



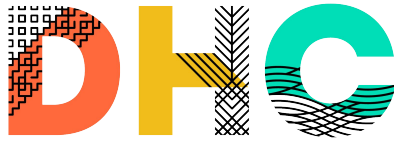
***Digitizing Hidden Collections***  
**Applicant Support Series–Session 4:**  
Rights, Ethics, & Re-use  
April 3, 2024

Welcome! We're glad you're here.  
There is no audio at the moment. Feel free to  
introduce yourself in the chat box. 🙋

**We'll begin at 2pm ET | 11am PT.**



Council on Library and  
Information Resources



Digitizing Hidden Collections

# Amplifying Unheard Voices

A program of  Council on  
Library and  
Information  
Resources

# Introductions

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# Our Webinar Platform

- Click 'CC Live Transcript ' to turn on captions
- All attendees are muted
- Set chat to "All panelists and attendees"
- Submit questions in Q&A box
- Recording in progress



zoom

Kaskaskia  
Kickapoo  
Mascogo  
Miccosukee  
Myaamia  
ᖃᐱᐱᐱᐱ ᖃᐱᐱᐱ ᐱᐱᐱᐱ ᐱᐱᐱᐱ (Osage)  
Peoria  
Potawatomi  
Seminole  
Shawandasse-Tula  
Timucula

Visit [Native-Land.ca](https://Native-Land.ca) to learn about Indigenous Lands where you live.

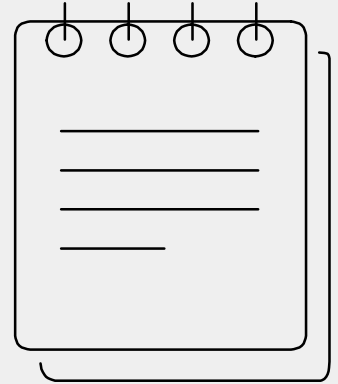


## Session outline:

- ✓ Overview + introductions
  - Presentation
  - *Break* (5 minutes)
  - Presentation
  - Q/A
  - Wrap up

# Final Application Task + Upload

- Task: Project Details– Rights, Ethics, & Re-use
  - Upload: Rights, Ethics, and Re-use appendices





# Introduction

**Sandra Enimil**

Program Director for Scholarly  
Communication and Information Policy  
Yale University Library





# Welcome!

**[Sandra Aya Enimil]**

[Program Director for Scholarly  
Communication and Information Policy]

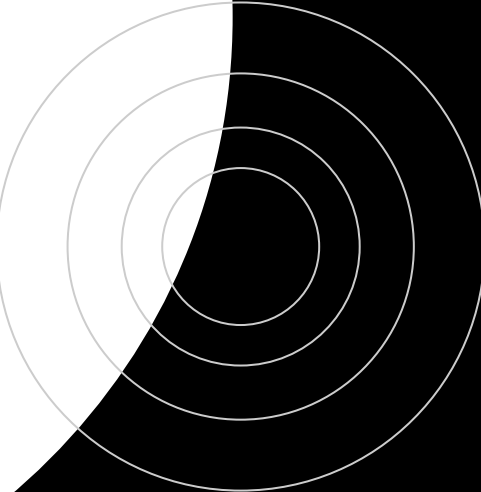
You can find me at @Copyrightlady  
sandra.enimil@yale.edu



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# [Rights, Ethics, and Re-use]

[What you need to know and consider as  
you complete your application]



# **[Disclaimer]**

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**Matt Margolis**

@ItsMattsLaw



“You’ll hear from my lawyer”

-boring

-overplayed

-probably a tax attorney

“Trish is going to be  livid”

-intimidating

-who is trish

-what have we done

**The information in this presentation is not legal advice.**

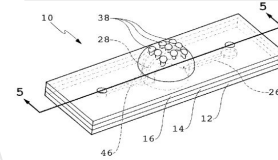
**•I am a lawyer, but I am not \*your\* Trish.**

# Intellectual Property Rights:



**Trademark:** words, names, symbols, or devices used in commerce to indicate the source of a good or service

- **Patent:** new and useful discoveries or improvements



**Trade secret:** business formulas, processes, and practices not readily known or ascertainable

- **Copyright:** protects original works of authorship fixed in a tangible medium of expression



