

RIGHTS IN THE DIGITAL ERA

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with an Introduction by Peter B. Hirtle*

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Appendix B: Case Study—UCLA Library Special Collections

UCLA Library has completed several large and small digitization projects that encompass a wide range of copyright issues likely to occur in many repositories.⁸⁶ Recently, the special collections units within the UCLA Library were integrated into one large department organized functionally. The new organizational structure now supports and encourages an integrated and comprehensive approach to developing, selecting, and managing digitization projects utilizing special collections materials.

As part of an integrated approach to digitization projects, a set of guidelines and detailed workflows was created for application to multiple projects. The guidelines and workflows included a copyright analysis workflow with an integral risk analysis component. The first step was to determine the copyright status of the materials under consideration. Those within copyright proceeded through the workflow, gathering more information, but it was possible to exit at particular steps, such as a finding of public domain status or a need to review the project. Second, information about the nature of the materials and rights ownership was collected and documented, with each proposed project resulting in at least one or more copyright and risk analysis reports. Each report characterized copyright status and the level of risk posed by including an item in the project, based on the factors related to the rights owner, age of material, and whether it was originally created for a commercial purpose. It should probably be noted here that since all are digitization projects, the proposed uses were all the same: digitizing and providing access copies online. Finally, the reports were all reviewed centrally by a staff member with copyright knowledge and expertise, and the next steps were agreed upon: continuing with the proposed use, creating a fair use statement, requesting permission, re-conceptualizing the project, or continuing the research, depending on the results of the risk analysis for a particular project. The two cases

⁸⁶ The author wishes to thank Jasmine Jones, Los Angeles Aqueduct Digital Platform project archivist, and Gloria Gonzalez, Digital Archivist, for documenting, refining, and enhancing an individual copyright and risk analysis process and documentation so that it could be used across a multitude of digital projects and taught to others.

discussed below provide examples of how the guidelines and workflows functioned in practice.

Project 1: The Los Angeles Aqueduct Digital Platform

The Los Angeles Aqueduct Digital Platform (<http://digital.library.ucla.edu/aqueduct/>) was launched on November 5, 2013, to commemorate the centennial of the Los Angeles Aqueduct and its influence on the development of Southern California. The first phase of the project was six months in development, and the project site includes links to resources in six other repositories outside of UCLA. UCLA has included materials from fifteen collections comprising more than twelve hundred photographs, documents, maps, and pamphlets.

The project by its nature was highly curated; however, because of its very short timeline a copyright and risk analysis approach was used, since permission and certainty for everything was not possible. After research, some published and unpublished material was found to be out of copyright, but other materials featured from the planning, construction, and opening of the Aqueduct were still within copyright. The Aqueduct and the politics of water are ongoing topics and the site brings this long, rich, history together. The copyright and risk analysis research also uncovered orphan works that were selected for inclusion because of their importance in telling the story of the Aqueduct. For materials that could not be cleared, an argument of fair use based on the checklist and the ARL *Best Practices* (Principles 2 and 4) was constructed and documented, noting how we address both the limitations and enhancements as described by the *Best Practices*, along with a disclaimer statement (see Appendix C) regarding our research for the website for any orphan works determined to be of low to medium risk.

For example, the decision was made to add newspaper clippings from newspapers published in the 1930s but no longer in existence or possibly subsumed by an unidentified entity, including clippings in which the paper was unidentifiable. Such materials had been identified through our research as low risk, with other clippings as medium risk, the former because there was a good chance that they were out of copyright and also because some were truly unidentifiable.

Project 2: Nitrate Negatives

A second example of a project using the copyright analysis and risk analysis workflow is the decision-making process UCLA used in deciding how to provide access to a series of nitrate negative collections that had been digitized for preservation purposes, but which were later proposed to be made available online through the UCLA Digital Library, <http://digital2.library.ucla.edu/>. With funding from the Arcadia Foundation, fifteen collections and more than forty thousand individual negatives dating from the 1920s to 1940s were digitized over five years. Many of the collections were the work of a single identifiable photographer, while some were not.

Of the seven collections selected for access, three (Charles S. Lee photographs, *Los Angeles Daily News* photographs, and *Los Angeles Times* photographs) were exempted from the process after an initial information review because a deed of gift or other documentation existed in the collection file, and these deeds transferred copyright to the University of California Regents. For two collections (Adelbert Bartlett photographs and Ralph D. Cornell photographs), we were able to identify contactable heirs, who provided permission to place the photos online.

The final two collections (C. C. Pierce photographs and H. W. West photographs) required a risk assessment. Our initial copyright analysis concluded that the collections comprised photographs taken exclusively by the photographer. Searches produced no information regarding whether any materials were published. In the case of one collection, biographical information sources also indicated that the photographer was known to eradicate the names of other photographers and place his own name on any photographs that he purchased, but it is not clear if this was done with any of the items in the UCLA collection. Research also revealed that the duration of copyright in unpublished materials created by one photographer had nearly expired. In both cases the identification of heirs of the photographers ran into a dead end. Based on this analysis, we decided to put collections online, recognizing the risks of encountering litigation for copyright infringement were minimal. To further mitigate the potential

risks, we published the materials with a disclaimer and documentation concerning our research.

Our copyright workflow and risk analysis has grown out of individual research and practice and has been codified and refined over time. We are now implementing the information-gathering and review process across all of our digitization projects. The process has been systematized and documented so that graduate students create the Copyright and Risk Analysis Matrix and Reports, and these reports are then reviewed by staff with expertise to advise on any subsequent action before making any materials available.

