

# What About Those Attractive Postage Stamps? Are They Copyrighted?

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The job of postmaster general, first held by Benjamin Franklin, became a presidential cabinet position in 1829. The U.S. Post Office operated continuously until the Postal Reorganization Act (P.L. 91-375) took effect in 1971, and the old Post Office Department became the U.S. Postal Service (USPS). The comprehensive reorganization cost the Post Office its position on the cabinet.

Because postage stamps printed under the U.S. Post Office were works of the U.S. government, stamps dating from before 1971 were not subject to copyright and are today in the public domain.

However, USPS stamps are copyrighted. *The Compendium of Copyright Practices II* says that “works of the U.S. Postal Service, as now constituted, are not considered U.S. Government works” (206.02(b)), and therefore may be registered for copyright. A casual search in the Office’s card catalog drawers reveals a few U.S. Post Office registrations. But the online records, which began in 1978, contain hundreds of visual arts claims for postage stamps with the USPS as claimant as an employer for hire.

Recent court cases are illustrative of the perils of confusing the copyright status of a stamp or of the image on a stamp. In September 2013, Vermont sculptor of the Korean War memorial Frank Gaylord won a settlement of more than \$684,000 because the USPS



used an unauthorized image of his sculptures on a postage stamp and on merchandise sold by the USPS. The contractor responsible for designing and constructing the memorial did not acquire the sculptor’s rights in the work and thus could not transfer them to the government. Gaylord registered his claim

to copyright in the memorial’s sculpture in 1998, and it was recorded in the Office as VAu000447698. While the photographer who shot the image of the snow-covered statues used on the postage stamp was paid \$1,500, the sculptor was not paid anything. At first, the Court of Federal Claims ruled for the USPS, saying that the use of the photograph on a stamp was fair use. But the Court of Appeals for the Federal Circuit reversed and directed the first court to establish damages.

In another recent and ongoing case, sculptor Robert Davidson is suing the USPS for the 2010 unauthorized use of his work. The USPS issued a “forever” stamp bearing an image of the Statue of Liberty. However, the image, which was obtained from Getty



Images, was not that of the iconic statue in New York’s harbor but of a recent replica created by Davidson that is standing in front of a Las Vegas hotel. He registered his claim to “Las Vegas Lady Liberty” in January 2012, and it is recorded as VAu001090876. The suit was filed in November 2013 in the Court of Federal Claims. The USPS has sold more than 4 billion copies of the stamp, according to the *Washington Post*. ©

