

Karyn Temple Claggett,
Associate Register of Copyrights
Director of Policy and International Affairs
Library of Congress, Copyright Office
101 Independence Avenue, S.E.
Washington, D.C. 20559-6000

Re: Reply Comments to Orphan Works and Mass Digitization; Request for Additional Comments and Announcement of Public Roundtables, 79 Fed. Reg. 7706 (February 10, 2014.) [Docket No. 2012–12]

This letter represents the University of North Carolina at Chapel Hill’s ((UNC-Chapel Hill) Scholarly Communication Office’s reply to comments filed with the Copyright Office in the response to the February 10, 2014 Notice of Inquiry regarding orphan works and mass digitization. Although the UNC-Chapel Hill Libraries contend with the orphan works problem in almost all areas of our collections, these comments focus on the challenges of digitizing the large numbers of historic photographs in our collections and on the difficulties and inequities that would result for us from special copyright rules for photographs or a requirement of extended collective licensing for photographs.

We hold millions of photographs in our special collections at UNC-Chapel Hill, with many of them pertaining to the American experience in the southern United States. In addition, through activities such as the North Carolina Digital Heritage Collection, we assist with the digitization and presentation of historic photographs from a variety of partner institutions across the state. Because many of these photographs are rare or unique, they are among the most important candidates for preservation and access through digitization. Clearing rights before digitizing these photographs is challenging because of the extreme difficulty of identifying the creators, determining whether the photographs were ever published, and often, determining when the photographs were created.

Many of the photographs we hold were created as personal mementos. In most cases, the photographers never considered *publication* of these works. The creators’ intentions were only to provide for the enjoyment a small circle of friends and family. Most of these photographs are “events of everyday life.” These pictures depict graduation, birthdays, Christmas, or an idle Tuesday. These photographs conceptually exist in a different way than commercial, journalistic, or artistic photography does.

Typically, the rights holder exhibited no interest in the intellectual property in the photograph. The donor may not remember who took the original photograph, so even determining to whom the copyright belongs to a legal certainty becomes impossible. Those who donate such

photographs to us often have limited information about rights or the circumstances under which the pictures were taken.

UNC-Chapel Hill also holds many photographs that were originally produced for commercial purposes, but which have lost their commercial value over time. These photographs retain cultural and historical value for libraries, museums, and archives, even though the original businesses or events associated with the photographs that have been discontinued or forgotten.

Despite the challenges inherent in clearing rights and determining copyright status for the historical photographs in our collections, we have not neglected these works. Fair use afford us a flexible framework for evaluating whether and how copyrighted works like these photographs may be made available. It has proven adequate to fulfilling our mission of making UNC Chapel Hill collections widely available for research, scholarship and learning. You will see below several examples of the types of photographs that, despite these challenges, we have made available online pursuant to fair use. Creating special copyright rules for orphan photographs or implementing an extended collective licensing scheme for historic photographs would not be equitable because of the likelihood that creators would never be found and could not be compensated. Please see the appendix to these comments for examples of representative photographs from our collections along with notes on what we do and do not know about their creators and copyright status.

Yours Sincerely,

A handwritten signature in cursive script that reads "Anne Gilliland". The signature is written in black ink and is positioned above the typed name and title.

Anne Gilliland
Scholarly Communications Officer, UNC-Chapel Hill

Appendix: Example Photographs from UNC-Chapel Hill's Collections

Beach Family 09¹



This photograph was donated to UNC-Chapel Hill along with papers the collection of John Kenyon Chapman (1947-2009), a life-long social justice activist, organizer, and historian who focused his academic and social career on workers' rights and African American empowerment in central North Carolina. Because of its lack of focal point and casual composition, the photograph has all the markings of a picture intended for personal use only. The photographer is unknown, and establishing his or her identity would be very difficult. Certainly the kind of research required to try to do so would be impossible for the large number of photographs of this type in our collections.

¹ <https://cdr.lib.unc.edu/record/uuid:010f645d-7000-4d71-9545-085a3af30bca>

West Main Street, 1925²



This photograph is from Transylvania County Library in North Carolina and is of Main Street of Brevard, NC. Brevard is the county seat of Transylvania County and has a population of approximately 7,000 people. We have not been able to determine who took the photograph 89 years ago or whether it was every published. It is possible that the photograph was published without registration or notice and so fell into the public domain shortly after creation. It is also possible, as a legally anonymous, unpublished work that it will be in copyright until 2045.

² <http://library.digitalnc.org/cdm/singleitem/collection/ncimages/id/2655/rec/73>

1925 Parker family reunion



With the Parker family reunion photograph,³ we have the same difficulty with determining copyright status as we do with the picture of West Main Street. The photograph is from New London, North Carolina (originally Bilesville), which is in Stanly County. Gold was discovered in New London in 1859 on the Howell Parker Farm.⁴ It is possible that the people in this photograph belong to that same family. Because of the time period, it is likely that a professional photographer took the picture.

³ <http://library.digitalnc.org/cdm/ref/collection/ncimages/id/5877>

⁴ <http://www.newlondonnc.org/history.html>

Postcard advertisement from Powell Supply Co., Wilson, N.C.



This advertisement photograph is from an agribusiness in Wilson, NC (current population 49,167) and is dated 1949.⁵ This specific copy does not have a copyright notice, which means that it entered the public domain at the time of publication. However, Congress allowed for curative measures if some copies were printed without notice or registration,⁶ and it has not been possible for the library to determine whether all copies were printed without notice. In addition, the owner would have had to file a renewal registration. Currently there is no good way to search pre-1978 copyright renewal registrations for photographs, short of paying the copyright office \$200/hour for a registration search.

In addition, it is likely that the copyright in the photograph was vested with the corporation, but there is no currently operating business in the state of North Carolina called Powell Supply Co.⁷ An effort to clear rights would start with determining whether there was a legal successor to the Powell Supply Co., or if the corporation was disbanded. Current copyright law does not contemplate the valueless intellectual property of disbanded corporations, and so attempts to find a rights holder would end. If the corporation had merged into another business, the next step would be to find merger documents and determine whether the merger document considered the historical intellectual property. If not, attempts to identify the rights holder would come to a halt.

⁵ <http://library.digitalnc.org/cdm/compoundobject/collection/ncimages/id/813/rec/1>

⁶ 1909 Copyright Act, Section 20.

⁷ <http://www.secretary.state.nc.us/corporations/thepage.aspx>

Students walking during a Civil Rights march



This photograph is from one of the University of North Carolina's partner libraries, James B. Duke Memorial Library at Johnson C. Smith University a historically black university founded in 1867. Although we know that the photograph is of a protest during the Civil Rights movement, we have found no date or author associated with the picture.⁸ Archivists believe this photograph may have been taken in 1964 when the university's newspaper reported on the march; however it is not certain that the photograph was ever published. Beyond UNC-Chapel Hill and the original contributor, no other copies of the photograph have been identified.

⁸ <http://cdm15170.contentdm.oclc.org/cdm/singleitem/collection/p15170coll3/id/127/rec/2>