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00:00:04.630 --> 00:00:27.019

Sharon Burney: Hi everyone, and welcome to the fourth webinar for those who've been invited to submit final applications to CLIR's *Digitizing Hidden Special Collections and Archives: Amplifying Unheard Voices* program this year. I'm Sharon Burney, program officer for the CLIR Grants team. And today's session will be focused on rights, ethics, and re-use.

2

00:00:33.330 --> 00:00:42.610

Jada Wright-Greene: Before we get started with introductions to the platform and our presenter for today's webinar, we want to launch a quick poll to gauge how you're feeling about today's topic.

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00:00:51.560 --> 00:00:54.330

Jada Wright-Greene: Thank you so much for filling out this poll.

4

00:01:01.660 --> 00:01:06.540

Jada Wright-Greene: Okay, thank you so much. It looks like we have pretty much everyone

5

00:01:06.640 --> 00:01:07.920

Jada Wright-Greene: that has

6

00:01:09.170 --> 00:01:11.210

Jada Wright-Greene: filled it out. Thank you so much.

7

00:01:23.450 --> 00:01:27.309

Jada Wright-Greene: Now, here are some notes about using Zoom during this session.

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00:01:27.340 --> 00:01:33.060

Jada Wright-Greene: A live transcript is being generated if you like to utilize it. To turn on this feature

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00:01:33.230 --> 00:01:37.890

Jada Wright-Greene: click the "CC" live transcript button at the bottom of your Zoom window.

10

00:01:37.980 --> 00:01:46.169

Jada Wright-Greene: Attendees will be muted throughout the presentation. However, you're welcome to use chat for general introductions and conversation.

11

00:01:46.260 --> 00:01:55.889

Jada Wright-Greene: If a chat box isn't already displaying on your Zoom screen, you can hover your mouse toward the bottom of the screen and open it manually.

12

00:01:56.140 --> 00:02:02.779

Jada Wright-Greene: In order to send a message to everyone, remember to change the default from "All panelists and hosts" to "Everyone."

13

00:02:03.370 --> 00:02:07.329

Jada Wright-Greene: We ask that you use a separate Q&A box to ask questions.

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00:02:07.410 --> 00:02:10.790

Jada Wright-Greene: This can be opened the same way as the chat box.

15

00:02:11.039 --> 00:02:22.719

Jada Wright-Greene: Because we have limited time together, please feel free to follow along with questions as they come in and upvote them to let us know that it would be helpful to you to have them answered live.

16

00:02:22.840 --> 00:02:30.860

Jada Wright-Greene: We will do our best to answer all of the questions live, but we will also share responses to the questions alongside the recording.

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00:02:31.140 --> 00:02:41.860

Jada Wright-Greene: This session is being recorded. The slides, Q&A, recording, and transcript will be available on the [Apply for an Award](#) page of our website in the next two weeks.

18

00:02:46.750 --> 00:03:10.619

Jada Wright-Greene: Before we move into our program content, we would like to center today's conversation by acknowledging that as residents of the US we are speaking to you from unceded land of many indigenous people. We recognize a longstanding history that has brought us to reside on this land, and we seek to have greater understanding of our place within the colonial history.

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00:03:10.750 --> 00:03:17.399

Jada Wright-Greene: We denounce any acts of terrorism, colonialism, and environmental disregard, both past and present.

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00:03:17.620 --> 00:03:31.590

Jada Wright-Greene: In particular, we would like to respectfully acknowledge and recognize the original and current caretakers of the land, water, and air where we live, and all indigenous people and all their ancestors and descendants.

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00:03:31.780 --> 00:03:44.570

Jada Wright-Greene: I am grateful to have the opportunity to live and work on their homelands, and ask you to join me in acknowledging all their communities, the elders, both past and present, as well as future generations.

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00:03:44.650 --> 00:03:55.900

Jada Wright-Greene: May this acknowledgement and our ongoing work demonstrate CLIR's commitment to beginning the process of working to dismantle the ongoing legacies of settler colonialism.

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00:03:56.090 --> 00:04:01.330

Jada Wright-Greene: If you haven't done so already, we'd love for you to introduce yourself in the chat

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00:04:01.390 --> 00:04:06.490

Jada Wright-Greene: and share a land acknowledgement for the area where you live, if you'd like.

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00:04:10.700 --> 00:04:23.250

Jane Larson (she/her): For today's session, our host will dig into rights, ethics, and re-use. We've allotted 90 min total for today, and the speaker will pause at the halfway point (at 2:45pm ET) for a quick break during their content.

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00:04:23.390 --> 00:04:31.659

Jane Larson (she/her): We're hoping for an engaging time of conversation around identifying rights and ethics and concerning in original materials, assessing risk,

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00:04:31.680 --> 00:04:36.089

Jane Larson (she/her): and determining appropriate access with creators and community in mind.

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00:04:36.250 --> 00:04:45.449

Jane Larson (she/her): The plan is to reserve about 25 min for Q&A near the end of this session. Both the session host and CLIR staff will be available to answer questions at that time.

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00:04:45.480 --> 00:04:51.780

Jane Larson (she/her): So while you may post questions throughout using the Q&A box, keep in mind that we won't get to every question as it's asked.

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00:04:51.800 --> 00:04:57.359

Jane Larson (she/her): Staff will be keeping track, and we'll circle back to any unanswered questions during the dedicated Q&A.

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00:04:59.980 --> 00:05:12.340

Jane Larson (she/her): In today's sessions, you'll learn more about the skills and strategies you need to complete the following application task: the project details- rights, ethics and re-use task along with upload rights, ethics and re-use appendices.

