**Gathering Legal Information for Digitizing Projects**

**About this Form**

***What is this form for?***

Our stewardship responsibilities obviously apply to care and access of our collections, but we are stewards of intellectual property embodied in many of those materials. There are often other legal rights implicated by digitizing projects, even ethical considerations or cultural sensitivities. **This form is intended to glean the kind of information that helps evaluate materials, analyze the legal implications if any, and provide recommended steps towards making a project possible. Determining the most appropriate type of access and overall course of action. Access might range from preservation-only access to global access.**

***This form is just what it says it is - an information-gathering tool***

Not every question will be relevant to your project. In fact, it is just as important to note when you do not know the answer to a question or you think a question unanswerable though it’s useful to know the reason you think that is the case. **Do not be daunted by the number of questions – in most cases, many will simply not be relevant.** Please answer everything you can, or note things you have questions about and we will discuss these later. Think of this as a net to identify areas that may need further documentation or analysis.

***Community practice***

Among cultural institutions like libraries, museums, and archive, this kind of data collection and evaluation process is consistent with reasonable community of practice that has developed since the mid-1990s (See Resources, below). By documenting the answers to these questions and then preparing a written evaluation, we act with respect for rights that may be associated with materials under consideration. We improve our ability to provide access to our collections by placing them online to further research and learning. The Library’s primary purposes in this activity are scholarship, education, research and similar needs. This document promotes a well-intentioned, practical approach to identifying and, through an evaluative memo, resolving rights issues in line with professional and ethical standards.

***Keep in mind: select materials thoughtfully***

Keep your mission in mind and start with materials of high research value or high user interest. Explain the general reason for digitizing the material and the need for access. Preservation, faculty demand, research value, rarity are all important factors where relevant. The reasons for scanning materials are critical to being able to assess whether and how fair use may apply to a particular situation.

***What to provide***

Please provide URLs, hard copies, or email any related documentation and refer to those items as you fill out the form. This form is provided in Word so that you can edit your responses directly into the form. You can add anything you think is relevant. Please do not change the format. Simply note ‘NA’ where a question is not applicable. If you have already provided this information for other parts of the Workflow, please just refer and include to that documentation – no need to repeat it twice. If there are additions or changes to collections over time, please contact the [Copyright Office](http://www.lib.umich.edu/copyright) or the [Digital Library Production Service](http://www.lib.umich.edu/digital-library-production-service-dlps) to see if further review is needed.

***Outcome***

Based on the information provided, the [Copyright Office](http://www.lib.umich.edu/copyright) will provide a written evaluation that identifies any questions or concerns, identifies options, and make recommendations for courses of action that will be used by the Library to determine whether and how the project should proceed in light of resource allocation and as a practical matter given competing priorities. There are a range of possible outcomes - the information gathered in helps us determine what makes the most sense legally and practically. It may be that there are no copyright or other questions. It may be that we can only provide limited access or less. We can evaluate whether it is feasible as a practical matter to seek permissions if need be. We can determine if legal interns can carry out the needed work under the direction of the Copyright Office.**The purpose of this effort is to have a legally sound basis for providing the greatest possible access and to proactively work out any other issues presented, such as privacy concerns. The data gathered here may allow us to open materials at a later date even if the immediate prospect is unlikely.**

***Notice statements and legal or administrative metadata***

If there is enough information, the memo will include draft statements to be provided online for people accessing the resulting online materials. The Library provides different statements regarding its copyright practices that may be viewed with an individual item and/or at a collection level where applicable. A sample statement for a collection might look like this:

***Getting started***

*These digitized collections are accessible for purposes of education and research. We’ve indicated what we know about copyright and rights of privacy, publicity, or trademark. Due to the nature of archival collections, we are not always able to identify this information. We are eager to hear from any rights owners, so that we may obtain accurate information. Upon request, we’ll remove material from public view while we address a rights issue.*

*We provide access to digital collections where (include relevant items):*

* *materials are in the public domain*
* *rights are held by the Library*
* *Library has permission to make them accessible*
* *We make them accessible for education and research purposes as a legal fair use, or*
* *There are no known restrictions on use*
* *Campus only; authenticated only*

*[State any known conditions or contacts for permissions as appropriate.]*

If you are new to this kind of project, you may want to take some time to peruse some of these resources. Check the [KNC](http://www.lib.umich.edu/knowledge-navigation-center) schedule and [Enriching Scholarship](http://www.umich.edu/~teachtec/es.html) for workshops about copyright.

