey Paige is working on traveling exhibitions, including a brand new exhibit about the Milwaukee Road's Beer



Line featuring images from our Wallace W. Abbey Collection (see p. 4 for additional details). Graduate archival intern Erin Rose is hard at work processing the thousands of black-and-white negatives in the Robert A. Hadley Collection, which is on loan to us from the Apex Foundation. Stay tuned to our social media accounts for previews and updates from this collection. Volunteer John Kelly has recently finished a complete inventory of the Glenn A. Oestreich Collection and is now entering metadata for selected photographs from several collections.

At Lake Forest College, graduate archival intern Colleen O'Keefe is working on making Photoshop edits and entering metadata for selections from the Fred M. Springer Collection. We have begun adding albums from the Springer Collection to our website and Flickr account, much like those in our John F. Bjorklund Collection. The first two, featuring the Middle East and Scandinavia, are already online.

Highlights from many of our collections can be viewed at [www.railphoto-art.org](http://www.railphoto-art.org), while we continually post new selections to our social media accounts on Facebook, Twitter, Instagram, and Flickr.

### Archival Terms

Like railroading, archiving has its own language. Some terms used in this column appear below, as defined by the Society of American Archivists (SAA). See a full glossary of archival and records terminology at: [www2.archivists.org/glossary](http://www2.archivists.org/glossary)

*Copyright.* A property right that protects the interests of authors or other creators of works in tangible media (or the individual or organization to whom copyright has been assigned) by giving them the ability to control the reproduction, publication, adaptation, exhibition, or performance of their works.

*Fair Use.* A provision in copyright law that allows the limited use of copyright materials without permission of the copyright holder for noncommercial teaching, research, scholarship, or news reporting purposes.

*Infringement.* A violation of intellectual property protected by a patent, copyright, or trademark.

*Intellectual Property.* A group of intangible rights that protect creative works, including copyright, trademarks, patents, publicity rights, performance rights, and rights against unfair competition.

A Nickel Plate Road passenger train led by Alco PA-1 diesel locomotive no. 188 waits at the station platform in Fort Wayne, Indiana, circa 1950s. Photograph by Robert A. Hadley on deposit from the Apex Foundation, Hadley-03-076-03