



# OCEAN: Open Copyright Education Advisory Network

<http://oceancopyright.org>

# Deeds of Gift/Acquisitions (Old and New)

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    - Program includes digital library, digital exhibits, scholarly communications, digital asset management system, GIS, data, emerging technology and web archiving
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- **Anne M. Young**
  - **Editor, *Rights and Reproductions: The Handbook for Cultural Institutions***
  - **Director of Legal Affairs & Intellectual Property, Newfields**  
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# 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

# The LYRASIS Pilot: Online Copyright Classes

## Copyright 101

Melissa Levine & Heather Briston

## No Fear Fair Use: Practical Fair Use for Cultural Institutions

Kyle K. Courtney & Sandra Aya Enimil

## Copyright Limitations and Exceptions

Lisa A. Macklin & Anne M. Young

## When Copyright Ends (or Never Was): Understanding the Public Domain

Brandon Butler & Greg Cram

## Copyright in Action

Rina Elster Pantalony & Cherie Chen



# Additional 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

## **OCEAN Discussion Session: Negotiating for permissions for the use of images of object-based collections**

Friday, June 3 at 12:00 PM Eastern Time

with Anne Young, Margaret McKee, Lisa Macklin, and Melissa Fournier

## **OCEAN Discussion Session: How to Work with General Counsel**

Friday, June 10 at 12:00 PM Eastern Time

with Greg Cram, Amy Blum, Arnetta Girardeau, and Rina Elster Pantalony

## **OCEAN Discussion Session: Terminations of Transfer**

Friday June 17, at 12:00 PM Eastern Time

with Brianna Schoenfeld, Rachel Brooke and Walter Lehman

# Thanks for Listening

Please check out our website for upcoming sessions and news!

<http://oceancopyright.org>

And can we'd love to hear your views and answer your questions!