

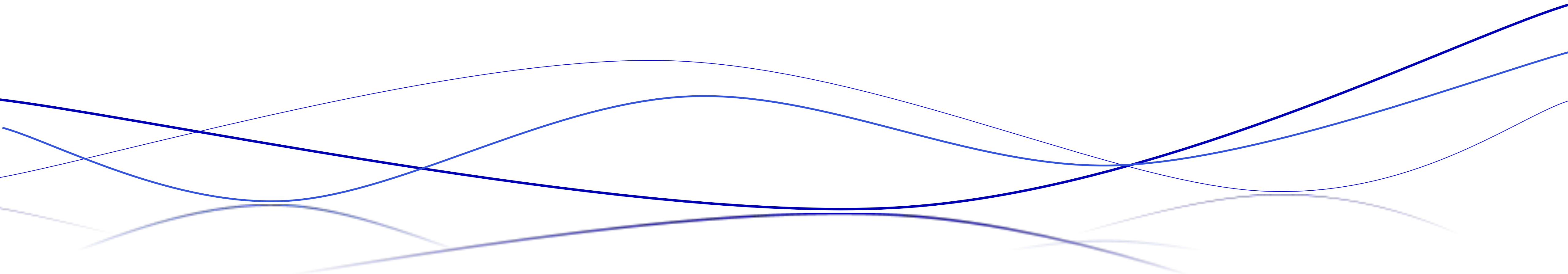


American
Alliance of
Museums

Collections Stewardship

OCEAN

**OPEN COPYRIGHT EDUCATION
ADVISORY NETWORK**





American
Alliance of
Museums

Collections Stewardship

Managing Copyright Issues from Acquisition to Exhibition

Friday, October 28, 2022

1:00-3:00pm EST

oceancopyright.org

Visit Our Websites:

oceancopyright.org

[www.aam-us.org/professional-networks/
collections-stewardship](https://www.aam-us.org/professional-networks/collections-stewardship)

Faculty

- **Anne M. Young**, Director of Legal Affairs & Intellectual Property, Indianapolis Museum of Art at Newfields
- **Megan P. Bryant**, Director of Collections and Interpretation, The Sixth Floor Museum at Dealey Plaza
- **Amanda Lynn Granek**, Rights and Reproduction Manager, Photo Archivist, 9/11 Memorial & Museum
- **Rina Elster Pantalony**, Director, Copyright Advisory Services, Columbia University Libraries
- **Greg Cram**, Assistant General Counsel and Director of Information Policy, The New York Public Library

Learning Objectives

After this class, participants will...

- Understand the practicalities of copyright law in the U.S. that are common in museums: finding rights holders, determining licensing or fair use, collections with multiples layers of rights, and how to use and license film and music
- Have a framework for understanding these rights issues that you can apply in real-life situations you may encounter in your museum

Assumptions

This class is focused on the use of works still protected by copyright. For more information on determining whether an item is protected by copyright and the copyright status of a work, check out past programs on OCEAN's website

The content of this class is for informational purposes only and should not be construed as legal advice

Fair Use v Licensing: Practical Considerations



Anne M. Young

she/her/hers

**Director of Legal Affairs & Intellectual Property
Indianapolis Museum of Art at Newfields**



Megan P. Bryant

she/her/hers

**Director of Collections and Interpretation
The Sixth Floor Museum at Dealey Plaza**

Determine Rights Holder

- Look to your agreements:
 - Deed of Gift
 - Purchase
 - Loan
 - Commission
- Any rights granted?
 - Non-Exclusive License
 - Exclusive License
 - Transferred
 - Retained



Non-Exclusive License

- May be granted as part of a commission agreement
- May be separately sought from the rights holder (creator, heir, corporate successor, etc.)

