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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 Ms. Sigall:

In 2001, while I was finishing my doctoral degree in English at Duke University, Cathy N. Davidson and I undertook a book project with Penguin Classics – editing an edition of Yankton Nakota writer and activist Zitkala Sa's works. Zitkala Sa published two books, *American Indian Stories* (1921) and *Old Indian Legends* (1901), which have been kept in print by University of Nebraska Press since the 1970s. There have been no collected editions of her work, nor any collections of her essays, poetry, and other various political and creative pieces written over the course of her lifetime. So, rather than simply reprinting what Nebraska was already accomplishing, we thought we would take the opportunity to do readers and scholars of Zitkala Sa the service of making some lesser known work available.

In the summer of 2001 I spent several weeks doing research in the L. Tom Perry Special Collections archives at Brigham Young University in Provo, Utah where Zitkala Sa's (filed there under her Anglo name, Gertrude Bonnin) papers are housed. At this time, I found a manuscript of 10-12 unpublished stories (stories that showed evidence of being prepared for publication – they were typed, and included formal title pages with word count, etc). I also found copies of many of Zitkala Sa's later writings, which included a number of articles, advocacy pieces, position papers, speeches, and a copy of the libretto of *The Sun Dance Opera* – a work co-written by Zitkala Sa and a Mormon music teacher and composer living in Utah, William Hanson.

Penguin Classics gave us *very* clear limitations in terms of our publishing guidelines; since they were operating on limited budgets, there was no room to even consider any works that fell outside of 1922, even if they seemed to be free of copyright claims. This, of course, was disappointing. Zitkala Sa worked in the public domain until 1936, working as a tribal advocate in Washington, D.C. – to fully represent her life's work would require going into the 1922 – 1936 period of her writing. We found three pieces that were published in the *California Indian Herald* in 1924, making them unusable, until I realized they were reprints from a 1922 edition of the San Francisco Examiner, and so were available to include in our edition. Other pieces from the 1920s, however, did not make it into the book. A co-authored report about graft and land abuse in the handling of the affairs of a number of people and tribes in Oklahoma (*Oklahoma's Poor Rich Indians: An Orgy of Graft, Exploitation of the Five Civilized Tribes, Legalized Robbery*

(1924)) was not reprinted because of date restrictions. There were a few other pieces that we might have published (a speech given at a *Nation* dinner and some memos circulated in Washington, D.C. based advocacy circles) but it was unclear how to classify the pieces, and, as they mostly fell after 1922, they seemed categorically off-limits. Neither myself nor my co-editor had any sense of the legal issues involved, so we found it very difficult to even open an inquiry into whether it might actually be legal to publish these post-1922 materials.

The libretto from *The Sun Dance Opera* brought up separate issues since it was clearly written (and produced) between 1911 and 1914. Numerous drafts of the libretto exist in Zitkala Sa and William Hanson's papers held at BYU's L. Tom Perry Special Collections. The supervisor of the Special Collections issued a "Contract of Use" granting us the right to publish materials from the Hanson and Bonnin Papers in the Penguin Classics edition. This contract explicitly did not claim that the materials were clear from copyright claims, but indemnified them from copyright claims.

However even with this contract in hand, we ultimately could not publish the libretto, nor (and this was the real disappointment) the previously unpublished stories, even though by all reasonable interpretations they were written well before 1922. The book manuscript had been approved for length by Penguin with the full selection of texts (including the libretto and unpublished stories), when someone (I can't remember if it was Penguin or one of us) noticed that a new book by another Zitkala Sa scholar contained a selection of these unpublished stories and a version of the libretto, published by University of Nebraska Press. In the acknowledgements, the author "gratefully acknowledges the estate of Gertrude Bonnin for permission to publish these works." Clearly this would make any reasonable person, not to mention a legal department, rather nervous about publishing very similar materials from the same archive. No one at the archives and no other scholars had made mention of an estate. Queries to the editor of the new book went unanswered. The possibility of an outstanding copyright claim on Zitkala Sa's work (even pre-1922 work) was enough to make Penguin's legal department ask us to pull the unpublished material. Penguin's budget did not allocate funds for legal inquiries or research, and they wanted to err far on the side of safety.

We made a few efforts to find who beyond BYU spoke for the Bonnin estate, but were unsuccessful. Since much of the material in question (though not all) was published in that excellent Nebraska edition, as far as the general scholarly community goes, scholarship and teaching on Zitkala Sa clearly should not suffer. But to have two editions – one a differently accessible mass market paperback – of this amazing and heretofore unknown writing would have been an event for sure.

Yours sincerely,

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