

Some **personal letters** written by Mr. Walter Packard to Mrs. Carrie Stevens dated during the year 1900. The personal letter described an outing that they had taken with a group of friends.

Both parties are deceased.

Personal letters belong into copyright category “unpublished work” – private communication, intended for limited audience and limited number of copies. Under the 1909 US copyright law, copyrights of all such materials, which would also include unpublished manuscripts and other handwritten communications, were governed by the state “common law” rules. They essentially provided that none of such materials would ever come into the public domain. However, after the 1976 Copyright Law, all such materials—created before 1978 and never published afterwards—come into the public domain after “life of the author + 70 years or December 31, 2002” (whichever come up later).

Therefore, in our case, if last of involved parties—Mr. Packard or Mrs. Stevens—died before the year 1935; the letters entered public domain and could be digitalized. If any of them died after 1935, the letters are still under copyright law. Depending on the terms under which the collection was donated or come into the possession of the depository, it maybe advisable to try to contact heirs of and obtain their consent or transfer of copyright. This especially if there are any special terms attached to the use of the collection in the first place. If that is not possible, the letters could be digitalized and published under provision of the “fair use” of copyrighted material. If Mr. Packard and Mrs. Stevens are not famous individuals, so their correspondence has minimal commercial value, and intended purpose of digitizing and publishing is exclusively for research purposes, there are no serious legal issues in publishing the letters. However, question could be put if the private courting letters are the best choice for publishing on Web. We can assume that writers of the letters never intended for them to become public and that they have the moral right to keep them private even after their deaths. Unless there are some compelling reasons (exceptional literary value, particular visual appearance, or penmanship, description of historically interesting occasions or social rituals) maybe the letters should remain unpublished.

Sources:

Legal explanation of rules for the unpublished material:

<http://www.llrx.com/features/digitization2.htm#Registered>

Example of institutional copyright policies like

<http://ahc.uwyo.edu/documents/about/publications/handouts/copyright.pdf>

A **book** with the following citation: Hall, F. (1871). The history of San José and surroundings: with biographical sketches of early settlers. (L. Goodrich [role]), San Francisco: Printing house of A.L. Bancroft and Company no. 721 Market Street

There are no objections to digitizing and allowing unrestricted public access to this book. As of January 2005, all works **published** before 1923 are in the public domain.

Under the US Copyright Law, “Copyright protects ‘original works of authorship’ that are fixed in a tangible form of expression” (US Copyright Office, What works are protected?). As of 1979, the formal registration with the Copyright Office or “copyright notices” on the published document is not requirement for copyright coverage. However, to be considered “published” the work must be publicly available on an unrestricted basis (Stim, 2006, p. 281). That would mean that Annual Report distributed only to the members of the Board of Directors would not be considered “published” work.

Source:

How to Determine Whether a Work is in the Public Domain

<http://homepages.law.asu.edu/~dkarjala/OpposingCopyrightExtension/publicdomain/SearchC-R.html>

Some **photographs** of J.J Owen (1827-1884?)
that contain no dates and no information on who took the photographs.

There is no objections to the digitizing and free use of pictures of J.J. Owen.

Photographs are protected under the same copyright laws as all other documents and materials. Photographs could be merely visual records (a picture of house for purposes of a real-estate business), visual records of the art (slide libraries in art history departments), or they could be the art objects on their own.

In the case photograph is merely a visual documentation of something it do not fall under the copyright law. If photograph is a visual record of the art, the copyright of the art should be considered, because under the amendment to the Copyright Law known as Visual Artists Rights Act (VARA), authors of the art have moral rights to control use and handling of their art even in a surrogate form (like picture of the art) (Stim 2006, p. 299). However, this right automatically apply only to the art published after 1989 and if “published with the notice” of copyright. When digitizing the photographic images of art it is necessary to make sure, we explore issues associated with copyright of the depicted art, as well as right to the reproduction of particular photograph or image of the depicted art (Copy Photography Computator, Principles, and Definitions).

For photograph to be considered the art object it is necessary to comply with the Visual Artists Rights Act definition of “work of visual art” as applied to photographs: “a still photographic image produced for exhibition purposes only, existing in a single copy that is signed by the author, or in a limited edition of 200 copies or fewer that are signed and consecutively numbered by the author.” (Stim 2006, p. 299). In that case, copyright coverage would be life of the author + 70 years. Considering that pictures of J.J. Owen are without name or signature of the author, they could not be considered as the “work of the visual art.”

If pictures of J.J. Owen are mare snapshots at the social occasions (i.e. documents of the facts rather than artistic interpretation of the occasion,) they will not be copyright protected, regardless

of the date of their creation. Even if we treat pictures of J.J. Owen as “unpublished works when the death of the author is not known,” where copyright expires 120 years from the date of the creation, the photographs reverted to public domain in the year 2004 (Copyright chart by Peter B. Hirtle).

Bibliography:

Stim, R. (2006). *Patent, copyright & trademark: An intellectual property desk reference* (8th ed.). Berkeley, CA: Nolo.

Copyright Term and the Public Domain in the US chart:

http://www.copyright.cornell.edu/training/Hirtle_Public_Domain.htm

Copyright issues associated with the photographic images:

<http://www.vraweb.org/computator/welcome.html>

Visual Artists Rights Act

<http://www.copyright.gov/title17/92chap1.html#106a>

Other sources:

US Copyright Office as ultimate reference guide:

<http://www.copyright.gov/>

<http://www.copyright.gov/circs/circ1.html>

Commission on Preservation and Access

<http://www.clir.org/pubs/reports/oakley/scheme-a.html>

Acquiring Copyright Permission to Digitize and Provide Open Access to Books

<http://www.clir.org/pubs/abstract/pub134abst.html>