Appendix C: Sample Disclaimer Notice⁸⁷

The UCLA Library has made every effort to determine that information related to copyright and other restrictions in our collections is accurate. However, rights in historical, archival and digital collections may be difficult or impossible to determine. The Library offers broad public access to our collections as a contribution to education and scholarship. Some materials in these collections may be protected by the U.S. Copyright Law (Title 17, U.S.C.). In addition, the reproduction of some materials may be restricted by terms of University of California gift or purchase agreements, donor restrictions, privacy and publicity rights, licensing and trademarks.

Transmission or reproduction of materials protected by copyright beyond that allowed by fair use requires the written permission of the copyright owners. Works not in the public domain cannot be commercially exploited without permission of the copyright owner. Responsibility for any use rests exclusively with the user. The UCLA Library is eager to hear from any copyright owners who are not properly identified so that the appropriate information may be provided in the future.

For more information about UCLA Copyright Policy, see <http://www.library.ucla.edu/copyright/ucla-copyright-policy>.

⁸⁷ UCLA Library Digital Collections, "Copyright and Collections," <http://digital2.library.ucla.edu/copyright.html>.

Appendix D: Copyright Audit Template

- _____ Repository includes a copyright statement and refers to “copyright and other related rights” on:
 - _____ Researcher registration form
 - _____ Duplication form (repository created copies)
 - _____ Duplication form (user initiated, including those for camera use)
 - _____ Statement on display where user-initiated duplication occurs
- _____ Repository has posted a copyright statement online.
- _____ Repository includes a disclaimer notice with all digital projects.
- _____ Repository clearly indicates the known copyright status of materials in digital collections, websites, or finding aids.
- _____ Repository has developed and documented procedures for granting permission to use items for which the repository owns copyright.
- _____ Repository has documented procedures for tracking copyright owner searches.
- _____ Deed of gift has been reviewed by legal counsel.
- _____ Repository has reviewed donor/collection files:
 - _____ Has located deeds of gift and noted gaps in record
 - _____ Reviewed deeds of gift and noted any rights held, updating public descriptions accordingly
 - _____ Noted gaps in copyright ownership requiring additional investigation
- _____ Repository has reviewed employment, volunteer, and internship agreements to ensure they obtain rights needed in work created.

[This project can provide the opportunity to reach out to donors or heirs to complete any gaps in records when it comes to ownership of the physical object or copyright.]

Appendix B: Access and Privacy Case Study

The following case study has been adapted from an actual situation.

In processing the professional and personal papers of an acclaimed scientist, acquired twenty-five years ago by a venerable public museum, you found in Scientist's unpublished journals, 1960–1990, not only remarkable scientific discoveries but startlingly explicit notes concerning an affair with a fellow academic.

Your team gathered to help you analyze privacy concerns and assess in confidence various possible courses of action and risks. The Team includes you, the museum's other archivist, librarian/division head, director of the Scientist's former department (who kept the division head aware of Team deliberations), and director of community relations (who apprised the fund-raising director and museum president). Legal counsel reviewed legal issues as needed.

The team reviewed available documentation, interviewed the remaining staff member who worked briefly with Scientist, considered likely interested persons, and reviewed the journals. They learned that:

- Scientist, Spouse, and Academic are still alive, but quite elderly and in ill health. Two have dementia and one has serious heart disease.
- Scientist is retired and has not been in contact with the museum for thirteen years.
- Scientist and Spouse had two adult children. One is deceased and the other long estranged from parents and living abroad. Academic has no spouse or children. There are no legal guardians or other close relatives who may be empowered to act on behalf of Scientist, Spouse, or Academic or know their wishes.
- Scientist, Spouse, and Academic have excellent reputations, are very well respected and well known in scientific and local communities.
- Only a few vague whispers of any relationship between Scientist and Academic were ever heard in the community, and those were quickly dismissed by everyone. The journals, however, contained extensive details about emotions, feelings, mental struggles, and physical actions.

- The papers have been closed and never reviewed or used, yet the museum considers them a treasure. There is great interest in using the papers.
- The contents are “explosive” and disturbing enough to cause possible consternation among any remaining family, friends, and associates of Scientist, Spouse, and Academic, as well as among the unduly sensitive and the Museum’s funders and other donors.
- There exists no donor agreement, correspondence, notes, or information about content, privacy concerns, access wishes, or desired restrictions. The acquisitions archivist is deceased. No one remembers any context or details about the donation.
- The archives lacks an access policy and process for assessing privacy issues and complaints and typically permits only “bona fide scholars” to use materials.
- Museum wants to protect the privacy and reputations of Scientist, Spouse, and Academic, as well as its own reputation, but without offending donors, users, members, or staff. Museum wants to avoid possible legal action, public and media criticism, and repercussions from government funding agencies and/or politicians.

After much deliberation, the Team eventually decided to recommend the following to the Museum administration and board, which agreed to close the journals until the deaths of Scientist, Spouse, and Academic (estimated to be five to ten years in the future and easily ascertainable, as all live locally). The journals contain information about living individuals that the Team determined was too personal and intimate to disclose without creating risk to personal reputations and a possible invasion of privacy. The remainder of the collection would be opened immediately. This solution would allow as much access as possible, yet meet the Museum’s concerns about disclosing private data. The Team also was mindful that the notes of the affair may be “fictional,” exaggerated, or inaccurate, so that releasing them “as is” at the present time might create unanticipated consequences and adverse publicity.