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00:05:20.630 --> 00:05:24.430

Sharon Burney: Now we're happy to turn things over to Sandra Enimil,

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00:05:24.620 --> 00:05:41.489

Sharon Burney: the Program Director for Scholarly Communication and Information Policy at Yale University Library. So we'll take just a few moments to let Sandra share her slides and get oriented, and as they do that, please remember that we'll be breaking for 5 min at the halfway point.

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00:05:41.590 --> 00:05:43.800

Sharon Burney: Approximately 2:45 PM.

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00:06:00.310 --> 00:06:04.510

Sandra Aya Enimil: Okay. Hello, everyone. I'm really happy to be here.

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00:06:04.870 --> 00:06:15.699

Sandra Aya Enimil: My name is Sandra Aya Enimil, and I've been Program Director for Scholarly Communication and Information Policy at Yale Library. I have also served the last few years as a grant reviewer

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00:06:15.990 --> 00:06:20.959

Sandra Aya Enimil: for many of the grant applications that come through for CLIR. And so

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00:06:20.980 --> 00:06:28.480

Sandra Aya Enimil: I wasn't able to participate in that way this year. So I'm happy that I was able to participate in another way, and I'm really grateful to be here.

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00:06:28.867 --> 00:06:33.392

Sandra Aya Enimil: Hopefully, we'll be able to get to many of your questions, but

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00:06:33.830 --> 00:06:46.660

Sandra Aya Enimil: and I'll do my best to hopefully, maybe answer them before you get to them. So we'll see. But, please, you know, feel free to start popping your questions in especially if something triggers a question as I'm going through my slides.

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00:06:51.070 --> 00:07:07.329

Sandra Aya Enimil: So today, we're going to talk about this very important section in the application, rights, ethics, and re-use, and going to go through what laws, what copyright laws, and what other types of rights and issues that might be of concern for some of the collections that you might have.

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00:07:10.480 --> 00:07:14.740

Sandra Aya Enimil: But first a little brief, short disclaimer.

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00:07:14.940 --> 00:07:16.500

Sandra Aya Enimil: I

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00:07:16.750 --> 00:07:38.260

Sandra Aya Enimil: am a lawyer, but I'm not your lawyer, so I'm providing information about legal topics and information so you can understand more about what things you might want to consider as you're putting together your application as you move forward and collecting items, as you want to digitize or preserve this content, things that you might want to think about and consider,

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00:07:38.410 --> 00:07:44.220

Sandra Aya Enimil: and hopefully things that will be helpful as you complete or are completing your applications for the grant.

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00:07:48.630 --> 00:08:07.349

Sandra Aya Enimil: Also, I like to make sure that we're all on the same page of what we're talking about. One of the main issues at play here would be, is, copyright law. But sometimes folks get things a little bit jumbled when they're thinking about intellectual property rights as a whole. And so I just want to make sure people know what space we're working in.

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00:08:07.350 --> 00:08:18.679

Sandra Aya Enimil: So trademark is the reason why you recognize certain brands. Why, you recognize the golden arches. Why, you recognize the price tag for Best Buy, the target for Target, like I have here.

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00:08:19.470 --> 00:08:33.889

Sandra Aya Enimil: Patents cover processes, new and useful discoveries, or improvements. And there are certain things that you might see, certain...a recipe could be covered by a patent. Certain ideas may be covered by patent

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00:08:34.080 --> 00:08:55.700

Sandra Aya Enimil: And trade secret are processes, formulas, and things that are not necessarily known, and maybe the secret to why your business is successful, and something that you wouldn't want others to be able to discern, even though, like now, with the Internet age, there's so many things that used to be a secret that we didn't know what it was. And now we do because somebody investigated or found out. And then they put it on the internet.

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00:08:56.880 --> 00:09:26.079

Sandra Aya Enimil: Copyright is the main focus of many of the things I'm gonna talk about today. But it is talking about the protection of the expression of ideas, expressions of original works of authorship that are fixed into a tangible means of expression. And so that's gonna be the main focus of what I talk about in terms of rights today. But I would be remiss if there weren't other

elements that might also come into play. So issues around privacy, cultural heritage are also things that I'm gonna touch upon today.

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00:09:29.570 --> 00:09:32.361

Sandra Aya Enimil: So there's a long history of copyright,

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00:09:33.040 --> 00:09:53.150

Sandra Aya Enimil: as many of you know. And we've talked through and talked about, with the land acknowledgement, that we are on a colonial property, and our history with copyright comes from the former colonizer of this country, which was the United Kingdom, England. And so 1710, we see the first copyright law Statute of Anne.

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00:09:53.160 --> 00:10:04.070

Sandra Aya Enimil: And this is a right that is created. So it's not a property right. It is something that is for people who are writing content so that they would have protection over their works

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00:10:04.280 --> 00:10:09.910

Sandra Aya Enimil: for a certain amount of time, and then at a time, that work, that protection would expire.

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00:10:09.970 --> 00:10:15.570

Sandra Aya Enimil: At the time, 1710, it was 14 years, and then another 14 years if the author was alive.

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00:10:15.850 --> 00:10:21.510

Sandra Aya Enimil: So this is like just an important little tidbit to keep in mind for later, because we're going to talk about what term is now,

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00:10:22.208 --> 00:10:27.410

Sandra Aya Enimil: and things that you might want to consider for the things that are in your collections, of understanding

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00:10:28.370 --> 00:10:38.319

Sandra Aya Enimil: when copyright term might expire, when you might have things that are in the public domain, and some of how that might impact your ability to do certain things with the content.

