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# **Copyright: The Case of the Sidney D. Gamble Photographs at the Duke University Libraries**

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## **Introduction**

In 1908, the eighteen-year-old Sidney Gamble (1890-1968) arrived in China for the first time with his parents. His family visited Hangzhou and the trip impressed Gamble so much that he came back to China three more times between 1917 and 1932, traveling throughout the country to collect data for socioeconomic surveys and to photograph urban and rural life, public events, architecture, religious statuary, and the countryside. As a sociologist and renowned China scholar, as well as an avid amateur photographer, Gamble used some of the pictures to illustrate his monographs, but most of his photographs were never published and therefore remain largely unknown.

About fifteen years after Sidney Gamble's death in 1968, his daughter, Catherine Curran, found a trove of nitrate negatives in a closet in the family's home in New York. Stored in beautiful rosewood boxes, the negatives were sheathed in individual paper sleeves and annotated with typed and handwritten captions. In 1986, Catherine Curran established the Sidney D. Gamble Foundation for China Studies to preserve the photographs and provide access to them. Duke University Libraries (DUL) invited Ms. Curran to place her father's photographs in its Archive of Documentary Arts, and an agreement to bring the Gamble collection to Duke was signed in March 2006. Among the things addressed in the transfer were rights in the photographs, ownership of which was to be held by both Duke University and the Gamble heirs. The collection includes about 4500 black and white nitrate negative films, 600 hand-colored lantern slides, a few short films, a photo album, scrapbooks, a small section of Gamble's personal papers, and records of the Sidney D. Gamble Foundation for China Studies.

## **What is the purpose of digitization?**

Nitrate negative film, introduced by Eastman Kodak in 1887, was more flexible and durable than previously used glass. Nitrate film also presented fewer breakage problems and was portable and much friendlier for travel photography. It was widely used by photographers for fifty years. Yet, nitrate is highly flammable, and the gas produced by burning nitrate is hazardous. In October 2006, Duke University Libraries contracted with Chicago Albumen Works in Massachusetts to digitize the highly flammable nitrate negatives, a process that continued through the spring of 2007. All of the films were scanned at a high resolution, and the original nitrate negatives were then shipped to Duke and preserved in cold storage in perpetuity. The vendor also digitized the typed image labels to transform them into raw text, which became the foundation for the image captions and geographic headings in the Sidney D. Gamble Photographs digital collection.

In early 2008, the geographic names in the labels were updated to Library of Congress subject headings, province names were added to the metadata, as well as standardized descriptions to support searching and browsing. The collection was published in fall 2008

and is accessible online at <https://repository.duke.edu/dc/gamble>. The 600 lantern slides were not processed individually until 2013. All lantern slides were then digitized and added to the digital collection in 2014. The photo album with 170 images of Gamble's 1908 trip with his family was the latest item digitized and was added to the database in 2019.

Sidney Gamble published seven books on China and always used his photographs to supplement his narrative. He used color lantern slides in his lectures around the country. Those images are unforgettable and profoundly effective in their resonance and range. The digitization of the nitrate negatives and glass slide, which captured the content of these deteriorating media, is part of the preservation strategy. It has extended access to these materials to a much wider audience. The Sidney D. Gamble digital collection is a comprehensive presentation of all his photographs and slides with metadata in English, Chinese, Japanese and Korean. When the digital collection came out in 2008, photographs could be downloaded in three formats: thumbnail, medium size (about 1MB) and high resolution (about 12 MB). The database fulfills DUL's commitment to promoting this wonderful collection of resources and making it openly available to researchers, students and the general public in the world.

### **What is copyrightable?**

Assessment of the copyright status of both the Gamble photographs and the other materials created in the course of digitization, such as metadata, formed an important part of the project. Copyright in both the United States and elsewhere generally protects original works of authorship in all types of mediums, including photography. Those rights exist for limited times – the international norm is that protection lasts for at least fifty years from the date of the death of the author, though in some jurisdictions (such as the United States) the term is longer. Works in the United States are generally protected for seventy years from the date of the death of the author.

For the photographs themselves, they are or at least were at one point protected by copyright. For copyright in any work, originality, i.e., new creation, is essential. This means in this case, that original copies of the Gamble photographs—creative works of authorship themselves—were protected. However, a new version that consists merely of the same work in a new form—such as a book or photograph that has been scanned to create a digital version—does not obtain any additional or new copyright. Digitization by itself doesn't create copyright or similar rights because in most cases there is no originality involved in making a faithful digital reproduction of a creative work. Therefore the digital images created from scanning the nitrate negative and glass slides are simply a reproduction of the original work. They don't create a new copyright.