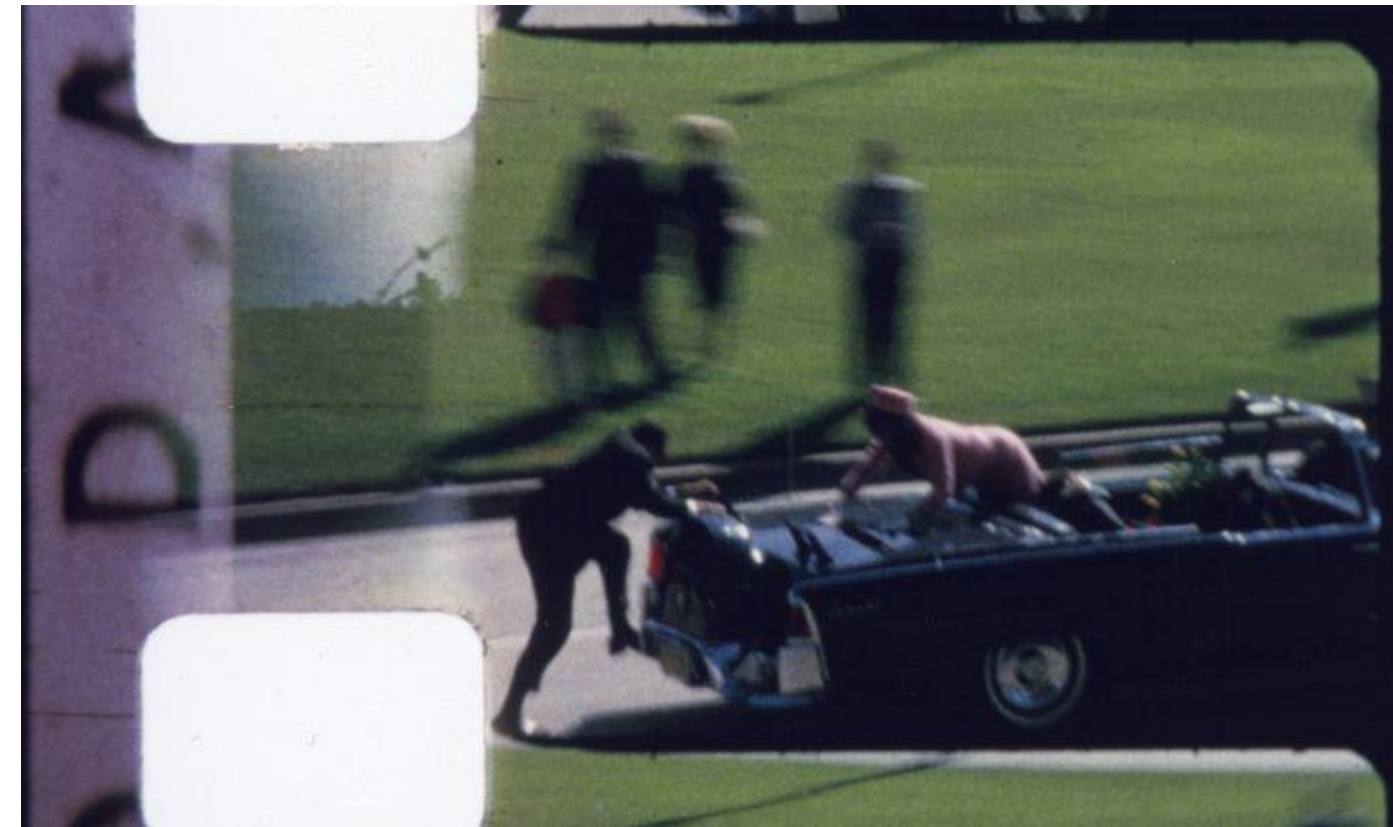


Atelier van Lieshout (Dutch, founded 1995), *Funky Bones*, 2010, fiberglass, plywood, dimensions vary. The Virginia B. Fairbanks Art & Nature Park at Newfields, Commissioned by the Indianapolis Museum of Art. © Atelier van Lieshout. Photo by Above All Aerial Photography.

Copyright Ownership



Dallas Times Herald Collection / TSFM



Zapruder Frame Still 371 / TSFM



Bill Winfrey Collection / TSFM



George Reid Collection / TSFM

- Rights transferred as part of acquisition of work
- Rights acquired separately from work
- Museum-generated / work for hire
- Transfer of rights must be made in a signed writing

Copyright Ownership - Use Considerations



Zapruder Film Still Frame 242 / Charcoal sketch Z242, Arthur Hawkins artist, Josiah Thompson Collection
The Sixth Floor Museum at Dealey Plaza

- Sensitivities regarding graphic depictions
- Privacy
- Commercial uses
- Donor / creator relationship

Determine Approach

Whether you license content or undertake a fair use analysis is all about your museum's comfort with risk and finding the balance that works for you