**[Copyright]**

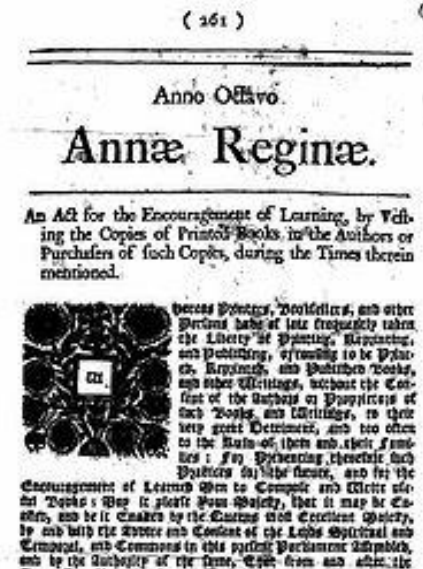
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# History of Copyright

## 1710. The Statute of Anne, England

- 14-year term, renewable for another
  - 14 years if author is still alive
- Created public domain
- Based on social quid pro quo

- ## 1886. Berne Convention, International Treaty
- **Berlin Act (1908)** defined copyright term: life of the author plus 50 years
  - **Rome Act (1928)** concerned moral rights of authors and artists right to object to modifications or to the destruction of a work



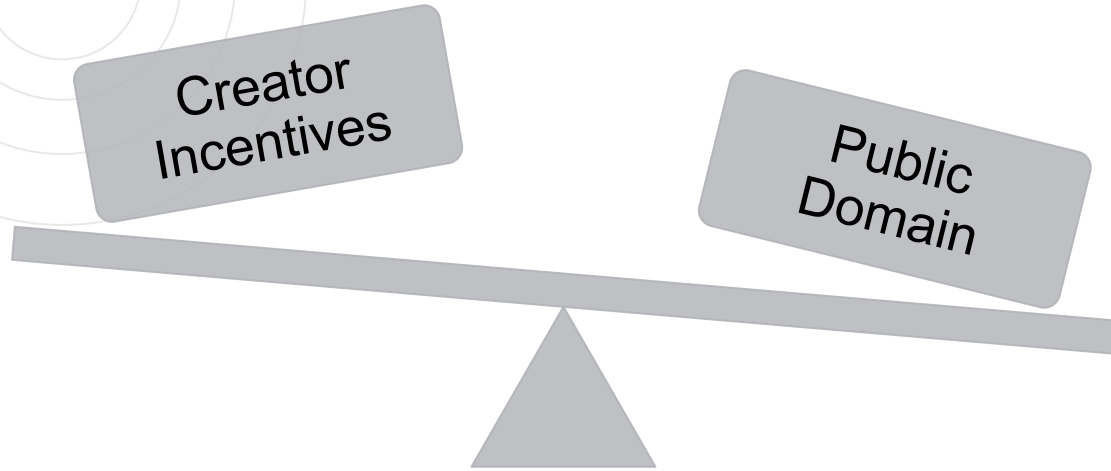
# History of U.S. Copyright

**//** *An Act for the encouragement of learning, by securing the copies of maps, Charts, And books, to the authors and proprietors of such copies, during the times therein mentioned."*





# Purpose of U.S. Copyright



What incentives? Authors and inventors have exclusive rights—for a limited time—that are not intrinsic or natural.

# Milestones in U.S. Copyright Law

- 1790. First Copyright Act
  - Term- 14 years, Renewable for another 14.
- 1831. Copyright Act Revised
  - Term- 28 years, Renewable for another 14.
- 1909. Copyright Act Revised
  - Term- 28 years, Renewable for another 28.
- 1976. Copyright Act Revised
  - Term- Life of the Author PLUS 50 years
- 1998. Sonny Bono Copyright Extension Act
  - Term- Life of the Author PLUS 70 years
- 2018. Orrin G. Hatch–Bob Goodlatte Music Modernization Act
  - Downloads/Streaming, pre-1972 Recordings, Producer Royalties
- 2020. Copyright Alternative in Small-Claims Enforcement Act (CASE Act)
  - Copyright Claims Board—voluntary small (–\$30K) claims



# What can be copyrighted?

Original works of authorship fixed in a tangible medium of expression.