Redaction was rejected as too labor-intensive given present resources because the scientific and “affair” notes are so closely interwoven. In the meantime, the archivists will explore resources and software to facilitate meaningful future redaction. If redacted results are acceptable while the principals are alive, the journals will be opened. The Team also realized that redacted copies could be unintelligible and unsatisfactory to users, raising objections about missing content, so if they are opened, the Museum will develop “talking points” to respond to questions about the redacted material.

The Team agreed that the journals are valuable and well worth retaining for possible future use. It reviewed and rejected these other options:

1. Permanent closure
2. Destruction
3. Return to Scientist
4. Consultation with Scientist, Spouse, or Academic, due to their age and health
5. Consultation with Scientist and Spouse’s child both as unlikely to be productive and not warranted or necessary
6. Locating other family members or Scientist’s legal counsel as unnecessary

Appendix C: Addenda to Deeds of Gift—Electronic Records

Adapted from Pennsylvania State University Special Collections Library and used with permission. The author thanks Timothy D. Pyatt of Penn State University, who graciously noted that the form was based on one developed by Seth Shaw and Naomi Nelson at Duke University.

The Donor acknowledges that the Archives acquires the materials with the intent of making them available for an ongoing or indefinite period of time. To accomplish this, the Archives may need to transfer some or all of these materials from the original media as supplied by the donor to new forms of media to ensure their ongoing availability and preservation. The donor grants the library rights to make preservation and access copies of materials in the collection and to make those copies available for use.

The Library may contract with university staff or outside contractors to store, evaluate, manage, and or analyze materials in the collection. All such arrangements must abide by the terms of this agreement.

Does the Archives or contractor have permission to crack passwords or encryption systems, if any, to gain access to electronic data received as part of the materials?

Yes

No (If “no”, such materials will not be retained by the Library.)

Does the Archives have permission to recover deleted files or file fragments, if any, and provide access to them to researchers?

Yes

Yes, under the following conditions: _____

No

Does the Library have permission to preserve and provide access to log files, system files, and other similar data that document your use of computers or systems, if any are received with the materials?

Yes

Yes, under the following conditions: _____

No

Privacy

The Archives will review the materials in the collection in an attempt to identify items that contain private information. Please indicate below your awareness of materials that may contain sensitive electronic information.

To the best of my knowledge, these materials do not contain sensitive electronic information.

OR

I believe that the materials are likely to contain private or sensitive information such as:

Social Security numbers Passwords or PINs

Credit card numbers Financial records

Medical records Licensed or pirated software

Other materials that have specific privacy concerns; please specify: _____

Materials Not Retained by the Library

In the event that the library locates duplicative materials within the collection or materials that are not of enduring research value, the Library will remove, discard, and/or destroy said materials. In the case of media carriers for born-digital content, the Library will either return them to the Donor or physically destroy them after the content has been migrated to new media and verified.

Appendix B: Case Study—Developing an Access Policy for a Rehabilitation Student Case File

By Melissa Salrin, Whitman College

In 1948 the University of Illinois at Urbana-Champaign (UIUC) became the first postsecondary institution in the world to develop a comprehensive program and set of services for students with disabilities. Founded by Dr. Timothy Nugent, the University's Division of Disability Resources and Educational Services (DRES) initially focused its efforts on removing physical barriers to campus buildings. Nugent believed that education was crucial to helping people with disabilities become productive, engaged members of society and that, if given the opportunity, they could succeed academically. Through the years, DRES engaged in research programs designed to make the world more accessible to people with disabilities. Many legislative actions that affect employment, housing, and public building access and equal rights for people with disabilities grew from activities launched at the University of Illinois. Innovations associated with DRES include the first wheelchair-accessible fixed-route bus system; the first postsecondary institution to introduce curb cuts; and the first national wheelchair sports program.

In 2007 and 2008, the Timothy Nugent Papers and official records from the Division of Rehabilitation-Education Services at the University of Illinois were transferred to the custody of the University Archives.⁸¹ We arranged and described more than 110 cubic feet of records documenting the structure and services provided by the core administrative leaders of DRES. Although the 66 cubic feet of official DRES student records (1943–2005), including correspondence, medical histories, registration forms, and academic records were part of the noncurrent records surveyed, these records were not transferred until 2012, due to privacy issues.

The initial step in creating an access policy for DRES student records was to consult DRES administrators. Before the first meeting,

⁸¹ The unit was initially known as the Division of Rehabilitation-Education Services but kept the DRES acronym when it was renamed Disability Resources and Educational Services.

University Archives staff reviewed FERPA.⁸² While FERPA does not apply to deceased students, it is unclear if it applies to pre-1974 records. However, the UIUC Student Records Policy (Campus Administration Manual, X-6), retroactively applies FERPA to records of all living students.⁸³ DRES administrators wanted to ensure that researchers would not be allowed to directly contact students but that such requests be routed through DRES; they also suggested placing an embargo on the use of more recent records. DRES also reminded the Archives to consider relevant state laws, such as the Illinois Mental Health and Developmental Disabilities Confidentiality Act.⁸⁴ Mindful of current institutional policies and federal and state legislation, we communicated our plan: to draft an approach that would safeguard the privacy of students while making these holdings available for research to the greatest possible extent, within a controlled setting.

As indicated above, the University already has a well-documented student record access policy.⁸⁵ For research involving living subjects, researchers seeking access to archival student records must have their request approved by both the University Archivist and University Registrar and must seek Institutional Review Board approval from their home institution; if IRB consent is granted, users of the archives are permanently prohibited from releasing any personally identifiable information without the written permission of the student. Failure of researchers to comply with the conditions of the student record access policy will lead to revoked research privileges and possible legal prosecution.