Fair Use Analysis

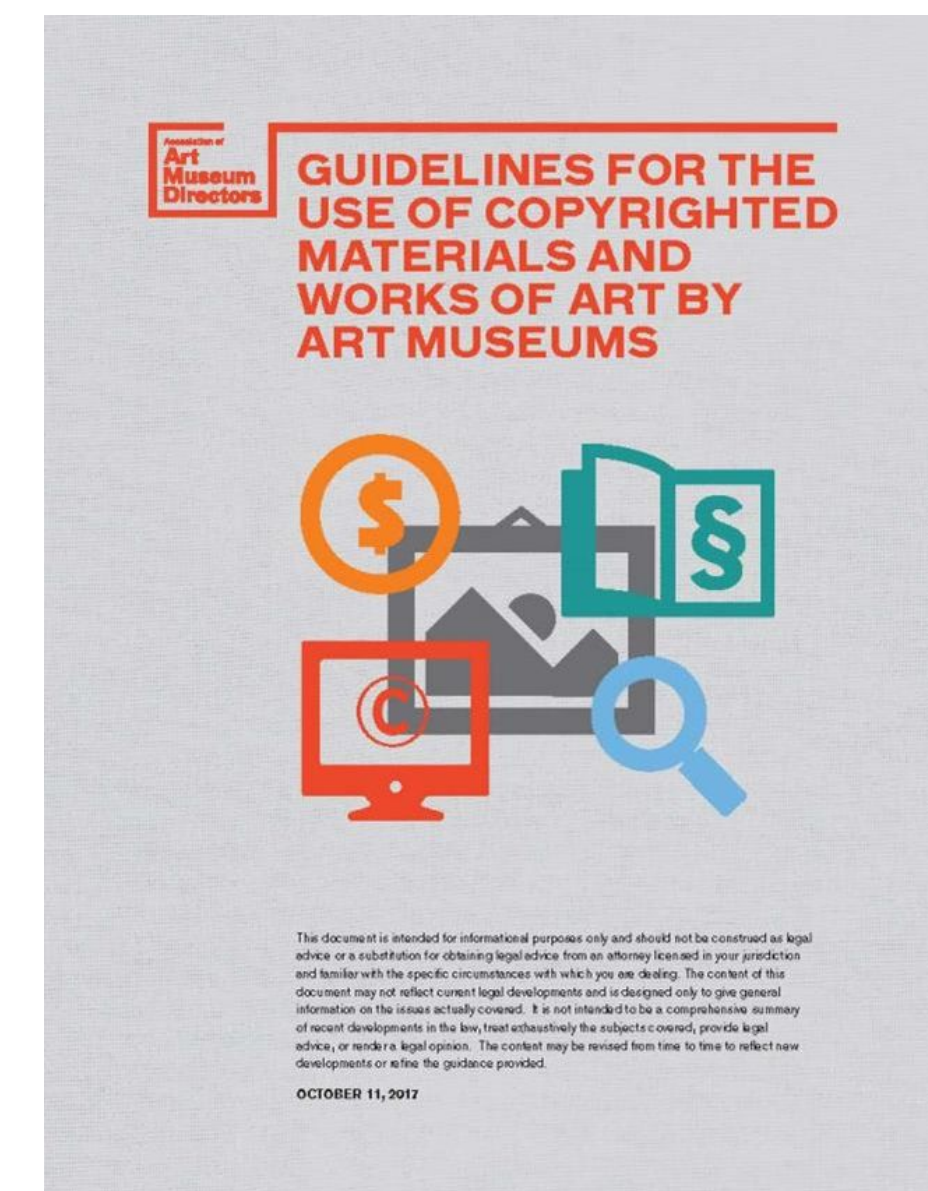
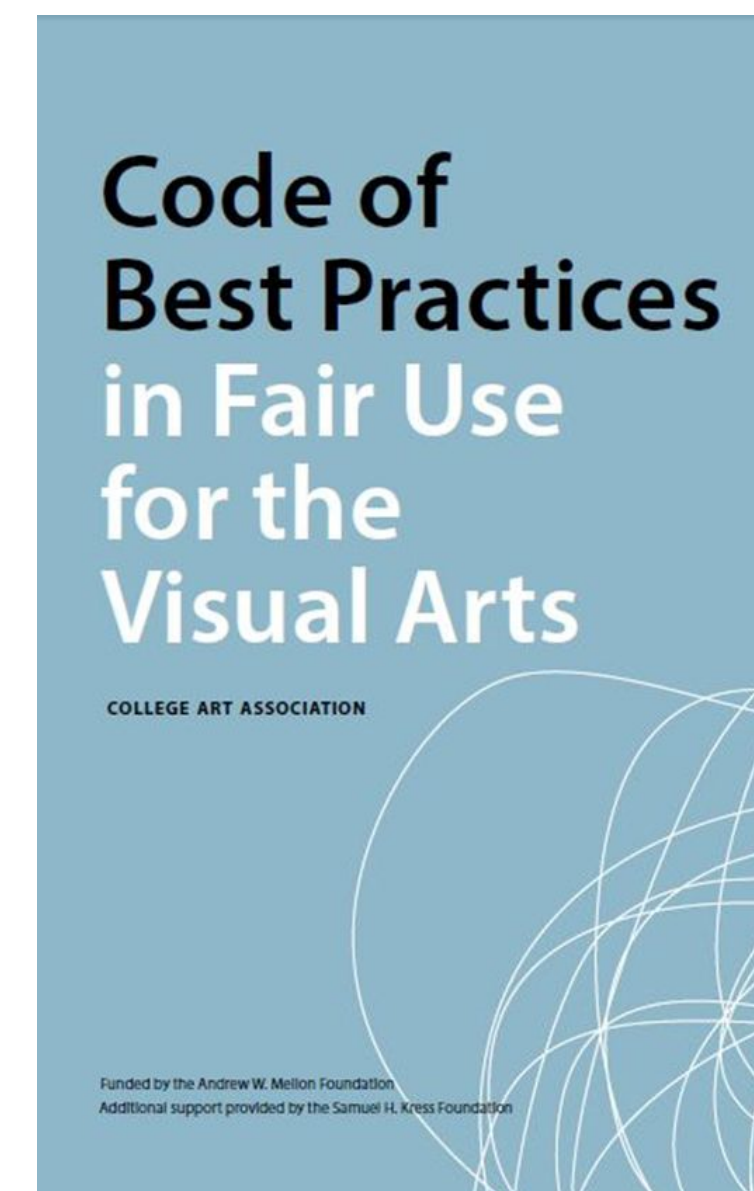


American
Alliance of
Museums

Collections Stewardship

Remember the 4 factors + transformative!

- Scholarship, research, and education
- Commentary, criticism, and reporting
- Non-commercial



Fair Use Assertion



Collections Stewardship

The Indianapolis Museum of Art at Newfields is pleased to send you [insert number] copies of the [insert publication title, edition, season and/or year as applicable]. **The reproduction of artworks in this publication relied upon the fair use provision of the Copyright Act's section 107, with a fair use analysis guided by the College Art Association's *Code of Best Practices in Fair Use for the Visual Arts* and the Association of Art Museum Director's *Guidelines for the Use of Copyrighted Materials and Works of Art by Art Museums*.** This publication includes interior reproductions of works by the following artists: [insert artist name(s)]. Please feel free to distribute these copies to these artists and/or their representatives and let us know if you require additional copies.



“Nevertheless, fair use does not cover all possible uses, and ethical users must consider that permissions may be necessary.”

– Rights and Reproductions: The Handbook for Cultural Institutions, Second Edition, 2019

- Maintaining relationships with rights holders may mean courtesy notices even when a fair use may be considered.
- Be flexible to ensure equity and inclusivity when balancing fair use v licensing and the fees that may or may not apply.

Licensing Process

- Decision to seek permission may be influenced by various factors (e.g. specifics of the intended use, institutional risk tolerance, relationship with rights holder, etc.)
- No one-size-fits-all approach
- TSFM's general philosophy - "golden rule"
- Seeking permission not always burdensome and can lead to positive long-term results
- Results may vary 😞

