# Foreign Service Review, Inc.

March 17, 2005

Mr. Jule L. Sigall
U.S. Copyright Office
Copyright CG/I & R
POB 70400 Southwest Station, Washington, DC 20024

Dear Mr. Sigall:

Here is my comment on the orphan copyright problem.

At the Lyndon B. Johnson Presidential Library in Austin, TX I found more than 1,000 letters written to President Johnson by the relatives of the Vietnam War dead. Johnson was reading many of the letters and answering some of them personally. The letters had a significant impact him and his conduct of the war. I've attached one letter, along with the Department of Defense casualty form filed with the letter.

The very busy staff at the L.B.J. Library went to an extraordinary effort in this case. At my request they reviewed and opened more than 150 boxes of documents, partially, I suspect, because they found the letters as moving as I did. They and NARS can provide no guidance on the copyright status of the letters. Some of the letter writers have been easy to find; others have not. In the case of the attached letter, the boy's father was listed as deceased on the D.O.D. form, there were no siblings, and there is no record of the mother's fate- no phone in California or the rest of the U.S., no death certificate, no will or estate- nothing. Even the synagogues in San Francisco have no information. If she were to be alive today, she would be in her mid-to-late 80s.

So how should I treat this letter? First, for both ethical and legal reasons I must make every effort to find her or her heirs to secure the rights. So far, without exception, when I can find the rights' owners, they have been very cooperative. But what do I do if the letter's writer or heirs are not identifiable? Many of the writers were poor, left blended families, and few wills. Forty years later there is no trail to follow.

Without the rights I'm faced with a problem: I can use a letter, with the names, dates and home towns changed but leaving in the key information, so anyone who knows a writer can guess the identity and contact me. That seems to me to be the most ethical course. But the legal consequences are much harder to figure out. The lawyers I've spoken with say "it depends". The potential publishers are wary. Recently there was a book of letters written to FDR published, but these letters are from the late 1930s; mine are from the mid 1960s. So for now I am using the letters only in a theater piece; just straight readings with names changed but otherwise unedited. If I'm able to find a letter-writer, and he or she says "I don't want the letter used" I will simply stop using it. But there will be no book, which is sad. Soon, under the present copyright law, letters as old as WW I letters are today will be covered and unavailable for historians to use. And if letters to the White House are covered, what about other forms of communication to the federal government, corporations... even old postcards? And what is the difference between me distributing the letters and the Johnson Library distributing them?

Because of the events in Iraq there is suddenly great interest in the letters. So I take the risk for readings, but a book of selections faces too many problems. I've decided not to accept any remuneration, and to depend on the educational exemption, but the legal murkiness and ethical problems leave me very uncomfortable. I don't offer any clear policy path, but the present system is unworkable now and will only get worse in the future.

Sincerely,

David B. Miller

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*Not Affiliated with the Department of State*