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00:10:38.580 --> 00:10:54.580

Sandra Aya Enimil: So this is also where the public domain is, comes from, because when rights expire, things go into the public, and are publicly made for others to be able to use as well in their creative endeavors. It's kind of creating this balance between authors and users of content.

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00:10:55.190 --> 00:11:00.100

Sandra Aya Enimil: In 1886, the Berne Convention came about as a copyright treaty.

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00:11:00.270 --> 00:11:01.460

Sandra Aya Enimil: That time

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00:11:01.520 --> 00:11:09.859

Sandra Aya Enimil: the US was established, had been established for over a century, but did not join the Berne Convention at this time, and we'll

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00:11:10.230 --> 00:11:11.999

Sandra Aya Enimil: get to that in just a moment.

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00:11:13.270 --> 00:11:15.150

Sandra Aya Enimil: In the United States.

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00:11:15.700 --> 00:11:17.090

Sandra Aya Enimil: One of the things that

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00:11:17.160 --> 00:11:26.039

Sandra Aya Enimil: the discussions that were happening around the time of independence from the colonization of England at the time, the United Kingdom as we know it now.

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00:11:27.190 --> 00:11:38.669

Sandra Aya Enimil: They had wanted to have a similar law to protect the rights of people who are creating content. And so essentially they looked at the Statute of Anne and said, "That looks good. Let's kind of use that."

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00:11:38.730 --> 00:11:47.699

Sandra Aya Enimil: And so we have a copyright law that goes into effect here in the United States in 1790. So one of the first acts that the

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00:11:48.060 --> 00:11:55.299

Sandra Aya Enimil: founders of the United States of America wanted to do was to make sure that there were protections in place for creators of

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00:11:55.560 --> 00:12:01.990

Sandra Aya Enimil: content at the time, mostly just thinking about people who made, authors who made books,

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00:12:02.120 --> 00:12:03.190

Sandra Aya Enimil: who made

72

00:12:03.539 --> 00:12:11.589

Sandra Aya Enimil: maps. So those were the kinds of things that they wanted to have copyright protection for, and make sure that those works were protected.

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00:12:13.270 --> 00:12:28.019

Sandra Aya Enimil: Again in the US it was the same thought process of having protections for creators, but also something that's available for the public. So the thought was that the creators would have an opportunity to have the rights for a certain amount of time,

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00:12:28.200 --> 00:12:56.899

Sandra Aya Enimil: and then, once that time expires, everyone is able to make use of that to build, to, to continue creativity moving because it was recognized even then, and it's recognized now that people have inspiration from all elements and aspects of creativity. So we might see something somewhere and be inspired by it. And then, in this case, when something goes into public domain, we can make use of it without having to pay for it. We can make use of it, because now copyright term has expired.

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00:12:59.220 --> 00:13:05.659

Sandra Aya Enimil: So just to go through some things that have happened in US copyright laws. So we have 1790. The first

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00:13:05.750 --> 00:13:11.379

Sandra Aya Enimil: copyright act. 1831, 1909, 1976, 1998.

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00:13:11.840 --> 00:13:31.260

Sandra Aya Enimil: More recently, 2018, 2020 things have happened. You can see that there's some large gaps there, some larger than others, and with each element in each time, in those earlier parts, like 1831 and 1909, 1976, more things came under copyright protection.

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00:13:31.280 --> 00:13:35.024

Sandra Aya Enimil: So you'll see that photography came in,

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00:13:35.740 --> 00:13:43.890

Sandra Aya Enimil: in 1831, 1909, we have film. And then there's all these elements and things that didn't have copyright protection before

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00:13:44.010 --> 00:13:47.070

Sandra Aya Enimil: with a new law now have copyright protection.

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00:13:47.390 --> 00:13:54.900

Sandra Aya Enimil: And 1976 is when we committed to fully join Berne Convention.

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00:13:54.930 --> 00:14:08.853

Sandra Aya Enimil: And once we joined the Berne convention, again, this is almost a hundred years after it had gone into effect, and again in an international convention, many other nations had joined prior to that we joined it, and so that made the life,

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00:14:09.420 --> 00:14:14.889

Sandra Aya Enimil: our copyright term life of the author plus 50 years. So that's the minimum

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00:14:15.730 --> 00:14:33.360

Sandra Aya Enimil: term that's available through the Berne convention. So most of what happens with this International Copyright Convention is that everyone is agreeing that people have, each country has their own individual copyright law, and everyone agrees that they will respect the rights that are afforded under each country's copyright laws.

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00:14:34.242 --> 00:14:37.239

Sandra Aya Enimil: Some other things of note that have happened recently.

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00:14:37.430 --> 00:14:48.560

Sandra Aya Enimil: Music Modernization Act, which is trying to align sound recordings with Federal protection. Prior to 1972 sound recordings were under state law,

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00:14:48.640 --> 00:15:01.640

Sandra Aya Enimil: and if you've ever tried to look up state copyright law, you can understand how difficult and challenging it could be to determine what rights are in play there. And so now this is, this was an attempt to get all of that protected under federal.

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00:15:01.910 --> 00:15:03.609

Sandra Aya Enimil: We also created a

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00:15:03.800 --> 00:15:06.690

Sandra Aya Enimil: public domain for sound recordings, as well.

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00:15:06.970 --> 00:15:13.159

Sandra Aya Enimil: 2020 brought a small claims tribunal. It's a voluntary tribunal which has

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00:15:13.744 --> 00:15:24.370

Sandra Aya Enimil: a limit of \$30,000 for mostly smaller creators, mostly like photographers who want to bring copyright claims, but are not able to do so at the federal level.

