Rights in Images

Dana Bostrom
UW Software & Copyright Ventures
April 18, 2002
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/uwcopyc/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?
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!

Dana Bostrom, M.A., M.L.I.S.
Software Technology Manager
Software & Copyright Ventures
University of Washington

bostrom@u.washington.edu
depths.washington.edu/ventures