


A collection of historical artifacts is arranged on a light-colored surface. On the left, a portion of a wooden chessboard with a checkered pattern and several chess pieces is visible. Next to it are two ornate medals: one with a red ribbon and a white star, and another with a blue ribbon and a white star. A silver compass with a white face and black markings is in the bottom left corner. A pair of gold-rimmed glasses with thin temples is positioned in the center. The background is a plain, light-colored surface.

Rights in Images

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What rights could be present in the image?

- ▶ Copyright
- ▶ Privacy/publicity rights of those individuals shown in the photo
- ▶ Trademark
- ▶ Moral rights



Copyright ownership

- ▶ Usually person who took the photo
 - If the photographer took it as an employee of an organization, his/her employer may own it
- ▶ How long ago was it taken?
 - The year determines the length of copyright protection
- ▶ Is there a copyright notice?
 - If there isn't, the copyright may have lapsed



Privacy & Publicity Rights

▶ Does a face show?

- If so, is the person shown endorsing something or in a potentially embarrassing way?
- Is one face prominent? (Crowd shots are usually okay.)

▶ When was the picture taken? The law was probably less strict then than now.

– See

http://depts.washington.edu/uwcopy/information/other_laws/2.shtml for more information

Trademark

- ▶ Is there a logo or other trademark in the picture?
 - If so, is the logo shown to endorse anything, or is it used in an unflattering way?
 - Is it prominently displayed in the photo?





Moral Rights

- ▶ New in law in U.S.
- ▶ Probably little reason to be concerned about in older photographs
- ▶ For more information, see <http://depts.washington.edu/uwcopy/information/copyrightlaw/5.shtml>



Fair Use

- ▶ Can you rely on it? Remember Fair Use is a defense, not a right
- ▶ 4 Factors:
 - Purpose & character of use
 - Nature of work
 - Percentage of work used
 - Effect on the market for work



More Fair Use

- ▶ Fair Use is an individual analysis done on a case-by-case basis by you and your attorney
- ▶ Work with your Board to determine what you would be willing to support & put it in writing
 - Kelly v. Ariba holds that thumbnail images are appropriate for indexing purposes
 - www.gigalaw.com/articles/2002-all/baroni-2002-03-all.html



Ideal Rights Situation

- ▶ Your organization would have an authorized, signed document indicating that you hold the entire right, title and interest in and to the photos
- ▶ Any individual or trademark included in the picture is not a large component of the picture



Reality

- ▶ Determine what you have and take an inventory of information
- ▶ Objects
 - How long have they been in your collection?
 - How did they become a part of your collection?
 - Do you know if they are available anywhere else?



More Reality


► Documents

- Do the documents mention any rights you have? (Display, copy, distribute, etc.)
- Is the document from the copyright holder?
- Did the copyright holder have any required publicity rights from the subjects?
- Do others have documents relevant to this collection?



For future acquisitions

- ▶ Ask for a written assignment of ownership, or exclusive or non-exclusive rights to:
 - display, copy, distribute, modify (create derivative works) & perform materials in collection
 - If you can't get an assignment, ask for a license
- ▶ Ask if they know anything about any other possible rights holders



How do you decide if you should make the image available?

- ▶ Conduct fair use analysis
- ▶ Determine what harm might occur if the materials were available online, and who might be concerned
 - How can you meet those concerns?
 - Attribute collection source? Share revenue? Enter into a written agreement?
- ▶ Have you considered all possible factors and can you document your work?



Collection control

- ▶ You have some materials, and have been able to make them available; you control some part of the collection
 - Have there been concerns regarding access to these documents in non-online format?
- ▶ If you make these materials available, what are you making available?
 - Rights to the images?
 - Access to the images?



Conclusion

- ▶ Examine all risk factors with your Board
- ▶ Document your decisions and the process you used



Good luck!

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