

WEBVTT

1

00:00:12.390 --> 00:00:19.700

Jane Larson (she/her): Hi everyone, and welcome to the second webinar for those who've been invited to submit a final application for CLIR's

2

00:00:19.800 --> 00:00:23.200

Jane Larson (she/her): *Digitizing Hidden Collections: Amplifying Unheard Voices.*

3

00:00:23.390 --> 00:00:30.989

Jane Larson (she/her): I'm Jane Larson, senior program associate on the CLIR Grants Team, and today's session will be focused on rights ethics, and re-use.

4

00:00:33.130 --> 00:00:39.090

Jane Larson (she/her): We're going to start off with some introductions, first to the platform and then to our presenter for today's webinar.

5

00:00:40.800 --> 00:00:44.380

Jane Larson (she/her): Here are some notes about using Zoom during this session.

6

00:00:44.530 --> 00:00:54.440

Jane Larson (she/her): A live transcript is being generated if you'd like to utilize it. To turn on this feature, you can click the "CC Show Captions" button at the bottom of your Zoom window.

7

00:00:54.690 --> 00:01:01.919

Jane Larson (she/her): Attendees will be muted throughout the presentation. However, you're welcome to use chat for general introductions and conversation.

8

00:01:02.070 --> 00:01:17.259

Jane Larson (she/her): If a chat box isn't already displaying on your Zoom screen, you can hover your mouse toward the bottom of the screen and open it manually. In order to send a message to everyone, remember to change the default from "All Panelists and Hosts" to "Everyone."

9

00:01:17.750 --> 00:01:35.020

Jane Larson (she/her): We ask that you use the separate Q&A box to ask questions. This can be opened the same way as the chat box. Because we have limited time together, please feel free to follow along with the questions as they come in and “upvote” them to let us know that it'd be helpful to you to have them answered live.

10

00:01:35.320 --> 00:01:44.170

Jane Larson (she/her): We'll do our best to answer all of our questions live, but we'll also share written responses to all questions alongside the recording.

11

00:01:44.860 --> 00:01:55.189

Jane Larson (she/her): This session is being recorded, and so the slides, Q&A, recording, and transcript will be made available on the [Apply for an Award](#) page on our website in the next 2 weeks.

12

00:01:58.230 --> 00:02:08.269

Jane Larson (she/her): Our team would like to center today's conversation by acknowledging that, as residents of the United States, we are speaking to you from unceded land of many indigenous peoples.

13

00:02:08.550 --> 00:02:20.619

Jane Larson (she/her): I'd like to respectfully acknowledge and recognize the original and current caretakers of the land, water, and air where I live: the Shawnee and Osage peoples and all their ancestors and descendants.

14

00:02:20.680 --> 00:02:41.990

Jane Larson (she/her): I'm grateful to have the opportunity to live and work on their homelands, and ask you to join me in acknowledging all indigenous communities, their elders, both past and present as well as future generations. May this acknowledgment remind us of our shared commitment to beginning the process of working to dismantle the ongoing legacies of settler colonialism.

15

00:02:43.880 --> 00:02:57.430

Sharon Burney: So during today's session, our host will dig into rights ethics, and re-use. We've allotted 90 min total for today, and the speaker will pause at the halfway point, at about 2:45 PM Eastern Standard time,

16

00:02:57.550 --> 00:03:14.140

Sharon Burney: for a quick break during their content. We're hoping for an engaging time of conversation around identifying rights and ethics concerns and original materials, assessing risk and determining appropriate access with creators and community in mind.

17

00:03:14.140 --> 00:03:38.450

Sharon Burney: The plan is to reserve about 25 min for Q&A near the end of this session. Both the session host and CLIR staff will be available to answer questions at that time. So while you may pose questions throughout using the Q&A box, keep in mind that we won't get to every question as it's asked. Staff will be keeping track, and we'll circle back to any unanswered questions during the dedicated Q&A.

18

00:03:41.890 --> 00:03:45.320

Sharon Burney: We want, okay, let me launch this real quick.

19

00:03:52.760 --> 00:04:03.629

Sharon Burney: So we want to launch a quick poll to gauge how you're feeling about today's topic In today's session, you'll learn more about the skills and strategies you need to complete the following application tasks:

20

00:04:04.150 --> 00:04:11.240

Sharon Burney: Project details - rights, ethics, and re-use task, along with the upload rights, ethics, and re-use appendices.

21

00:04:21.940 --> 00:04:23.680

Sharon Burney: Hope it's still going.

22

00:04:30.510 --> 00:04:32.569

Jane Larson (she/her): Few more trickling in.

23

00:04:35.170 --> 00:04:36.710

Jane Larson (she/her): Think we're good.

24

00:04:40.320 --> 00:04:42.450

Sharon Burney: Alright. Let's end that.

25

00:04:44.950 --> 00:04:50.619

Sharon Burney: So now we're gonna be happy to turn things over to Sandra.

26

00:04:50.910 --> 00:05:10.640

Sharon Burney: This is Sandra Enimil, who is the director of scholarly communication and collection strategy at Yale University Library. We'll take just a moment to let Sandra share her size and get oriented, and as they do that. Please remember that we'll be breaking for 5 min at the halfway point.

27

00:05:32.470 --> 00:05:34.079

Sandra Aya Enimil: Are you all seeing my slides?

28

00:05:39.070 --> 00:05:39.840

Sandra Aya Enimil: No.

29

00:05:43.390 --> 00:05:47.870

Alyson Pope: See them, but we can see them, but they're not in slideshow.

30

00:05:48.120 --> 00:05:51.119

Sharon Burney: They're small, they're small. There we go!

31

00:05:51.120 --> 00:05:53.110

Sandra Aya Enimil: Okay. Alright. Great.

32

00:05:53.910 --> 00:06:12.230

Sandra Aya Enimil: Okay. Hello, everyone. My name is Sandra Enimil and as Sharon noted, I'm the director for scholar communication and collection strategy at Yale Library. Have my email address there if you want to reach out later after this, as well. Let me. I'm going to turn off my camera

33

00:06:12.860 --> 00:06:16.809

Sandra Aya Enimil: and I'll turn it back on when it's time for the Q&A portion.

34

00:06:22.900 --> 00:06:46.250

Sandra Aya Enimil: So, as you all know, I'm here to talk about rights, ethics, and re-use as you all are considering the applications that you're going to put forth for the grants that you're considering. And it's really meant to provide some information around copyright to help you think through what might be some possible issues in regards to

35

00:06:46.250 --> 00:06:58.780

Sandra Aya Enimil: copyright, cultural heritage considerations, what specific communities might be involved, or interested, or part of your collections, and how you can reuse the content

36

00:06:58.960 --> 00:07:12.220

Sandra Aya Enimil: if these, if this material is not necessarily owned or created by your particular institution. And what? What are some of the things that you need to think about and consider as you're working on your application?

37

00:07:13.550 --> 00:07:30.109

Sandra Aya Enimil: So first I hope everybody is dealing and with and managing this change of time well. I am still kind of struggling, but hopefully everybody is back on the right time zone, and in your minds as well.

38

00:07:31.760 --> 00:07:36.398

Sandra Aya Enimil: I always have to start with the disclaimer whenever I'm talking about legal topics.

39

00:07:36.960 --> 00:08:06.710

Sandra Aya Enimil: This is information about legal topics. So we'll include information about copyright, but it is not considered, or should not be considered as legal advice for your specific situations. And so you may need to, or may be important for you to talk to someone who might represent you, or a lawyer who might be able to take in some of your interests and your very specific questions that you might have. So just want to let you know this is information about legal topics. It's not legal advice.

40

00:08:09.270 --> 00:08:27.430

Sandra Aya Enimil: I also like to just make sure that everybody's clear on what we're talking about. So we're going to be focusing on issues around cultural heritage. So rights, ethics, your responsibilities, and how you might re-use materials that you didn't create.

41

00:08:28.580 --> 00:08:40.000

Sandra Aya Enimil: But wanna make sure that you understand what the world of intellectual property rights and how it includes copyright, but that's not the only thing. Trademark has to do with

42

00:08:40.090 --> 00:09:06.820

Sandra Aya Enimil: how you recognize brands. So symbols and things that are used as for associated with the good or service. I have the bullseye from target there. So when you see that you know that means target. The sales tag from best buy, the golden arches from Mcdonald's. These are all things that indicate a brand, a trademark that is used to show you that a good is related or associated with that particular mark.

43

00:09:07.820 --> 00:09:14.295

Sandra Aya Enimil: Patent is for new and useful discoveries or improvements. So you might also see patents to

44

00:09:15.390 --> 00:09:39.730

Sandra Aya Enimil: for inventions and for things that are going to be useful for society. Trade secret includes formulas and processes, things that are not readily known or ascertainable. Although with the Internet there's a lot of things that have been figured out over time that used to be top secret, but it is something that is meant to be that is related to a particular brand

45

00:09:40.012 --> 00:09:50.479

Sandra Aya Enimil: and their way of putting out their products into the world. An example of this which you know used to be my go to example, I need to find another one. But

46

00:09:50.620 --> 00:10:10.490

Sandra Aya Enimil: the secret sauce on a McDonald's Big Mac that used to be secret. So people didn't know what it was. But although I've heard that it's basically just 1,000 island. But whatever the Internet has definitely revealed, what that secret is. But it used to be known as a trade secret, which was something that was part of one of their biggest selling items, the Big Mac.

47

00:10:11.050 --> 00:10:29.669

Sandra Aya Enimil: And then, you know, copyright is what we're going to be talking about today. Just giving some background and information on copyright and some particular parts of copyright that could be helpful as you consider things that are part of your collections and what you're hoping to utilize as part of your grant application.

48

00:10:32.880 --> 00:10:41.340

Sandra Aya Enimil: So going to go back in time just a little bit to give, like the international historical perspective on copyright. In 1710, the Statute of Anne

49

00:10:41.640 --> 00:10:59.959

Sandra Aya Enimil: was put into effect in England, and it has copyright term, which is a new way of thinking about how things are created, and it gave protection to the creators or authors of copyrightable content for 14 years, and then that term was renewable for another 14 years.

50

00:10:59.960 --> 00:11:12.430

Sandra Aya Enimil: And the author had to still be alive in order to receive that benefit. With the creation of this statute, the public domain was created. So there's a social quid pro quo that comes about because

51

00:11:12.670 --> 00:11:19.929

Sandra Aya Enimil: authors and creators are given a certain amount of time to be able to make their money, do whatever they need to do,

52

00:11:20.030 --> 00:11:49.299

Sandra Aya Enimil: exploit the thing that they created in any way that they feel, and allow others to do it on their behalf. But they are able to make uses of the things that they created. And then, after the copyright term expires, it is available to the public to also to make use. And the real, the real benefit of the public domain is that people are able to get access to this content, and then also make their own new creations and new things, maybe building on this material, or just from the inspiration.