All of the following kinds of works **can** be copyrighted:



Audio



Literature



Architecture



Video & film



Choreography



Music



Drama



Pictures, graphics,  
& sculptures



Computer  
code

# Exclusive rights of creators

- Reproduce
- Prepare derivative works
- Distribute
- Publicly display
- Publicly perform
- Publicly perform a sound recording via digital audio transmission

# What is not protected by copyright:

- Works **not original or fixed** in a tangible medium
- Ideas, facts, principles, discoveries, systems
- Works of the U.S. Government produced by government employees in the **scope of employment**
- Works already in the **Public Domain**

# Who/what is left out of the whole process because their work is not protected by copyright?



Do we want these things to be protected by ©?



What would be the advantages and disadvantages?



Are other protection systems preferable?

- Ö Traditional knowledge
- Ö Traditional cultural expressions, such as textile designs, folk music, folk dance
- Ö Family oral histories
- Ö Fashion designers—Is there sexism underlying this because women were seamstresses?
- Ö Chefs/cooks and their recipes—Is there sexism underlying this because women were cooks?

# The Public Domain

Information, knowledge, discoveries, and artistic creations never or no longer protected by copyright

Publicly available (e.g. online) does not mean public domain



"Night of the Living Dead" movie poster, retrieved from [Plagiarism Today](#)



# Published before ~~1923~~ 1929

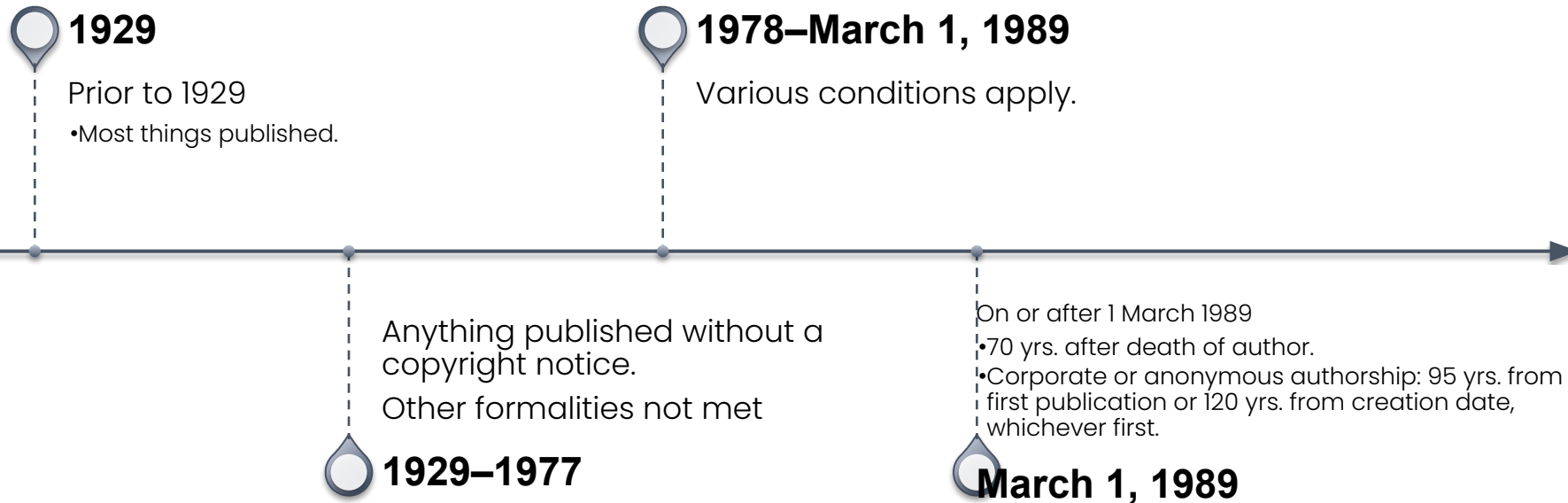
- Published works will enter every year (works published in 1928 entered this year - 2024, 1929 will enter in 2025, on and on and on)

