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In this [presentation](#), Melissa Levine, Director of the Copyright Office at the University of Michigan Library, spoke about how copyright helps and hinders what we have access to, what is saved, and what is preserved. She invited the audience to think about how copyright can amplify—or prevent—speech in the form of cultural diversity, collection building, and access. Levine also highlighted several current efforts to address copyright-related concerns at scale.

Use this viewing guide to expand your learnings from the talk. Take notes, reflect, and use the guide to frame discussions you would like to have with colleagues and peers, and plan for your next steps.

Introduction: But what about copyright?

The title of Levine’s talk comes from a familiar refrain heard in cultural heritage institutions—“we could do so much with the technology, we could make anything happen”—which is stopped short with the follow-up question: “But what about copyright?”

Levine’s thoughts on this have been informed by her experience in the mid-1990s as Legal Advisor for the Library of Congress’ National Digital Library Project, [American Memory](#). There was a sense of the tremendous possibility of the internet, of new openness. Staff at cultural heritage institutions were—as they are today—trying to work through the opportunities presented by new technologies with a deep sense of the stewardship of possible copyright intrinsic in the collections that often sits in tension with preservation and access concerns.

REFLECTION

Is the situation referenced in the talk’s title a familiar one for you and your institution? Do questions and uncertainties about copyright pose barriers to the online projects and activities you and your colleagues want to implement? If so, what would help you and your colleagues overcome these barriers? What do libraries and cultural heritage institutions need to effectively navigate the tension between copyright and online access?

Much of the material that was scanned for American Memory comprised copyright deposits submitted to the Library of Congress and US Copyright Office over decades—most of it now in the public domain. The collections reflect a profound diversity of materials in terms of subject matter and medium. Levine shared the observation that these collections survive at all because there was a legal and business incentive to preserve them (historically, two copies of a work had to be deposited when registering for copyright). This is an example of the ways in which copyright deposit—in addition to providing critical evidence to protect copyright holders in the case of infringement claim—is critically important for the preservation of memory.

REFLECTION

This observation about the American Memory collections offers a starting point for thinking critically about collections and collecting generally. What has been preserved, and why? What has been collected, and why? How did legal structures and economic interests of the past impact these decisions? What stories and materials from the past are underrepresented or missing from our present holdings as a result? How might current legal structures and economic interests impact what is preserved for future generations? What kinds of collecting decisions and policies should cultural heritage institutions make to best document the full diversity of contemporary experiences for future generations?

Copyright law is complex and evolving

“Congress shall have power . . . to promote the Progress of Science and useful Arts, by securing for limited Times to Authors and Inventors the exclusive Right to their respective Writings and Discoveries.”

—Article I, section 8 of the US Constitution (1787)

Levine explained how this language, though beguilingly simple, is anything but simple in practice. And changes to copyright law over the years¹ necessitate changes to practice. This complexity of copyright affects and shapes what is preserved and shared.

While US law is complicated enough, the complexity of reconciling European Union (EU) and other international copyright law for meaningful global access requires stunning work. As an illustration of this complexity, take a look at this [series of flowcharts](#) measuring 1 x 2 meters that documents how to make

a public domain determination in the EU for each individual country! Now that the General Data Protection Regulation (GDPR) has recently gone into effect to protect the data and privacy for people in the EU and the export of personal data outside the EU, this raises new, practical questions. It's not clear whether the GDPR may mean limiting access to US collections and web offerings from outside the US. This is another issue for those in the cultural heritage field to work together to understand.

REFLECTION

How are libraries and cultural heritage institutions supposed to navigate all the layers and complexities of copyright law? Do staff at these institutions need to know all the relevant laws everywhere, as well as keep up with the latest developments? Is that even possible? Those who work in libraries and allied institutions excel at researching and sharing information and collaborating. What are ways to leverage these skills to meet the challenges? Discuss these questions and issues with colleagues with the aim of brainstorming possible ideas, solutions, and innovations to help libraries navigate the complexities of copyright.