53

00:11:50.040 --> 00:11:53.759

Sandra Aya Enimil: 1886, is the creation of the Berne Convention.

54

00:11:54.330 --> 00:12:03.980

Sandra Aya Enimil: At this time the United States did not join, but it was created by other parties around the world, and it is creating this convention that says

55

00:12:04.180 --> 00:12:33.330

Sandra Aya Enimil: everyone who is a part of this convention will respect the copyright laws of every member that's party to the terms. It defined the copyright term of life of the author plus 50

years. And so we get out of, like all the various ones that people have, and they have a minimum term that you have to be able to be a part of the convention. You have to have life of the author, the author lives, dies, and then for 50 years after that the works that they create are still covered by copyright.

56

00:12:33.940 --> 00:12:49.519

Sandra Aya Enimil: And this may be important for some of you and your collections, if you have works or content from people, from authors who are no longer living, knowing when they passed away is important to know, like when their items would go into the public domain.

57

00:12:53.530 --> 00:13:19.909

Sandra Aya Enimil: When the United States became its own entity, became its own country, one of the first things that were done after the Constitutional Convention was to create a copyright act. And they created, they wanted to create something that would have protections the same as the ones that were available in England. Essentially, they use a lot of similar terms and phrases to be able to have protections for people who are creating content,

58

00:13:20.890 --> 00:13:23.610

Sandra Aya Enimil: creating copyrightable content at that time.

59

00:13:25.000 --> 00:13:51.970

Sandra Aya Enimil: And again, it was the same kind of idea where there were incentives for creators, and there was also the balance of the public domain. So, just as with the original Copyright Statute, statute of Anne and 1710 and 1790, they had the same idea where creators would have a limited term to be able to exploit their works, and then, once the term ended, it would be available for the rest of the public to utilize.

60

00:13:55.090 --> 00:14:17.209

Sandra Aya Enimil: I wanted to show all of these different milestones in US copyright law. These are by no means the only things that were happening with US copyright law, but these were some of the major acts that happened over the time from the founding of the nation to the first Copyright Act to revisions. With each of these revisions more things were considered included

61

00:14:17.643 --> 00:14:27.869

Sandra Aya Enimil: in copyright. And so there were, we started off with text textual works, and most of those things were covered. Then eventually started adding things like

62

00:14:27.930 --> 00:14:30.599

Sandra Aya Enimil: pictures, sculptures, film,

63

00:14:30.770 --> 00:14:38.570

Sandra Aya Enimil: and software. Eventually, with each and every revision more things were made to be included in copyright.

64

00:14:39.660 --> 00:15:06.309

Sandra Aya Enimil: You'll note here the change from the term being 14 years and renewable for another 14. In 1790, you had to be still alive in order to renew the term. In 1831, because they added in a provision where you could, that your heirs could then be available, eligible to still benefit from the thing you created, so you did not have to be alive still for copyright to still be in place.

65

00:15:06.440 --> 00:15:12.350

Sandra Aya Enimil: In 1870, copyright matters moved to the Library of Congress, where our copyright office still is.

66

00:15:12.600 --> 00:15:14.720

Sandra Aya Enimil: And then increasingly

67

00:15:15.060 --> 00:15:39.140

Sandra Aya Enimil: the terms got longer. So 28 years 1909, plus another 28 years, if renewed. 1976, when in 1976, we were trying to get into the Berne Convention, and so in preparation for that, the term had to change again to the minimum standard which was available through the Berne Convention, which was life of the author plus 50 years.

68

00:15:40.460 --> 00:15:57.270

Sandra Aya Enimil: 1998 Sonny Bono Copyright Extension Act, some people also call it the Mickey Mouse Copyright Extension Act, which added another 20 years, which now makes the term which is the current term for copyright life of the author plus 70 years.

69

00:15:57.500 --> 00:16:07.420

Sandra Aya Enimil: So that is the current term of copyright. The US is now a part of the Berne Convention, and so we respect other people's copyright laws, they respect our copyright laws.

70

00:16:07.860 --> 00:16:26.330

Sandra Aya Enimil: In 2018 the Music Modernization Act came into force. Really, to try, one of the main goals was to federalize pre-1972 sound recordings and to address issues related to downloading, streaming, and producer royalties.

71

00:16:26.994 --> 00:16:42.710

Sandra Aya Enimil: One of these the great, the one of the great things which I'm gonna talk about a little bit later, is the creation of the public domain for sound recordings. Until this point it was a bit of a mess, because everything is regulated by the individual states.

72

00:16:42.990 --> 00:17:10.630

Sandra Aya Enimil: And so now that there is Federal protection, it creates a public domain for these. In 2020, during the pandemic, the Copyright Alternative and Small Claims Enforcement Act came about. So the Copyright Claims Board, which is a tribunal, not a court, voluntary tribunal where for cases of infringed copyright infringement, where the claim is less than \$30,000 could go through this tribunal.

73

00:17:10.760 --> 00:17:27.210

Sandra Aya Enimil: And this is to try to help rights holders who may not have the funds, or really the time resources, all the things that are needed to mount a Federal copyright infringement case. And so this is again a voluntary tribunal.

74

00:17:27.339 --> 00:17:30.169

Sandra Aya Enimil: And there's a lot to be said about that.

75

00:17:32.790 --> 00:17:50.759

Sandra Aya Enimil: So, as I mentioned, when I talked about all the different revisions and times that copyright has changed in the United States, that each revision brought in new things that could be covered by copyright. And so you see some examples of things here in the image, architecture, sculpture, literature, pictures,

76

00:17:51.250 --> 00:17:54.499

Sandra Aya Enimil: film, music, software,

77

00:17:54.710 --> 00:18:16.199

Sandra Aya Enimil: books, of course, drama. All these different things are meant to be a floor, not a ceiling, for what can be covered by copyright. There are many things that you know

weren't anticipated. Once the most recent revision came about with 1976, there are things that didn't exist then, that are still covered by copyright, because they fit the parameters still.

78

00:18:20.350 --> 00:18:50.050

Sandra Aya Enimil: As a creator of copyrightable content, there are 6 rights that you have that are listed out in US Copyright law. So you have the right to reproduce your work, to make copies. You have a right to prepare derivative work, so to take your poem and make it a song. Take your book and make it into a film. You have the right to distribute your work, publicly display and publicly perform, including publicly performing a sound recording via digital audio transmission.

79

00:18:50.870 --> 00:19:02.959

Sandra Aya Enimil: So these are all the rights that you have, and you have them until you transfer them away and give them to someone else, or you can keep them and license certain rights to specific people for specific things.

80

00:19:03.270 --> 00:19:22.620

Sandra Aya Enimil: So you keep the rights, and you can authorize others to make uses of that content under your direction, or however you want to do it, or you can transfer rights to other people, and once you transfer those rights, you no longer are the rights holder, you would still be considered the creator or the author. But if you transfer your copyright,

81

00:19:23.340 --> 00:19:27.349

Sandra Aya Enimil: the person you transfer to would then become the rights holder.

82

00:19:29.930 --> 00:19:44.519

Sandra Aya Enimil: So the things that are not protected by copyright. Works that are not fixed in a tangible means of expression. So if I were just speaking to you face to face in person, and giving this presentation, me just speaking to you

83

00:19:44.660 --> 00:19:49.719

Sandra Aya Enimil: there can't be copyright in that, because it's not fixed in a tangible means of expression.

84

00:19:50.320 --> 00:20:10.769

Sandra Aya Enimil: The Powerpoint, however, can have copyright protection because it's fixed. It is content that has been created and fixed into a tangible means of expression. The recording

of this webinar could have copyright protection because it is, it will be fixed into a tangible medium.

85

00:20:11.130 --> 00:20:28.800

Sandra Aya Enimil: So ideas, facts, principles, discovery systems, those cannot be covered by copyright. It's possible they might be able to be covered by something else. And you know, if you remember that intellectual property slide that I shared earlier, it could be covered by one of those other things, but it can't be covered by copyright.

86

00:20:29.070 --> 00:20:42.819

Sandra Aya Enimil: Short phrases also can't be covered by copyright. Maybe it could be covered by trademark, but not copyright. Works of the US government produced by government employees in the scope of their employment,

87

00:20:43.280 --> 00:20:49.250

Sandra Aya Enimil: not covered by copyright. Their works go into the public domain immediately.

88

00:20:50.380 --> 00:20:56.579

Sandra Aya Enimil: Works that are already in the public domain are not protected by copyright.

89

00:20:58.660 --> 00:21:19.059

Sandra Aya Enimil: And I throw this in just to have, as you know, part of the thought exercises, think about who was left out of the process, because work is not covered by copyright. And I'm not sharing this to say that maybe it should be covered by copyright, or it's bad that it's not covered by copyright. It's just the information of like to think about like

90

00:21:19.370 --> 00:21:30.499

Sandra Aya Enimil: when, in 1790, in the United States, nothing I created could have been covered by copyright because I was not considered to be someone who could have their work protected.

91

00:21:31.263 --> 00:21:35.799

Sandra Aya Enimil: And that's just the fact of, you know, the way things were at that time.

92

00:21:36.000 --> 00:21:47.279

Sandra Aya Enimil: And there are also other things, other elements that are not covered by copyright. And I, you know, just want to share this, to have us kind of think about why, that is why is that?

93

00:21:48.370 --> 00:21:53.269

Sandra Aya Enimil: Oral histories because they cannot, there's no way of those things being fixed.

94

00:21:53.420 --> 00:22:09.779

Sandra Aya Enimil: I often hear some indigenous leaders talk about the fact that an oral history is fixed in the person with whom it's shared. But that's not something that could be covered by copyright. And again, I'm just, you know, sharing this just to say, isn't that interesting and something to think about.

95

00:22:13.810 --> 00:22:15.670

Sandra Aya Enimil: More on the public domain.

96

00:22:15.820 --> 00:22:44.010

Sandra Aya Enimil: Some of your work, and the content that you're thinking about, including as part of this grant, could be covered by the public domain. That content could have lost copyright protection or never had it in the first place, or copyright term has expired. So the public domain is a term of art, a legal term of art, that means information, knowledge, discoveries, creations that never or no longer have copyright protection.

