

CASE 1: Stuart Pratt Sherman Papers

Stuart Pratt Sherman was a professor of English and active writer who left the University in 1924, went to New York to work for a prominent newspaper. He died prematurely in 1926. His personal papers contain not only teaching materials, but documents concerning his own literary production, and correspondence with some notable authors. The collection was acquired by the Library a few decades before the Archives was established, and as such there is no Deed of Gift.

What might the copyright law say about the following:

1. A researcher requests a photocopy of a ca. 1922 letter from Sinclair Lewis (died 1951) to Sherman for use in a project on Lewis.
2. A researcher requests a photocopy of Sherman's 1923 letter responding to Lewis.
3. A researcher requests permission to publish the letter in # 1 or to read most of it in a documentary ostensibly for PBS.
4. A researcher requests permission to publish the letter in # 2 or to read most of it in a documentary ostensibly for PBS.
5. A researcher requests permission to publish in full an epic poem written in dialogue by Lewis and Sherman from the 1919 *Campus Leaves*, a student literary quarterly.
6. The Archives would like to create a website featuring Sherman and including an EAD marked-up copy of the finding aid for the Sherman papers and images of the full content of items 1, 2, and 5.
7. Also in the website, the Archives would like to include a photograph from the 1918 yearbook showing Lewis and Sherman at a campus poetry reading.
8. Also in the website, the Archives would like to include a sound bite of Sherman reading a portion of a poem from a studio transcription disk made by the campus (university-owned) radio station from their 1926 broadcast of impromptu remarks by Lewis and Sherman at a reading by Lewis.
9. The researcher has sent you a request to sign a one-page legal release document required by the publisher of a journal (book, television documentary). The document asks you to affirm ownership of the Sherman and Lewis manuscripts in question, grant permission for use in the upcoming work, and grant permission for all subsequent uses in known and to-be-discovered formats.

CASE 2

Your repository's standard Deed of Gift clause reads: "To facilitate the research use of the Materials, the Donor hereby gives and assigns to the Donee all rights, title, and interest, including copyright which the Donor has in the Materials." [This is in addition to clauses such as: "title to the physical material shall pass to the Donee upon their delivery."]

During the process of a new acquisition, you have presented a draft Deed containing this language to widow of a faculty member who died in 1977. The apprehensive widow notes that as heir to the deceased, she owns the copyright and therefore wishes to review all requests to **examine or** photocopy any incoming or outgoing correspondence in the papers as well as establish a policy that no quotations may be published from any letters. She wants your recommendation for whether this should apply for:

- a) Her lifetime, or
- b) Her lifetime and the lifetimes of her children; or
- c) Her lifetime, the lifetimes of her children, and the lifetimes of her grandchildren

How does copyright law relate to her request and the papers?

CASE 3

Maxim I. Z. Prophets, the President of the Board of your historical society, has requested that your "Prints and Photographs Division" henceforth use a schedule of fees for all orders. In addition to the actual charges made by the local photography studio for scans or copy negatives and prints, you should charge a usage fee to provide revenue to compensate for recent budget cuts in the Society's general operating budget. Ms. Prophets proposed schedule of fees is:

\$50 for all orders, plus

\$100 if the image is to be used in a dissertation or scholarly journal or non-profit organization's magazine

\$500 if the image is to be used in a commercial magazine, university or trade press book

\$2000 if it is to be used in a video or film.

What copyright issues are involved in implementing such a policy? Please consider how you would approach such fees under three different scenarios:

- a) copyright in the work is owned by the society,
- b) copyright holder is unknown or untraceable, and
- c) copyright holder is known and is other than the society.

BACKGROUND NOTES: your photos include personal family snapshots in local history collections; an extensive set of an amateur photographer's glass plates of the area's natural and built environment; a defunct commercial photographer's studio files; and images from the 1900-1953 morgue of a currently operating local weekly newspaper. *Important: the listing of the types of images in the preceding paragraph is for background only. You do not need to parse out different actions for each of these categories of material, but your approach should be on the general policy matters.*

CASE 4

A) A son of the third daughter of a deceased (1949) professor from your institution has seen that a scholar at an eastern U.S. university created a website in 2004 which includes a hitherto unpublished photograph of his grandfather at a Utah Shoshone archeological site in 1936. Claiming infringement, he has contacted the website and your repository asking you to withdraw the photograph from any further copying at your repository.