# Published before 1924

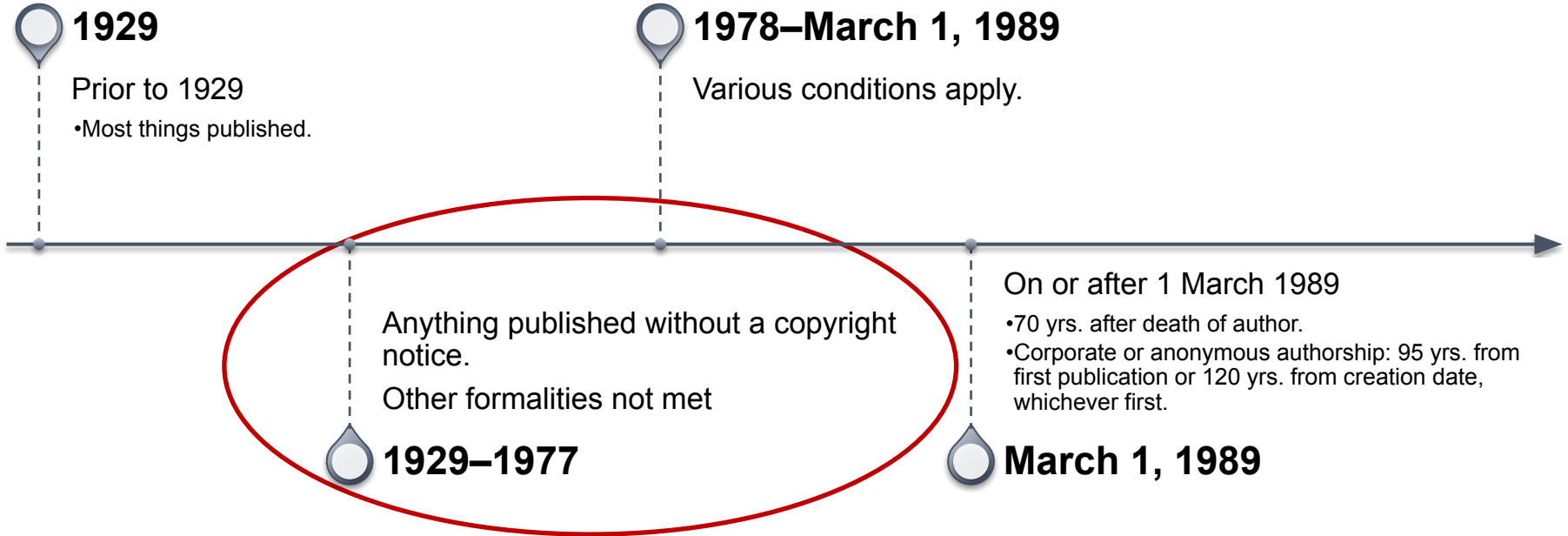
SOUND RECORDINGS!



# When does something fall into the public domain?



# When does something fall into the public domain?



# Who is a copyright owner?

- Generally, the **author** of the work is the copyright owner.
  - **Important exception: Works made for hire**
  - **Exception to the exception in academia: faculty/student scholarship (most institutions do not claim © in academic scholarship)**
- Copyright can be held **jointly**.
- Copyright can be **transferred** or **assigned**.
- Ownership can be impacted by **institutional policy**.
- Ownership of copyright is distinct from ownership of the material object in which the work is embodied.

## Works Made for Hire

A copyrightable work is "made for hire" in two situations:

- When it is created by an employee as part of the employee's regular duties
- When a certain type of work is created as a result of an express written agreement between the creator and a party specially ordering or commissioning it

When a work is a made for hire, the hiring or commissioning party is considered the author and the copyright owner.

To register a work with the U.S. Copyright Office, you generally must identify the author or authors of that work. In addition, you must identify the party that owns the copyright in the work. Ordinarily, the author is the person or persons who actually created the work you intend to register. "Works made for hire" are an exception to this rule. For legal purposes, when a work is a "work made for hire," the author is not the individual who actually created the work. Instead, the party that hired the individual is considered both the author and the copyright owner of the work.

Whether a work is a work made for hire is determined by facts in existence at the time the work is created. There are two situations in which a work made for hire is produced: (1) when the work is created by an employee as part of the employee's regular duties and (2) when a certain type of work is created as a result of an express written agreement between the creator and a party specially ordering or commissioning the work. When a work is produced under these conditions, the employer or the party ordering or commissioning the work is considered the author and copyright owner.