Given the effectiveness of this general student record policy, many of the same conditions of access were incorporated in the DRES student record policy. All researchers must complete a user application form. Researchers must also indicate safeguards (administrative, technical, and physical) they will use to prevent unauthorized use or

82 20 U.S.C. 20 U.S.C. § 1232g; 34 CFR Part 99; and Tamar G. Chute and Ellen D. Swain, "Navigating Ambiguous Waters: Providing Access to Student Records in the University Archives," *American Archivist* 67 (Fall/Winter 2004): 212–233.

83 University of Illinois at Urbana-Champaign, "Guidelines and Regulations for Implementation of the Family Educational Rights and Privacy Act of 1974," *Campus Administrative Manual*, May 28, 1996, <http://cam.illinois.edu/x/x-6.htm>.

84 Illinois Mental Health and Developmental Disabilities Confidentiality Act (740 ILCS 110/), <http://www.ilga.gov/legislation/ilcs/ilcs3.asp?ActID=2043&ChapterID=57>.

85 University of Illinois at Urbana-Champaign, "Guidelines."

disclosure of records. They must obtain written permission for the research project from the University Archivist and the Director of DRES. In all instances, researchers are permanently prohibited from releasing any personal information without the written permission of any living student. Conditions of access, specified for each request from a set list, must also be met; this includes anonymizing any personally identifiable information at the earliest possible time in the research project and destroying all notes/copies with any personally identifiable information. While seven possible conditions of access are enumerated, additional conditions may be imposed where appropriate. By including this clause, we sought to create a policy restrictive yet flexible enough to create opportunities for meaningful research.

Our access policy was also informed by the National Library of Medicine's History of Medicine Division (HMD)'s approach to HIPAA.⁸⁶ Because the University has elected to self-designate as a hybrid entity and DRES is not included in their list of recognized health care components, HIPAA is not applicable to these records.⁸⁷ However, following HMD's example, we restricted these student records containing medical information to protect individuals' privacy. Our final step was to share the draft of our access policy with University Legal Counsel and DRES to ensure the policy met with their approval.⁸⁸

Following Tamar G. Chute and Ellen D. Swain, we strongly believe that "researchers should be able to use student records even if still under FERPA regulations for any *organizational or historical study* as long as they follow procedures to destroy all personal identifying information."⁸⁹ These records are the crucial resource for understanding both individual and collective experiences of DRES students. The fundamental mission of DRES is to ensure that students with disabilities are afforded an equal opportunity to participate and benefit from the University's programs, services, and activities. The University

86 National Institutes of Health, National Library of Medicine's History of Medicine Division (HMD), "Access to Health Information of Individuals," last revised May 10, 2004, <https://www.nlm.nih.gov/hmd/manuscripts/phi.pdf>. See also Pub. L. No. 104-191, 110 Stat. 1936 (1996).

87 University of Illinois Board of Trustees, "HIPAA Privacy & Security Compliance Policy," November 14, 2013, <http://www.trustees.uillinois.edu/trustees/agenda/November-14-2013/018-nov-HIPAA-Privacy-Security-Compliance-Policy.pdf>.

88 A copy of the access policy is available upon request from the University of Illinois Archives.

89 Chute and Swain, "Navigating Ambiguous Waters," 230.

Archives' efforts to describe and enhance access to DRES student records underscore our commitment to creating opportunities for enduring discovery and research of these high-achieving but under-recognized students.

Appendix B: Case Study—The Jon Cohen AIDS Research Collection Digitization Project

University of Michigan Library and School of Information

Jon Cohen, a writer for *Science Magazine* and author of *Shots in the Dark: The Wayward Search for an AIDS Vaccine*, donated his collection of AIDS-related research material to the Special Collections of the University of Michigan Library. A grant from the John D. Evans Foundation provided for the digitization of the collection between 2007 and 2009. The Library, in consultation with the University's lawyers, decided that because most of the material in the collection was still within the term of copyright, the digitized materials could not be presented on the Web unless an affirmative authorization had been received from the copyright holder for each individual item. Aware that this project would be labor-intensive, the team decided to turn it into a case study to determine the costs and response rates for an effort to secure permission for an entire manuscript collection. Accordingly, a project manager, Dharma Akmon, was brought on board, and she coordinated the work of several School of Information graduate students. Most of this work was done between May 2007 and August 2008, when there were two to four staffers working between fifteen and thirteen hours a week on the project.

The first step was to determine the scope of the project. Overall the collection contained 13,381 items. The documents were created between 1941 and 2005, and the bulk, approximately 89 percent, were written between 1991 and 2000. Almost half of the items (6,026, or 45%) were newspaper and journal articles that project staff decided not to digitize. Of the non-article items, 1,892 (26%) were U.S. government work products and so not in copyright. The remaining 5,463 items (41%, or approximately 11 linear feet) were protected by copyrights held by 1,377 unique copyright holders. The donor, Jon Cohen, held the copyright for 209 items (4%) and had already consented to the digitization project.

Although archivists usually describe items at the folder level and avoid item-level description, it was apparent that managing the work

would require a database to keep track of each item. The database tracked the following item-level metadata elements:

- Unique item ID
- Title (staff created if not suggested by the document itself)
- Creator name(s)
- Creation or published date
- Genre type (based on the *Getty Art & Architecture Thesaurus*)
- Copyright holder name(s)
 - contact information
 - record of communications
 - final outcome of permission requests
 - type of copyright holder (individual, nonprofit, government, education, association, or commercial)
- Permissions status
- Link to the item

Once the team obtained contact information for a copyright holder, often through a Google search, the process was to send each copyright holder a letter describing the project and how the materials would be used and requesting non-exclusive rights to include the material in the online collection. No money was offered, and indeed, only one rights holder asked for a fee but relented and allowed digitization when the Library demurred. Business reply envelopes were included, but responses could be made by fax or e-mail.