97

00:22:44.900 --> 00:23:05.250

Sandra Aya Enimil: And this is distinct from publicly available. So most of the things that you might find online on the Internet, those things have, probably copyright protection. Somebody has made it available to you for you to be able to see, but that doesn't mean that they have relinquished their copyright unless they have, they clearly state that somewhere.

98

00:23:06.490 --> 00:23:13.730

Sandra Aya Enimil: If there are things that have been digitized and made available, you do have to be mindful of thinking of

99

00:23:13.950 --> 00:23:20.860

Sandra Aya Enimil: the underlying work. What is actually being made available? What is copyrighted within those, that imagery?

100

00:23:21.410 --> 00:23:49.129

Sandra Aya Enimil: I have a slide here that shows a poster of Night of the Living Dead, and I share it, because it's one an example of someone who didn't they, the producer did not follow the appropriate formalities that were in place at the time that this film was created, which was that they needed to have a copyright notice affixed to the film somewhere. And because they did not, when they first publicly showed

101

00:23:49.571 --> 00:23:57.520

Sandra Aya Enimil: showed the film, it went into the public domain immediately, because it didn't have what was necessary, required for copyright protection at the time.

102

00:24:02.070 --> 00:24:22.540

Sandra Aya Enimil: So if any of you like work in particular spaces where you might encounter or work with copyrighted materials, the number 1923, might be like etched on your brain of like what things are in the public domain. Written published works in the public domain before 1923.

103

00:24:22.640 --> 00:24:27.409

Sandra Aya Enimil: I'm here to tell you. You got to get rid of 1923 as a number as a marker, because

104

00:24:27.600 --> 00:24:33.690

Sandra Aya Enimil: as of 2019, the number is gonna change every year

105

00:24:33.960 --> 00:24:45.760

Sandra Aya Enimil: until it gets on the same schedule of what we are currently, the current regime copyright term regime that we're on now, which is life of the author plus 70 years. So

106

00:24:46.220 --> 00:24:49.510

Sandra Aya Enimil: anything works in the United States, published

107

00:24:49.940 --> 00:24:53.919

Sandra Aya Enimil: before 1930, are now in the public domain.

108

00:24:54.480 --> 00:25:13.309

Sandra Aya Enimil: and then next year, beginning on January 1st 2026, everything published before 1930 will enter into the public domain. It's just going to keep going and keep going again until it catches up with the current term of what's happening with our current copyright

109

00:25:14.980 --> 00:25:15.950

Sandra Aya Enimil: terms.

110

00:25:16.460 --> 00:25:31.270

Sandra Aya Enimil: And then, something really exciting that happened because of the Music Modernization Act, as I mentioned before, having a public domain for sound recording. So now, works that were published before 1925 are now in the public domain.

111

00:25:35.550 --> 00:25:42.930

Sandra Aya Enimil: It can be a little tricky to figure out when something might fall into the public domain, when you're dealing with things that are from the 20th century.

112

00:25:47.420 --> 00:25:58.150

Sandra Aya Enimil: And it's important to note that this is for the United States. There are different formalities and expectations in other countries. But this is, I'm speaking specifically about the United States.

113

00:25:59.030 --> 00:26:04.009

Sandra Aya Enimil: So most things published before 1930 are in the public domain.

114

00:26:04.670 --> 00:26:07.530

Sandra Aya Enimil: 1930 to 1977,

115

00:26:07.680 --> 00:26:31.420

Sandra Aya Enimil: which includes Night of the Living Dead, that time there were formalities that were in place that had to be done in order to have copyright protection. So it. There were other formalities as well. Certain standards for renewal, certain standards for registration. And if you didn't meet that your work could have gone into the public domain in that time period.

116

00:26:31.650 --> 00:26:47.220

Sandra Aya Enimil: 1978 to 1989, we were trying to get ourselves aligned with the Berne Convention and trying to do the rights and responsibilities that were necessary to participate in that. And so there are different conditions that might apply

117

00:26:47.650 --> 00:27:01.089

Sandra Aya Enimil: to that time period. So it really makes it matters for you to be able, you will need to be able to do some research, maybe on some of the content that you might have if any of your materials falls into these dates.

118

00:27:02.500 --> 00:27:13.799

Sandra Aya Enimil: On or after March 1st 1989, we are officially part of Berne Convention, and we have changed our term to life of the author, plus 70 years.

119

00:27:14.330 --> 00:27:22.419

Sandra Aya Enimil: Corporate anonymous authorship are 95 years from first publication, or 120 years from the creation date, whichever is first.

120

00:27:26.290 --> 00:27:30.979

Sandra Aya Enimil: And again, this the one area that I have circled here is the kind of

121

00:27:31.560 --> 00:27:44.809

Sandra Aya Enimil: hard period to try to figure out what what were the standards that were in place at the time, and then figuring out whether or not what work you might be looking at, or considering what content you might be considering

122

00:27:44.990 --> 00:28:08.080

Sandra Aya Enimil: if they met, the formalities that were required at the time can be difficult to figure out. I know the Library of Congress and the copyright office, as well as many other stakeholders, have been heavily invested in trying to help ease the confusion on how you figure out whether something was registered or whether something was renewed. It can be very challenging to figure these things out.

123

00:28:12.270 --> 00:28:34.970

Sandra Aya Enimil: So I talked a little bit about whose work is not covered by copyright law, or what types of works are not covered by copyright law, but it's important to think about who is a copyright owner. Generally the person who creates or is the author of the work is the copyright

owner. An exception to that is, works made for hire, so work that you create as part of your job duties,

124

00:28:35.130 --> 00:28:53.650

Sandra Aya Enimil: would be the actual property of your employer. Not you. Unless you have some kind of arrangement to the contrary, which is what I have here, with the exception to the exception. In academia, higher education, many institutions do not claim copyright in academic scholarship

125

00:28:53.740 --> 00:29:14.219

Sandra Aya Enimil: so they let that go with the people who are creating that content. Mainly because they don't want to manage it. A lot to do with freedom of expression and freedom, to study what they want to study, and also because they want faculty to produce whatever scholarship they're interested in producing, and they don't want to be involved in managing the copyright of their publications.

126

00:29:14.659 --> 00:29:31.109

Sandra Aya Enimil: So you know, it's important to know, what ownership standards are set at your institution, what does your institution say about that? They may have a policy about creators and creatorship, and who owns what and you should be clear on what that language says.

127

00:29:31.350 --> 00:29:41.329

Sandra Aya Enimil: Copyright can be held jointly. It can be transferred or assigned. Ownership of copyright is distinct from ownership of the material object. So your

128

00:29:41.760 --> 00:29:55.640

Sandra Aya Enimil: your particular institution, agency, school, what have you, you may have something physically, but that doesn't mean that you own the copyright or can make decisions around copyright for that material.

129

00:29:59.730 --> 00:30:04.310

Sandra Aya Enimil: So now it's important to note that copyright is automatic.

130

00:30:04.990 --> 00:30:11.359

Sandra Aya Enimil: The formalities that were required sometime during the time, during in times past,

131

00:30:11.430 --> 00:30:34.310

Sandra Aya Enimil: are no longer required as part of joining the Berne Convention. We have agreed that those formalities are not requirements. They are optional. So if you want to register your copyright for particular materials, you can do so, but you do not have to. You automatically have copyright as soon as it's fixed into a tangible means of expression.

132

00:30:34.310 --> 00:30:46.019

Sandra Aya Enimil: You actually have to do something in order to not have copyright protection. So you know, think about what that means. Your emails have copyright protection. Your Facebook rants have copyright protection.

133

00:30:46.030 --> 00:30:51.740

Sandra Aya Enimil: Everything, anything that's fixed in a tangible means of expression, could have copyright protection.

134

00:30:53.300 --> 00:31:02.719

Sandra Aya Enimil: So as with these examples of emails, Facebook rants, Instagram posts, etc, having copyright protection,

135

00:31:03.810 --> 00:31:25.889

Sandra Aya Enimil: if you're thinking, that could make it very difficult to know, you know who owns what? Because things make their way around on the Internet, right? So yeah, that's true. So it is more difficult actually to know who owns what because of the way we are able to interact with social media. The way we're able to share our content in different ways online.

136

00:31:25.930 --> 00:31:49.410

Sandra Aya Enimil: So yeah, automatic is good in lowering the formalities that are required. So the formality of having to register ,having to pay. But there was something to be said for those formalities, because when you registered your name is associated with it, you have the date that you created that item, and materials made available in, you know, some roles which you know have,

137

00:31:49.700 --> 00:32:05.249

Sandra Aya Enimil: have now been digitized and now are available for people to be able to search through. But it now that it's automatic, and it's, you know, in ways where maybe it's not

as easy to figure out who might be the owner of something. That can also be a little complicated.

138

00:32:08.160 --> 00:32:13.990

Sandra Aya Enimil: So we talked about the duration of copyright already, but just to

139

00:32:14.820 --> 00:32:25.670

Sandra Aya Enimil: harp on it a little bit more. Life of the author, plus 70 years. If there's more than one author, it's life of the last surviving author plus 70 years.

140

00:32:33.560 --> 00:32:55.459

Sandra Aya Enimil: And as I've mentioned a couple of times now, there is a copyright term for sound recordings now that there is Federal protection for pre-1972 recordings. The public domain terms are here. And generally it's a hundred or 110 years from when they started. This is an attempt again, as mentioned, to try to get

141

00:32:55.460 --> 00:33:12.979

Sandra Aya Enimil: these sound recordings in line with what is our current standard for copyright term. And so these will be in place until they are eventually on the same term and same time period as our current, as things that are now being created and going into a copyright term.

142

00:33:16.300 --> 00:33:35.759

Sandra Aya Enimil: So just to break down. What does all of this mean? Once something is fixed into a tangible means of expression, it's automatically covered by copyright law. You are the copyright owner, unless it was created as a work for hire, or there's some other arrangement that you have agreed to in order to have it be someone else's.

143

00:33:36.310 --> 00:33:45.940

Sandra Aya Enimil: The author is the rights holder, unless they transfer those rights. Tangible includes the Internet.

144

00:33:46.160 --> 00:33:49.539

Sandra Aya Enimil: Those things are also covered by copyright.

145

00:33:49.980 --> 00:33:59.759

Sandra Aya Enimil: And that the rights will eventually end. It seems like a very long time, but they will eventually end, and then work will, work goes into the public domain all the time.

146

00:34:08.960 --> 00:34:12.760

Sandra Aya Enimil: Now I want to go into using materials.