The work made for hire concept can be complicated and has serious consequences for both the individual who creates a work and the hiring party who is considered to be the author and copyright owner of that work. This circular draws on the Copyright Act and judicial interpretation to provide a general introduction to this topic and answer common questions. For more information, see chapter 505, section 506 or chapter 600, section 614 of the Compendium of U.S. Copyright Office Practices.

# “Automatic” Copyright

- Copyright is the *rule* rather than the exception
- Materials receive copyright protection *instantly*
- You must do something in order *not* to have copyright protection

# Duration of Copyright

Rights holders can exercise the **six rights** for the duration of the copyright term. For works **created on or after January 1, 1978**, this term will vary depending on who is the rightful copyright owner:

- **Single** author: term = life of author + 70 years
- **Joint** authors: term = life of last surviving author + 70 years
- If **work made for hire**: term = 95 years after publication or 120 years after creation, whichever is sooner.
- If an **anonymous or pseudonymous** author: term = 95 years after publication or 120 years after creation, whichever is sooner.

# Copyright Term for Sound Recordings

Music Modernization Act

Title II: Classics Protections and Access Act

Federal protection for pre-1972 recordings

Publication Date	Term
Before 1923	Public Domain (term ended 12/31/2021)
Between 1923 and 1946	100 years from the publication date, ending on December 31.
Between 1947 and 1956	110 years from the publication date, ending on December 31.
Between 1957 and February 15, 1972	Term ends February 15, 2067

# What does this all mean?

- Once fixed in a tangible means of expression, works are automatically covered by Copyright law
- You own that copyright unless the work is created as a “work for hire”
- Rights belong to the author(s) unless transferred
- Content available in digital form on the Internet (including e-mail) is considered “tangible” and covered by copyright
- Rights will (eventually) end....

# **[Use of Materials]**

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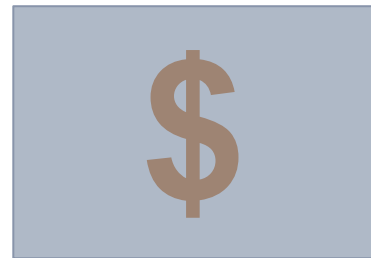
## Select copyright sections that aid cultural heritage institutions:

- “Fair Use”– Sec. 107
- “Reproduction for Libraries”– Sec. 108
- “First Sale Doctrine”– Sec. 109
- “Classroom Display or Performance” – Sec. 110

# Why does it matter how we use content?

**Criminal penalties** for copyright infringement:

- Imprisonment for up to 5 years
- Up to \$250,000
- Both

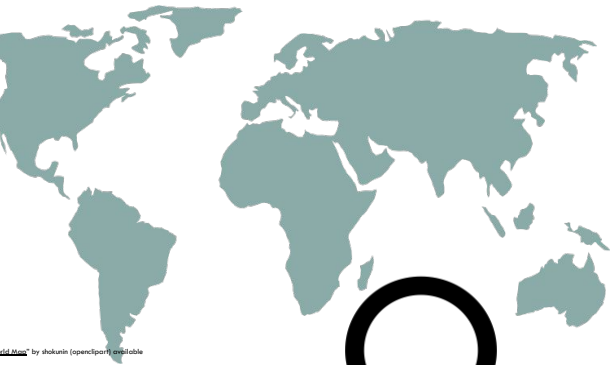


**Civil penalties** for copyright infringement:

- \$750 to \$30,000 per work
- “willful” infringement—up to \$150,000 per work

**NEW:** Copyright Small Claims Board

- Claims up to \$30,000



World Map by Shkurin (openSource) available



**vs.**



work by dDara from the [Noun Project](#) CC BY 3.0

# Request Permission

- Identify the copyright owner
- Request the broadest feasible permission
- Get it in writing – Email is OK
- Follow up on oral discussions with written clarification and confirmation