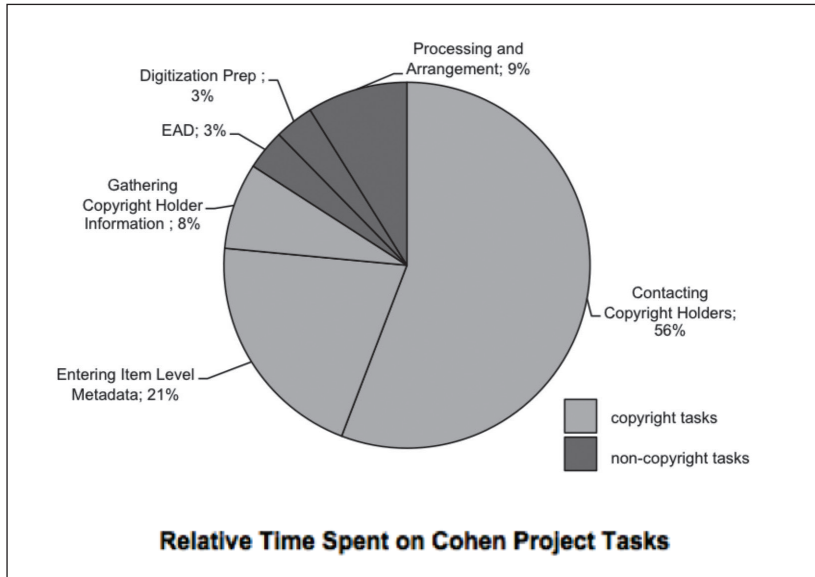
Perhaps the most important decision made during the process was to consider that non-responses were equivalent to a denial—only items with explicit consent could be included in the collection. If an item had more than one copyright holder, all authors were contacted, though permission from any one of them was deemed sufficient to include the item in the online collection.

To make the project maximally useful as a case study, staff effort was recorded on the following tasks:

1. Processing and arrangement
2. Encoding EAD
3. Preparing documents for digitization

4. Entering item-level metadata (including tracking copyright permission tracking information)
5. Gathering contact information for copyright holders
6. Contacting copyright holders

The actual digitization work was outsourced and was not tracked by the project.



Results:

- Project staff members were able to identify and find contact information for a copyright holder for 87 percent of the items (4,776).
- For this collection, it took staff members, on average, 4.66 minutes per document to enter item-level metadata and 70.3 minutes per rights holder to gather contact information and negotiate for permission.
- If the copyright holder had not responded within 120 days, they were not likely to ever respond. A higher proportion of commercial and government copyright holders failed to respond.
- Of the 1,092 requests to unique copyright holders, 352 (32%) had no response and thus their documents could not be

digitized. Another 679 holders agreed to the digitization (62%), and 46 holders refused their permission (4%).

- Non-response caused the exclusion of approximately 1,500 items, which caused a lack of coherence for the collection.

For a full description of the project, read Dharma Akmon's paper, "Only with Your Permission: How Rights Holders Respond (or Don't Respond) to Requests to Display Archival Material Online," *Archival Science* 10, no. 1 (2010): 45–64. The figure above, "Relative Time Spent on Cohen Project Tasks," is from page 55 of the article. The Jon Cohen AIDS Research Collection can be found online at <http://quod.lib.umich.edu/c/cohenaid/>.

Appendix C: Sample Permission Request Letter³⁸

[Date]

[Address]

Dear Sir or Madam:

I am writing to request your permission as copyright holder to reproduce [your work / work by an author or artist you represent]. The work I wish to reproduce is [full citation to the exact part of the work to be used: author or artist, title, page numbers, URL, whether black and white or color for images].

My project is [description of current project].

The material will be distributed [or published] as follows:

[Describe medium of distribution, publisher, expected publication date, and expected length of work in pages or words, target market (for example, academic audience or general public). Indicate if you intend to use the work on the publication cover or its digital equivalent.]

If you do not solely control copyright in the requested materials, I would appreciate any information you can provide about others to whom I should write, including most recent contact information, if available.

Sincerely,

Copyright proprietor, please initial any statement that applies:

I hereby represent that I have the authority to grant the permission requested herein.

I am the sole owner/author of the work.

Author Signature

Rights Holder Signature

Author's name

Name of authorized signatory

Address

Title

Company

³⁸ Adapted from University of Texas Library, "Sample Written Request for Permission," Copyright Crash Course, 2007, <http://copyright.lib.utexas.edu/permmm.html>.

Appendix D: Harry Ransom Center Permission Form³⁹

NOTIFICATION OF INTENT TO QUOTE FROM OR PUBLISH MANUSCRIPTS
PLEASE READ AND COMPLETE ALL PAGES

Name (please print): _____

Phone: _____

Fax: _____

E-mail: _____

Address: _____

I hereby notify the Harry Ransom Center of my intent to quote from or publish the following manuscripts that are part of the Ransom Center's collections: (Please state specifically which manuscripts or parts of manuscripts you intend to quote from or publish. If any images of manuscripts are to be used as illustrations, please also complete and submit a "Notification of Intent to Publish Photographic Images" form.)