147

00:34:12.929 --> 00:34:27.710

Sandra Aya Enimil: And how you can make use of materials in your collections. So these are some sections in US Copyright law that help cultural heritage institutions with content that's in their collections that they may have, may not have created.

148

00:34:27.909 --> 00:34:34.759

Sandra Aya Enimil: So fair use is one. Hopefully, you all have heard of fair use. Reproduction for libraries and archives.

149

00:34:35.170 --> 00:34:44.579

Sandra Aya Enimil: First sale doctrine, which is what allows most libraries to be able to lend works and materials, and to acquire materials to lend them.

150

00:34:45.460 --> 00:35:03.659

Sandra Aya Enimil: Classroom display or performance, which is an educational exception, which allows for the use of content in face to face setting and in online settings as well. The online settings part is a lot more restrictive and face to face is less restrictive.

151

00:35:06.120 --> 00:35:30.120

Sandra Aya Enimil: So why does it matter how we use other people's content? There are criminal and civil penalties. And now, as I mentioned earlier, there's a copyright small claims board. There are a number of ways that a rights holder who may be concerned or offended or not pleased with how you're using their materials may want to come forth and

152

00:35:30.240 --> 00:35:38.819

Sandra Aya Enimil: possibly institute litigation or a claim in a small claims board to, against you or your institution

153

00:35:39.050 --> 00:35:41.469

Sandra Aya Enimil: for copyright infringement.

154

00:35:44.670 --> 00:36:05.830

Sandra Aya Enimil: The context of the use matters. So whether you're online or you're putting content online or using it in an enclosed environment. So those enclosed environments can include face to face teaching, it also could include course reserves, closed systems, things that only a certain amount of people could utilize

155

00:36:05.830 --> 00:36:15.820

Sandra Aya Enimil: as opposed to things that are made openly available on the Internet. You know, through something such as like a Youtube or streaming service, or something like that.

156

00:36:18.410 --> 00:36:25.689

Sandra Aya Enimil: One of the ways to be able to use material is to ask permission. So you find out who is the rights holder

157

00:36:25.690 --> 00:36:50.619

Sandra Aya Enimil: and try to request the broadest amount of permission as possible. So if you're thinking I'm gonna use it for this particular use, then you can get permission to do that and whatever possible other ways you might utilize that content to think about those ways and try to get that permission. Get it in writing, email is okay. If you have a face to face conversation with someone, and they say it's fine.

158

00:36:50.720 --> 00:37:03.889

Sandra Aya Enimil: Follow that up with another written notice, written clarification and information about what you plan to do. So permission is one way to be able to use someone, the work of someone else.

159

00:37:05.340 --> 00:37:19.670

Sandra Aya Enimil: Another thing that's available to anyone, individual, institution, is fair use. So fair use is section 107 of US Copyright law. It allows using a copyrighted work for purposes

160

00:37:19.860 --> 00:37:27.780

Sandra Aya Enimil: such as criticism, comment, news, reporting, teaching scholarship, and research, and this is not considered an infringement of copyright.

161

00:37:30.990 --> 00:37:52.040

Sandra Aya Enimil: As I started in the beginning of this, copyright is about balance, so there is a tug and a pull between the creators and the public. So fair use is really trying to capitalize on that, so that there is some type of balance between people who are creating materials and content, and other folks who are using those materials.

162

00:37:52.040 --> 00:38:05.749

Sandra Aya Enimil: So some things are good for being able to copy, to make commentary to teach on something. We are both creators and consumers of copyrighted work so there needs to be some give and take and fair use helps with that.

163

00:38:08.200 --> 00:38:24.909

Sandra Aya Enimil: Fair use has 4 parts to it that as you're going through the fact, the 4 factors, you would analyze how you're intending to use somebody's content, and then have a determination of whether your use could be a fair use, or maybe is not a fair use.

164

00:38:25.020 --> 00:38:28.099

Sandra Aya Enimil: Or leans away from fair use. I should say

165

00:38:28.380 --> 00:38:50.450

Sandra Aya Enimil: the first one is talking about the purpose of the use. So what are you doing with this content? Are you doing something that is transformative that is different from the original use? Is your use commercial or non-commercial educational? What is the nature of the work? Is it fictional works or fact-based work published work, unpublished work?

166

00:38:51.000 --> 00:38:58.330

Sandra Aya Enimil: The amount. How much of this work do you plan to use? And is it only what's necessary to serve your purpose?

167

00:38:58.750 --> 00:39:06.340

Sandra Aya Enimil: And lastly, whether there would be a potential harm, market harm, for the original owner or the rights holder?

168

00:39:06.820 --> 00:39:14.159

Sandra Aya Enimil: Is there, and this is to do with the current or a potential market that the rights holder might be involved in.

169

00:39:17.190 --> 00:39:37.189

Sandra Aya Enimil: Some of you may be familiar with the fair use checklist. Kenny Crews, Dr. Ken Crews, originally at Columbia University, created a fair use checklist which was based on court cases which I'm going to go into a few court cases. Probably maybe after I might be able to get in, get in one before we go into the break. But

170

00:39:37.740 --> 00:39:47.839

Sandra Aya Enimil: we use these to kind of go through when we're considering content that's not our own content, that's someone else's material that's still in copyright,

171

00:39:48.410 --> 00:39:50.300

Sandra Aya Enimil: considering whether

172

00:39:50.430 --> 00:40:05.910

Sandra Aya Enimil: the use that we're participating in either favors or opposes fair use. And again, this checklist put together is based on cases that have gone through, you know, the Federal courts to determine whether or not they were fair use or not.

173

00:40:16.400 --> 00:40:17.430

Sandra Aya Enimil: So

174

00:40:17.930 --> 00:40:22.480

Sandra Aya Enimil: I think I may be able to get through one case, and then we'll come back and finish these.

175

00:40:23.410 --> 00:40:34.949

Sandra Aya Enimil: The cases that I wanted to kind of go through to go through the 4 factors of fair use. So you can kind of think about how these might apply to some of the content that you might have in your collections.

176

00:40:37.020 --> 00:40:43.829

Sandra Aya Enimil: So the first case I wanted to talk about. All of the factors, the 4 factors of fair use, all of them are important.

177

00:40:43.990 --> 00:41:00.089

Sandra Aya Enimil: But there are certain cases where it kind of turns on one particular factor, not to the detriment, but you know, in concert with the others, but there's like one kind of thing that kind of got through on a particular factor.

178

00:41:00.460 --> 00:41:24.910

Sandra Aya Enimil: First case is Campbell versus Acuff-Rose music. Some of you may be familiar with Roy Orbison and both 2 Live Crew. They make wildly, vastly different music and in 1989, 2 Live Crew wanted to make a parody of Roy Orbison's Oh, pretty woman! So they want to make a parody of the song. They originally reached out

179

00:41:24.910 --> 00:41:30.780

Sandra Aya Enimil: to the music label and ask for permission to be able to make their their version.

180

00:41:31.109 --> 00:41:46.919

Sandra Aya Enimil: 2 Live Crew if you don't know or not familiar, please don't use your work computer to look them up. But you can find out information about them, but they are a rap, Miami-based group based and they do a lot of

181

00:41:46.930 --> 00:41:52.009

Sandra Aya Enimil: pretty raunchy music. Rory Orbison is a sixties balladeer.

182

00:41:52.270 --> 00:42:12.069

Sandra Aya Enimil: So they wanted to make us do a song that made fun of the song that Roy Orbison created. They asked for permission and they were rejected several times. They decided to go ahead and do the song anyway. So they made their song, and the music label representing Roy Orbison brought litigation.

183

00:42:12.420 --> 00:42:13.550

Sandra Aya Enimil: And went

184

00:42:13.700 --> 00:42:26.159

Sandra Aya Enimil: several rounds in Circuit Court, and eventually ended up at the Supreme Court, where the Supreme Court determined that the 2 Live Crew's use of the music was transformative.

185

00:42:26.270 --> 00:42:38.880

Sandra Aya Enimil: So this is the first time we hear the words transformative in fair, with fair use, and it was a case that was very, very interesting in how the decision came down.

186

00:42:38.990 --> 00:42:50.334

Sandra Aya Enimil: The courts, the Supreme Court said, This is, you know, this is what they needed to do. They use only what they needed to show that they were poking fun at this song. There was

187

00:42:50.790 --> 00:43:08.219

Sandra Aya Enimil: the transformativeness was in that the song was a satire commentary on the original song, and it was different because they're different audiences. And it also said that the the market would not be harmed for Roy Orbison song because

188

00:43:08.430 --> 00:43:10.759

Sandra Aya Enimil: those markets are vastly different.

189

00:43:10.950 --> 00:43:12.030

Sandra Aya Enimil: So

190

00:43:12.710 --> 00:43:26.350

Sandra Aya Enimil: they found for 2 Live Crew, essentially saying that it would be unlikely that the artists would have the same audience, and that one person would mistake one song for the other. Again,

191

00:43:26.470 --> 00:43:29.580

Sandra Aya Enimil: you should listen to the songs. If you haven't heard them both.

192

00:43:29.820 --> 00:43:31.670

Sandra Aya Enimil: Maybe not on your work computer.

193

00:43:33.530 --> 00:43:36.429

Sandra Aya Enimil: Let's see, I might be able to get to one more. Let's see.

194

00:43:36.750 --> 00:43:53.719

Sandra Aya Enimil: So I wanted to actually put this case in, too, because it's another case that was decided on the first factor, because actually, one of the parties decided to go to the court first to ask for a ruling on the transformativeness of

195

00:43:53.880 --> 00:44:06.100

Sandra Aya Enimil: their use. So in this case it's a Warhol v. Goldsmith. Lynn Goldsmith, who's a photographer, took the photo on the left. Andy Warhol somehow got hold of the photo

196

00:44:06.260 --> 00:44:08.720

Sandra Aya Enimil: and made the series that you see on the right.

197

00:44:08.780 --> 00:44:30.689

Sandra Aya Enimil: And once Lynn Goldsmith became aware that her photo had been used to create the series, and that Andy Warhol and his foundation had made a lot of money off of that, she approached them to say, this is my original copyrighted content. You need to make sure the copyright of this material comes to me, and any money that you've received comes to me.

198

00:44:30.710 --> 00:44:56.719

Sandra Aya Enimil: They did not appreciate that, that the Warhol Foundation. So they actually started the litigation and asked for the Federal court to say that how they use the material was a transformative, fair use on. They asked for this ruling on the first factor only. Usually most court cases when it's a fair use case they will go through all of the 4 factors, but they were asking for a specific ruling on just the first factor.