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00:15:27.750 --> 00:15:39.570

Sandra Aya Enimil: So I already mentioned a few things that can be copyrighted. There's an illustration here that shows audio, architecture, literature, video, film, choreography, music, drama, software,

93

00:15:39.770 --> 00:15:50.240

Sandra Aya Enimil: photographs, graphics, sculptures, these are things that are meant as a floor of things that can be copyrighted. There are things that may be not captured here that could still have copyright protection.

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00:15:50.771 --> 00:15:57.309

Sandra Aya Enimil: And the key is that this, whatever it is that is created, must be fixed in a tangible means of expression.

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00:15:58.060 --> 00:16:02.120

Sandra Aya Enimil: So right now this presentation is being recorded,

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00:16:02.440 --> 00:16:05.719

Sandra Aya Enimil: so the recording will have copyright protection.

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00:16:06.000 --> 00:16:18.090

Sandra Aya Enimil: The presentation itself is fixed in a Powerpoint so it also has copyright protection. And so these things all have copyright protection, and they're able to have copyright.

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00:16:18.280 --> 00:16:19.050

Sandra Aya Enimil: So

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00:16:20.190 --> 00:16:31.810

Sandra Aya Enimil: the important part and parts of this is to think about, you know, times when things do not have, they weren't recorded. They weren't fixed into a tangible means of expression. So if we were not recording this

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00:16:31.990 --> 00:16:43.160

Sandra Aya Enimil: there would be no copyright in me just speaking to you. The presentation would still have copyright, but there would be nothing that's copyrightable that had been, if it had not been recorded.

101

00:16:46.290 --> 00:16:51.819

Sandra Aya Enimil: As a creator of content, or as someone who is a

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00:16:52.450 --> 00:16:55.169

Sandra Aya Enimil: person entity that is

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00:16:55.400 --> 00:17:14.360

Sandra Aya Enimil: collecting content, it's good to know what types of rights are available to people who create content. So you have the right as a creator to reproduce, prepare derivative works, distribute that work, publicly display and perform, and also publicly perform via digital audio transmission.

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00:17:15.349 --> 00:17:28.379

Sandra Aya Enimil: So these rights are exclusive to creators, and these are rights that they can either transfer to others or license to others, they can authorize others to act on their behalf.

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00:17:28.450 --> 00:17:31.200

Sandra Aya Enimil: But as the rights holder, they are the first

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00:17:31.300 --> 00:17:39.280

Sandra Aya Enimil: person who is, who is, who has to be contacted, who has to be engaged in order to exploit any of these rights.

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00:17:39.860 --> 00:17:52.980

Sandra Aya Enimil: Things that are not protected by copyright, so works that are not fixed. As I mentioned before, ideas, facts, principles, discovery systems. So discoveries or systems could be covered under something else, but they can't be covered under copyright.

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00:17:53.130 --> 00:18:01.669

Sandra Aya Enimil: Works of the US government, produced by the government by government employees in the scope of their employment, cannot have copyright protection.

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00:18:01.840 --> 00:18:06.739

Sandra Aya Enimil: This can get a little tricky when you think about consultants, maybe working for the government. So

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00:18:06.960 --> 00:18:16.969

Sandra Aya Enimil: it'd be important to know, like, their role. If any of you are coming from government entities and some have anything that was created by

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00:18:17.550 --> 00:18:25.690

Sandra Aya Enimil: consultants, you want to check and see what the arrangements were for copyright for anything that was created by the consultant, because it doesn't automatically become

112

00:18:25.760 --> 00:18:29.550

Sandra Aya Enimil: in the public domain if they don't have that already in place.

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00:18:29.560 --> 00:18:35.700

Sandra Aya Enimil: And then things that are in the public domain, either because copy term is expired or formalities were not followed.

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00:18:37.360 --> 00:18:49.969

Sandra Aya Enimil: And I just like to pause here to talk about this slide from Dr. Kimber Thomas, who talks about what happens, what, what is, what we should think about when there are certain things that are not or cannot be covered by copyright.

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00:18:50.010 --> 00:19:13.840

Sandra Aya Enimil: So there's certain things like traditional knowledge, traditional cultural expressions, cultural designs, folk dance, those types of things that can't have copyright protection, and I mentioned them here because some of you may have things in your collections and things that you're wanting to submit for this grant that might fall into this that don't necessarily have copyright as the issue of concern. There may be other issues related to cultural heritage,

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00:19:14.080 --> 00:19:30.300

Sandra Aya Enimil: related to how you are making things available or making things accessible. But this is something that I always like to have people just think about in terms of copyright and what is protected and what is not, and it's not for me to say whether they should be or they shouldn't be. But

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00:19:30.310 --> 00:19:32.500

Sandra Aya Enimil: I like just like to have people think about that

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00:19:35.870 --> 00:19:52.050

Sandra Aya Enimil: To talk about the public domain. Many of you may not have things that are in the public domain, but in the event that you do, or you work elsewhere where that might be

important, it's important to know when the public domain might impact how you're able to use content in your collections.

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00:19:52.090 --> 00:20:01.239

Sandra Aya Enimil: So the public domain is, as a term of art, a legal term of art in copyright, and it doesn't mean publicly available.

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00:20:01.750 --> 00:20:10.030

Sandra Aya Enimil: So you're able to find something or find access to something online that is publicly available, it's not necessarily publicly in the public domain.