Please provide publication information below:

Author/editor: _____

Title: _____

Publisher: _____

Projected publication date: _____

Print run (number of copies): _____

Projected retail price: _____

Intended audience: _____

³⁹ University of Texas at Austin, Harry Ransom Center, "Notification of Intent to Quote from or Publish Manuscripts," May 2013, http://www.hrc.utexas.edu/research/forms/pdf/HRC_Intent_Manuscripts.pdf.

Rights requested: () One country / () Worldwide
() One language / () All languages
() Print edition only / () Print ed. and electronic format

Conditions Governing Publication of Ransom Center Manuscripts:

1. All requests for use of Ransom Center materials in any medium (book, periodical, motion picture, video, website, performance, exhibition, etc.) will be considered on a case-by-case basis. This agreement shall remain in effect for the life of the project.
2. It is the responsibility of the patron to obtain any required copyright permissions from the copyright holder.
3. It is the policy of the Ransom Center to assess a fee for some uses of materials from its collections. Such fees are assessed on a case-by-case basis and are intended to offset a small part of the Center's costs associated with processing, preserving, and servicing of its collections.
4. Fees cover non-exclusive, one-time use only unless otherwise indicated and are to be paid in advance. They are assessed in addition to any duplication costs. You must submit a new Notification form for later editions of the same publication.
5. The following credit line must be used:
 Harry Ransom Center
 The University of Texas at Austin
6. Recipients of Ransom Center research fellowships should additionally acknowledge the sponsor of their particular fellowship.
7. The Ransom Center requires that a complete copy of any publication (in any medium) that makes use of its materials be given to the Center for its collections.
8. THE APPLICANT WILL DEFEND AND HOLD HARMLESS THE RANSOM CENTER AND THE UNIVERSITY OF TEXAS SYSTEM, ITS BOARD OF REGENTS, THE UNIVERSITY OF TEXAS AT AUSTIN, ITS OFFICERS, EMPLOYEES AND AGENTS AGAINST ALL CLAIMS, DEMANDS, COSTS, AND EXPENSES INCLUDING ATTORNEYS' FEES INCURRED BY COPYRIGHT INFRINGEMENTS OR ANY OTHER

LEGAL OR REGULATORY CAUSE OF ACTION ARISING
FROM USE OF RANSOM CENTER MATERIALS.

AGREEMENT: I certify that the information provided by me herein is correct. Further, I have read, understand, and by my signature below, agree to abide by the rules, regulations and obligations as set forth by the Harry Ransom Center in "Conditions Governing Publication of Ransom Center Manuscripts." (A signed copy of this form will be returned to the applicant in acknowledgment of this agreement.)

Signature: _____ Date: _____

() The research for this publication was supported by a Harry Ransom Center research fellowship. Please provide the year of the fellowship and name of the fellowship recipient:

To be completed by Ransom Center staff:

Publication of Ransom Center manuscripts is approved, subject to payment of fee of _____

PDC: _____ Curator/Librarian: _____

Assoc. Director: _____ Date: _____

Appendix E: Model Deed of Gift

DEED OF GIFT⁴⁰

1. Transfer of Ownership

I (we), [insert donor's name here] [and spouse, if any here], of [insert address here] hereby irrevocably donate and convey to [NAME OF LIBRARY OR UNIVERSITY] (the "Library" or "University," as appropriate), for the benefit of the University Libraries, all rights, title, and interest that I (we) possess in the materials described on Exhibit A to this Deed of Gift (the "Donated Materials"), except as noted in this Deed of Gift.

By signing this Deed, I (we) understand and agree that the location, retention, cataloging, preservation, and disposition of the Donated Materials by the University will be conducted in its discretion, in accordance with University policy and with applicable law. Common discretionary uses by the University include, but are not limited to, exhibition, display, digitization for preservation and access purposes, and making works available for research and scholarship. I (we) acknowledge that the Library may dispose of any Donated Materials not selected for permanent retention. Retained Donated Materials shall be made accessible for research, subject to the terms and conditions, if any, stated below:

⁴⁰ This model deed of gift is made available by the Association of Research Libraries with the understanding that ARL is not rendering legal advice. Please consult an appropriate professional for legal services. If you are using this document in connection with a contract or other actual transaction, please treat it as if copyright had been waived per Creative Commons Zero (CC0). If you are using this document or a variation of it as a model or template, please treat it as licensed under the Creative Commons Attribution (CC-BY) 3.0 Unported License. ARL suggests the following attribution: Courtesy of the Association of Research Libraries, and adapted from a form developed at the University of Minnesota Libraries.

2. Copyright

A. Current copyright ownership and control

To the best of my knowledge, (please select only one of the following statements):

- () I control all copyrights in the Donated Materials (i.e., all works were created by me, or I acquired the copyrights in all Donated Materials).
- () I control some of the copyrights in the Donated Materials (i.e., some of the Donated Materials were created by me, or I acquired the copyrights in some of the Donated Materials, but the Donated Materials also contain works for which other individuals or organizations control the copyrights).
- () I control none of the copyright(s) in the Donated Materials. Further information about the control of copyrights in the Donated Materials is found in the attached documentation.

B. Transfer of copyright ownership:

Please select only one of the following options.

- () I irrevocably assign to the University any and all copyrights I control in the Donated Materials.
- () I retain full ownership of any and all copyrights I currently control in the Donated Materials, but I grant the University a nonexclusive right to authorize all uses of these materials for noncommercial research, scholarly, or other educational purposes pursuant to a Creative Commons Attribution, Noncommercial license.
- () I do not transfer or intend to transfer copyright ownership to the University.