It's not just copyright

Libraries and cultural heritage institutions work in an ecosystem with many factors and considerations beyond copyright. Levine highlighted several other issues that impact what and how our institutions preserve and share their collections and information.

TRADITIONAL KNOWLEDGE

Cultural heritage institutions seek to operate ethically and responsibly. This means sharing collections and information with respect to the traditional knowledge, moral rights, and concerns of indigenous peoples. Dr. Kim Christen's [DSS presentation](#) discussed these issues and pointed to tools and resources to support work with indigenous communities and their collections. The International Federation of Library Associations and Institutions (IFLA) has been doing significant work with respect to [indigenous knowledge](#).

CONTEXTUALIZING (MIS)INFORMATION

Levine shared a conversation she had with Jane Sledge (Associate Director, Museum Assets and Operations, National Museum of the American Indian, Smithsonian Institution). It inspired Levine to rethink her assumptions about open access and the records cultural heritage institutions hold—that we all want everything open and that records are just facts. But Sledge pointed out that sometimes we

have the wrong facts and sometimes we don't have facts at all in our records; she wrote about this in her article, [Stewarding Potential](#):

Museum record-keeping systems are more than finding aids. They support the stewardship of knowledge. Museum information systems often present valuable ambiguous, uncertain, and incorrect information—and I hope things will continue this way. I would say perhaps 20 to 30 percent of the information in the [museum's] information system is wrong, but it is important and useful to us in that it provides information about the Museum's past collectors and their understanding of Native Americans. If we were to totally clean up our data and to delete the wrong data to make everything "correct" it would be as if we cleaned up the evidence of the past.

To make her point, Sledge describes how the museum had previously displayed some women's clothes in a way that was backward. Important evidence came from conversations with the community. There are no copyright issues here, but rather the reminder to continually reexamine assumptions, reconsider evidence, and think about what a fact *is* in a given situation. Seeking to correct these instances of misinformation offers opportunities to connect with the communities that created and used these objects. When stakeholder communities are engaged in contextualizing (often, they are re-contextualizing) collections, everyone benefits from the fuller and more complete knowledge that results. Again, [Dr. Christen's talk](#) and the [Local Contexts](#) initiative help us understand that "facts" aren't always facts.

PRIVACY AND ETHICAL CONCERNS

Levine shared the example of "[Above Ground: China's Young Feminist Activists and Forty Moments of Transformation](#)," an online exhibit about feminism in China. The curator, Lü Pin, is acknowledged in the exhibit (she is the photographer and the copyright holder) but the individuals pictured are not named. Pin explains that the activists in her photos were feeling nervous and anxious because the police had been monitoring their activities—demonstrations and rallies are prohibited in China. Thus, the records reflecting this exhibit and its subject leave out some important elements for safety reasons. Ethical concerns and professional judgment, rather than copyright, shaped which facts and data are presented online.

ACCESSIBILITY

According to the World Blind Union, less than 10% of all published materials are accessible to people with blindness or low vision. The World Health Organization statistics as of 2010 estimate that more than 285 million people worldwide live with visual impairments; 39 million of them are blind. This is a profound area of concern for significantly addressing the UN's Sustainable Development Goals.

[HathiTrust](#) was formed for a number of reasons; one of these is the opportunity to give [meaningful access](#) to research libraries to people with print disabilities. Digital formats can be marked up for use with devices that support reading by those with blindness or low vision. HathiTrust's many accomplishments, including its robust support of researchers with visual impairments, were possible because its participants remained mission-driven. A nexus of talented people with diverse expertise and experiences all found ways to work together. The HathiTrust community is now more than 120 partners and 16 million volumes—approximately 38% or 6.1 million volumes in the public domain.