199

00:44:56.930 --> 00:45:00.060

Sandra Aya Enimil: This case also ended up in the Supreme Court.

200

00:45:00.250 --> 00:45:05.089

Sandra Aya Enimil: And the Court said that the use by Andy Warhol was not

201

00:45:05.200 --> 00:45:28.341

Sandra Aya Enimil: a fair use, that it was not transformative. That they were doing the same thing. They were operating in the same space. The one picture on the left taken by Goldsmith was intended to go into a magazine to sell magazines. The second image, which you can faintly see highlighted there. The orange prints was

202

00:45:29.380 --> 00:45:31.860

Sandra Aya Enimil: orange press was was used

203

00:45:32.390 --> 00:45:43.990

Sandra Aya Enimil: to also sell magazines, and to show a face of Prince. And so the court said, this was not a transformative fair use, and ruled against Andy Warhol in that case.

204

00:45:45.260 --> 00:45:53.409

Sandra Aya Enimil: Okay, so I will pause here for the break, and then we'll come back and finish with the 3rd and 4th factors.

205

00:45:58.910 --> 00:46:03.029

Alyson Pope: We'll be back in 5 min at 2:51 PM Eastern.

206

00:46:27.910 --> 00:46:56.770

Sandra Aya Enimil: All right. Welcome back, all right. So I misspoke. We are starting with the second, third and fourth factors. But let me just get through these pretty quickly, and then we'll get into some other considerations around ethics for your collections. So Factor 2 is dealing with the nature of the work. Those of you who are maybe history buffs, US history buffs, may be aware of this particular case. Harper & Row V. Nation Enterprises.

207

00:46:58.613 --> 00:47:09.290

Sandra Aya Enimil: President Gerald Ford, wrote a memoir, and his publishing company negotiated to be able to

208

00:47:09.600 --> 00:47:23.540

Sandra Aya Enimil: share a blurb. A short version of this with the magazine, and that they would be able to have basically a scoop of information that is contained in the memoir.

209

00:47:23.540 --> 00:47:42.779

Sandra Aya Enimil: So this work was not yet published, and had not yet been released, but they were given the scoop to a particular magazine. The Nation came along somehow, got a hold of those unpublished memoirs, and they went ahead and published an article before the other magazine could get theirs out.

210

00:47:42.850 --> 00:47:51.510

Sandra Aya Enimil: And so the publishers of A Time to Heal Harper and Row came forth with litigation that ended up in the Supreme Court

211

00:47:52.380 --> 00:48:16.449

Sandra Aya Enimil: basically saying that they use what was essentially the heart of the work of the publication, the memoir, the memoir from President Ford, where people would be probably most interested in getting that particular book, is to know why he pardoned Richard Nixon, former President Richard Nixon. And they went ahead and published that in their publication before

212

00:48:16.450 --> 00:48:31.260

Sandra Aya Enimil: the publisher or their authorized other magazine they authorized, would be able to publish it, and that really basically ruined their market for their ability to be able to be successful with the book and to sell the copies that they wanted to.

213

00:48:31.260 --> 00:48:38.459

Sandra Aya Enimil: The Supreme Court found that the unauthorized reproduction of excerpts of the unpublished memoir was not a fair use.

214

00:48:39.420 --> 00:48:47.330

Sandra Aya Enimil: And that the unpublished work that the fact that it was unpublished was really key to negating the fair use defense because they were like

215

00:48:47.330 --> 00:49:09.439

Sandra Aya Enimil: you knew that this was a key very much, the very heart of the work, and why people would be interested so the amount, the amount was also in play as well, because they were saying that, you know, most people who were buying his autobiography probably wanted to know a lot about what was happening with the Nixon pardon. So that was one where Factor 2 was very much at play.

216

00:49:12.370 --> 00:49:27.099

Sandra Aya Enimil: Next, factor 3 is talking about the amount also dealing with kind of the the heart or the main parts of the work which we, you know, talked a little bit about in the previous factor, but that one mostly did hinge on the fact that it was an unpublished work.

217

00:49:28.280 --> 00:49:43.631

Sandra Aya Enimil: With Factor 3 dealing with the amount. This is Bill Graham Archives versus Dorling Kindersley Limited. This did not make it to the Supreme Court, but it did go several rounds in Federal court. And essentially what happened here was there was a

218

00:49:44.690 --> 00:50:05.990

Sandra Aya Enimil: the Bill Graham archives owned the copyright for the rock band, the Grateful Dead's Concert posters and tickets. Dorling Kindersley Limited, wanted to actually sought permission, initially, to reproduce images of 7 posters for a cultural history book about the Grateful Dead.

219

00:50:06.370 --> 00:50:15.639

Sandra Aya Enimil: They did not get permission, and they went ahead and displayed these 7 posters in the book that they created.

220

00:50:16.150 --> 00:50:20.010

Sandra Aya Enimil: Bill Graham Archives brought litigation, and the court said

221

00:50:20.530 --> 00:50:25.230

Sandra Aya Enimil: that the use by Dorling Kindersley in their book was fair use.

222

00:50:25.360 --> 00:50:34.339

Sandra Aya Enimil: They basically said that they were using the concert posters as historical artifacts about the Grateful Dead, and it was a transformatively different purpose.

223

00:50:34.340 --> 00:50:56.610

Sandra Aya Enimil: And they also did, while they did use the posters in their entirety, they reduced them in size, and had them as part of like a timeline which was telling a story about the Grateful Dead, and they were not using them in the exact same way the original posters were being used. It was really to show this historical perspective, and they, while they did use 100% of the poster,

224

00:50:56.610 --> 00:51:01.909

Sandra Aya Enimil: they needed a hundred percent of the poster in order to fulfill their purpose, and that this was a fair use.

225

00:51:04.600 --> 00:51:09.300

Sandra Aya Enimil: So finally, the final fourth factor deals with the market effect.

226

00:51:10.460 --> 00:51:15.500

Sandra Aya Enimil: And this is Cariou V. Prince also did not make it to the Supreme court.

227

00:51:15.530 --> 00:51:45.219

Sandra Aya Enimil: Several rounds in Federal Court. And you have Patrick Cariou, who created a coffee table book called Yes Rasta, with very tasteful, beautiful photographs of Rastas in Jamaica, and Richard Prince, who is a well-known appropriation artist, took several of the photos from the coffee table art book and made what you see on the right side of the screen.

228

00:51:46.020 --> 00:51:50.240

Sandra Aya Enimil: The Circuit Court said that this was a fair use.

229

00:51:50.710 --> 00:52:13.553

Sandra Aya Enimil: And that there was no, there was no concern for the market, because they had different markets. So someone who was looking for you know, these beautiful photos of Rastafarians is probably not also in the same market, for whatever these, this is from Richard Prince.

230

00:52:14.290 --> 00:52:25.620

Sandra Aya Enimil: Not one of my favorite fair use cases. You can ask me a question about that later. But yeah, so this was found that there was not a market harm because they had different markets.

231

00:52:29.530 --> 00:52:58.439

Sandra Aya Enimil: So application of fair use. What is, what do these cases mean to you? There are a lot of myths, myths that still persist, even though you know people have been talking about fair use for a long time, you might have heard 20%, 10%, 6 seconds of a song, 10 seconds of a song. If it's educational use is fair use. Commercial use can't be, have a fair use. Any use is transformative if it's socially useful, that's fair use.

232

00:52:58.500 --> 00:53:07.090

Sandra Aya Enimil: And you can't do fair use if there's a permission scheme involved. Several of the cases that I talked about here doing a little bit of a,

233

00:53:07.330 --> 00:53:10.269

Sandra Aya Enimil: just a little information about these different cases.

234

00:53:10.380 --> 00:53:27.079

Sandra Aya Enimil: Sometimes the people asked for permission, and they either weren't given permission or nobody responded to them, and they still went ahead and used the material, and then got a ruling in court that it was a fair use. And so, and we know from, you know, industries

235

00:53:27.550 --> 00:53:41.619

Sandra Aya Enimil: across all the different artistic industries have to rely on fair use in order to do some of the work they're doing. So some of the largest production companies, movie companies, music companies, music labels are all relying on fair use.

236

00:53:41.730 --> 00:53:45.140

Sandra Aya Enimil: And they're definitely not hurting for money.

237

00:53:48.790 --> 00:54:08.990

Sandra Aya Enimil: So how do you determine fair use? You're going through those 4 steps and as I mentioned, all 4 are important to kind of talk about and think about when you're wanting to make a case for fair use. So what is the purpose? Why are you using this particular thing? Could you use something else, or does it have to be this particular item?

238

00:54:09.230 --> 00:54:10.940

Sandra Aya Enimil: The nature of the work.

239

00:54:11.200 --> 00:54:32.989

Sandra Aya Enimil: Fiction, nonfiction? Highly fictional things have a greater protection. We've seen that in the courts where they are wanting to protect things that are, you know, not just, not factual, but something that somebody created with their mind. They want to be protective of that. So you really have to show that there's a purpose for why you want to use this particular thing. How much of it are you using?

240

00:54:33.160 --> 00:54:38.520

Sandra Aya Enimil: We saw some evidence with some of the cases that sometimes they're using 100% of the work.

241

00:54:38.710 --> 00:54:58.199

Sandra Aya Enimil: And sometimes that is necessary to fulfill your purpose. Sometimes people are only using what exactly they need to be able to make their cases. And then, lastly, showing whether there's some market harm for what it is that you're doing with this material? Could you harm a current or a potential market or the creator?

242

00:55:02.050 --> 00:55:15.780

Sandra Aya Enimil: Another part of US copyright law that's beneficial for cultural heritage institutions that are archives and libraries is Section 108. So this is where we are allowed to make copies of certain content.

243

00:55:16.880 --> 00:55:20.939

Sandra Aya Enimil: It covers libraries and archives. It does not cover museums.

244

00:55:21.260 --> 00:55:30.660

Sandra Aya Enimil: And so many museums may look to see if they could do something under fair use, because Section 108 specifically does not include them.

245

00:55:31.560 --> 00:55:33.289

Sandra Aya Enimil: Things that are permitted.

246

00:55:33.330 --> 00:56:02.209

Sandra Aya Enimil: Isolated, related copying and distribution of single copies of work, literary works, other types of works. It depends on what it is that you're doing under Section 108. If you've had an opportunity to read Section 108, you'll know that this is a very abbreviated version of it. It is very long. It has a lot of caveats, but you know I mentioned it here, so that, you know like that there is a right that's available for libraries and archives, and specifically mentioned libraries and archives in US Copyright law.

