

Goodman Associates, Inc.

February 19, 2005

Jule L. Sigall
Associate Register for Policy & International Affairs
U.S. Copyright Office
Copyright GC/I&R
P.O. Box 70400 Southwest Station
Washington, DC 20024

Dear Jule Sigall,

I'd like to tell you about the situation we are facing in the production of a documentary about the history of American Picture Postcards. The reasons for mentioning this in regard to your request for comments will be clear as I explain the issues.

Picture postcards have been manufactured since 1893. Illustrations and photographs were used to create the images depicted on these postcards. The cards were published by a huge number of companies and most no longer exist. In many cases, the photographs were created by photographers and sold to publishers who bought them with the understanding that all rights in the photographs were being purchased. That arrangement was industry practice from 1893 until the early 1960s when a photographer sued one of the publishers because a local distributor had misappropriated a photograph created by that photographer. The case was settled in favor of the photographer and from then on publishers purchased only the right to publish the photograph and placed the name of the photographer and copyright information on the back of the postcard. The case called into question who owned the images in the archives of the postcard publishers and led to the demise of several industry leaders. The bulk of the images manufactured since the introduction of the picture postcard of which there are likely several hundred million - no one is sure of the total number - one company alone produced nearly 400,000 different images - have no copyright information other than a publisher's name.

As we decide which images to include in our film, we must contend with the copyright issues. If there is an identifiable person named, we are making the attempt to find them or their heirs. Except for contemporary publishers or companies such as Hallmark that began as postcard publishers and still

exist, all of the other companies are out of existence. There are several archives that hold the bulk of the output of two of the major companies but the issue of who actually owns the copyright of the images is in doubt because of the various changes in copyright law over the past 30 years. Prior to 1976, most of these images would have been considered to be in the public domain. Today, we assume that the photographers own the images because there weren't any signed work-for-hire agreements in place. In sum, what is clear is that no one knows for sure who owns any of these images. Do the archives own the images? Do the photographers own the images?

The uncertainty of ownership leaves us in the position of attempting to find individuals and successors to these companies and ask their permission to use the images. All in all it's a nearly impossible task given the number of images that will be included in the finished film. Plus, no one can be sure whether they actually have the right to grant permission. Images clearly marked as copyrighted prior to 1918 (the boom period for postcards was between 1900-1918) may or may not be in the public domain. It depends on varying legal opinion and conjecture.

In the end, all we can do is make an effort to locate the owners and hope we aren't sued for copyright infringement once the film is finished. The increased risks will significantly raise our O&E insurance rates which have become a requirement for licensing the film for broadcast. These higher costs significantly reduce the economic viability of the film which has meant greater difficulty in funding its production. What we believe is a significant story about American history and popular culture remains untold because of issues within the copyright laws.

Sincerely,

Robert M. Goodman
Writer/Director