REFLECTION

The challenges of addressing issues beyond copyright, such as the ones highlighted above, often present incredible possibilities as well. Research into ownership rights, provenance, and correcting misinformation in records can be opportunities to create meaningful connections with indigenous and stakeholder communities. In prioritizing accessibility for those with visual impairments, the HathiTrust has expanded access to knowledge for the common good, including a population that is often marginalized and underserved. The work we undertake in libraries requires significant investments of labor and resources, which are often scarce. How can we multiply the value and impact of this work to serve and benefit more people? How can we be more inclusive in defining the communities we serve and how we serve the common good? Invite colleagues and peers to consider these questions and issues with you—and highlight any opportunities you see.

There's a lot that libraries are doing around copyright

As difficult as it can be to navigate copyright issues, Levine cautions that libraries cannot let it be a cop-out. Encouraged by the idea of uncertainty as the presence of alternatives,² she encourages staff at cultural heritage institutions to step back and identify the simplest approach possible. Levine shared a few examples of projects that are working through uncertainty.

COPYRIGHT REVIEW MANAGEMENT SYSTEM (CRMS)

Determining the copyright status of a book can be complicated. With a multi-year grant from the Institute of Museum and Library Services (IMLS), the University of Michigan Library created a system that reviewed works and determined their copyright status, resulting in open reading access to the public domain materials. Many cultural and memory institutions lack resources to confidently and efficiently identify works that may be in the public domain. The Copyright Review Management System through HathiTrust sought to rectify this. The project's work and toolkit are documented in, "[Finding the Public Domain: The Copyright Review Management System](#)," which is freely available online.

CRMS was truly a [team effort](#). Through the investment and commitment of staff who dedicated time to participate, more than 650,000 items were reviewed and 320,000 public domain works were identified.

CRMS built upon work that was done by Stanford Libraries' [Copyright Renewal Database](#). CRMS also relied on VIAF (the [Virtual International Authority File](#) from OCLC that gives a single point of search for author information from national libraries globally) to check author death dates for restoration of copyright provided under General Agreement on Tariffs and Trade ([GATT](#)).

SUSTAINING TELEVISION NEWS FOR THE NEXT GENERATION

For this [project](#), a group of experts—archivists, librarians, television news professionals—gathered to discuss rights, metadata, and the question of what *is* television news today. The goal is to develop new strategies for sustaining library-based broadcast preservation. Few people get their news from the main networks anymore. What should be preserved and how do we address copyright matters for access? What gets copied gets studied; what gets copied survives.

COMMUNITY STANDARDS FOR 3D DATA PRESERVATION

This [project](#) is working on standards or best practices for preserving data from scans of three-dimensional objects or sites. Levine observed that it was the most interdisciplinary, truly diverse, group of professionals she'd been around in a while. They learned from each other—another example of a kind of diversity in action, doing things collectively, collaboratively, and reflecting interdependence.

RIGHTSSTATEMENTS.ORG

[Digital Public Library of America](#) and [Europeana](#) set out to develop a set of standardized rights statements to be used to communicate the copyright and reuse status of digital objects to the public. The rights statements have been designed with both human and machine users (such as search engines) in mind and make use of semantic web technology.

The rights statements are online and being used. The project demonstrates the profound impact of fair use on the breadth and diversity of collections online in the US. The group agreed fundamentally that reproductions of otherwise public domain works should *not* be treated as if the reproduction is eligible for a new copyright. The way we handled rights in the 90s may be the best we can do for now, but it's not good enough anymore. Given the expectation of use, reuse, and remix, it is vital that we tell users what we can about rights and more about what they can do.

[RightsStatements.org](#) provides 12 standardized [rights statements](#) that can be used by cultural heritage institutions to communicate the copyright and reuse status of digital objects to the public. With respect to the intellectual property of indigenous, local, and traditional communities, [TK labels](#) can be used to communicate additional information to help people make informed decisions about use, reuse, and circulation of these materials.

REFLECTION

These examples demonstrate what is possible when people faced with the “But what about copyright?” question respond not by inaction or abdicating responsibility, but by seizing the opportunity to engage with the important issues and to work toward solutions collaboratively to positively impact the ways collections are preserved, shared, and accessed. What are the principles and values expressed in these projects? How can you incorporate these principles and values into your work and into your institution’s approach to preserving and sharing its collections? Consider the tools and resources generated by these projects. How can you put these to use on a practical level? How can you leverage the work of these projects?