Regardless of my above choice as to transfer of copyright ownership, I acknowledge that some of the discretionary uses incidental to the Donated Materials' inclusion in the collections of the University (including, but not limited to, exhibition, display, and research access) may implicate copyrights. To the extent that such activities are not already permitted under statutory copyright exceptions such as fair use, I grant the University an irrevocable non-exclusive royalty-free worldwide perpetual license for all reasonable discretionary uses.

SIGNATURE OF DONOR:

I (we) represent and warrant that I am (we are) the sole owner(s) of the materials described above; that I (we) have full right, power, and authority to give the materials to the University; and that the information I (we) have provided is accurate. The terms of this Deed of Gift shall apply to all of the Donated Materials described on Exhibit A and on any subsequently delivered Exhibit notwithstanding that some materials may be delivered before or after the date of this Deed of Gift.

Signed: (DONOR)_____

this [insert day here] day of [insert month here], 20[complete year here].

Signed: (DONOR)_____

this [insert day here] day of [insert month here], 20[complete year here].

ACCEPTANCE BY UNIVERSITY:

[NAME] Libraries hereby accepts this gift on behalf of the [University] with appreciation and agrees to the conditions stated in this Deed of Gift.

Date: _____

Name: _____

Title: _____

EXHIBIT A TO DEED OF GIFT

Description of Donated Materials

Appendix F: Beinecke Library Digital Photography Policy⁴¹

Readers are permitted to take their own digital pictures for study purposes in the Reading Room with a small, handheld camera, iPad, or cell phone. SLR cameras or larger cameras must be approved by staff at the service desk prior to use. Extra care must be taken with large cameras as they can damage material if dropped. Lanyards worn around the wrist or neck are encouraged.

Images intended for publication (web or print) must be ordered from our Digital Studio. It is the responsibility of the reader to keep complete and accurate citations (call numbers, accession numbers, ID numbers, page numbers, and box and folder numbers) for all items photographed. Requests for subsequent orders for high-resolution images for publication will not be processed without this information.

Please Note: Photographs may not be taken of the reading room, the lobby, staff members or other readers.

- 1) **Authorization.** As part of the registration process, please check off that you agree to the rules and regulations regarding personal digital photography in the reading room. If you have any questions please ask at the Service Desk or email—beinecke.access@yale.edu.
- 2) **What may be photographed.** Many Beinecke Library collection materials may be digitally photographed. However, in some cases, the reader may be asked to submit a request for professional photography from the Digital Studio due to size or condition of the material. The final determination will be made by the Reading Room staff during the reader's visit.
- 3) **Preparation before photography.** Before taking pictures, the reader may flag the requested pages with acid-free streamers provided at the Service Desk. A staff member will review the material for condition before authorizing the photography. We strongly suggest that you write the ID number, volume, and

⁴¹ Beinecke Rare Book and Manuscript Library, "Digital Photography Policy," 2013, <http://beinecke.library.yale.edu/visit/digital-photography-policy>.

page number or the accession number, box, and folder number on the streamer to facilitate your record keeping.

- 4) **Cameras permitted.** A handheld digital camera, preferably with a wrist strap, may be used with the flash disabled. A test shot will be required to ensure that the flash is off. The reader is responsible for knowing how the camera works. Cell phones and iPads are permitted, but SLR cameras or other large cameras must be approved by the desk staff prior to use. The reader must take extreme care that their camera does not fall on material. Lanyards worn around the neck or wrist are encouraged. Laptops may not be used to photograph material.
- 5) **Photographic methods.** Only hand-held overhead capture is acceptable. Material must be photographed on the table surface. Readers may not alter the supports of rare books or aesthetically arrange material on foam. Laptops, portable scanners, lights, and tripods are not permitted. Placing material on the floor or standing on the furniture is strictly prohibited.
- 6) **Handling rules.** Never touch material while photographing; no pressure may be applied to the object. Material should not be removed from Mylar or from any mounts, nor should any unopened printed material be opened or paper clips or staples removed. Please report any of these situations to the Service Desk staff. Snakes or foams are available to safely photograph material.
- 8) **Confidentiality of other researchers.** Readers must be sensitive to others conducting research in the reading room; readers may be asked to delay their photography if the activity is disturbing other readers. Photographs may not be taken of the reading room, the lobby, staff members or other readers. The Library reserves the right to deny requests or revoke permission for any reason at any time.

Copyright compliance. It is the policy of Beinecke Library that no entire collection or book can be copied or photographed. Readers agree to use digital surrogates for private research only. Readers must read and sign this copyright agreement form acknowledging that it

is their responsibility to obtain relevant permission from copyright owners in the event they decide to publish their work.

COPYRIGHT NOTICE

The Copyright law of the United States (Title 17, United States Code) governs the making of photocopies or other reproductions of copyrighted material. Under certain conditions specified in the law, libraries and archives are authorized to furnish a photocopy or other reproduction. One of these specified conditions is that the reproduction is not to be “used for any purpose other than private study, scholarship, or research.” If a reader makes a request for, or later uses, a photocopy or reproduction for purposes in excess of “fair use,” that reader may be liable for copyright infringement. The reader agrees to defend, indemnify, and hold harmless the Beinecke Rare Book and Manuscript Library and Yale University against all claims, demands, costs and expenses incurred by copyright infringement or any other legal or regulatory cause of action arising from the use of library materials.

Yale University Non-disclosure Agreement. The materials that I have requested may contain Social Security numbers. I agree that I will not record, reproduce, or disclose any Social Security number that may be included in the materials that I have requested. I understand that violation of this Agreement may result in the loss of research privileges at Yale University.

