

Digitizing Hidden Special Collections and Archives: Amplifying Unheard Voices

Session 2: Rights, Ethics, and Re-use
March 12, 2025



Links mentioned:

- [Program Homepage](#)
- [Core Values](#)
- [Apply for an Award](#)
- [Native land](#)
- [Application Guidelines \(view only\)](#)
- [Application Guidelines \(make a copy, Google account required\)](#)
- [Projects funded through Digitizing Hidden Collections, 2015-2020 and DHC: Amplifying Unheard Voices, 2022-2024](#)
- [Registration for the Applicant Support Series Session 3, March 19](#)
- [Webinar Survey](#)

Questions and Answers

All questions asked in chat and via the Q&A box during the live webinar are copied below. Some questions were answered live during the March 12, 2025, webinar and are marked. Any questions answered live may include additional references or clarification. Consider using the “Find” feature in this document to search for a word or phrase to find a more specific question topic. If you have any other questions, email the CLIR Grants team at hidencollections@clir.org.

Q: This all applies to materials formally copyrighted, right?

A (Sandra Enimil): In our current copyright regime (1976 was the last full revision of U.S. Copyright law), there are no formalities that are necessary for copyright protection. Basically, 1978 to present is the term of copyright for life of the author +70 years. You don't need to register for copyright. You don't need to put a copyright notice on your materials. If you do create something, it is useful for you to put a copyright notice or the terms you want to set for reuse on the materials you create. Creative commons can be used for this. In the past, there were official and formal procedures you needed to follow to register and in some cases, renew your copyright. When the United States joined the Berne Convention, these formalities and requirements were removed to make it simpler and easier to have copyright protection.

Q: Are records created by state and city government entities also not covered by copyright?

A (Sandra Enimil): For federal employees, if they are creating it as part of their job duties, it does not have copyright protection. Not all federal work is copyright free, federal contract workers may have different rights depending on their contract terms. For city and state workers, there may be other reasons why it is not readily available to you apart from copyright, such as gatekeeping or charging fees. Depending on what type of records you are talking about, maybe it does not have copyright protection in the first place. If it could have had copyright protection, anything created in the scope of employment of federal employees goes into the public domain automatically. City and state copyright is different. You would need to look up the specific state or city to see what rules or regulations they might have regarding what is created by state or city employees.

Find information on U.S. states' copyright laws here: <https://copyright.lib.harvard.edu/states/>.

Q: 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.

A (Sandra Enimil): Obviously, I would not have any knowledge of specific deals, but if you are a newspaper publisher, I would imagine that if you sell the rights to the paper, that would include copyright. I would think a purchaser would be most interested in owning the copyright for that material and the ability to continue to process or share information using their copyright, their trademark - whatever intellectual property rights that are involved. If it is an archive you are thinking about, you will want to investigate if some of that content has gone into the public domain.

Also consider third party content, like advertisements, more than likely would not be included in whatever intellectual property rights the newspaper may have.

Q: Regarding materials in the archives, who owns the copyright? The archives or the person who created the document?

A (Sandra Enimil): It depends. Generally, it could be the person who created the material. If you work in libraries, archives, museums (we get donated materials all the time), sometimes they transfer copyright, but not all the time. The archive should be very clear on what material they have rights in. If they received a copyright transfer it needed to have a signature from the rightsholder. If you have a physical archive of material, it doesn't mean you have copyright in those works. Just by virtue of having the archive, does not make them the copyright owner. In archives, there is a lot of mixed content. It could be that the donor transfers copyright of the things they have created and they have a right to transfer. However, they might also have materials that they just collected and copyright might belong to someone else. If it is an author, they might have works where they transferred the copyright of the published work, but may still have copyright to unpublished versions.

Q: 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?

A (Program Officers): We recommend RightsStatements.org for information about how access restrictions can be communicated using standardized, machine-readable statements. We also advocate for the use of creative commons licenses and utilizing tools such as [Local Contexts](#). However, we do not recommend a specific format for all these projects because your projects are unique and the materials are all different. You can go to the program's [Funded Projects](#) page and review previously funded projects that might be similar to your own. There is frequently an assumption that if you do not have full public access for everything, that the review panel will discredit your application. When in actuality, the panel wants to see that your restrictions are appropriate to your materials. For example, if your materials have private personal information, they want to see that you are considering how you are handling access and perhaps, not providing blanket access to everyone.

A (Sandra Enimil): As a grant reviewer for another program, I want to add this is exactly right. We want to see there is a plan of action. We want to see that you are acknowledging some of the content may have copyright, ethical, or privacy considerations, and that you have created some plan to deal with or manage those. Whether you have open or closed access or tiered access, we want to see you have thought about it.

Q: 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?

A (Sandra Enimil): It can be really, really challenging if an organization is no longer around. You will need to explore if the former leaders are the people that can actually give you permission. It also may be challenging in a situation where you cannot get a hold of anyone. It might be helpful to look at your goals and think about whether fair use may be helpful for what you want to accomplish. There are instances where a person will contact someone who is a part of the organization, not so much as to seek permission, but to share what they intend to do and see if they have any objections. They may even go so far as to create a type of formal agreement. In those instances, you want to make sure that it is actually someone who can give you the permission you are seeking. If it is a situation where fair use may not be the best option, but you do not know who to get permission from, it might be asking the question of what harm could come from your use? What is the risk? Who would be harmed or offended? Is there a particular community that might raise objections with what you intend to do?

