Collaborating Across Disciplines

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Copyright Risk Assessment in Special Collections

Presenters

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Obligatory Legal Disclaimer

We are not lawyers and this is not legal advice.

Additionally, the views presented here are the views and experiences of the presenters only, not their respective current or former employers

About Emory and Emory Libraries

- Emory University is private R1 research university located in Atlanta, GA
- We are comprised of 7 graduate and professional schools and two undergraduate liberal arts colleges
- Emory Libraries is a network of 15 distinct libraries and service centers
- We hold nearly 6 million volumes, nearly evenly split between electronic and physical volumes and employ 364 staff members
- Many of those librarians and staff positions (like our copyright librarian) provide services and expertise for colleagues across all of those 15 libraries

Rose Library Manuscript Collections

- Over 22,000 linear feet of manuscripts
- Mostly created in the 20th and 21st centuries
- Very heterogeneous in terms of:
  - Format
  - Presence of licensing agreements in our deeds
  - Publication status

Risk Management and Sharing Cultural Heritage Online: Background and Task Force Charge

Background

- Approach to Risk: We generally only made content available online if we could determine with a high level of certainty that it was in the public domain, if we has obtained a clear license, or if we had done extensive investigation and due diligence to find rights holders to orphaned works
- Rarely relied on fair use or made things available that we knew to be in copyright but low risk
- 2019 Emory Libraries was preparing to launch a new digital library platform, Emory Digital Collections
- Desire to ramp up digitization to have the platform populated with a robust amount of content by launch

Limitations

- Item level reviews are extremely time and labor intensive
- Rights review work performed at the item level
- Rights review conducted by by 20% of one individual
- Lots of redundancies and duplicate work: descriptive metadata work produced by archivists wasn't effectively communicated and duplicated by copyright or metadata librarians
- Work only addressed copyright, we wanted a more holistic approach to risks that also included things like privacy and that more meaningfully balanced risk with our educational mission

Goals of the Task Force

- Maximize material from the Rose Library's collections available online to support the educational and research mission of the Library and Emory University
- Shift from project-based digitization to programmatic digitization and delivery
- Design policies that allow us to address legal, ethical, and practical risks related to copyrighted, private, or restricted material in our collections by assessing and managing risks categorically rather than at item level
- Work within our institution's risk tolerance

Building Our Team, Sharing Our Skills

Developing a Community of Practice

- Establish a shared purpose
- Build a shared base of knowledge through training
- Learn and share about each other's roles in the organization and the workflow
- From these discussions, realized that review work could be more broadly distributed and had natural synergies with work done during processing
- Eventually published our findings in an Open Educational Resource book

Including Rights Review in Processing Workflows

Why Include Rights Review in Processing Workflows?

- Many of the data points for analyzing collections for arrangement and description and analyzing copyright status are the same
- Leverages expertise of archivists with deep knowledge of a collection at the time they know the most
- Reduces duplication of labor
- Archival description can be repurposed and repackaged along with information about rights and risks for broad dissemination

Benefits of a Risk Assessment Framework

It's not just copyright

- This holistic approach considers the intellectual property rights impacted by digitization of special collections as well as other types of risk (i.e., privacy, financial, reputational, ethical, etc.)

Meeting Demand for Research Access

- Demand for online/virtual access to special collections materials has increased The COVID-19 Global Pandemic sped up that increase drastically
- Not enough available, affordable labor to perform rights review assessment as an item-by-item level to meet that growing demand
- A risk assessment framework allows for satisfactory assessment of a collection's rights status (as well as other risk liability) with the labor capacity available

The Bus Factor

- A risk assessment framework integrates review/information gathering at multiple staff levels
- This reduces the "bus factor"- If a single employee is unable to perform their duties, the risk management process can continue to move forward

Implementation and Deliverables

Pilot testing

- Socialized these changes in processes by gradually introducing new workflows/forms; SCO and Rose staff tested them over past couple of years
- Still making minor improvements, but no major changes seem warranted
- Immediate benefits of distributing rights-review work: more works ingested as collection stewards complete Copyright Review and Analysis Form and copyright librarian simply reviews it
- Archivists complete the Post-Processing and Risk-Assessment Report as they process new collections only

Deliverables

Licensing & Permissions Tools

- Deed of Gift/Sale Template
- Deed of Gift Addendum
- Permission Letter Template