The project also involved the creation of significant metadata. Whether metadata is protected by copyright depends on what specific types of metadata. Short factual pieces of data are not copyrightable, but longer descriptions, such as abstracts or expositions, may rise to the level of creative expression that can be protected by copyright law. The metadata in Gamble photograph digital collection is based on Gamble's own notes. Many of these are short factual data, but some are enriched with longer descriptions by library staff. All metadata are translated into Chinese, Japanese, Korean and Russian.

Because reuse of metadata is generally thought to promote sharing and reuse of the collection, several libraries have developed licensing policies to clarify the copyright status of the metadata they host or create. The New York Public Library (NYPL) has a policy on open bibliographic metadata (<https://www.nypl.org/help/about-nypl/legal-notices/open-metadata>), which says that NYPL is “committed to making its bibliographic metadata records as broadly available as possible to support scholarship, research and to promote innovative uses of these records.... To the extent that NYPL has a copyright interest in Metadata Records, a Creative Commons CCO 1.0 Universal Public Domain Dedication will apply.” NYPL requests that users of their metadata give attribution to NYPL. The Digital Public Library of America (DPLA) also has a metadata policy statement (<https://pro.dp.la/hubs/metadata-application-profile>), which says that DPLA “asserts no rights over its database of metadata and dedicates its contributions to the public domain. .... To the extent that the DPLA’s own contributions to selecting and arranging such metadata may be protected by copyright, the DPLA dedicates such contributions to the public domain pursuant to a CCO Public Domain Dedication.” DPLA encourages users of their metadata to give attribution to all the sources of the metadata”. While Duke University Libraries doesn’t have a formal statement online about the use of its metadata, it generally promotes reuse of its data while requesting proper attribution.

### **The Copyright and Permissions Statement**

Duke University Libraries has a copyright statement regarding the use of these images. The statement has evolved over the course of the project, reflecting the changing copyright status of the materials in it as well as reflecting a reaction to the use of the materials in China. The statement read originally that “The materials in this collection are made available for use in research, teaching, and private study. Texts and images from this collection may not be used for any commercial purpose without prior permission. Copyright in these images is held by Duke University Libraries and the heirs of Sidney D. Gamble. All rights are reserved, except as specified above. When use is made of these texts and images, it is the responsibility of the user to secure any necessary permissions and to observe the stated access policy, the laws of copyright, and the educational fair use guidelines. For permission from Duke University, please contact the David M. Rubenstein Rare Book & Manuscript Library”.

An important point in the evolution of the Duke copyright statement came in August 2018, when Chinese publisher, Zhejiang Mei Shu Chu Ban She (浙江美术出版社), published a fifteen volume set of Sidney Gamble Photographs (甘博摄影集, details see an online store <http://www.booyee.com.cn/bookdetail-new.jsp?bookid=465552>). The set (ISBN 9787534066450) includes about 4125 black and white photographs (based on the information from the first volume). Each image takes a whole page with a simple caption at the bottom. The set is sold worldwide for RMB5970 (about US\$870). The publisher didn’t contact DUL for use of Gamble photographs. The captions of the images are a copy of the metadata from the digital collection. The publisher had taken advantage of the freely available high-resolution images and the bi-lingual metadata.

Duke University Libraries welcomes the use of its digitized materials in academic and commercial publications. Fees are often waived for academic publications. DUL’s permission letter tells users its preferred citation in publications and exhibitions: [Identification of item],

Sidney D. Gamble Photographs, David M. Rubenstein Rare Book & Manuscript Library, Duke University. The 15-volume set mentions in its introduction that these photographs are now housed at Duke University Libraries. It is difficult to understand that with this knowledge the publisher decided not to contact DUL to get permission for the publication.

This case involves understanding of the copyright laws of both the United States and the People's Republic of China. Many of these photographs were never published during Sidney Gamble's lifetime. In China, the copyright of unpublished works is protected for 50 years after the creator's death (Gamble passed away in 1968). The set came out in August 2018, if the publisher were more patient and released it in 2019, they could have argued that these images are in public domain. In the United States, since copyright is for 70 years after the creator's death, these photographs are still under copyright protection in the U.S.

The fundamental role of an academic library is to promote access to knowledge and to encourage creativity. Libraries do not seek profit from charging copyright fees for their digitized content. The copyright statement is to give guidance on citation and the acquisition of proper permission.

In summer 2019, Sidney Gamble photograph collection was migrated to DUL's digital repository platform. The image viewer at the new platform allows users to zoom in to see details but only offer medium size download (about 1 MB). DUL updated its copyright statement, it now says that "In the course of acquisition Duke obtained rights to these materials. As of 2019, the underlying works entered the public domain in some jurisdictions, but are still protected in others, including the United States. To encourage reuse and avoid doubt, Duke hereby waives any intellectual property rights it retains in these materials under the terms of the CC0 waiver. We encourage collaboration with publishers and others who wish to create works based on these materials. Please see <https://library.duke.edu/rubenstein/research/citations-and-permissions> for additional information."