Learning to Live with Risk

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How legally to digitize archival collections

• Get permission
• Change the law
• Accept some risk
• Impossibly expensive for modern collections
• Example: Senator Thomas Watson (d. 1922) papers
  • 3,304 correspondents
  • 21% public domain (i.e., died before 1937)
  • Only 4 identifiable copyright owners among the rest
  • Cost: over $1,000/linear foot.


Permissions

http://www.georgiaencyclopedia.org/articles/history-archaeology/thomas-e-watson-1856-1922
- Exceptions for libraries and archives found in § 108.
- 2005: Study group appointed to look at digital impact, possible changes

http://www.section108.gov
2008 Recommendations

- Extend protections to some museums
- Remove the 3 copies limit
- Add “fragile” to the law
- Create a new “preservation only” exception
- Allow limited capture and preservation of web sites
- How to protect against misuse?
  - Limit who can do this: certified repositories
  - Storage in a “dark archives”
• No legislation as yet introduced
  • Copyright Office promises it is coming
• Possible impact on WIPO treaty negotiations
• But at what price?
  • Is it better to live with a bad law than a changed law?

Results
• Existing limitations in US law for infringement of unpublished and unregistered works
• Increased reliance on “fair use” as a possible defense.
  • *ARL Code of Best Practices in Fair Use*

A better approach: risk management
• Principle 4:

*It is fair use to create digital versions of a library’s special collections and archives and to make these versions electronically accessible in appropriate contexts.*

(With additional specified limitations and enhancements)
• Principle 8:

It is fair use to create topically based collections of websites and other material from the Internet and to make them available for scholarly use.
Risk management in practice: Fair use

http://rmc.library.cornell.edu/obama/
HEAL OUR LAND

Our Father, Lord of America,
Father of the Free and the Brave,
We pray to you that we may triumph over evil.

We ask you to
Protect us against Terrorism,
Natural disasters, and Unseen forces.

Through our devotion to you
May our country be safe and
Our hearts free.

We ask this of you through your
Immaculate Heart
To your Son, Jesus. Amen.

God Bless America!

Barack H. Obama
44th President
2009
Copyright

The copyright status and copyright owners of most of the images in the President Barack Obama Visual Iconography Collection are unknown. Whenever possible, information on current rights owners is included with the image. Cornell is providing access to the materials as a digital aggregate under an assertion of fair use for non-commercial educational use. Cornell is providing access to the materials as a digital aggregate under an assertion of fair use for non-commercial educational use. Cornell is not responsible for determining the independent legal assessment of an item and securing any necessary permissions ultimately rests with persons desiring to use the item.

Cornell would like to learn more about items in the collection and to hear from individuals or institutions that have any additional information as to rights holders. Please contact rareref@cornell.edu.
The Triangle Research Libraries Network’s Intellectual Property Rights Strategy for Digitization of Modern Manuscript Collections and Archival Record Groups

January 2011

Laura Clark Brown, Judy Ruttenberg, and Kevin L. Smith, J.D.

http://www.trln.org/IPRights.pdf
RESEARCH COLLECTIONS > FULLY DIGITIZED COLLECTIONS

Fully Digitized Collections

Over a hundred archival collections have been scanned and posted online in their entirety. Please note that majority of the Archives’ 6,000 collections are only partially digitized. The Image Gallery displays items from partially digitized collections.

Funding provided by the Terra Foundation for American Art

FEATURED COLLECTIONS

Betty Parsons Gallery Records and Personal Papers

The Betty Parsons gallery records and personal papers were digitized in 2008-2009.

The bulk of the papers have been scanned and total 61,427 images.

http://www.aaa.si.edu/collections/online
CITY ART GALLERY
LEEDS

28th January, 1938.

Dear Saligmann,

Your letter of November 27th has at last reached me today. It is very good to hear from you again. I have been Director here for four years, but pay very frequent visits to London, so do let me know if you are over there. Bellini is still unpublished. I finished it just before I came here, but the Oxford University Press wanted me to convert it into a more popular book. This I wasn't willing to do, and at the moment the material is going into lectures at Oxford, where also I am Slade Professor. I hope that the University Press will think better of it now that I am a member of the University, and that the book has in any case become a bit more popular in Curn. I should be glad to hear from you if you have sold your little portrait, and if so where it is to be found.

Yours very sincerely,

Philip Leach

Germain Saligmann, M.A.,
Jacques Beligmann & Co., Inc.,
3 East Fifty-Fifth Street,
NEW YORK,
U.S.A.
Mission rises to the fore…

- Repositories face extremely unlikely, but real, legal risks
- More and more are turning to their mission:
  - Education
  - Promotion and use of historical materials
  - Encouragement of new scholarship, new art
- Professional judgment may matter as much as law

Mission rises to the fore….
• Don’t just ask “Is it legal”?
• Ask “Who is going to be angry if I do this? Who will benefit?”
• Look for ways to minimize potential harm while maximizing access and use.
• Tell users all you know about rights, so they can be responsible:
  • Copyright owners
  • Your requirements

Take-aways
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