247

00:56:03.520 --> 00:56:29.719

Sandra Aya Enimil: The conditions where you are able to make copies as a library and archive is that there is, that you have no information or no knowledge about commercial advantage, that somebody comes to you and says, Oh, I'm going to use this in my movie. I'm going to use this in my book. I'm going to use this in, you know something sounding very commercially. Then you would know I can't rely on Section 108 to be able to to make whatever copies they've been asking for.

248

00:56:29.860 --> 00:56:39.129

Sandra Aya Enimil: Your collection, your library archive has to be open to the public and available to researchers. Reproduction and distribution

249

00:56:39.420 --> 00:56:42.080

Sandra Aya Enimil: of this work has a copyright notice.

250

00:56:42.489 --> 00:56:51.180

Sandra Aya Enimil: Provides information with, to folks about copyright that the material might be covered by copyright. That is very important to be able to rely on Section 108.

251

00:56:53.190 --> 00:57:19.179

Sandra Aya Enimil: Another thing that consider in your collections is that there might be something else. So we talked about, you know, getting permission. We talked about the rights you might have under US Copyright law fair use, Section 108 if you're a library/archive. But you might have things in your collections that are covered that are copyrightable materials that have some other type of restriction. So if things were donated, and it has some kind of restriction in that donation agreement.

252

00:57:19.552 --> 00:57:26.629

Sandra Aya Enimil: If you are sending things out to third parties and digitizing materials, are there some restrictions on that material?

253

00:57:27.069 --> 00:57:43.040

Sandra Aya Enimil: Licenses for e-resources could have some restrictions, as well. So these are things that you should be thinking about. If you have items that have been donated that are still covered by copyright, are there restrictions that might have some impact on how you reuse that content?

254

00:57:46.780 --> 00:57:56.808

Sandra Aya Enimil: Okay, so the last part of my section that my presentation today is to do with the collections that you have and to think about

255

00:57:58.500 --> 00:58:03.499

Sandra Aya Enimil: how you're using the content and how, you know, what is your content?

256

00:58:03.880 --> 00:58:08.089

Sandra Aya Enimil: And how are you making uses, how do you want to make use of that material?

257

00:58:08.280 --> 00:58:26.869

Sandra Aya Enimil: And this is just really things for you to think about some of it. It's like, I feel like, these are the slides of questions where I have a lot more questions than I have answers or solutions, but it really is for you to think about what it means for your collection, as some of these points that I'm going to raise.

258

00:58:29.280 --> 00:58:32.560

Sandra Aya Enimil: So what is in your collection? What are you collecting?

259

00:58:33.000 --> 00:58:58.990

Sandra Aya Enimil: Audio visual materials, text, artwork, artifacts, cultural heritage? Obviously not everything is problematic or have some kind of issue with it. But there are some things that maybe reserve a lot of thought and thinking about what's in the collections. Recently, in some conversations I've been in, people have been like remembering trying to remember that sometimes your collection is really

260

00:58:59.100 --> 00:59:15.820

Sandra Aya Enimil: humans in the collection. And I don't mean remains, although I sometimes mean remains. But that there are representations of people, of family, of community in your collections. And what is it that you plan to do or want to do with that material?

261

00:59:15.950 --> 00:59:18.690

Sandra Aya Enimil: Why do you collect this material?

262

00:59:18.800 --> 00:59:27.260

Sandra Aya Enimil: And some of that could help with your mission, with your principles, with your guidelines on how you make other types of uses of this material.

263

00:59:29.230 --> 00:59:46.810

Sandra Aya Enimil: We're collecting all types of stuff. You know, as mentioned, I'm at Yale Library. There are so many different types of materials that are in our collections. We are collecting it for a variety of reasons, research and education, and providing access, preserving materials.

264

00:59:46.810 --> 01:00:10.519

Sandra Aya Enimil: And also, you know, because there are responsibilities that we might have to donors who are providing some of the materials that we have. Some people see that there is in providing certain types of access to certain types of materials, there's some element of justice or social justice that might be kind of driving why we're collecting certain things or have certain things in our collections.

265

01:00:11.920 --> 01:00:41.510

Sandra Aya Enimil: The issues you might want to consider intellectual property rights and not just copyright. There may be things in our collections that have to do with patents or trade secrets or trademarks even. What, you know, copyright is definitely an element that should be considered, but there may be some other issues that are of concern. And what might be included in your materials, privacy, moral rights for artists, cultural heritage items,

266

01:00:43.150 --> 01:00:54.249

Sandra Aya Enimil: ethical issues, issues about round repatriation. Whether that is digital digital repatriation or physical repatriation of materials. All things to think about.

267

01:01:03.120 --> 01:01:21.299

Sandra Aya Enimil: So I also like thinking about, I know, I said I'm not only talking about like kind of uncomfortable things in our collections, but I'm but you know there are probably, in all everybody's collection, I know for sure, there are here uncomfortable things that we have in our collections, and you know we do need to think about

268

01:01:21.380 --> 01:01:37.060

Sandra Aya Enimil: what it means. And this is really at the heart of what I'm saying when I'm talking about human representation in your collections. So some of you might be familiar with the documentary film, came out a few years ago, Three Identical Stranger.

269

01:01:37.080 --> 01:01:51.900

Sandra Aya Enimil: Three Identical Strangers. It had to do with a twin and multiple study that was done, actually don't remember what institution was behind it, but it was a study that was done where multiple birth,

270

01:01:52.524 --> 01:01:57.339

Sandra Aya Enimil: children were separated at birth, and the study was

271

01:01:57.680 --> 01:02:18.709

Sandra Aya Enimil: looking at the different outcomes that came from the separation. So there were twins who were separated, triplets who were separated, and then they were studied, and to see what happened. So there are all the records related to that study are here at Yale, and they are sealed until 2065.

272

01:02:19.280 --> 01:02:41.679

Sandra Aya Enimil: And I genuinely and sincerely hope that I'm not still working at Yale in 2065, but something that I really think about is like what will happen in 2065 or 2066, if we decide to open that collection. The thought of having it sealed for so long is, you know, around, maybe it's we need to know

273

01:02:41.900 --> 01:02:55.649

Sandra Aya Enimil: that people who are involved with this. Maybe they have, they're no longer around or no longer alive, and maybe it's okay for this information to be released about them.

274

01:02:56.100 --> 01:03:10.830

Sandra Aya Enimil: I don't know. I mean they may be deceased or not around. But what about people who are related to them? Is it important to think about how this could impact them? How the records around this could impact the family members who may be behind.

275

01:03:11.230 --> 01:03:15.570

Sandra Aya Enimil: Another case on the right are images of

276

01:03:15.850 --> 01:03:40.439

Sandra Aya Enimil: enslaved individuals who were taken by a noted racist from Harvard and taken in the mid 19th century. So these were enslaved people who had no ability to consent to their images being taken. The photographs being taken of them. And then housed in a closet at Harvard for many, many years, until they were discovered in

277

01:03:40.560 --> 01:03:44.529

Sandra Aya Enimil: 1997. No. No. 1977, I'm sorry.

278

01:03:44.570 --> 01:04:00.749

Sandra Aya Enimil: And then, you know, made available in different ways. And one person who has stated that she believes that she is a descendant of several of the enslaved photos, people who are included, enslaved people who are included in these photographs

279

01:04:00.780 --> 01:04:15.059

Sandra Aya Enimil: came forward and said, this is my family. Why are they included in your collection? And you've made them available online this way. So she brought litigation against Harvard.

280

01:04:15.340 --> 01:04:27.409

Sandra Aya Enimil: And so there, there are things that where we just need to be thinking about like, why do we have these things? And what is the mindset for how we share or make available these types of this type of material?

281

01:04:32.780 --> 01:04:46.390

Sandra Aya Enimil: Other ways, other issues are happening in regards to collections from Native Americans, items that have come from other countries that have somehow made its way into our collections,

282

01:04:46.660 --> 01:05:02.459

Sandra Aya Enimil: and maybe it wasn't supposed to be. Maybe it got there by mistake, or somehow got acquired. But now there are conversations that people are having about why is this thing in your collection? Why do you have this material?

283

01:05:02.460 --> 01:05:21.200

Sandra Aya Enimil: And wanting either it to be returned, wanting it to be repatriated, wanting to have some type of repair for having certain types of material. And I'm sharing these different little stories just as a way for you to be thinking about the things that you have in your collections

284

01:05:21.200 --> 01:05:23.579

Sandra Aya Enimil: and like what it means to

285

01:05:23.930 --> 01:05:37.969

Sandra Aya Enimil: digitize that material, to make that material, whether you make it available openly online, or you make it available, you know, in your reading room or at your facility. However, you make it available, thinking about you know

286

01:05:38.330 --> 01:05:49.130

Sandra Aya Enimil: what it might mean to a particular community, or individual families, or persons who might be related to anyone who's featured, or any items that are featured.

287

01:05:54.950 --> 01:06:16.120

Sandra Aya Enimil: One of the last vignettes I wanted to share is, you know, the the other part of sometimes having this content, or some so what I would still consider to be like problematic kind of content available, is that there is an opportunity for people to try to even intervene when they have no connection

288

01:06:16.120 --> 01:06:33.460

Sandra Aya Enimil: to do a repair to something. So the photo on the left is an artwork that was done by Mary Enoch Elizabeth Baxter, and she came across a photograph that was listed

289

01:06:34.240 --> 01:06:48.770

Sandra Aya Enimil: openly online on the Pennsylvania Academy of Fine Arts website. It was a photo of a naked child, and it was taken by Thomas Eakins.

290

01:06:49.540 --> 01:07:10.060

Sandra Aya Enimil: She came across this photo. She contacted the Academy and asked, why was this photo just available online of a naked little girl just sitting there. And they had, they really hadn't even thought about it like they really, until she raised this issue, this, this photograph had just been on the Internet.

291

01:07:10.489 --> 01:07:16.779

Sandra Aya Enimil: And so she is, as an artist, created artwork. I'm not sure if you can see it very clearly, but she

292

01:07:16.910 --> 01:07:34.909

Sandra Aya Enimil: inserts herself into the photograph to cover the little girl, and there are other parts, other artwork that she's done where she is putting a blanket over the child. And so this is an attempt to kind of reframe to provide protection to the girl.

293

01:07:35.250 --> 01:07:42.379

Sandra Aya Enimil: But this is, you know, a thing that I'm raising just for us to think about as you know sometimes I feel like we.

