

Sandra Aya Enimil

Liberating digital collections

Rights review of digital collections at the Ohio State University Libraries¹

Digital collections serve as one of the many vehicles for cultural heritage institutions to highlight and display digitized material from special and curated collections. Many institutions have long relied on fair use² to make digitized content from their collections openly available online. In recent years, after researching collections, some institutions³ have specifically distinguished public domain content. These institutions took time and resources to enhance their digital collections with rights information. Reassessing and identifying rights status is worth the time and resources because providing this metadata allows visitors to make informed decisions about reuse.

Institutions can use rights statements,⁴ which provide uniform statements on reuse and share their own rights status determinations to guide how the content could possibly be used.

The Ohio State University Libraries (OSUL) used the work of the University of Michigan's Copyright Review Management System⁵ and the New York Public Library⁶ as the initial inspiration on how to determine copyright status of items in digital collections. The original goal of the rights review project at OSUL was to research the copyright status of material in the Libraries' Digital Collection (DC)⁷ and to select the appropriate rights statement to submit metadata to the Ohio Digital Network, the service hub for the Ohio instance of the Digital Public Library of America.⁸

With January 2019⁹ marking the restart of the public domain in the United States, an additional goal was determining what content might be in the public domain due to expiration of copyright term.

Ideas about conducting a rights review of OSUL's digital collections had been around for several years, but it was not until funding was made available to the Copyright Services unit at OSUL to pilot rights review of existing digital collections that the idea came to life. With an anticipated fall 2018 start date of the pilot, hiring, creating training, and practice for student workers became a huge focus for the staff of the unit.

In summer 2018, additional funding provided a pre-pilot opportunity to test the training and to evaluate how the pilot would run, using a high school student. The pre-pilot was successful, aiding in improving and shortening the training materials and length of training time. During the search for collegiate student workers, certain skills were sought, such as interest in copyright, research skills, and strong writing abilities.

In fall 2018, Copyright Services began the pilot review of material, mainly images, available through the DC.

Sandra Aya Enimil, formerly copyright services librarian at the Ohio State University Libraries, is now copyright librarian and contracting specialist at the Yale University Library, email: sandra.enimil@yale.edu

Rights review pilot

A training manual on U.S. copyright law and how to research rights statuses was provided to each student involved in the project. Training content that was openly available online was intentionally sought, selected, and provided for the students.¹⁰ The content¹¹ includes copyright law itself, work that interprets and explains the law, and materials that allow the students to test their knowledge in ways that would be useful for the rights review project. The students were originally asked to create detailed narrative research reports on the artists and creators as listed in the DC. Students built documents that asked for the following:

- Who created the work and in what capacity (e.g., individual vs. employee)?
- What type of work are we evaluating—photographs/artwork/text? Is the work published or unpublished?
- Where was the work created/published (in the U.S. or elsewhere)?
- When was the work created/published (important for copyright term and in case special circumstances are in play)?
- Why was the work created (e.g., to be used for a private/internal purpose or to be distributed to the public)?

The students had access to databases within the libraries. They also occasionally consulted the collection in person and worked with the curator or librarian who worked most closely with the collection. In most instances, the digitized content available in the DC accounted for a fraction of the physical collections and students almost always found information that benefited research into the rights of the underlying work. Students were also trained on how to search for registration and renewal records through the U.S. Copyright Office's Copyright Catalog and through earlier digitized copies of the Catalog of Copyright Entries. Additionally, they learned how to conduct online research on the creators to better understand

the context for the creation of the work and their professional lives. These details helped provide insight into copyright ownership.

Training was iterative—each semester there were a minimum of two students working on the project. With each cohort of students, we updated information and were better able to find helpful guiding resources. We looked for ways to shorten the training period to allow practice reviews to take place more quickly. One student improved the project by implementing use of an Excel spreadsheet to track item-level information for each collection. The two documents (the narrative research document and the Excel spreadsheet) will eventually be available for our curators and librarians to use internally. The training also included oversight and meetings with faculty and staff within the unit, who ultimately selected the appropriate rights statements¹² for the reviewed collections.¹³

Managing the review project

A typical rights review may involve researching the creator and their employment history, researching the publication in which a work was distributed, searching through copyright registration and renewal files, and determining the public domain status under U.S. copyright law. Reviewers must keep in mind the type of content under review and the possible impact on copyright status. Rights review is time-consuming, challenging, and sometimes repetitive work. It is also enriching the metadata by providing insight and depth to existing records. The work requires expectation management and negotiations with a variety of necessary stakeholders. The review process takes anywhere from a few days to several weeks, depending on the depth of research needed and the size of the collection under review. It is difficult to say how long a review will take, since the type of material and creators vary. The variability of timeframe requires constant communication with partners and discussion of needs and priorities.

Rights review attempts to provide more complete and accurate information, specifically about copyright, for the collections that researchers and the public can access online. Management of expectations includes discussions regarding the amount of time it might take to complete a review. Another is that even with extensive research, there may still be ambiguity with the rights status.

Also, in some cases, due to the tools available for research, determining whether something is in the public domain in the United States or elsewhere can be difficult. Determining the rights status, and therefore appropriate rights statement, of content that might be considered “orphaned”¹⁴ may also prove challenging.

