

Lincoln Authorized 1865 Copyright Legislation

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The Library of Congress opened *With Malice Toward None: The Abraham Lincoln Bicentennial Exhibition* on February 12 to coincide with the 200th anniversary of Lincoln's birthday. The exhibition, scheduled to travel later to other U.S. cities, documents the growth of the 16th president of the United States from prairie lawyer to statesman, exploring the historic challenges he faced, including slavery, the dissolution of the Union, and the Civil War.

Copyright is not among the topics typically associated with Lincoln. Yet he signed important copyright legislation just six weeks before his assassination. On March 3, 1865, he authorized a bill amending the Copyright Act to extend protection to photographs and photographic negatives. The bill also required that a printed copy of each copyrighted work be deposited in the Library of Congress within a month of publication.

Multiple sources speculate that Congress extended copyright protection to photographs in response to the fame and popularity of Civil War photographer Mathew Brady, writes legal scholar Christine Haight Farley in the spring 2004 issue of the *University of Pittsburgh Law Review*. Although Farley says the legislative history is inconclusive about Brady's influence on the bill, she notes that Brady was among a "handful of photographers" who had the "audacity to attach copyright notice to their photographs" in the 1860s.

A search of Copyright Office records for the U.S. District Court for the District of Columbia confirms her assertion. Brady registered the titles of numerous photographs even before 1865, including two of Lieutenant-General Winfield Scott on October 24, 1861, and seven of Mrs. Lincoln on January 11, 1862. One of the many photos that Brady took of Lincoln himself accompanies this column.

Despite passage of the 1865 amendment, courts did not acknowledge copyright in photographs until 1884, when the U.S. Supreme

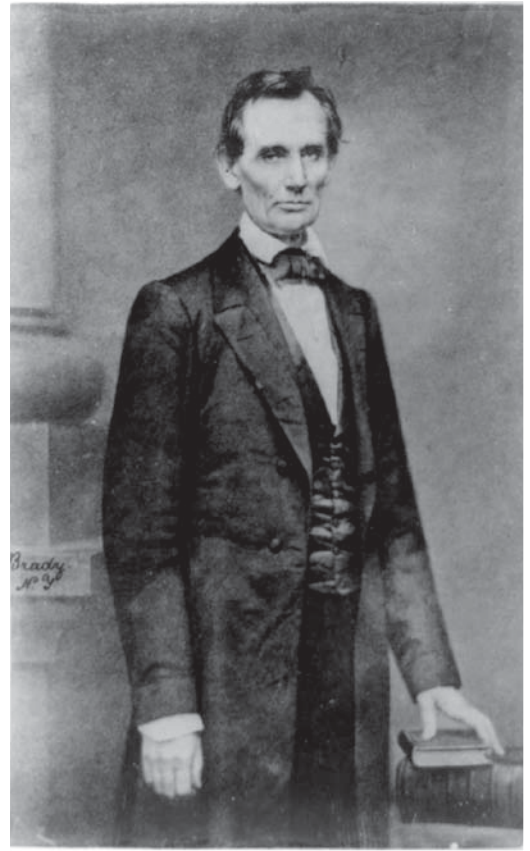


PHOTO COURTESY OF PRINTS AND PHOTOGRAPHS DIVISION, LIBRARY OF CONGRESS

An 1860 photograph of Abraham Lincoln by Mathew Brady.

Court decided the case of *Burrows-Giles Lithographic Co. v. Sarony*. Napoleon Sarony, a well-known photographer of theatrical stars, photographed Irish author Oscar Wilde in 1882 when Wilde visited New York. Burrows-Giles made 85,000 prints of Sarony's image to sell to celebrity photo collectors, and Sarony sued for copyright infringement. The company countered that photographs were mechanical products, not original works of authorship, and thus ineligible for copyright protection. The Supreme Court, however, upheld the constitutionality of the 1865 amendment, finding that a photograph is a "writing" within the meaning of the copyright clause of the U.S. Constitution. ©