Q: What about materials we collect while doing grant-funded research? EG: if we conduct video interviews with equipment purchased from a grant, who "owns" this work? The creator or the institution (if it's not an academic institution)?

A (Sandra Enimil): Generally, a creator or an author is considered the copyright owner of a work. An exception to this are "works made for hire," which are works created in the scope of employment. Works created in the scope of employment are considered to be the intellectual property of the employer. This may be subject to your organization's intellectual property policy,

if one exists, or an employment contract that specifies or delineates intellectual property rights between the employer and employee.

US Copyright Office on works made for hire: <https://www.copyright.gov/circs/circ30.pdf>

A (Program Officers): As a reminder the *Digitizing Hidden Collections: Amplifying Unheard Voices* program is not a collecting grant. A project centered on collecting, such as oral histories is disallowed; except when it is essential to provide contextual metadata for digitized collections.

Q: 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.

A (Sandra Enimil): It depends. Assuming you have something recorded and you have some concerns, you might want to get in touch with the people you recorded. You may want to ask permission if you want to use the material differently from what you originally intended (such as make it available online or in a reading room). If you have permission forms or license forms you used when you recorded someone to take their oral history, you may want to have a lawyer or general counsel to review that document and see if there is any wiggle room in that document. This is a plug for when you are initially seeking permission or creating a permission form to be as broad as possible. Think not just about what you need it for now, but the broad possibilities of what you might need permission for in the future.

The public domain is legal terminology for works for which the copyright term has ended, expired or never existed.

For more information on the public domain, please check out Duke Law School’s Center for the Study of the Public Domain: <https://web.law.duke.edu/cspd/>

Q: What if we collect videos and materials from small private archives? EG, a local community center, has historical materials from their members. Are those materials subject to the same expectations for archives if they’re not a formal archival institution?

A (Sandra Enimil): Best practice would be to have an understanding or agreement in writing with whoever contributed materials to your archive. The agreement should have information about the collected materials and what can or cannot be done with the materials. Any known intellectual property information should be clearly stated.

Q: Hello: Can I apply for a grant for audio transfer from an older format to a digital format for public access, with a 100% budget for the technician who would work with the audio transfer?

A (Program Officers): The focus of this grant is digitization and so yes, the entire budget can go to the vendor performing the digitization. You can read more about putting together your budget in the Project Details—Need for support section, along with allowable and disallowed costs in the [Appendix A](#) of the [Application Guidelines](#).

Q: What about newspapers no longer in print from the 1950s and 1960s? I don't know who to contact regarding the copyright for these documents.

A (Sandra Enimil): This material may or may not still be in copyright. It can be challenging to figure out if something is still under copyright, especially in this time period. If it's possible to determine who is the rightsholder, that would be who can grant permission. If you cannot determine rights status or ownership, this content might be considered orphaned. You can consider doing a fair use analysis or a risk analysis to decide whether and how you might use the material.

Cornell maintains a useful chart to help determine copyright status:

<https://copyright.cornell.edu/publicdomain>

Q: This may be more of a question for Sharon and Alyson. Will our grant application be hurt if we need to pursue copyright protection (not a CC0 license) for images of artworks? I work in a progressive art studio for artists 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. Thank you!

A (Program Officers): We do have specific instructions regarding licensing fees in the [Application Guidelines](#). We want you to explain any fees you use. The creative commons requirement is for metadata only.

Q: If a person worked for an organization and a document was part of the work he or she did, and that person passed away, and the document was in the organization's archive, does the copyright for that work reside with the author or with the organization?

A (Sandra Enimil): Generally, works created in the scope of employment are considered to be the intellectual property of the employer. This may be subject to your organization's intellectual property policy, if one exists, or an employment contract that specifies or delineates intellectual property rights between the employer and employee.

US Copyright Office on works made for hire: <https://www.copyright.gov/circs/circ30.pdf>

Q: This may be a topic for a future webinar, but can you address the rationale for the Creative Commons requirement for metadata? Are there exceptions?

A (Program Officers): The Digitizing Hidden Collections program is a regranting program funded generously from the Mellon Foundation. We are required to abide by the terms of our grant from the Mellon Foundation. All metadata created during funded project activities must be dedicated to the public domain under a CC0 Creative Commons waiver and be freely available to the public. If applicable, any software created during funded projects must also be dedicated to the public domain under a CC0 waiver or equivalent license. Exceptions may be made for culturally sensitive metadata or sensitive personal information. You will have to explain your exception and the justification to the review panel in your application.

Q: My institution owns film materials (outtakes, dailies, interviews, complete work) that I would like to have digitized, but the heir of the filmmaker still controls the rights, so we would have to send any reuse requests to the heir, and they would decide on fees. How favorable/unfavorable does CLIR see a grant that has that stipulation.

A (Sandra Enimil): If you are a library or archive, you may be able to rely on Section 108 of US copyright law to preserve materials that may be deteriorating.

Q: Should the audio technician be affiliated with a sound preservation organization such as the Association for Recorded Sound Collections (ARSC)?

A (Program Officers): In order to remain unbiased in the grant process CLIR does not require the use of nor endorse any specific vendor. It is important to select a vendor that is the best fit for your individual project. The review panel will want to see that your project has chosen the best vendor for your project based on the needs of the nominated materials. Sometimes the vendor selection is due to location, format specializations, cost effectiveness, and/or equipment. Our [Apply for an Award](#) page contains the [DLF Digitizing Special Formats Wiki](#) which lists external resources for digitizing rare formats.