General Release. The reader agrees to defend, indemnify, and hold harmless the Beinecke Rare Book and Manuscript Library and Yale University against all claims, demands, costs and expenses incurred by copyright infringement or any other legal or regulatory cause of action arising from the use of library materials.

Appendix G: New York Public Library Fee Schedule for Digital Files for Editorial, Commercial, and Other Uses⁴²

Fee Schedule below lists fees to access 300 dpi TIFF files for public domain and any other images. The Library DOES NOT hold or control copyright. The Library does not charge additional permission fees to use such material.

Table One:	Access fee per image to obtain 300dpi TIFFs of public domain or images whose copyright is not held by NYPL.	
	Existing File from Digital Gallery	New Digital Photography
Individuals	\$50	\$75
Nonprofits and Government Agencies	\$100	\$150
Commercial Newspapers and Magazines	\$150	\$200
All Other Commercial Organizations	\$200	\$250
Commercial Publishers—Cover use only	\$300	\$350

For any questions about use, please contact us directly.

Fee Schedule below lists fees to license images that the Library holds or controls copyright. Licensing agreements will be issued. Licensing fee per image for NYPL copyright held or rights-controlled images.

⁴² New York Public Library, "Digital Files for Editorial, Commercial, and Other Uses," May 2014, <http://www.nypl.org/help/get-what-you-need/photographic-services/obtaining-images>.

Table Two:	Existing File from Digital Gallery: Interior	New Digital Photography: Interior	Re-use in same project
Individuals/Authors:			
Use in nonprofit book or journal, print edition only	\$75	\$75	\$50
Use in nonprofit book or journal, print and electronic editions	\$100	\$100	\$50
Use in commercial book or newspaper/magazine	\$150	\$150	\$100
Publishers:			
Nonprofit presses	\$150	\$150	\$100
Commercial publisher print run print run up to 10,000 (one-time use, print & electronic editions)	\$250	\$250	\$150
Commercial publisher print run over 10,000 (print editions only)	\$350	\$350	\$250
Commercial publisher print run over 10,000 (print & electronic editions)	\$400	\$400	\$300
Cover use:			
Nonprofit press	\$300	\$300	\$150
Commercial publisher - print run up to 10,000	\$500	\$500	\$375
Commercial publisher - print run over 10,000	\$750	\$750	\$550
Museums:			
Kiosk/video/publication	\$150	\$150	\$100
Exhibition up to 1 year	\$200	\$200	
Exhibition up to 5 years	\$350	\$350	
Exhibition 5 years + or permanent	\$500	\$500	
Documentaries/TV Programs:			
Non-broadcast/Non-theatrical	\$100	\$125	
Film Festival	\$150	\$150	
Public TV broadcast only	\$200	\$200	
Public TV broadcast with all media except theatrical	\$350	\$350	
Public TV broadcast with all media including theatrical	\$450	\$450	
Commercial TV broadcast only	\$300	\$300	

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Commercial TV broadcast with all media except theatrical	\$450	\$450	
Commercial TV broadcast with all media including theatrical	\$600	\$600	
Commercial Newspapers and Magazines:			
Less than half page	\$250	\$250	
Half page	\$300	\$300	
Full page	\$350	\$350	
Spread	\$500	\$500	
Cover	\$750	\$750	

Please contact us for all other commercial uses.

Appendix H: DACS Rules Regarding Rights⁴³

Excerpted from *Describing Archives: A Content Standard, Second Edition*

4.1 Conditions Governing Access (Required)

Purpose and Scope:

This element provides information about access restrictions due to the nature of the information in the materials being described, such as those imposed by the donor, by the repository, or by statutory/regulatory requirements.

General Rules:

4.1.5 Give information about any restrictions on access to the unit being described (or parts thereof) as a result of the nature of the information therein or statutory/contractual requirements. As appropriate, specify the details of the restriction, including the length of the period of closure or the date when it will be lifted; the authority that imposed and enforces the conditions governing access; contact information for the person or office to whom the restriction may be appealed; authorized users; and so on. If there are no restrictions, state that fact.

4.1.6 Alternatively, simply indicate the fact of restriction.

4.4 Conditions Governing Reproduction and Use (Added Value)

Purpose and Scope:

This element identifies any restrictions on reproduction due to copyright or other reasons, as well as restrictions on further use of the materials being described, such as publication, after access has been provided.

⁴³ *Describing Archives: A Content Standard*, 2nd ed. (Chicago: Society of American Archivists, 2013), pp. 51–57. Available online at <http://files.archivists.org/pubs/DACS2E-2013.pdf>.

General Rules:

4.4.5 Give information about copyright status and any other conditions governing the reproduction, publication, and further use (e.g., display, public screening, broadcast, etc.) of the unit being described after access has been provided.

4.4.6 Where possible and appropriate, combine the statements pertaining to copyright status, reproduction, publication, or use in the most efficient way.

4.4.7 If the details of the copyright status of the materials being described are unknown, unclear, or complex, make a general statement about possible copyright restrictions.

4.4.8 If the materials being described are protected by copyright, indicate the copyright owner, when the copyright restrictions will expire, and contact information for the copyright owner or the owner's agent, if known.

4.4.9 If the term of copyright has expired, indicate that the material being described is no longer subject to copyright restrictions.

4.4.12 If the conditions governing publication and other uses are fully expressed in the copyright status statement, do not repeat them in a separate statement.

4.4.13 Give information about any conditions that may restrict publication or other uses of all or part of the unit being described. As appropriate, specify the details of the condition(s), including the duration of the restriction or the date when it will be lifted; the authority that imposed the condition(s); and the contact information for the person or office from whom permission to publish may be sought.