294

01:07:42.770 --> 01:08:10.689

Sandra Aya Enimil: The material that we put across becomes data becomes information that is disconnected somehow with what it's human human connection. It's human-ness. And so like, I want us to be thinking about this as we're thinking about some of the content that we might be contemplating including in some of the grant applications, and including in our collections in general, even if it's not a part of anything that you might be thinking about.

295

01:08:11.280 --> 01:08:29.769

Sandra Aya Enimil: I talked quickly about, you know, sometimes there are human remains in our collections. You know, if you're familiar with the movie bombing that happened in Philadelphia. You may have heard on the news of several collections in the Philadelphia area

296

01:08:30.340 --> 01:08:54.910

Sandra Aya Enimil: who had remains of people who were affected by this bombing. It's unclear to me why they had remains of people who died, you know, after the police set off a bomb in a neighborhood. And you should look it up. That is what happened, and you know so they've only now been finding out that these remains were not buried. They were

297

01:08:55.260 --> 01:09:06.379

Sandra Aya Enimil: in classrooms and being studied in libraries, in archives, in places that they shouldn't have been. And so I think part of it is like a disconnection that people have to

298

01:09:06.740 --> 01:09:13.280

Sandra Aya Enimil: items that are in our collections where we are somehow not seeing the humanity that's attached to it.

299

01:09:17.910 --> 01:09:30.660

Sandra Aya Enimil: So there's a lot of work that's already been happening among libraries, archives, museums around, you know, the things that we have in our collections and in places where they're building collections.

300

01:09:30.729 --> 01:09:45.200

Sandra Aya Enimil: And I think it's important to think about whether your organization, your institution, your place of work, whatever institution you're involved with that may be submitting something. Are you part of the community

301

01:09:45.229 --> 01:10:06.569

Sandra Aya Enimil: that your collection might impact or affect? I understand that the community is not a monolith. You know you there, there may be different parts of you know that want this or want that. But are you in community with them? Are you having conversations with them? Are you thinking about how you represent that community, how you represent this collection?

302

01:10:07.500 --> 01:10:34.790

Sandra Aya Enimil: Recently there's been a lot that we've seen about repatriation, actual physical repatriation, sending things back to the community from which it came. Or working with community to do digital repatriation where people are allowed to have digitized representations of the content, or vice versa. The institution keeps a digital copy, and the community gets the physical copy back.

303

01:10:35.500 --> 01:10:46.800

Sandra Aya Enimil: Restricting or limiting access to materials. Another way, that conversations, through conversations with community, to determine, like what? What should, what should happen with this material?

304

01:10:52.120 --> 01:10:58.050

Sandra Aya Enimil: So in my last couple minutes before we open it up to questions, I just want to say that

305

01:10:58.450 --> 01:11:06.239

Sandra Aya Enimil: when we're thinking about how to re-use materials,

306

01:11:06.730 --> 01:11:17.489

Sandra Aya Enimil: as, if we're not the if we are the rights holder of materials, there are some ways in which we can make works available online to let people know

307

01:11:17.780 --> 01:11:21.710

Sandra Aya Enimil: how they can re-use that material once they've found it.

308

01:11:23.180 --> 01:11:40.769

Sandra Aya Enimil: So with rights holders, you can use [creative commons](#). You may have seen these badges online, different places. These are actually licenses to be able to reuse materials,

which is something that a rights holder can do. You can allow certain reuses of your material in certain ways.

309

01:11:40.810 --> 01:12:02.190

Sandra Aya Enimil: And starting from the top, this is actually, the top one is actually not a license. It's a badge that's saying we are putting this work into the public domain. We're not reserving any rights to this content. And then starting with the CC BY attribution license that is the least restrictive license, saying that as long as you say where you got it from, you can use this material.

310

01:12:02.700 --> 01:12:05.390

Sandra Aya Enimil: And then going down, it gets more restrictive.

311

01:12:10.010 --> 01:12:34.809

Sandra Aya Enimil: When you're not a rights holder, there's some other options that are available. There's a public domain mark. So that is a mark that's available if you think that a work might be in the public domain. You may have some information that it's in the public domain as part of your collection. You didn't create it, but you feel, you think that the work is in the public domain. This is a mark that you can use on content. And obviously you would want to do it on content that you know for sure is in the public domain.

312

01:12:35.420 --> 01:13:04.440

Sandra Aya Enimil: There's also work with local contexts dealing with indigenous communities and putting traditional knowledge labels on materials. And then another non rights holder solution is using rights statements. This is also available for rights holders as well, as well as local context labels. But these are ways in which you can provide information on how people can make uses of the material they may find on your sites.

313

01:13:05.195 --> 01:13:12.350

Sandra Aya Enimil: And that is my last slide. I just want to thank you all for your time and attention today. And now we have a little time for questions.

314

01:13:25.040 --> 01:13:44.000

Alyson Pope: Hey, all. We're going to get into some questions now. If we run out of time to answer all your questions today, we'll be sure to provide written answers in the Q&A doc that will be posted alongside the recording on the Apply for an Award page. And please note that we'll be holding a full hour-long session dedicated to questions and answers only on April 9th.

315

01:13:46.670 --> 01:14:03.109

Sharon Burney: I guess we'll read out the questions, and if it's something that the program officers will jump in. First question for you, Sandra, this applies to materials formerly copyrighted? We think this is from your slide 12

316

01:14:03.500 --> 01:14:05.020

Sharon Burney: but we're not sure.

317

01:14:14.260 --> 01:14:17.400

Sandra Aya Enimil: Oh, I am not sure what that means.

318

01:14:17.400 --> 01:14:27.279

Alyson Pope: I'm not sure what the question means either. This all applies to materials formally copyrighted? Maybe speak on the difference between formally and not formally.

319

01:14:27.280 --> 01:14:46.119

Sandra Aya Enimil: Okay, yeah, I'll do that. So in our current copyright regime that we are under, which is officially the 1976 was the last full revision of US Copyright law, there are no formalities that are necessary for copyright. So that's

320

01:14:46.240 --> 01:14:49.779

Sandra Aya Enimil: basically 1978 ish

321

01:14:50.000 --> 01:14:56.320

Sandra Aya Enimil: to present the term of copyright is life of the author plus 70 years.

322

01:14:56.460 --> 01:15:03.119

Sandra Aya Enimil: You do not need to register copyright. You don't need to put a copyright notice on, although it is good

323

01:15:03.680 --> 01:15:27.810

Sandra Aya Enimil: and useful for you to do so. So if you create something you should put a copyright notice on, or you should use some type of information or terms if you want to set those for people. You can use something like creative commons to provide information on how people

can reuse materials. So it is actually in your benefit if you create something and put it online to have information about copyright or have information about reuse.

324

01:15:28.020 --> 01:15:52.879

Sandra Aya Enimil: In the past, so before formalities were removed, there were certain things that you needed to do. And those changed over time, which is why, now this is meant to be simpler and easier to have less formalities, because before you needed to register your copyright, or you needed to at least have a copyright notice on it. In some cases you needed to renew copyright, and these are all

325

01:15:52.880 --> 01:16:00.130

Sandra Aya Enimil: official and formal procedures that needed to happen in order for you to have copier protection. We no longer have those

326

01:16:00.160 --> 01:16:01.480

Sandra Aya Enimil: requirements.

327

01:16:02.820 --> 01:16:10.599

Sharon Burney: Next question, are records created by state and city government entities also not covered by copyright?

328

01:16:10.910 --> 01:16:26.079

Sandra Aya Enimil: If they're creating it as a part of their job duties, it doesn't have copyright protection. There might be other reasons why it's not so readily available to you, and that might have more to do with gatekeeping or

329

01:16:26.090 --> 01:16:54.189

Sandra Aya Enimil: charging fees than it does to do with like copyright. So whatever is being created as part of job duties. If it could have had copyright protection which you know, depending on what type of records you're talking about, maybe it doesn't have copyright protection in the first place. But if it could have had copyright protection, anything that's created in the scope of employment of Federal employees goes into the public domain automatically. State and city copyright is different.

330

01:16:54.190 --> 01:17:04.549

Sandra Aya Enimil: So you would have to look up that state or city to see what rules or regulations they might have around what is created by state or city employees.

331

01:17:05.840 --> 01:17:10.399

Sandra Aya Enimil: And again, you do have to consider whether or not it is something that could be copyrighted.

332

01:17:13.330 --> 01:17:34.649

Sharon Burney: Thanks. Do you know if there is any documentation or resources to verify if a newspaper archive purchased by a new publisher is automatically transferred to the new publisher, or if in some circumstances, it could be retained by an earlier publisher of the same paper? I'd like to research this practice.

333

01:17:35.170 --> 01:17:39.780

Sandra Aya Enimil: Hmm! That is a good question. So

334

01:17:39.940 --> 01:17:47.580

Sandra Aya Enimil: I would imagine, if you are a publication, a newspaper specifically, and you sell

335

01:17:47.860 --> 01:17:53.620

Sandra Aya Enimil: the rights to the newspaper publication that that would include copyright.

336

01:17:54.220 --> 01:18:14.870

Sandra Aya Enimil: Obviously I couldn't be involved or wouldn't have knowledge of like any specific deals. But, I would think a purchaser would be probably most interested in owning the copyright for that material and the ability to continue to process and do whatever information sharing they're doing

337

01:18:15.306 --> 01:18:29.379

Sandra Aya Enimil: using their their copyright, using their trademark using, you know, whatever other intellectual property rights are involved. So if there is an archive that continues to be in copyright,

338

01:18:29.720 --> 01:18:45.730

Sandra Aya Enimil: then I would think a purchaser would also have purchased the copyright to that. Now you would want to think about if it's an archive, whether some of that content has

gone into the public domain. That is a possibility. So that is something that you would also want to investigate.

339

01:18:51.070 --> 01:18:59.799

Alyson Pope: Regarding this, so this is keeping it basic, regarding materials in the archives, who owns the copyright? The archives or the person who created the document?

340

01:19:01.270 --> 01:19:17.139

Sandra Aya Enimil: So I did a really good job of not saying it depends even once, but now here I come with it depends. So it would generally could be the person who created the material, could be the copyright owner.

341

01:19:17.300 --> 01:19:30.629

Sandra Aya Enimil: But if you work in libraries, archives, even some museums, we get donated items all the time. And so, and through those donations sometimes the donors also transfer copyright.

342

01:19:31.241 --> 01:19:40.990

Sandra Aya Enimil: Not all the time, but sometimes they do transfer copyright, and if they transfer copyright, it does become under the ownership, copyright ownership of the archive.