* [NEDCC HANDBOOK FOR DIGITAL PROJECTS: A Management Tool for Preservation and Access](http://www.nedcc.org/resources/digitalhandbook/dman.pdf)
* [Copyright and Cultural Institutions: Guidelines for Digitization for U.S. Libraries, Archives, & Museums](http://papers.ssrn.com/sol3/papers.cfm?abstract_id=1495365)
* [Digitization of Special Collections and Archives: Legal and Contractual Issues](http://www.arl.org/bm~doc/rli-266-cornell.pdf)
* [OCLC Well intentioned practices](http://www.oclc.org/research/activities/rights/)
* [ARL Fair Use Best Practices](http://www.arl.org/pp/ppcopyright/codefairuse/code/index.shtml)

## Questions to Answer and Documentation to Provide

### *Nature of material*

Describe what the material is, media, subject matter, age of material, volume (amount), significance, use (high, low, who and why). If you have written this up as part of the [*Digital Project Proposal Short Form*](http://www.lib.umich.edu/files/services/dlps/DigitalProjectProposal-ShortForm.docx), please refer to that document - no need to duplicate it here.

Is material well documented or not? In either case, will digitizing help develop documentation? Will it be easier to use because it is already well documented?

Questions regarding ‘documentation’ are catch-all questions. For example this could mean metadata, indexing, cataloguing, item or collection-level descriptions or even other kinds of documentation. Poorly described materials will be of low scholarly use - unless the point of making them available is to improve documentation and utility. It may be that there are preservation reasons to scan material and keep them secured - and that having those scans available to authorized persons to work from makes it feasible to do metadata creation and rights determination needed for possible broader access.

Is material published? Sold, distributed widely, offered for sale, lease, lending.

### *Why is digitizing important in your case?*

Some common purposes and access levels: preservation-only, preservation with global access, on campus access?

Describe the relevance to mission and goals or goals of consortia, demand for materials (wear and tear concerns as well as access for improved use). If you described this in the initial[*Digital Project Proposal Short Form*](http://www.lib.umich.edu/files/services/dlps/DigitalProjectProposal-ShortForm.docx), feel free to refer to that description rather than duplicate here.

### *Provenance*

Where did the material come from? If it's an MLibrary collection, how did it end up there?

Provide copies of any documentation, acquisition agreements, or general information about ownership:

* physical ownership of materials (be sure there was an effective transfer, don’t invest in digitizing projects of materials not in the collection except in rare circumstances)
* copyright in component parts of collection (donor/seller may not have had copyrights, just ownership of physical materials).

If project involves recordings in an oral history project, are there release forms? Permissions? What was context of interview?

As a general matter, consider legal questions at time of new acquisitions. Document. Collect any possible information about the material at time of acquisition. File and retain in a consistent location.

### *Known restrictions*

Are there any donor restrictions or gift agreements to be reviewed?

Is the material believed to be in copyright?

Provide any known rights information and agreements.

### *Privacy, political sensitivities, trademark*

These may be a non-issue but may warrant awareness or context:

* Are children depicted or identified in any way? How?
* Is there any nudity? Medical information? Information regarding criminal convictions? Note.
* Are there private persons (not famous) who are reflected in a way that might be embarrassing? How?
* Are there any famous people who might have commercial rights in their name, likeness, etc.?
* Trademarks? What?
* Sensitive political content or the like?

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### *Are there any models like your collection?*

Are there similar materials online from other cultural institutions? Is your project unique? Does your project complement other material online elsewhere?

Are there other projects online that provide a model for addressing legal questions (e.g. museum has similar 20th century photo collection online that compliments our proposed project – theirs has been online without complaint for 8 years even though rightsholders could not be identified.)

### *Some materials warrant particular attention to possible rights issues*

Please describe any of the following kinds of materials that may be part of your proposal:

* Contemporary literary papers. For example, is the creator still alive or deceased, say, in the 20th century? Personal and literary papers may have more privacy concerns, copyrights may be held by different people or entities, there may be publishing or similar contracts between the creator or heirs that otherwise affect the use of the materials.
* Material with sensitive information, such as social security numbers or medical data.
* Materials likely to have been created with commercial intent that may be more likely to have economic value. Very recent materials not intended to be made public (common in archives). Even materials with commercial intent may be perfectly appropriate for a library to make available online in some way; it depends on the facts which in turn allow us to consider different approaches appropriate to the situation.

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### *Context of the materials and how you want to present materials*

What are you doing and why? If you described this in the initial[*Digital Project Proposal Short Form*](http://www.lib.umich.edu/files/services/dlps/DigitalProjectProposal-ShortForm.docx), feel free to refer to that description rather than duplicate here.

Is this publishing in the sense that its selected and contextualized? Is it more of a database of content? Is permission needed for the intended use?

Is there a fair use or other exception to copyright that applies? This will depend on the nature of the material and the use. We are interested in you thinking on this item; evaluating fair use involves a case by case examination of particular facts - the[*Copyright Office*](http://www.lib.umich.edu/copyright)can help you with this question. It may not be possible to answer this in your initial information gathering process - which is fine. But we would welcome your opinion and reasons if you have formed them.

Will material be presented as a body (a collection or exhibit) or as individual items - or both? The way material is presented can affect a fair use analysis.