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00:20:10.050 --> 00:20:28.860

Sandra Aya Enimil: So if you find something, you know, on Facebook, something on Instagram, or wherever, what have you. You might still think, or you should think, that that item, that material may still be covered by copyright, even if you're not able to immediately determine who the rights holder is, or when it was created.

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00:20:28.980 --> 00:20:31.340

Sandra Aya Enimil: That work may still be covered by copyright.

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00:20:32.470 --> 00:20:41.800

Sandra Aya Enimil: I have an image here of Night of the Living Dead. It's an example that I like to give of when something goes into the public domain immediately.

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00:20:42.030 --> 00:20:55.979

Sandra Aya Enimil: This is because at the time this movie was created there was a requirement under US Copyright law, you saw all the different times that things changed in US Copyright law, there were different formalities that were in place here and there,

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00:20:56.220 --> 00:21:06.479

Sandra Aya Enimil: and at this time the formality was that there needed to be a copyright symbol with the name of the creator, producer in this case,

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00:21:06.540 --> 00:21:17.999

Sandra Aya Enimil: listed within the film. At the time when they released this film, they did not include a copyright notice. So the work went into the public domain immediately, because it needed to have that requirement in order not to.

127

00:21:21.870 --> 00:21:28.590

Sandra Aya Enimil: I also love sharing, sharing these images from the center for the study of the public domain at Duke,

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00:21:28.670 --> 00:21:35.200

Sandra Aya Enimil: that shows every year when content goes into the public domain due to the expiration of copyright.

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00:21:35.260 --> 00:21:41.099

Sandra Aya Enimil: You might, in some of the work that you do, may be used to hearing the number, the year

130

00:21:41.320 --> 00:21:42.949

Sandra Aya Enimil: 1923.

131

00:21:43.090 --> 00:21:52.619

Sandra Aya Enimil: In 1923, as in most things published before 1923, those works are in the public domain if it's published in the United States.

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00:21:53.280 --> 00:21:58.789

Sandra Aya Enimil: The year now is 1929. And if you look at the graphic, next year

133

00:21:59.080 --> 00:22:04.859

Sandra Aya Enimil: works from 1929 will be in the public domain and earlier. And then the year after that

134

00:22:05.170 --> 00:22:20.820

Sandra Aya Enimil: works from 1930 will go into the public domain and on and on and on. And it was going to go on this system until it catches up with our current copyright practices. So current copyright practices under the Berne Act as part of our joining the Berne Convention.

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00:22:21.080 --> 00:22:39.290

Sandra Aya Enimil: Certain things like formalities like having to register your copyright, having to renew copyright, having to have a circle C, with your name and information as a copyright statement, those certain formalities are no longer in place for the Berne Convention. They removed the formalities.

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00:22:39.320 --> 00:22:42.609

Sandra Aya Enimil: These are all things that you can still do and continue to do.

137

00:22:42.690 --> 00:22:45.480

Sandra Aya Enimil: But you don't have to in order to have protection.

138

00:22:49.650 --> 00:22:54.400

Sandra Aya Enimil: So trying to figure out when something falls in the public domain can definitely be challenging.

139

00:22:55.190 --> 00:23:04.990

Sandra Aya Enimil: So now, as I mentioned, anything published in the US prior to 1929, so anything from 1928 and earlier is in the public domain in the United States.

140

00:23:05.953 --> 00:23:09.490

Sandra Aya Enimil: But there is what I refer to as a

141

00:23:09.780 --> 00:23:18.962

Sandra Aya Enimil: kind of black hole period, 1929 to 1977, where there are a lot of different things that are in play. A lot of different

142

00:23:19.850 --> 00:23:48.620

Sandra Aya Enimil: formalities that are kind of working together, going together where you needed to register, you needed to renew. You needed to have notice. You need to have this, a lot of things that were happening at that time. And so how you would figure out between 1929 and 1977 what's happening with content if you, if you have things in your collections from this time period, and you want to know, is this stuff in the public domain or not? You would have to do some research to try to figure out, like, did they follow whatever formality was in place at the time.

143

00:23:49.590 --> 00:24:04.767

Sandra Aya Enimil: 1978 to 1989 there are some other conditions that are applying. We are trying to make sure that we're in line for joining the Berne convention. We're also, there's also some other issues that are happening as well where

144

00:24:05.310 --> 00:24:22.339

Sandra Aya Enimil: there was a, you know, thinking about making sure that we're able to do this. We also wanted to change terms from what the Berne Convention has as a minimum. So now our term for US copyright law is the life of the author plus 70 years. So

145

00:24:22.510 --> 00:24:29.590

Sandra Aya Enimil: then, some other research needs to be done for that time period. And then March 1, 1989. We are on

146

00:24:29.770 --> 00:24:32.110

Sandra Aya Enimil: the schedule for Berne,

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00:24:32.550 --> 00:24:35.250

Sandra Aya Enimil: where there are no formalities that are required.

148

00:24:35.320 --> 00:24:47.789

Sandra Aya Enimil: It's life of the author, plus 70 years corporate or anonymous or student. Anonymous authorship is 95 years, or 120 years from creation, whichever is first. So there's, you know, a lot of things to think about

149

00:24:47.840 --> 00:24:58.719

Sandra Aya Enimil: Things that are after 1989 are a lot more straightforward because we're now fully part of Berne, and we can move forward in that way to know what the term of copyright is.

