**QUESTION: WHAT IS THE DIFFERENCE BETWEEN “PUBLISHED” VS. “UNPUBLISHED” WORKS, WHY DOES IT MATTER, AND HOW DOES THE DIFFERENCE RELATE TO ONLINE VS. PRINT PUBLISHING?**

U.S. Copyright Law defines publication as:

“The distribution of copies or phonorecords of a work to the public by sale or other transfer of ownership, or by rental lease, or lending. The offering to distribute copies or phonorecords to a group of persons for purposes of further distribution, public performance, or public display constitutes publication. A public performance or display of a work does not itself constitute publication.”

Publication under the first part of the definition is rather straightforward. Publication under the second part is a bit more complicated. Generally, publication occurs on the date on which copies of the work are first made available to the public. Unpublished works are those which have not been distributed in any manner.

Although prior to 1978, copyright protection generally was available only for published works, such protection is now available for published as well as unpublished works.

Whether a work is published or unpublished still matters for certain reasons. For example:

- works that are published in the United States are subject to mandatory deposit in the Library of Congress;
- unpublished works are eligible for protection without regard to the nationality or where the author lives;
- published works must bear a copyright notice if published before March 1, 1989;
- certain limitations on the rights of a copyright owner are applicable only to published works; and
- the duration of protection for works made for hire may be determined by the date of publication.

For specific FAQ relating to whether photographs are published or unpublished, see the ASMP's Copyright Tutorial entitled “Defining published and unpublished?” by clicking [here](#).