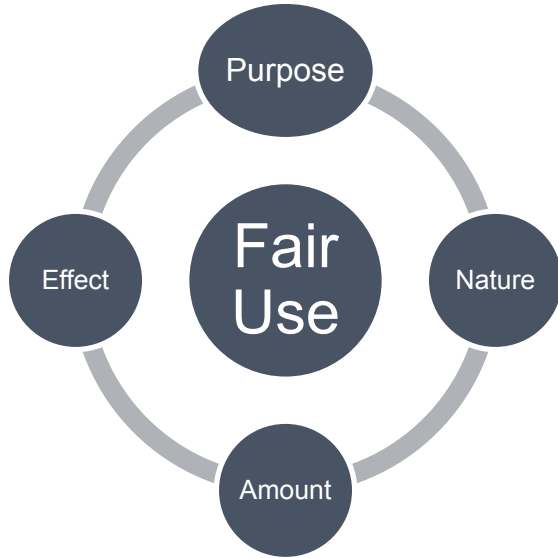
# Section 107: Fair Use

**//** *The fair use of a copyrighted work... for purposes such as criticism, comment, news reporting, teaching (including multiple copies for classroom use), scholarship, or research, is not an infringement of copyright.”*

# Copyright Is About Balance

- Fair use and use in education
- Some copying is good for socially useful purposes and society
- We create and consume copyrighted works





<b>Purpose</b>	<ul style="list-style-type: none"><li>• Transformative</li><li>• Commercial</li></ul>
<b>Nature</b>	<ul style="list-style-type: none"><li>• Fact/Fiction</li><li>• Published/Unpublished</li></ul>
<b>Amount</b>	<ul style="list-style-type: none"><li>• Quantity</li><li>• Quality</li></ul>
<b>Effect</b>	<ul style="list-style-type: none"><li>• Current market</li><li>• Potential market</li></ul>

All 4 factors are important

# Section 108: Reproduction for Archives/Libraries

## Who is covered?

Libraries and archives and any of their employees acting within the scope of their employment.

## What is permitted?

The isolated and unrelated copying and distribution of a single copy of a work.

## What works are covered?

Literary works. Coverage for other types of works depends on activity.



# Under what conditions?

1. The reproduction or distribution is made **without any purpose of direct or indirect commercial advantage**; and
2. Collections of the library/archive are (a) **open** to the public or (b) available to researchers affiliated with the institution and others doing research in a specialized field; and
3. Reproduction or distribution **includes copyright notice** that appears on work or legend stating work may be protected by copyright.

# Copyrighted Materials in Collections



Transfer



License



Statutory  
exception

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**Donor Agreements**

**eResource Licenses**

**Vendor Digitization Contracts**

# [Your Collections]

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Ethical Considerations

# Collections/collecting practices

- What is in your collection?
- Why do you collect this material?

# Collections/collecting practices

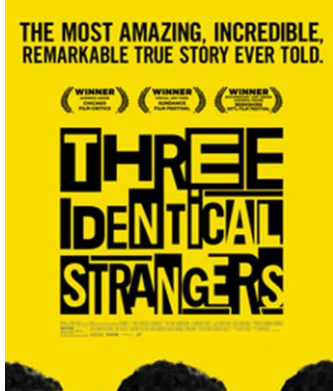
- Why do you collect?
  - Research
  - Education
  - Access
  - Preservation



# Issues to Consider:

- Intellectual Property Rights
- Privacy
- Moral Rights
- Cultural Heritage
- Ethics
- Research
- Repatriation

# Collections/collecting practices



Records from controversial twin study sealed at Yale until 2065



## Why These Early Images of American Slavery Have Led to a Lawsuit Against Harvard

Tamara Lanier claims the university has profited off the images of her ancestors

# Break

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# Collections/collecting practices

Outcry prompts withdrawal of Native American artifacts from Medford library auction



Medford  
Public  
Library



British Exhibitions of Ethiopian Manuscripts Prompt  
Questions About Repatriation

Stolen Artifacts Unwittingly  
Acquired By Boston Public Library  
Returned To Italy

# Collections, Ethics, and Re-use:

- Thoughtful Collecting and Labelling
- Digitization
- Preservation
- Conversations
- Community connections
- Context
- Repatriation
  - Digital/Physical
  - Limited/Restricted Access

# [Re-use]

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# Rights Holder Solutions: Creative Commons



**No rights reserved CC0**



**Attribution CC BY**



**Attribution-NoDerivs CC BY-ND**



**Attribution-NonCommercial CC BY-NC**



**Attribution-ShareAlike CC BY-SA**



**Attribution-NonCommercial-ShareAlike CC BY-NC-SA**



**Attribution-NonCommercial-NoDerivs CC BY-NC-ND**

# Non-Rights/Rights Holder Solutions



CC: Public Domain Mark

<https://localcontexts.org> ☆

## RIGHTS STATEMENTS

### Three Categories of Rights Statements

IN COPYRIGHT



Statements for works that are in copyright

NO COPYRIGHT



Statements for works that are not in copyright

OTHER



Statements for works where the copyright status is unclear

### Indigenous communities

reinforce rights by applying TK and BC Labels



Traditional Knowledge (TK) and Biocultural (BC) Labels establish Indigenous cultural authority and governance over Indigenous data and collections by adding **provenance** information and contextual metadata (including community names), **protocols**, and **permissions** for access, use, and circulation.