What really matters

In closing, Levine shared:

I don’t really care that much about copyright in and of itself. **I do, however, care a great deal about how copyright intersects with the things that I do care about:** art, literature, science, ideas, expression, knowledge, memory, discovery, invention; generally, all the things that make us human. I care about freedom of inquiry. We are more and more a network of interdependent relationships that serve scholarship, memory, stewardship, and so much more.

Fair use supports inquiry. Fair use is speech. Without speech to express and examine difference, we are left with violence.

... **We have a mission-driven imperative to ensure collection development, preservation, and access.** Let’s make sure we get the best ideas and experiences for our research, scholarship, or educational possibilities—of meeting our missions. Let’s get the best of the promise that diversity, equity, and inclusion really offers for all of us.

Copyright issues are complex and evolving, but there is much that those working in and aligned with cultural heritage institutions can do. Tackling these challenges will take significant effort over the long term, but there is work to build on, practical next steps, and resources available.

PRACTICAL STEPS

- Explore the resources and tools provided at the end of this guide. Use them and share them. Identify who else would benefit from this information; share widely with colleagues and peers at your organization and beyond.
- Read about the projects and examples outlined in the talk. Discuss these with peers and colleagues. Brainstorm about other models, strategies, and approaches to navigating copyright issues.
- Identify what else you need to know or learn about these issues to navigate copyright effectively.
- Don't be discouraged by the complexity of copyright issues. Seek simple and practical solutions. Collaborate with others.
- Know that there is a community of individuals aligned with cultural heritage institutions working on and making progress on these issues. Leverage their work and contribute to it. Get involved!
- Be mindful of considerations beyond copyright such as ethics, privacy, and accessibility. Share your learnings about these with colleagues and peers and work to bring an equity, diversity, and inclusion lens to the work you do to expand the community you serve and magnify the impact of your work.
- Stay focused on your institution's mission. Take copyright issues seriously but evaluate risk in light of your mission and how to responsibly carry it out. Encourage colleagues and peers to see opportunities in the challenges, and work toward solutions.
- What are some of the most compelling aspects of Levine's talk? Raise awareness among colleagues and peers by engaging in thoughtful reflection and discussion around these topics. Schedule a viewing session and discussion with colleagues; read related articles and host a journal club discussion; or organize conference sessions that provide opportunities to explore these issues.

Continuing the conversation

There was discussion beyond the presentation—online via Twitter and in person with some Q&A. Explore the questions and comments and consider these additional points to reflect on and discuss.

TWITTER

Follow the Twitter thread:

<https://twitter.com/search?vertical=default&q=%23oclcids%20since%3A2018-05-20%20until%3A2018-05-31&src=typd>

FROM THE Q&A

(condensed and edited for clarity and length)

Q: Could you talk a little bit about how Copyright Review Management System (CRMS) is being used today?

ML: Sustainability is a core issue. The project, which was funded over three grants, has since been absorbed into HathiTrust and continues to operate at a smaller scale. HathiTrust partners have access to scans and data generated by the CRMS project and use the results of these examinations to make determinations about which works to make open and viewable.

Q: Could you tell us more about your work with orphan works?

ML: We had initiated a project several years ago to identify orphan works in our collections. We wanted to take books known not to be in the public domain (from the results of the CRMS project) to try to identify copyright holders. The project triggered a lawsuit so we stopped, but much of the research continued.

As a practical matter, many organizations deal with what is functionally the issue of orphan works with fair use. There is a lot of literature describing the significant investment of resources necessary to identify rights holders. If we reach a dead end and something is important to put online, we may proceed and have a takedown policy that is very transparent. More typically, when we do hear from someone in response to a takedown notice, it's positive—from family members or descendants of the rights holder pleased that these works are available and online.

