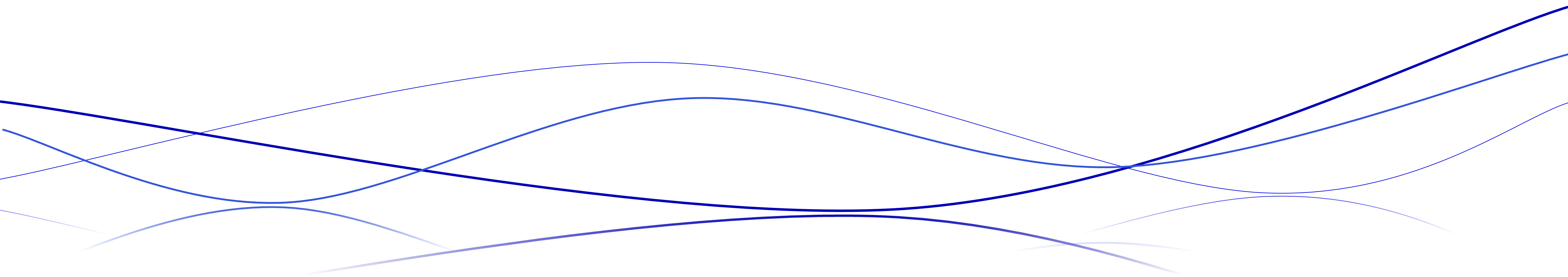


OCEAN

**OPEN COPYRIGHT EDUCATION
ADVISORY NETWORK**



Welcome!

Tech Support:

Need help? Send us a note in the chat.

Sound:

Your microphone is muted. You may hear silence until the class starts. Use the chat box for questions and comments.

Slides:

You will receive a handout of the slides and a link to the recording after class.

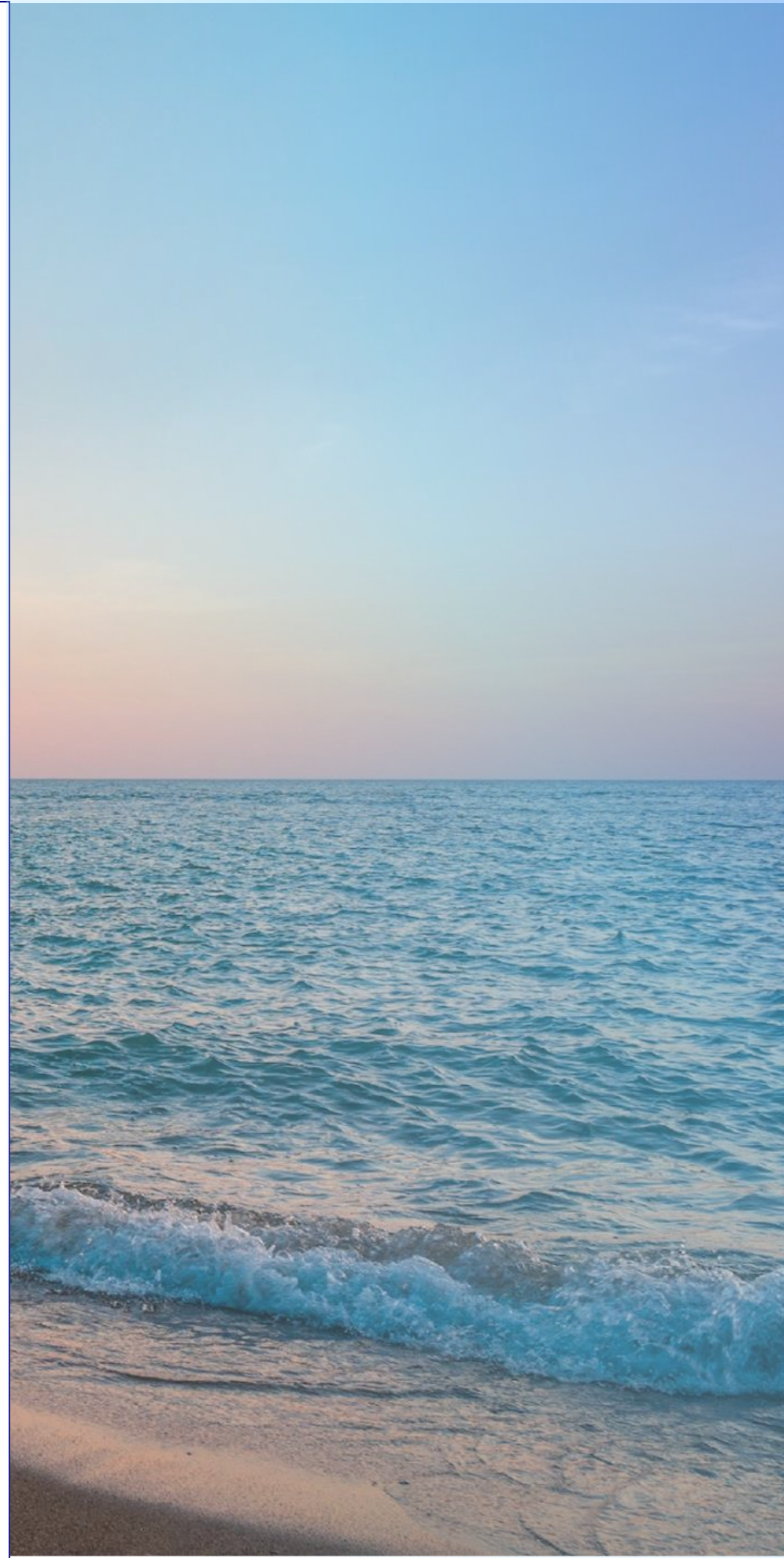
Recordings and Resources:

Visit oceancopyright.org for more resources or learn about upcoming workshops, discussions, and programs.

