

MODULE 4

UNDERSTANDING
COPYRIGHT LAW

HEATHER BRISTON



SOCIETY OF
**American
Archivists**

CHICAGO

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.