Q: How is [VIAF](#) (The Virtual International Authority File) used in CRMS?

ML: When CRMS looked at books published in the United Kingdom, Canada, and Australia, the formula for rights is calculated based on a specified number of years past the author's lifetime. VIAF allowed us to efficiently and reliably identify author death dates. This helped us know what might be subject to restoration of rights in the US, thus, open outside the US but closed within.

The library authority files for author death dates were the best resources we had and, generally, the files aligned. One area where they didn't align was in identifying author nationalities. These were typically authors who were born in one country, but later lived and worked, or died in another. It has occurred to me that VIAF could be a source for an argument about brain drain—whether you could chart movement of authors to disruptions of different times and places.

Resources

RESOURCES AND EXAMPLES REFERENCED IN THE PRESENTATION

Public domain calculator for the European Union (EU)

<http://outofcopyright.eu/about/>

Poster of the public domain flowcharts for the EU

<http://archive.outofcopyright.eu/research/Calculator%20Poster.pdf>

Dr. Kim Christen's OCLC Distinguished Seminar Series presentation

<https://www.oclc.org/research/events/2017/07-13.html>

Indigenous Matters section, International Federation of Library Associations and Institutions (IFLA)

<https://www.ifla.org/indigenous-matters/background>

"Above Ground: China's Young Feminist Activists and Forty Moments of Transformation" online exhibit

<https://www.lib.umich.edu/online-exhibits/exhibits/show/aboveground>

HathiTrust Digital Library

<https://www.hathitrust.org/>

HathiTrust and accessibility

<https://www.hathitrust.org/accessibility>

Finding the Public Domain: Copyright Review Management System Toolkit

<https://quod.lib.umich.edu/c/crmstoolkit/14616082.0001.001/>

Stanford Libraries' Copyright Renewal Database

<https://library.stanford.edu/collections/copyright-renewal-database>

OCLC's Virtual International Authority File (VIAF)

<http://viaf.org/>

RightsStatements.org

Recommendations for Standardized International Rights Statements

http://rightsstatements.org/files/180531recommendations_for_standardized_international_rights_statements_v1.2.2.pdf

Sustaining Television News for the Next Generation

<http://sustainingtelevision.news/>

READING LIST

Association of Research Libraries staff. (n.d.) "Copyright Timeline: A History of Copyright in the United States."

<https://www.arl.org/focus-areas/copyright-ip/2486-copyright-timeline#.W9oxu5NKi72>

Hansen, K. (2017) *Future-proofing the News: Preserving the First Draft of History*. Lanham, Md.: Rowman & Littlefield Publishers.

Institute of Museum and Library Services. (2017) "The Copyright Review Management System: Opening the Doors to the Public Domain."

<https://www.ims.gov/news-events/project-profiles/copyright-review-management-system-opening-doors-public-domain>

Levine, M., Adler, R.C., et al. (2016) *Finding the Public Domain: Copyright Review Management System Toolkit*.

DOI: <http://dx.doi.org/10.3998/crmstoolkit.14616082.0001.001>

Padilla, T. (2016) "On a Collections as Data Imperative." Conference report from Collections as Data: Stewardship and Use Models to Enhance Access.

http://digitalpreservation.gov/meetings/dcs16/tpadilla_OnaCollectionsasDataImperative_final.pdf

Saez, C. (2017) "Copyright Exceptions for Libraries Widespread, Study at WIPO Shows, but Disharmony Persists." *Intellectual Property Watch*.

<http://www.ip-watch.org/2017/11/15/copyright-exceptions-libraries-widespread-study-wipo-shows-disharmony-persists/>

Sledge, J. (2007) "Stewarding Potential." *First Monday* 2(7).

http://firstmonday.org/issues/issue12_7/sledge/index.html

END NOTES

1. See Association of Research Libraries' [Copyright Timeline](#).
2. This is a reference to lines from A. Maxwell's *Candor is the Brightest Shield* in T. Padilla, "[On a Collections as Data Imperative](#)."

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