Important considerations

Because copyright creators and rightsholders are important in determining copyright ownership and status, the rights reviews, where possible, focus on a singular author or creator. To be successful, the project requires cooperation and collaboration from colleagues working in a variety of units. Interest and a willingness to collaborate with curators and librarians in special collections, information technology, and metadata services, to name a few, will be necessary to advance any rights review project.

Being cognizant of the workload for key constituents is crucial to completing as full of a rights review as possible. For many, assisting in rights review work is often in addition to current work priorities and goals. Open, consistent communication and grace are necessary. Those in special collections can provide necessary information on birth and death dates, as well as information on creation, copyright ownership, and employment history. Others in information technology and metadata services can work to make necessary changes and updates to the online collections. These units, among others, can also provide support, resources, and insight into priority creators and collections.

Colleagues in special collections can provide insight on donor restrictions, concerns

about privacy, or other contractual obligations. Other stakeholders can also help with changes as more information is gathered or learned about collections. Additionally, as material transitions to the public domain, the metadata will need to reflect the new status. Under current U.S. copyright law, copyright notice and registration are not required. This will be challenging for reviewing more recent works.

An unexpected element to the rights review project was an expansion to include content that may not be added to the DC. These additional reviews have varying levels of research and evaluation of status, but it has increased involvement in looking into rights statuses for a variety of physical and digital material in the collections of the Libraries. Though unexpected, the additional work led to other connections and relationships within the Libraries that could prove useful for the rights review project at a later date.

Conclusion

At the time of publication, rights review summaries have been completed for 29 creators (a total of more than 7,200 digital images). These completed summaries all contain a selection of rights statements. In addition, retroactive rights review summaries have been completed by student employees for another 18 creators (a total of more than 14,700 images). These retroactive reviews are awaiting selection of a rights statement.

The project at OSUL used student workers (a high school student, undergraduates, and law and graduate students) to review content, while faculty and staff librarians provided oversight and review. This type of work can be used as professional development for library staff interested in acquiring new skills in research, enriching metadata, and copyright information. Other important components of rights review work are relationship building and the collaborative nature of the work. For students, this may be their first opportunity to work

in the library, and staff reviewers may work with colleagues they would never have had the chance to before. This is meaningful work for students. They learn or enhance their attention to detail, research, and writing skills. Additionally, they can see a tangible outcome of their work in updates to the DC or in the progress of other digital projects within the Libraries.

As information professionals, providing the most accurate information we have about collections that are openly available online should always be our goal. Funding, support, resources, and interest may ebb and flow. Undertaking a rights review project may be organizationally difficult but rewarding in the rich metadata and information made available to persons interested in accessing and reusing digital collections.

Notes

1. This column is based on a blog post titled “Copyright Services Rights Review Project,” which appeared on the Copyright Corner blog hosted by Copyright Services at Ohio State University Libraries. It also contains some content from a keynote presentation entitled “In Search of the Public Domain (Or Liberating Our Digital Collections): Starting a Rights Review Project,” delivered at the 2020 Kraemer Copyright Conference. Many thanks to Maria Scheid, copyright services coordinator at OSUL, for her work on the project and help with this column.

2. Section 107 of U.S. Copyright law, allowing for the use of copyrighted content without permission following a four-part analysis, <https://www.copyright.gov/title17/>.

3. Art Institute of Chicago, New York Public Library, the Metropolitan Museum of Art, etc.

4. Rights Statements provide standardized statements for use online by cultural heritage institutions, <https://rightsstatements.org/en/>. See also, Linda Ballinger, Brandy Karl, and Anastasia Chiu, 2017, “Providing Quality Rights Metadata for Digital Collections Through RightsStatements.Org,”

Pennsylvania Libraries: Research & Practice 5 (2): 144–58, <https://doi.org/10.5195/palrap.2017.157>.

5. Copyright Review Management System, <https://www.hathitrust.org/copyright-review>.

6. Greg Cram, “How We Expand Access to Our Public Domain,” February 17, 2016, accessed August 31, 2020, <https://www.nypl.org/blog/2016/02/17/rights-public-domain>.

7. The Ohio State University Libraries Digital Collection, accessed August 31, 2020, <https://library.osu.edu/dc>.

8. This became a more pressing issue when DPLA began requiring the use of rights statements in metadata submitted for inclusion in its database. Digital Public Library of America, DPLA Standardized Rights Statements Implementation Guidelines, December 7, 2017, accessed August 31, 2020, <https://bit.ly/dpla-rights-guidelines>.

9. There was a 20-year pause in the United States on published materials entering the public domain due to copyright expiration. In January 2019, works from 1923 entered the public domain, each year more works will go into the public domain. Find more information at the Center for the Study of the Public Domain, <https://web.law.duke.edu/cspd/publicdomainday/2019/>.

10. For the portion of the project that occurred during the COVID-19 pandemic, having materials that were accessible online was particularly helpful for students.

11. Copyright Services Training Manual, accessed August 31, 2020, <https://library.osu.edu/document-registry/docs/1081/stream>.

12. This guide is incredibly useful. Rights Review: An approach to applying Rights Statements from RightsStatements.org (2020 version): <https://z.umn.edu/rightsreview>.

13. Institutions considering rights review projects might consider including support and training around selecting rights statements.

14. Material where rights status and ownership are unknown or unclear. *RL*