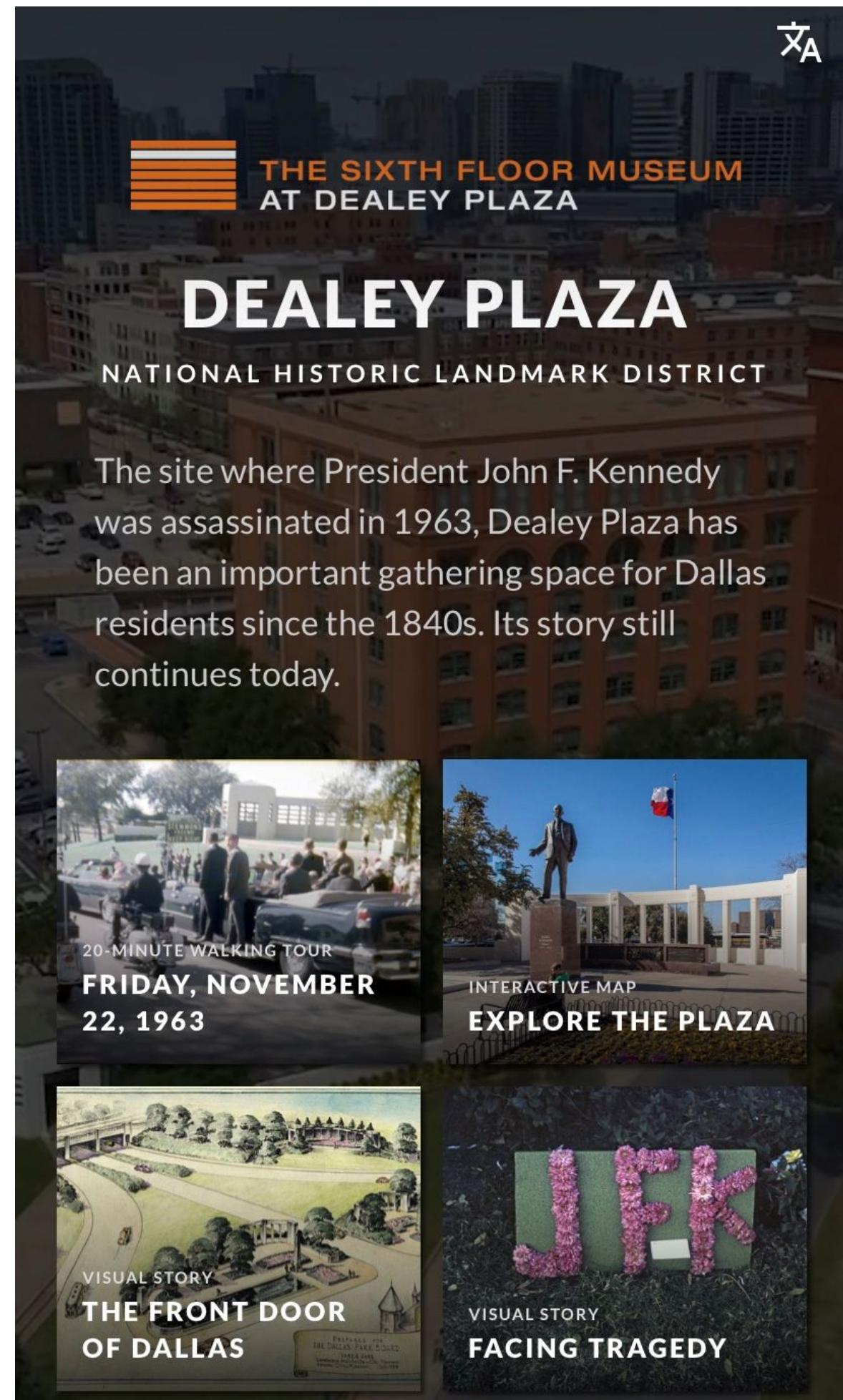
TSFM: Licensing Process Steps

- ID work to be used and the rights holder
- Determine image file needs
- Outline all rights needed for the planned use
- Contact rights holder - explain intended use and the permissions sought
- Negotiate as appropriate
- Document in writing
- Review license agreements carefully
- Establish relationships with rights holders of works you use frequently