150

00:25:01.200 --> 00:25:17.759

Sandra Aya Enimil: Who is an owner can sometimes be a little more complicated than you would think it would be. Usually it is the author who creates that work. They would be the copyright owner, but an exception to that is, works made for hire. So when people are doing work as part of their job

151

00:25:18.179 --> 00:25:27.399

Sandra Aya Enimil: or part of a contract, they've been hired to do a certain thing, that work may belong to the person who commissioned the work or their employer

152

00:25:27.770 --> 00:25:40.750

Sandra Aya Enimil: In academia, for any of you who are coming from academic spaces, there's also an exception to the exception. Because in most academia, due to wanting to have freedom of expression for faculty members,

153

00:25:40.950 --> 00:25:46.819

Sandra Aya Enimil: most institutions either outright give back copyright to

154

00:25:46.840 --> 00:25:53.310

Sandra Aya Enimil: they're faculty authors, or they never make a claim towards copyright for faculty scholarship.

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00:25:53.320 --> 00:26:08.919

Sandra Aya Enimil: And this is really due to wanting the faculty to do and write about whatever they'd like to write about, but also because they don't need to then manage any of the rights. They don't need to manage their publications or anything like that, and the faculty members are able to do that.

156

00:26:09.980 --> 00:26:15.929

Sandra Aya Enimil: Copyright can be held jointly. You can do transfers or assignments of specific rights or all rights.

157

00:26:16.040 --> 00:26:22.339

Sandra Aya Enimil: It can be impacted by institutional policy. So, knowing what your institution says about that is important to know.

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00:26:22.700 --> 00:26:26.050

Sandra Aya Enimil: One thing to really to point out as well is

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00:26:26.490 --> 00:26:30.990

Sandra Aya Enimil: ownership of copyright is distinct from the ownership in the material object.

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00:26:31.110 --> 00:26:37.879

Sandra Aya Enimil: So in some of your collections you have the physical item that does not mean that you have copyright.

161

00:26:38.910 --> 00:26:56.640

Sandra Aya Enimil: So you wanna understand who is the rights holder if it's not you. And then, if you have been donated items where you were, maybe the rights were also donated to you. What are the limitations? What's the explanation? What's the information about those rights that were donated to you? And how are you managing

162

00:26:57.011 --> 00:26:59.260

Sandra Aya Enimil: those rights if they were donated as well?

163

00:27:04.180 --> 00:27:11.620

Sandra Aya Enimil: So we talked about this, but copyright is automatic. It comes, you receive protection as soon as something is fixed

164

00:27:11.650 --> 00:27:25.109

Sandra Aya Enimil: into a tangible means of expression. Under our current system, you need to do something in order not to have copyright. So you need to say, I disclaim all my rights. You can use systems like creative commons, which has a

165

00:27:25.472 --> 00:27:33.379

Sandra Aya Enimil: CC0, which is not a license. It's just a badge you can put on to say that you're disclaiming rights in that content.

166

00:27:33.530 --> 00:27:54.540

Sandra Aya Enimil: You can also put markings to say that this is when you own copyright in that material, this is something that you can do. You can also, as I said, you can follow certain formalities if you're interested in copywriting something that you created and you own the rights to, you can register that copyright. You can also put Circle C if that's helpful or useful for you.

167

00:27:57.370 --> 00:28:07.559

Sandra Aya Enimil: We talked about the duration, the copyright here, but I want to talk also about duration for sound recordings. For some of you, this may be important to think about.

168

00:28:07.830 --> 00:28:10.859

Sandra Aya Enimil: So with the Music Modernization Act, part of the

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00:28:11.421 --> 00:28:14.130

Sandra Aya Enimil: this new act brought in

170

00:28:14.740 --> 00:28:26.349

Sandra Aya Enimil: sound recordings to try to provide some information about the public domain, and also the terms of copyright, and so establishing that was really important. And it was,

171

00:28:26.750 --> 00:28:51.849

Sandra Aya Enimil: really awesome that this year is the first year 1923 and earlier sound recordings are in the public domain. And so you can see from the chart here that there are some tiers to when these works will eventually go into the public domain. Again, once this is done, they should be caught up to be with a part of the regular system that we're on now, which again, is the life of the author plus 70 years.

172

00:28:55.180 --> 00:28:57.789

Sandra Aya Enimil: So all of this to say,

173

00:28:58.490 --> 00:29:03.220

Sandra Aya Enimil: fix and tangible means of expression, you can have copyright protection.

174

00:29:03.410 --> 00:29:09.590

Sandra Aya Enimil: You own the work unless it's created as work for hire, where it belongs to you unless you transfer that work.

175

00:29:09.780 --> 00:29:16.029

Sandra Aya Enimil: Things that are in digital form on the internet are also tangible, this is covered by copyright,

176

00:29:16.170 --> 00:29:22.010

Sandra Aya Enimil: and rights, it seems longer, much longer than 14 years at this time, but they do eventually end.

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00:29:24.490 --> 00:29:28.990

Sandra Aya Enimil: So now to talk about using materials in your collections.

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00:29:30.400 --> 00:29:57.089

Sandra Aya Enimil: There are several copyright sections that aid cultural heritage institutions. Some of you may be familiar with Fair Use, Section 107. Reproduction for Library, Section 108. First Sale Doctrine, which allows libraries to function in being able to purchase and loan out materials for others to use. Classroom Display and Performance, which allows the use of copyrighted materials in

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00:29:58.420 --> 00:30:09.270

Sandra Aya Enimil: face-to-face, academic or teaching settings, or in certain very limited circumstances, online distance learning circumstances.

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00:30:11.170 --> 00:30:34.409

Sandra Aya Enimil: So why does this matter? There are criminal and civil penalties for this work and art. I hate to be the heavy here, but you know it is important to think about, especially as some of this content you might be interested in making available online, openly, or or even through authenticated services. But you might want to think about these things and think about how you're using the content created by other people.