BACKGROUND NOTES: the anthropologist's papers were donated after his death by his widow who has since died herself. The collection came without a deed of gift. The scholar at the eastern University obtained his photographic copy of your image via a typical remote user photo order which your staff fulfilled in the early 1980s. The son/grandson is as yet unaware that your archives used a similar photograph from the collection of same archeologist at another site in a 2003 brochure describing Native American holdings.

What copyright issues are involved?

B) Same questions but in this case, the photograph is a 1940 image taken by his grandfather of a Native American Sun Dance ceremony. Citing his claim of copyright ownership, he also asks that the image be withdrawn from the collection since his own anthropological work has encountered Native American sensitivity about revelation of their ceremonies to outsiders.

CASE 5:

Background: Your repository holds the personal papers of Chicago-based sculptor Carlos Crump. During his lifetime, Crump's work had been commissioned by individuals, civic groups, and various institutions; some of these items have found their way into public museums. After his death in 1940, his widow gave your university all of the casts, models, photographs, correspondence, business records, and newspaper clippings left in his studio, and did this via letter which was recorded as accepted by the University in its Trustees' minutes. At that time, the sculpture, casts, and models remaining in his studio were absorbed by the campus museum which has since sold or traded many items to various other museums. The papers, which came to the archives at its 1963 establishment, include original photographs of many of the works in Crump's studio and, in some cases, in their public installations.

Scenario and Questions: A local art historian is working on a guide to midwestern cemetery art and is interested in using a photograph of a sculpture that was on the grave of local socialite Janice Jones' (d. 1916). The cemetery sustained damage in wind storms over the years, and the sculpture no longer includes all of the features of the original. Crump's business records show that the photographer whose name and address appears on the verso of your photo had periodically invoiced Crump for "professional services from 1928 to 1934." You have checked local city and phone directories and found that the photographer's studio has not been listed since the early 1940s.

1. The art historian wants to use the photo
 - a) in his college class lectures,
 - b) in his fee-based local art tours, and
 - c) in his guide book and in his historical journal article about Janice Jones.
2. Looking at the possibility of generating revenue for your repository, you would like to use the photo on postcards and calendars to be sold through the Library Friends.
3. A staff member has also volunteered to use the photograph to make a small scale copy of the sculpture, also for sale to benefit the archives.

Identify and assess the copyright issues.

CASE 6:

Assess the merits of the following request for permission that has been provided to you by a production company. The company previously obtained a publication-quality photographic print from an image in your institutional archives and now seeks permission as outlined below. Note, that the photo was taken by your institution's Public Affairs Office in 1947 and includes the images of a handful of faculty and alumni/ae.

AUTHORIZATION TO USE NAME/PRODUCT/LOGO

This will confirm that, having the sole right to do so, I grant to THE [REDACTED] COMPANY (herein "Producer") (and its parent, subsidiary and affiliated corporations and their respective successors, assigns and licensees, employees and agents) the right to photograph, record, reproduce or otherwise use the below mentioned names, products, trademarks, servicemarks, trade names, logos, copyrighted material and/or other materials ("the Materials") in and in connection with the production, exhibition, exploitation, and promotion of the motion picture tentatively entitled, "[REDACTED]" ("Picture"), without limitation as to time, territory or medium:

use photograph and composite with our actor

I represent that the consent of no other person, firm, corporation or labor organization is required to enable Producer to use the Materials as described herein and that such use will not violate or infringe upon the trademark, tradename, copyright, artistic, and/or other rights of any third parties.

I acknowledge that nothing herein requires Producer to use the Materials in or in connection with the Picture.

The rights granted herein include the right to use excerpts or stills from "[REDACTED]" which may contain the Materials in any other motion picture, publication, recording, or in your and your distributor's theme parks and Studio Tour.

This agreement contains the full and complete understanding between the parties and supersedes all prior agreements and understandings pertaining hereto and cannot be modified except by a writing signed by each party.

ACCEPTED AND AGREED:

(COMPANY NAME)

By: _____
(Executive's Name)

_____ Date

Title: _____