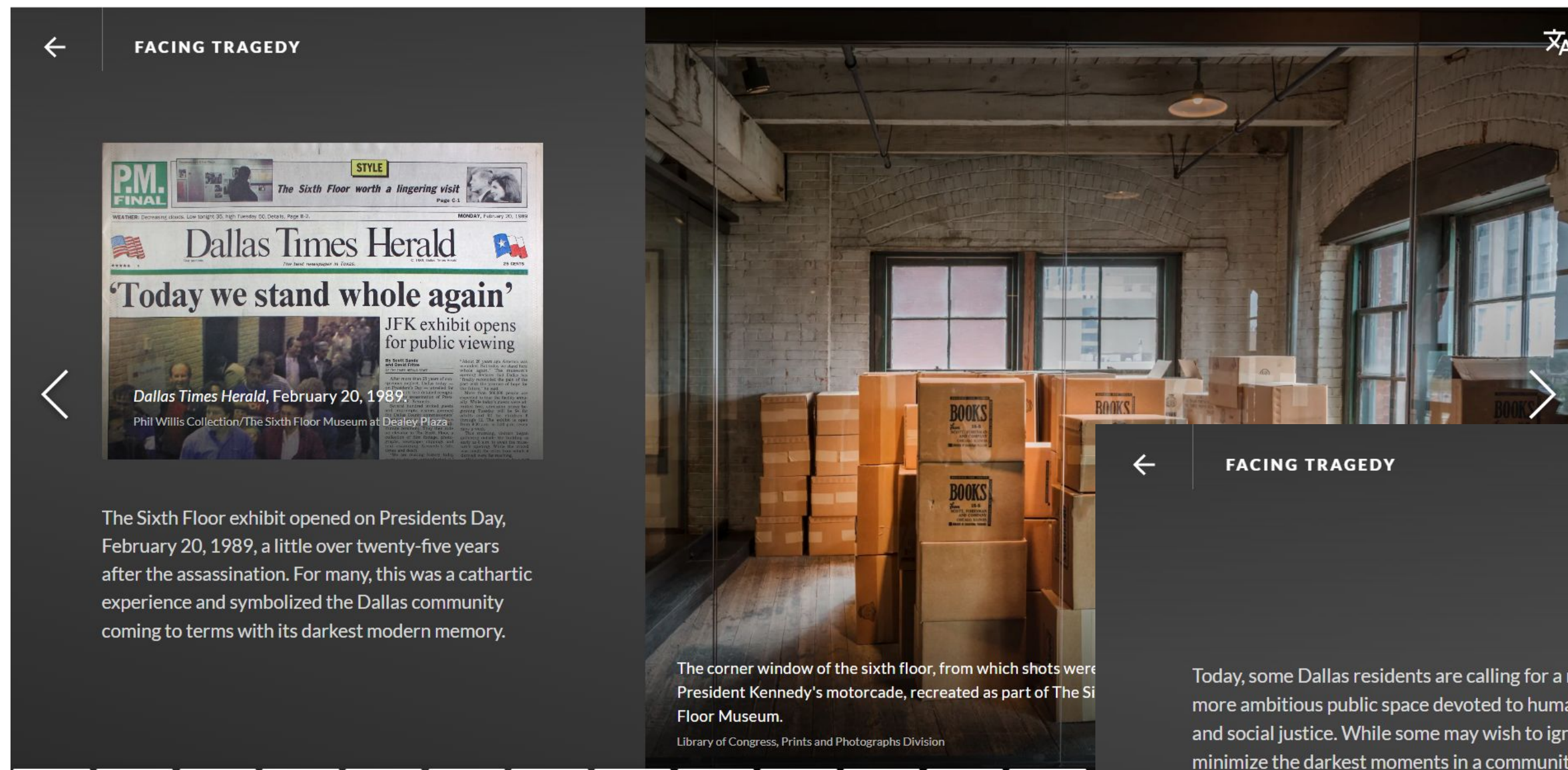
Practical Application

Dealey Plaza Interactive Guide - <https://dealeyplaza.jfk.org/>

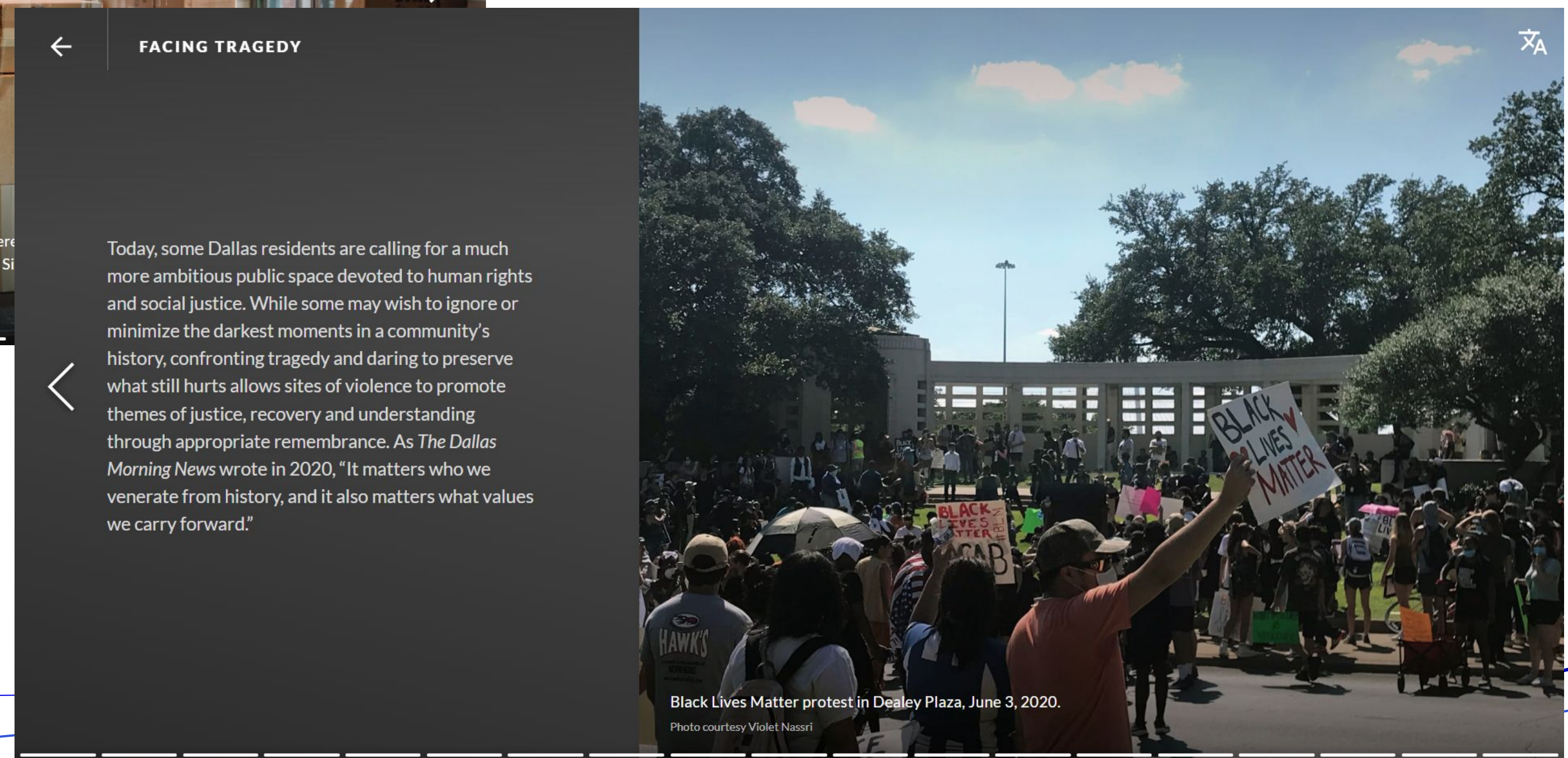
- Free web-based multimedia guide to Dealey Plaza, developed in 2020
- Includes narrated walking tour, interactive map, and visual stories exploring the history of the Plaza and memorialization of President Kennedy
- “Facing Tragedy” visual story looks at how a city remembers one of its darkest moments, including:
 - Opening of The Sixth Floor Museum in 1989
 - Licensing of defunct newspaper front page/headline
 - Ongoing use of the plaza as gathering space for social activism and civic engagement
 - Use of crowd-sourced image of June 2020 protest rally



Practical Application



Screenshots from Dealey Plaza Interactive Guide visual story, "Facing Tragedy"
dealeyplaza.ifk.org



Practical Application



Installation view of *We. The Culture: Works by The Eighteen Art Collective* in the June M. McCormack Forefront Galleries, September 23, 2022–September 24, 2023. Artworks © their respective creators. Courtesy of Newfields.