181

00:30:38.450 --> 00:30:49.430

Sandra Aya Enimil: The context of the use matters. So I mentioned this Section 110, which is the classroom and teaching exception. So when you're face-to-face in teaching a class,

182

00:30:49.510 --> 00:31:08.780

Sandra Aya Enimil: if I were in the same room with you all, I could do all kinds of things. I could show you a film. I could show you books. I could even perform Beyonce or something (you wouldn't want to hear me perform Beyonce). But I could, right, because we're in a face-to-face session. But because we're actually not face-to-face, we're together digitally,

183

00:31:08.820 --> 00:31:13.839

Sandra Aya Enimil: there are a lot of limitations on what I can actually do in this space with you.

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00:31:14.230 --> 00:31:15.990

Sandra Aya Enimil: And this is due to

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00:31:16.060 --> 00:31:36.250

Sandra Aya Enimil: copyright law and due to the limitations of how we're able to make content available to others. So again, like I mentioned, if you're planning to make things available through the internet, if you're planning to even make things available, maybe not openly, but through a closed service, there's still considerations that you want to think about, and how you might be able to do that.

186

00:31:39.090 --> 00:31:41.750

Sandra Aya Enimil: You can always ask for permission

187

00:31:42.280 --> 00:31:43.899

Sandra Aya Enimil: from the rights holder.

188

00:31:44.010 --> 00:31:53.139

Sandra Aya Enimil: So figure out who the rights holder is, and remember you want to think about is it the person who created it? Is it their employer? Is it someone else?

189

00:31:53.727 --> 00:32:07.879

Sandra Aya Enimil: And then think about what it is that you want to do with the content. Do you want to put it in a book? Do you wanna put it in, you know, on a disk, you wanna put it on a blog? What is it that you're trying to do?

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00:32:07.890 --> 00:32:10.690

Sandra Aya Enimil: And if you're able to have

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00:32:10.730 --> 00:32:14.550

Sandra Aya Enimil: verbal conversations with the rights holder, the appropriate rights holder,

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00:32:14.800 --> 00:32:18.039

Sandra Aya Enimil: you might want to try to make sure that you get that in writing.

193

00:32:18.390 --> 00:32:20.179

Sandra Aya Enimil: Sending an email to say,

194

00:32:20.260 --> 00:32:31.539

Sandra Aya Enimil: just to recap what we talked about, you are allowing me to do XY, and Z with your content. I just want to lay out here what it is that I'm planning to do and to make sure that people,

195

00:32:31.953 --> 00:32:37.900

Sandra Aya Enimil: that the user, the creators of the content understand what it is that you want to do with their materials.

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00:32:38.030 --> 00:32:47.199

Sandra Aya Enimil: So now I'm going to go into fair use, which again, many of you may be familiar with already. So fair use, Section 107 of US Copyright law,

197

00:32:47.510 --> 00:33:00.070

Sandra Aya Enimil: says that using 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.

198

00:33:00.360 --> 00:33:02.759

Sandra Aya Enimil: So this is the language that's in the statute.

199

00:33:02.840 --> 00:33:06.220

Sandra Aya Enimil: And it is basically saying, and again, this is meant to be

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00:33:06.300 --> 00:33:13.459

Sandra Aya Enimil: the minimum of things that people can do if they can make a fair use case to use other people's content, is to think about

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00:33:14.218 --> 00:33:36.360

Sandra Aya Enimil: how you're using this work. So there's criticism, there's comment, news reporting, teaching. There's active engagement with how you're working with this content. So some of you may be using materials to build exhibitions or build other types of work that are telling a compelling story that are commenting on elements of this material, this content

202

00:33:36.530 --> 00:33:46.109

Sandra Aya Enimil: or that is building a story about something. And so you might want to think about - does fair use apply to what you're planning to do, what your intention is with the materials?

203

00:33:47.860 --> 00:33:57.839

Sandra Aya Enimil: We talked earlier about the balance that's there in copyright law. So the balance between users and creators of content in education.

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00:33:57.960 --> 00:34:06.800

Sandra Aya Enimil: Many, many of us who are, you know, in education and libraries, in archives and museums, rely on fair use fairly heavily.

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00:34:07.950 --> 00:34:14.769

Sandra Aya Enimil: Fair use for scholarship, fair use for creating exhibitions for work and research.

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00:34:15.020 --> 00:34:16.839

Sandra Aya Enimil: These are all things that are

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00:34:16.880 --> 00:34:29.929

Sandra Aya Enimil: elements that are kind of second nature to the work that we're doing. We're working with content that belongs to others, but we're also wanting to engage with it to be in conversation with some, with some of this content.

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00:34:35.929 --> 00:34:42.169

Sandra Aya Enimil: When thinking about fair use, there are 4 factors, and these factors are stated in the

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00:34:43.090 --> 00:34:52.250

Sandra Aya Enimil: US Copyright law. You can find it in Section 107. It goes through the 4 factors that are the purpose of the use. What are you doing with this material?

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00:34:52.739 --> 00:34:54.630

Sandra Aya Enimil: And then there is a

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00:34:54.659 --> 00:34:56.530
Sandra Aya Enimil: fairly recent,

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00:34:57.180 --> 00:35:08.239

Sandra Aya Enimil: it's getting to be, maybe not so recent, but in the scheme of things I think it's still safe to say, fairly recent notion around transformativeness.

213

00:35:08.660 --> 00:35:22.550

Sandra Aya Enimil: And so this is using this content for a completely different purpose than the original author may have used it for. And so courts, when they have been called to question about whether something is fair use, have looked to see-

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00:35:22.820 --> 00:35:28.559

Sandra Aya Enimil: Is this transformative? Is this a totally different, maybe unanticipated use of this content?