ABOUT US

Open Copyright Education Advisory Network

OCEAN aims to address **points of convergence** where copyright issues impact day-to-day and strategic decisions across museums, libraries, archives, research, scholarship, and education.



OUR VISION

To inform and empower the cultural heritage community in recognizing that copyright and related issues are foundational to navigating our networked digital world.

oceancopyright.org

Visit Our Website:

oceancopyright.org



Heather Briston

she/her/hers

**Director, Scholarship Tools and Methods Program
UC San Diego Library**



Hope O'Keefe

she/her/hers

**Senior Associate General Counsel
Library of Congress**



Anne M. Young

she/her/hers

**Editor, Rights and Reproductions:
The Handbook for Cultural Institutions**
Director of Legal Affairs & Intellectual Property
Indianapolis Museum of Art at Newfields
(institutional affiliation for identification purposes only)

You asked for it!
**How to Manage Crazy, Complex
Copyright Issues in Gift Agreements**

New Agreements: Key Rights Clauses

Best time to negotiate rights: at acquisition

- What rights does the owner retain?
 - What rights does the owner license to you
 - What rights does the owner license to patrons
 - limited to rights the owner has
 - may be different for different materials in collection
- How long do the rights extend? **NOTHING IN PERPETUITY**
 - range: term of years, life of owner, term of copyright
 - Does the license change over time?
- Rights terms within deeds of gift or purchase agreements or subject to separate license?
 - separate license when donor/seller is not the rights holder
 - separate license keeps acquisition agreement clean, is more flexible
- Different from access terms:
 - defines how collections can be used once you have access



Negotiation Strategies

- Emphasize the importance of not just preserving the legacy, but spreading it
- Don't be afraid to push back and negotiate seller and donor-requested restrictions.
 - require rights discussion/standard form
 - train recommending officers
 - third party negotiator/ acquisitions officer
- Consider varying perspectives and how to talk to donors and sellers about rights
- Remember:

***Your donor or seller is not your friend,
but you are friendly to your donor or seller***

Common Issues With Old Agreements

- No written agreement
- Silent on rights
- Donor is not the creator and the deed transfers rights
- Rightsholder is without heirs or clear corporate succession
- Agreement references outmoded technology (eg, videotapes, CD-Roms)
- Agreement includes perpetual restrictions

Fixing Old Agreements

- Renegotiate
 - Negotiate rights with donor/seller or heirs and successors
 - Ask for a separate copyright license
 - Apply to Probate Court to lift restriction from donor, if not living
- Reinterpret
 - changing tech
 - changing policies
 - changing law
- Risk Assessment
 - age of agreement
 - relationship with donor/seller
 - your institution's mission and goals



Future Proofing Rights Agreements

- Avoid words like perpetual
 - Limit to copyright term at most
- Use consistent rights language to facilitate rights databases and metadata
- Include language to permit future transfers/migrations to new formats
- Include language to permit new forms of access
- Allow all uses consistent with copyright law
- Subject access and use to general policies of the collecting division
- Specify successor contacts
 - Seek decision default to your institution absent response

Resources:

Fair Use Guides

- American University, Washington College of Law: [Best Practices in Fair Use Publications and Completed Projects](#)
- CAA's ["Code of Best Practices in Fair Use for the Visual Arts"](#)
- AAMD's ["Guidelines for the Use of Copyrighted Materials and Works of Art by Art Museums"](#)

Chapters and Books

- "Contracts, Intellectual Property, and Privacy" in *The Digital Archives Handbook*, ed. Aaron D. Purcell, Lanham, MD: Rowman & Littlefield, 2019.
- *Rights in the Digital Era*, eds. Menzi L. Behrnd-Klodt & Christopher J. Prom, Chicago, IL: Society of American Archivists, 2015.
- "Nonexclusive Licensing Agreements" and "Elements of a Nonexclusive Licensing Agreement" in *Rights and Reproductions: The Handbook for Cultural Institutions, Second Edition*, ed. Anne M. Young, Lanham, MD: Rowman & Littlefield, 2019.

Upcoming OCEAN Sessions

- **Traditional Knowledge, Traditional Cultural Expressions, and Collections Management**

November 18, 2022 at 12:00 p.m. EST

What is **traditional knowledge**? What are **traditional cultural expressions**? How do I identify them in collections and what are the implications? Join faculty in examining the interests and issues arising in the management of collections where traditional knowledge and traditional cultural expressions are inherent.

- **The Internet Archive Case Update and Discussion about Controlled Digital Lending**

December 2, 2022 at 12:00 p.m. EST

What does the current case **Hachette v. Internet Archive** mean for the cultural heritage community? How might it affect the application of fair use? Join faculty to discuss the implications of this case.

Thank You!

Course questions? Email: hbriston@ucsd.edu

loke@loc.gov

ayoung@discovernewfields.org

For more resources: Visit oceancopyright.org