Signature courtesy of The Eighteen Art Collective.

Practical Application

The *We. The Culture* playlist features original songs from seven Indianapolis-based artists. The songs you'll hear will blend elements of hip-hop, jazz, go-go, and rhythm & blues to provide a beautiful audio complement to the exhibition. Curated by Nigel Long at GANGGANG, find the playlist on Spotify or by scanning the QR code.



Song List

KD the Mellow Soul, Khiry Managan, Tendo Payne—"Groove with Me"
Dead Silence (feat. Wavy Blayne)—"Everyday"
Taylor Hall—"Streetlights"
ThankYouBus—"Money Machine"
Dorsh—"UI / UX"
Maxie—"30 for 30" (Warning: Explicit Language)
Ed Lanier—"Stomp Holes"

*Scan the QR code to find further ways to engage with *The Eighteen* over the next year.*

Visit the Museum & Garden Shop to find items connected to *We. The Culture* and *The Eighteen* Art Collective.



Audio Credits

KD the Mellow Soul, Khiry Managan, and Tendo Payne, "Groove With Me," 2021. Duration: 4 min. 21 sec. © 2021 KD the Mellow Soul, Khiry Managan, and Tai Payne.

Dead Silence (feat. Wavy Blayne), "Everyday," 2020. Duration: 2 min. 30 sec. © 2020 Hush Records.

Taylor Hall, "Streetlights," 2021. Duration: 2 min. 51 sec. © 2021 Topview LLC.

ThankYouBus, "Money Machine," 2019. Duration: 3 min. 1 sec. © 2019 All Lov3 Recordings.

Written by Dorshon Deans; performed by Dorsh, "UI/UX," 2020. Duration: 4 min. Courtesy of Stama.

Maxie, "30 for 30," 2018. Duration: 2 min. 9 sec. © 2018 MNMB.

Ed Lanier, "Stomp Holes," 2022. Duration: 4 min. 17 sec. © 2022 Ed Lanier.

Rights Management for Complex Collections



Amanda Lynn Granek

she/her/hers

**Rights and Reproduction Manager, Photo Archivist
9/11 Memorial & Museum**

Donor Permissions and Restrictions: Family Gifts



Collections Stewardship



Family Gifts are objects, documents, photos, and videos which are donated to the 9/11 Memorial & Museum collection from family and friends of the victims of the 1993 World Trade Center bombing and September 11, 2001 which help tell the stories of their lives.

- Family Gifts have their own Deed of Gift template.
- Usage permissions choices on the Family Deed of Gift cover both copyrightable and noncopyrightable objects.
- Some objects which are part of family gifts have additional rights owned by 3rd parties – wedding photos, news videos, books, posters.
- A few families have requested courtesy notification when images of their objects are used.

From left: Collection 9/11 Memorial & Museum (3), Gift of Susan in memory of my husband, Norman Rossinow; Gift of the Guza Family in memory of Phil; Gift of the Taylor family in memory of our son and brother, Darryl A. Taylor

