

# Well-intentioned practice for putting digitized collections of unpublished materials online

The primary responsibilities of cultural materials repositories - stewardship and support for research and learning - require us to provide access to materials entrusted to our care. This document establishes a reasonable community of practice that increases and significantly improves access to collections of unpublished materials by placing them online for the purpose of furthering research and learning. Although it promotes a well-intentioned, practical approach to identifying and resolving rights issues that is in line with professional and ethical standards, note that this document does not concern itself with what individuals who access particular items may do with them. While the document was developed with US law in mind, it is hoped that the spirit of the document will resonate in non-US contexts.

If your institution has legal counsel, involve them in adopting this approach; after the approach has been adopted, only seek their advice on specific questions.

## Select collections wisely

- Keep your mission in mind and start with a collection of high research value or high user interest.
- Assess the advantages and risks of relying on fair use (in the US) to support public access.
- Some types of materials may warrant extra caution when considering rights issues, such as
  - Contemporary literary papers
  - Collections with sensitive information, such as social security numbers or medical data
  - Materials that are likely to have been created with commercial intent (because they are more likely to have economic value)
  - Very recent materials that were not intended to be made public
- If research value is high *and* risk is high, consider compromises, such as making a sensitive series accessible on-site only, until a suitable time has passed.

## Use archival approaches to make decisions

- Check donor files and accession records for permissions, rights, or restrictions.
- Assess rights and privacy issues at the appropriate level, most often at the collection- or series-level.
- Attempt to contact and get permission from the rights-holder, if there's an identifiable rights-holder at that level.
- Include what you know about the rights status in the description of the collection, including if the collection is in the public domain, if the institution holds the rights, or if the rights-holder has given the institution permission to place the digitized collection online.
- Document your processes, findings, and decisions and share them with your professional community.

## Provide take-down policy statements and disclaimers to users of online collections

- Adopt a liberal take-down policy, such as: *"These digitized collections are accessible for purposes of education and research. We've indicated what we know about copyright and rights of privacy, publicity, or trademark. Due to the nature of archival collections, we are not always able to identify this information. We are eager to hear from any rights owners, so that we may obtain accurate information. Upon request, we'll remove material from public view while we address a rights issue."*
- Use an appropriate disclaimer at the institutional level, such as *"[Institution] makes digital versions of collections accessible in the following situations:*
  - *They are in the public domain*
  - *The rights are owned by [institution]*
  - *[institution] has permission to make them accessible*
  - *We make them accessible for education and research purposes as a legal fair use, or*
  - *There are no known restrictions on use*

*To learn what your responsibilities are if you'd like to use the materials, go to [link]"*

## Prospectively, work with donors

- Identify possible intellectual property issues and get relevant contact information.
- Ask donors to state any privacy concerns and identify sensitive materials that may be in the collection.
- Suggest that donors transfer copyright to the institution or license their works under a Creative Commons CC0 license.
- Include statements in your collecting policies and in your deeds of gift or transfer documents that:
  - ensure that no restrictions are placed on content that is already in the public domain,
  - grant license to digitize the materials for unrestricted access even when donors retain the rights,
  - and guard against limitations or restrictions on fair use rights.

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For more about this document, see <http://www.oclc.org/research/activities/rights>

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