LEARN MORE >

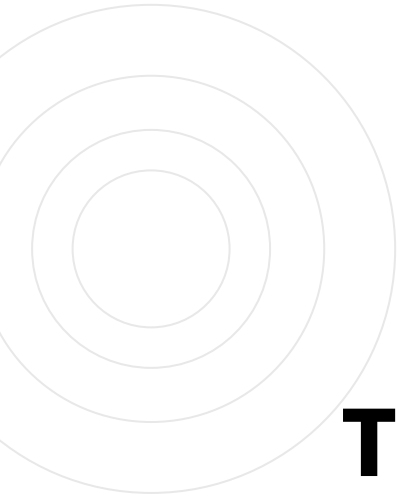
### Institutions and researchers

disclose interests by placing Notices

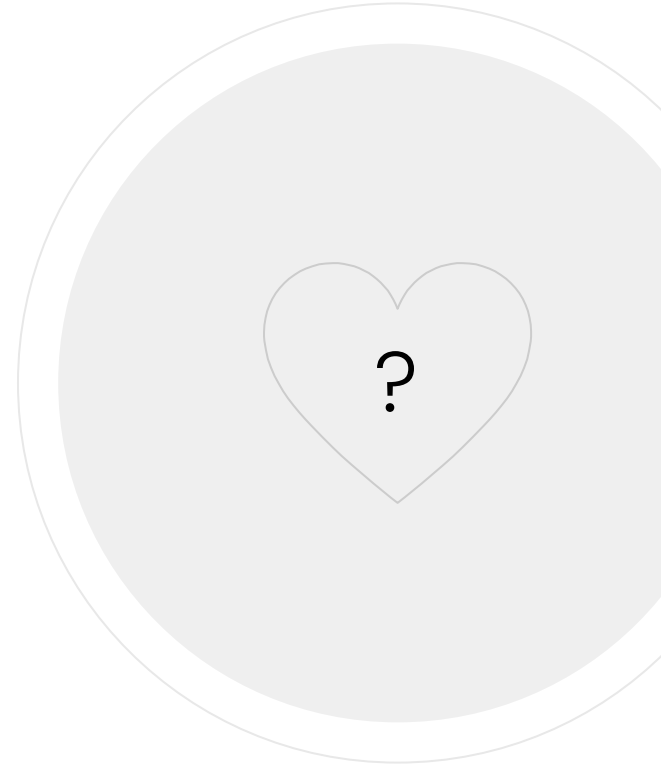


Notices are tools for institutions, repositories, and researchers to **support ethical use** and **reinforce relationships** with Indigenous communities. They also work to **educate the public** around Indigenous rights and interests in historical and future collections and data.

LEARN MORE >



**Thank you.**



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# Question + Answer

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Submit questions using Q&A box

# Wrap up:

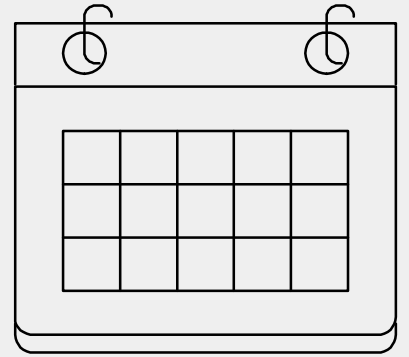
## Session 5: *Staffing & Budget*

**April 10**

2:00–3:30 PM ET

Register for all upcoming sessions:

[clir.org/hiddencollections/apply-for-an-award/](https://clir.org/hiddencollections/apply-for-an-award/)







# Thank you!

Please take a moment to complete a survey about this session.

Questions? [hidencollections@clir.org](mailto:hidencollections@clir.org)