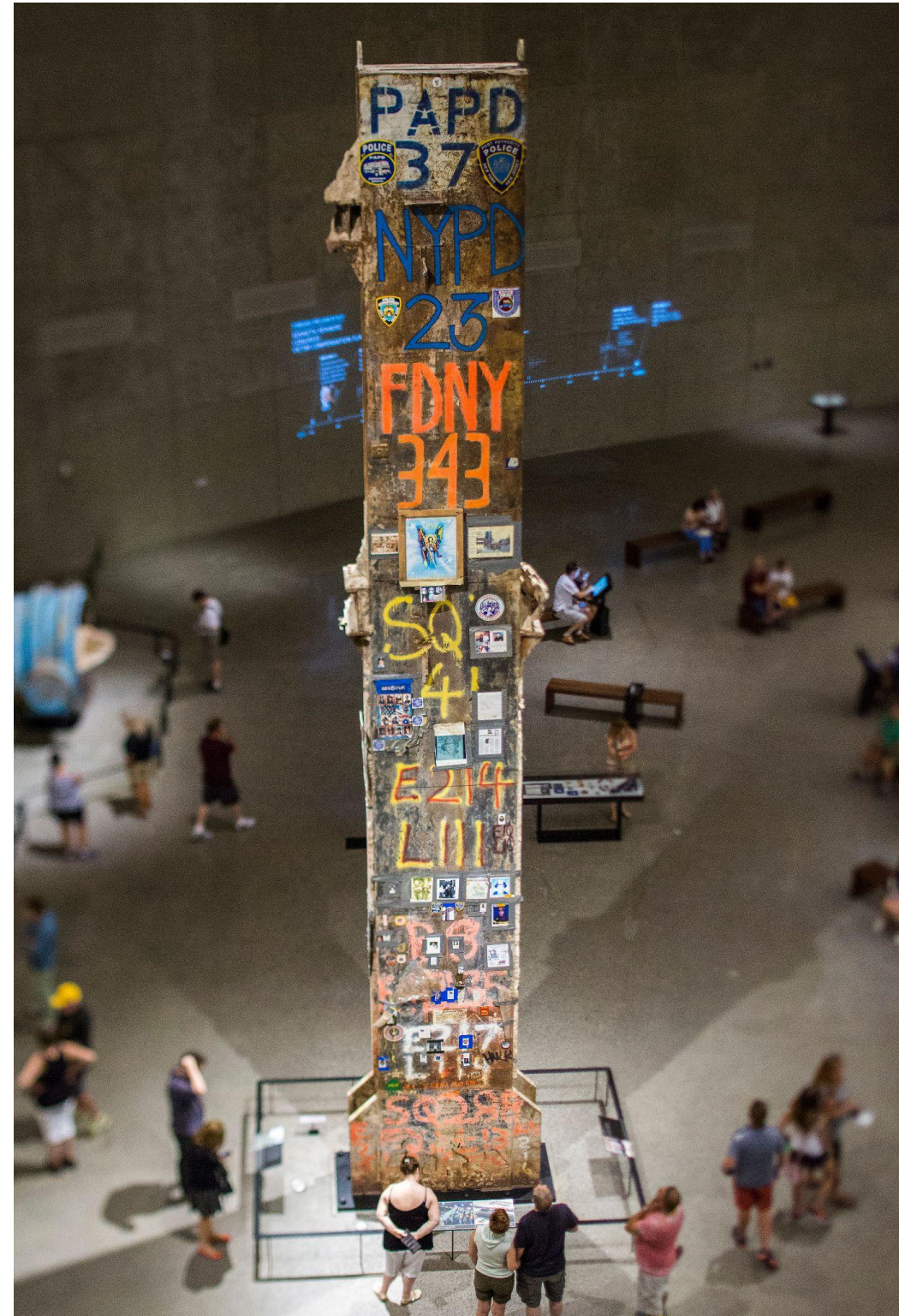


With large ephemera archives and memorial response art collections it is important to assess who holds the rights to the materials. Questions to ask:

- Does the donor own the rights to the materials?
- If not, are the rights holders known?
- Have the participants/creators signed a release/license granting certain usage permissions?
- Does that release/license allow the transfer of rights or permissions?
- Are there additional 3rd party rights such as privacy rights and trademarks with may need additional clearance?

From left: 9/11 Memorial & Museum, Photograph by Jin S. Lee; Collection 9/11 Memorial & Museum, Roberto Rabanne Archive, Photograph by Roberto Rabanne; Photograph by Andrea Booher, FEMA

Transformative Fair Use: Objects and Memorial Exhibition



From left: Recovered from the World Trade Center site after September 11, 2001, Collection 9/11 Memorial Museum, Courtesy of the Port Authority of New York and New Jersey. The preservation of this artifact was made possible in part by the Institute of Museum and Library Services via Save America's Treasures., Photograph by Jin S. Lee; 9/11 Memorial & Museum, Photograph by Jin S. Lee; Collection 9/11 Memorial & Museum, Gift in memory of the courageous firefighters from Engine 54/Ladder4/Battalion 9 killed at the World Trade Center on September 11, 2001, Photograph by Bruce M. White



9/11 Memorial & Museum, Photograph by Jin S. Lee

As an educational and cultural institution one of our goals is to be able to utilize images of objects from our collection and content on view in our galleries to expand on the history and stories we tell in our exhibitions across departments such as education, publicity, marketing, institutional advancement, retail, events, and online.

- We are bound by the uses permitted in our various agreements - Deeds of Gift, Purchase Agreements, Loan Agreements, Licenses, Releases.
- Agreements may put limits on public photography and/or on our ability to photograph objects beyond images for condition reports.
- Additional concerns regarding sensitive content are considered, as well. Just because agreements grant the rights to do something doesn't mean they should be utilized that way.
- The public is permitted to photograph on the Memorial and the interstitial galleries for personal use but not in the Historical and Memorial Exhibition galleries.
- Commercial photography by the public is not permitted unless coordinated with our external affairs team who are aware of areas which may have rights and/or sensitivity considerations.

Practical Application



9/11 Memorial & Museum, Photographs by Jin S. Lee

Break

Using Film and Music: When to License and Why



Greg Cram

he/him/his

**Assistant General Counsel,
Director of Information Policy
The New York Public Library**



Rina Elster Pantalony

She/her/hers

**Director, Copyright Advisory Services
Columbia University Libraries**

Use in Exhibitions

- First sale protects public display of a work
- Strong fair use rationales for exhibition uses generally when use is not protected by the First Sale doctrine
- Developing guidelines



Considerations

- Commercial availability
- How item was created; commercial intent?
- How performed in space
- Was our copy made lawfully?
- Open to the public?
- Risk profile for institution

Online Exhibitions

- Often presents more copyright and risk complexity
- Opportunities to add extra contextualization and commentary



Licensing

- Check existing licenses (e.g., PROs, deeds of gift)
- Gather all uses institution would like to make
- Secure license
- Share terms with stakeholders for compliance

Columbia University Libraries Collections

COLUMBIA UNIVERSITY LIBRARIES

Services & Tools ▾ Libraries ▾ Using the Libraries ▾ Collections ▾ About ▾

Avery Architectural & Fine Arts Library
Burke Library at Union Theological Seminary
Business & Economics Library in Uris
Business Library at Manhattanville
Butler Library

C.V. Starr East Asian Library
Gabe M. Wiener Music & Arts Library
Health Sciences Library
Journalism Library
Law Library
Lehman Social Sciences Library

Mathematics Library
Milstein Undergraduate Library
Rare Book & Manuscript Library
Science & Engineering Library
Social Work Library
Go to All Libraries & Affiliates

I WANT TO



Find Libraries
Open Now



Use the Libraries



Borrow, Request,
Renew



Ask A Librarian



Access Alumni
Resources



Make A Gift



Ask A Librarian

rarv.cumc.columbia.edu

Decision Making Factors



Collections Stewardship

Purpose of exhibition

- Educational?
 - e.g. Today's **Sound Art MFA Music & Arts Library Pop Up Show** at the Butler Library open to faculty and students at Columbia University

Nature of exhibition

- Public or private?
 - e.g. Miller Theater screening and post screening discussion open to the public

Nature of the collection

- Sensitive issues?
- Contractual obligations?
- Indigenous collections captured in film or video?
- Private information? e.g. home movies or oral histories audio collections
- Commercially released films?