Point-of-Processing Tool

- Post-Processing and Risk-Assessment Report

Workflow & Integration Tools

- Copyright Analysis Workflow
- Copyright Review and Analysis Form

Decision-Making Tool

- Rights and Risks Matrix

Example: Rights and Risk Matrix

PERSONAL PAPERS

Color Key	Color Key
likely out of copyright, low/no risk	likely in copyright, low risk
likely out of copyright, higher risk	likely in copyright/orphan work, lower risk
in copyright/likely in copyright, strong fair use argument	likely in copyright, medium risk
more research required	likely in copyright, high risk
Emory owns copyright, restricted or high risk	

	Living Creator	Non-living Creator	Revenue generating	Many creators present	Famous creator(s)	Litigious Estate
General Personal Papers, Creator/Main Entry who died before 1950*						
Correspondence	N/A					
Juvenalia	N/A					
Records related to work/volunteer activities with organizations (charities, boards,sororal organizations, etc.)	N/A					
Professional records for job worked at**	N/A					
Professional records from a company person owned	N/A					
Subject Files	N/A					
Research Files	N/A					
Diaries/Journals	N/A					
Datebooks/Calendars	N/A					

Point-of-Processing Tool

- Archivists complete a post-processing and risk-assessment report after processing to document known or anticipated rights issues in collections.
- This documentation will be critically important to save time and avoid duplication of effort down the road if/when the collection is proposed for digitization and sharing.
- The report will also help us determine whether or not a collection is too high risk overall to be digitized.
- Includes:
  - Post-Processing and Risk-Assessment Report

Rights and Risks

- The rights and risk matrix helps archivists and others assess the potential risk of digitizing and making available a library collection.
- It takes into consideration both likely copyright status of a set of works and other risk factors, such as how protective an estate is of the donor's work or reputation, how brand-conscious an organization is, or statutory restrictions that may govern collections.

Digitization Workflow and Integration

- These workflows and forms fully operationalize the work and integrate rights assessments happening in the Rose Library into broader workflows and policies.
- The copyright analysis workflow illustrates the process as a flowchart.
- The copyright review and analysis form is completed by the collection steward and reviewed by the copyright librarian and the university librarian (if we are sharing the work under a fair use rationale).
- Includes:
  - Copyright Analysis Workflow
 - Copyright Review and Analysis Form

Find more examples of these tools at . . .

https://bit.ly/CopyrightWorkflows

Our Book and the Scholarly Communications Notebook

- Our book is *Finding Balance: Collaborative Workflows for Risk Management in Sharing Cultural Heritage Collections Online*
- The IMLS-funded Scholarly Communications Notebook project supported the creation of our book
- Other related open educational resources can be found at the SCN site on the OER Commons
- OCEAN Presentation on June 30
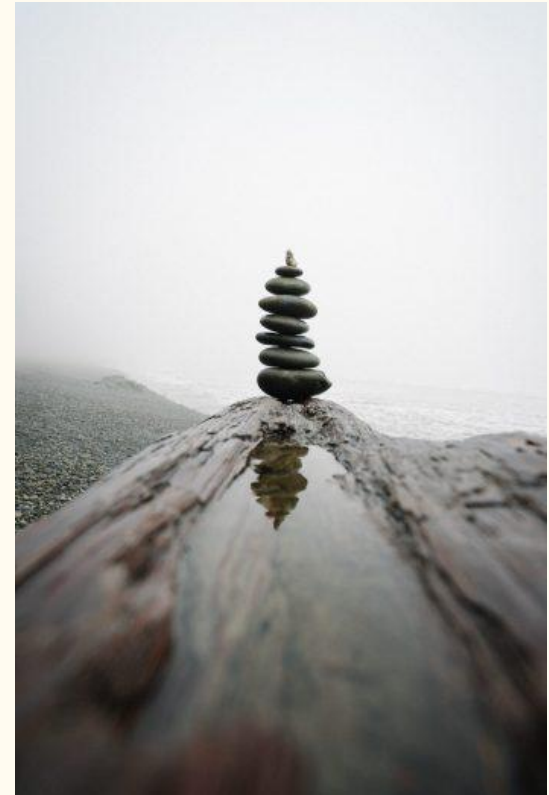
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