343

01:19:41.640 --> 01:20:06.709

Sandra Aya Enimil: And the archive should be very clear on what they have rights in and their transfer needs to have a signature. So just by virtue of them having the archive that does not make them the copyright owner. And you should also think about, in archives, there's a lot of mixed content. So it might be content that was created by the donor in which they could transfer copyright and things that they created. But they might also have things that were

344

01:20:06.910 --> 01:20:12.070

Sandra Aya Enimil: that they've just collected. They might also have things that are the copyright of someone else.

345

01:20:12.524 --> 01:20:23.879

Sandra Aya Enimil: They might have, if it's an author, they might have works where they transferred the copyright, but they still have copies of you know this published work where they transferred copyright.

346

01:20:24.940 --> 01:20:35.640

Sandra Aya Enimil: But they might still have copyright in the unpublished version. So those are things that you still want to think about, if you're looking at a particular collection in an archive.

347

01:20:42.900 --> 01:21:11.859

Alyson Pope: Sorry this question is kind of more of an "us" question, I think. Is there an ideal format or existing example format that CLIR recommends when breaking down the various access, re-use, and rights to reproduce considerations within our proposed collection? We recommend RightStatements.org for some information about how you might want to communicate access restrictions and to create machine readable statements. We also

348

01:21:12.320 --> 01:21:39.039

Alyson Pope: advocate the use of creative commons licenses. But we don't recommend a specific format for all these projects, because your projects are unique and your materials are all different, and that may depend on the needs of your materials. So you can go to our [Funded Projects](#) page and see some previous funded projects that may be similar to your own. But there is

349

01:21:39.040 --> 01:22:00.839

Alyson Pope: frequently an assumption that if you do not have full public access for everything that is some kind of knock against you in the panel. When in actuality, the panel wants to see restrictions that are appropriate to your materials. So if you have materials that have a lot of

350

01:22:00.960 --> 01:22:10.960

Alyson Pope: private personal information in them, they want to see that you're considering how you're handling these things. They don't want to just see blanket access for everyone.

351

01:22:12.150 --> 01:22:18.819

Sandra Aya Enimil: And I'll just add to that when I've served as a grant reviewer for other

352

01:22:19.960 --> 01:22:44.849

Sandra Aya Enimil: other grant sessions, and that's exactly right what Alsyon said. We are just looking to see that there's a plan of action. That you're acknowledging some of the content may have copyright considerations, or ethical considerations, or privacy considerations, and that you've created some kind of plan to deal with or manage that, whether that means you have closed access or everything is not going to be available

353

01:22:44.850 --> 01:22:53.529

Sandra Aya Enimil: online, or you have some kind of tiered something. But we just want to see that you have actually thought about it as opposed to: Oh, we think everything's gonna be fine.

354

01:22:53.530 --> 01:22:57.649

Sandra Aya Enimil: Which maybe it might be. But you know, we do definitely want to see that you've thought about it.

355

01:23:00.285 --> 01:23:10.570

Sharon Burney: And I will say that this looks like this applies to a question that was just asked, at the bottom. Just

356

01:23:10.680 --> 01:23:25.020

Sharon Burney: so we can just move on. But this one was. This may be more of a question for Sharon and Alyson. Will our grant application be hurt if we need to pursue copyright protection for images of artworks? I work in a progressive art studio for artists

357

01:23:25.100 --> 01:23:41.569

Sharon Burney: with developmental disabilities, and we'd like the artwork images to be accessible, but to be able to charge licensing fees for commercial use (we manage licensing on behalf of our artists). However paper records, archival photos of studio activities would be public domain.

358

01:23:42.080 --> 01:23:46.799

Sharon Burney: And I I think you answered that already, Sandra right.

359

01:23:49.780 --> 01:23:51.259

Sandra Aya Enimil: Oh! And hey, Lucy!

360

01:23:53.610 --> 01:23:56.205

Alyson Pope: I do want to just say about the

361

01:23:56.750 --> 01:24:01.720

Alyson Pope: licensing fees. We do have specific instructions in the guidelines.

362

01:24:04.160 --> 01:24:13.570

Alyson Pope: Just asking you to allude like, explain any fees you use. But the creative commons requirement is metadata only.

363

01:24:13.570 --> 01:24:19.350

Sharon Burney: Yeah, you know, as long as you put the fee schedule in there, and it looks acceptable to the

364

01:24:19.730 --> 01:24:22.249

Sharon Burney: reviewers, you should be fine.

365

01:24:22.460 --> 01:24:34.269

Sharon Burney: Okay. The next question is, if one of the organizations our collections have material from is no longer active, but we have contact with former leaders, who should be asked for copyright permissions?

366

01:24:38.280 --> 01:25:02.899

Sandra Aya Enimil: Yeah, that can be really, really challenging. If an organization is no longer around. If the former leaders are actually the ones who can give permission is a question that I wouldn't have the answer to. So I think one of the things to look at, cause I'm sure many people might have a similar situation where either the organization is defunct

367

01:25:02.900 --> 01:25:13.179

Sandra Aya Enimil: or you're not able to get in touch with anyone. This might be a case where it might be helpful to look at: what are you trying to do? What is what is what is

368

01:25:13.180 --> 01:25:24.494

Sandra Aya Enimil: like one of your goals? And what are you trying to accomplish? And think about whether fair use may be helpful for what it is that you want to do, what what you're trying to to

369

01:25:25.410 --> 01:25:49.149

Sandra Aya Enimil: to to make happen. One thing I've seen definitely in the past is someone will contact someone who is part of the organization, maybe leadership in the organization, to not so much permission, but to be like, you know, this is the thing that we are intending to do. Do you have objections? They may even sometimes

370

01:25:49.190 --> 01:25:58.549

Sandra Aya Enimil: even go, as far as you know, creating some type of formal agreement. In those types of instances, you do want to make sure that this is actually someone who could

371

01:25:58.902 --> 01:26:10.769

Sandra Aya Enimil: give you the permission that you're seeking. And you know, there are other instances where you might want to think about, okay so maybe fair use is not great. I don't, I'm not actually sure who I can get permission from?

372

01:26:11.121 --> 01:26:35.750

Sandra Aya Enimil: Then it maybe comes like, what is the risk? What is the harm that could happen? So who would be harmed or offended, or have some concerns if we do what it is, our goal is to do with this product? Should we, you know, look into that and be considerate of that before we move forward. Because, you know, this particular community may raise objections, or this particular community

373

01:26:36.047 --> 01:26:46.149

Sandra Aya Enimil: could be harmed by the way we're planning to operate in the space. So it is something to think about and I am sorry that I don't have like a very good

374

01:26:46.210 --> 01:26:50.419

Sandra Aya Enimil: concise answer for you. But yeah, it's definitely a thing you should think about.

375

01:26:56.460 --> 01:27:20.980

Alyson Pope: All right. We're going to take one more, and then we have a couple of closing slides. We'll put up any answers to any questions we didn't get to today. Sandra, is there an understanding of a changing definition of "public domain"? ie. oral histories that we want to digitize where permission was given to place the oral history in the archive/museum, but these written permissions were given pre-internet.

376

01:27:22.090 --> 01:27:36.324

Sandra Aya Enimil: Oh, here I come with it depends again. I'm so sorry. Okay, but the reason why, I would say it depends here is depending on when these record, so I'm assuming you have something recorded

377

01:27:36.690 --> 01:28:01.489

Sandra Aya Enimil: that you are, that you're that you're utilizing. So if you, if you do have something that is recorded, and there are some concerns that you might have if it's possible to get permission from the folks who were recorded. To say, you know, here's a different use that we're actually planning to use for this material. Is it allowable? You might also consider if you have

378

01:28:01.490 --> 01:28:09.069

Sandra Aya Enimil: those like the permission forms, or license forms that you had to record the person to take their oral history.

379

01:28:09.800 --> 01:28:18.420

Sandra Aya Enimil: You know, kind of having someone, maybe a lawyer or maybe you were a general counsel, if you have one, to take a look at that, to say

380

01:28:18.530 --> 01:28:40.780

Sandra Aya Enimil: is there anything that we could do? Is there any wiggle room in this agreement that could allow us to? If the desire is to make things available online or make things available in the reading room, or whatever it is that you're thinking of doing. You know, you might want to ask, like as you're reading this agreement, do you think there's any space for us to do the things that we want to do? Now.

381

01:28:40.870 --> 01:29:03.979

Sandra Aya Enimil: this is a plug, for you know, when you're seeking permission in the beginning to try to think as broadly as you can. I know sometimes it could be hard to think as broadly as possible, and then sometimes you are just receiving something where you had no involvement with the collection of that information, and so you couldn't have asked for what you know what you need for it now. But

382

01:29:04.000 --> 01:29:19.180

Sandra Aya Enimil: if you are the one that's in charge, and you're creating a form, you want to think about like all the broad possibilities of use of uses that you might have. So you don't have to try to go back and try to find the person to try to get this extended permission that you want to have.

383

01:29:23.050 --> 01:29:29.819

Jane Larson (she/her): Alright. Thank you so much. We just have a few quick reminders before we end. First we wanna do a quick

384

01:29:30.030 --> 01:29:33.369

Jane Larson (she/her): poll to see how you're feeling now about today's topic.

385

01:29:33.490 --> 01:29:37.800

Jane Larson (she/her): So we'll take a minute if you can complete that.

386

01:29:56.300 --> 01:29:58.410

Jane Larson (she/her): Were getting a couple more.

387

01:29:59.470 --> 01:30:25.100

Jane Larson (she/her): While that's happening, I just want to thank you for your participation and feedback. As you work on your final application, remember there'll be three additional sessions over the next month. The next one will be on March 19th and we will explore how to assess your collections and design a sustainable and achievable digitization plan, and you can sign up for this session on our [Apply for an Award](#) page.

388

01:30:27.240 --> 01:30:53.339

Jane Larson (she/her): And I also want to make note of the [survey](#) that we dropped in the chat if you can take some time to complete that. We would, we look forward to hearing how this session went, what you might like to see in future sessions, and how we might improve. Please don't hesitate to send questions to the CLIR Grants team at hidencollections@clir.org as they come up between now and the final submission deadline of May 5th.

389

01:30:54.028 --> 01:31:03.579

Jane Larson (she/her): Thank you. We want to extend a huge thanks to Sandra for leading, and thank you for joining us today, and we hope to see you at another session soon.

390

01:31:04.170 --> 01:31:07.499

Sandra Aya Enimil: Thank you very much for having me, and thank you all for your great questions.