Arthur Mitchell Collection

Arthur Mitchell Collection, 1800s-2019, bulk 1934-2019

Table of Contents

[Summary](#)

[Arrangement](#)

[Description](#)

[Using the Collection](#)

Note: some material may be restricted or offsite

[About the Finding Aid / Processing Information](#)

[Subject Headings](#)

[History / Biographical Note](#)

Container List

[View All](#)

Summary Information

Abstract

Arthur Mitchell (1934-2018) was an American ballet dancer, choreographer, and founder and director of the Dance Theatre of Harlem. This collection contains materials related to his career as a dancer with the New York City Ballet, and his later professional work with the Dance Theatre of Harlem and others. The collection includes administrative records, appointment books, correspondence, invitations, notes, notebooks, photographs, programs, and audio and video recordings.

At a Glance

Call No.:	MS#1739
Bib ID	11583096 View CLIO record
Creator(s)	Mitchell, Arthur, 1934-2018
Title	Arthur Mitchell Collection, 1800s-2019, bulk 1934-2019
Physical Description	106 linear feet (142 boxes - 58 record cartons, 68 document boxes, 8 flat boxes, 3 audio boxes, 5 card files)
Language(s)	English .
Access	You will need to make an appointment in advance to use this collection material in the Rare Book and Manuscript Library reading room. You can schedule an appointment once you've submitted your request through your Special Collections Research Account. Unique time-based media items have been reformatted and are available onsite via links in the container list. Commercial materials are not routinely digitized. Email rbml@columbia.edu for more information. Material currently listed in this finding aid is processed and available for use in the reading room with the exceptions noted above. Awards, books, oversized posters and oversized photographs, and three-dimensional objects remain un-processed and these materials are not available for research use at this time. The following boxes are located off-site: 133-142. You will need to request this material from the Rare Book and Manuscript Library at least five business days in advance to use the collection in the Rare Book and Manuscript Library reading room.

Harlem Ballet's Trailblazer Exhibition

An exhibition to celebrate the donation of the entire archive of Arthur Mitchell founder of Dance Theater of Harlem

and

An exhibition to celebrate the opening of the Miriam & Ira D. Wallach Gallery at the Lenfest Center of the Arts located at Columbia's new Manhattanville Campus

Decision-Making Factors

Public exhibition

High profile

Important cultural event in New York with important community connections to Columbia and Harlem

Important curator as part of the dance community

Exhibition to contain

- images
- film
- documentary materials from more than 20 institutions
- Film loops produced from film and video in the collection
- complex rights issues
- Commissioned curatorial essays for catalog
- Website

Rights Assessment for Film Loops

Top level film rights

- 24 distinct film and video recordings

Underlying Rights

- public performance
- choreographic rights (Martha Graham copyright case)
- music reproduction and distribution rights
- composition and recording rights
- synchronization rights

Additional Rights

- Guild Obligations
- Rights of Publicity
- Courtesy licenses

Arthur Mitchell in Performance

Reproduced and distributed with permission:

Permission was generously granted by the following rights holders

American Federation of Musicians (AFM), American Guild of Musical Artists (AGMA), The George Balanchine Trust, Harry Belafonte / Belafonte Enterprises, Inc., Boosey & Hawkes, CBS Broadcasting Inc., Creative Arts Television, Suzanne Farrell, International Alliance of Theatrical Stage Employees (IATSE), Local 1, The New York City Ballet, The New York Public Library for the Performing Arts, Jerome Robbins Dance Division, The Paley Center for Media, C. F. Peters Corporation, School of American Ballet, Schott Music Corp / EAMDC, Estate of Burt Stern, Video Artists International, Inc.

This video compilation was curated by Lynn Garafola for the exhibition *Arthur Mitchell: Harlem's Ballet Trailblazer*.

Produced by Columbia University's Center for Teaching and Learning in collaboration with The Rare Book & Manuscript Library and the Miriam and Ira D. Wallach Art Gallery.

Dance Theater of Harlem in Performance

Reproduced and distributed with permission:

Permission was generously granted by the following rights holders

American Guild of Musical Artists (AGMA), The George Balanchine Trust, Boosey & Hawkes, Dance Theatre of Harlem, Carmen de Lavallade / Leo Holder, De Mille Productions, Bob Downes, Robert Garland, Arthur Mitchell, Music Sales Corporation & G. Schirmer, Inc., Laveen Naidu, The New York Public Library for the Performing Arts, Jerome Robbins Dance Division,

Robert North, C. F. Peters Corporation, Soweto String Quartet, Thirteen Productions LLC, Augustus van Heerden

This video compilation was curated by Lynn Garafola for the exhibition *Arthur Mitchell: Harlem's Ballet Trailblazer*.

Produced by Columbia University's Center for Teaching and Learning in collaboration with The Rare Book & Manuscript Library and the Miriam and Ira D. Wallach Art Gallery.

Resources



Collections Stewardship

- [Guidelines for the Use of Copyrighted Materials and Works of Art by Art Museums](#), Association of Art Museum Directors
- [Code of Best Practices in Fair Use for the Visual Arts](#), College Art Association
- [Statement of Best Practices in Fair Use for Orphan Works for Libraries, Archives, and other Memory Institutions](#), Center for Social Media and Social Impact
- [Documentary Filmmakers' Statement of Best Practices in Fair Use](#), Center for Media and Social Impact
- [Fair Use Checklist](#), Copyright Advisory Services, Columbia University Libraries
- [A Fairy Use Tale](#), Center for the Internet and Society, Stanford Law School

Thank You!

General questions? Email: collections@aam-us.org
Rina.Pantalony@columbia.edu

For more resources: Visit oceancopyright.org or
[aam-us.org/professional-networks/
collections-stewardship](http://aam-us.org/professional-networks/collections-stewardship)