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00:35:28.930 --> 00:35:32.900

Sandra Aya Enimil: And then for the nature of the work, what type of work is it?

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00:35:32.970 --> 00:35:41.669

Sandra Aya Enimil: Courts have looked more favorably on things that are more fact-based, and more favorably on things that are published versus unpublished.

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00:35:42.450 --> 00:36:11.559

Sandra Aya Enimil: But that doesn't mean that some of these things cannot be fair use. But this is where we've seen courts look more favorably. And then for the amount courts are looking at the quantity and the quality of the use. So, they're looking at it in relation to the purpose. So are you only using the amount that you need to fulfill the purpose that you have, and if that purpose is transformative, that does weigh well, or make a good case for you for fair use.

218

00:36:12.000 --> 00:36:13.150

Sandra Aya Enimil: Lastly,

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00:36:13.280 --> 00:36:17.110

Sandra Aya Enimil: there's market harm or potential market harm.

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00:36:17.880 --> 00:36:43.400

Sandra Aya Enimil: So could your use have some kind of impact on the creator, and their ability to exploit or make money off of the content that they've created. So would whatever you're doing, your intention if you're planning to make something available, is the creator also in that same space? Are they doing the same things, and could your use and how you're making the work available have some impact on them?

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00:36:46.460 --> 00:36:48.750

Sandra Aya Enimil: This next one, Section 107

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00:36:49.140 --> 00:36:53.489

Sandra Aya Enimil: is a right that's available for everyone to make use of. Section 108

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00:36:53.650 --> 00:37:03.179

Sandra Aya Enimil: is a right that's only available to archives and libraries. Museums are not included for section 108, and this deals with reproduction.

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00:37:03.890 --> 00:37:08.830

Sandra Aya Enimil: And so you might think of making copies for folks like

225

00:37:09.436 --> 00:37:13.730

Sandra Aya Enimil: making complete copies of content for folks.

226

00:37:13.840 --> 00:37:22.529

Sandra Aya Enimil: Section 108 and Section 107 can work together. So you can rely on fair use and Section 108, if you're a library or archive.

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00:37:22.630 --> 00:37:29.420

Sandra Aya Enimil: And the important parts of being able to rely on this is that you are open to the public

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00:37:30.516 --> 00:37:32.340

Sandra Aya Enimil: and that you are

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00:37:34.590 --> 00:37:36.880

Sandra Aya Enimil: not aware of any

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00:37:37.070 --> 00:37:40.660

Sandra Aya Enimil: possibility that there is going to be a commercial

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00:37:40.790 --> 00:37:41.930

Sandra Aya Enimil: or

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00:37:42.330 --> 00:38:07.619

Sandra Aya Enimil: commercial use to this. So the person has asked you to make a copy of something, or they've asked you for ILL, or they've come to you and said that they need a full copy of something you have to. You're able to do this only under certain conditions, and I'm not going to go into all of the conditions that are there. But suffice to say that there are a lot of things that you need to investigate before you can provide a full copy of something to someone.

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00:38:07.630 --> 00:38:15.570

Sandra Aya Enimil: But there is a possibility that you might be able to do that. So if you're working in a library or archive, this might be useful information for some of the work that you might do.

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00:38:19.370 --> 00:38:21.759

Sandra Aya Enimil: Within archives or

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00:38:22.100 --> 00:38:29.510

Sandra Aya Enimil: library collections, museum collections, as well, we have content that is impacted by donor agreements.

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00:38:29.530 --> 00:38:46.530

Sandra Aya Enimil: We have eResource license content. We also have vendors who come to us, wanting to digitize some of the content that we have. So there could be other things that might complicate your use of materials. So if you have things in your collections that might be impacted by

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00:38:46.870 --> 00:39:00.630

Sandra Aya Enimil: what the donor says when they have given this item to you, or it might be impacted by a license, you might want to think about like how you can mitigate those issues or concerns.

238

00:39:01.240 --> 00:39:02.760

Sandra Aya Enimil: Or if you cannot.

239

00:39:03.020 --> 00:39:28.300

Sandra Aya Enimil: If you made an agreement, let's say, with a vendor to come in and digitize some of your works, and they've just told you. Oh, we will clear copyright. We'll clear these other issues. You just let us come in and digitize whatever they want to digitize. Now you want to come and do something else with that material with this impact, the contract that you have with that vendor, that you've said that they could do this. And now you are doing it. So you might want to think about that as well.

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00:39:29.200 --> 00:39:38.030

Sandra Aya Enimil: If there's any material that you know also might be impacted by eResources license that you have as well, you might want to think about whether there's any

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00:39:38.160 --> 00:39:43.339

Sandra Aya Enimil: need or concern that could be addressed by what you intend to do.

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00:39:48.030 --> 00:40:01.369

Sandra Aya Enimil: So now we've talked about copyright and the impact of what particular agreements might have, how you might use materials in your collections. I want to talk for a little bit about

243

00:40:01.720 --> 00:40:05.639

Sandra Aya Enimil: what's in your collections and why you collect that material.

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00:40:19.580 --> 00:40:33.660

Sandra Aya Enimil: So I imagine for some of you, you're collecting for a multiple of reasons, like not everything is, you know, an issue, or problematic or troubling, but some things may be donor driven or mission driven.

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00:40:33.910 --> 00:40:40.929

Sandra Aya Enimil: And maybe it is for research or education. A lot of reasons why you might come to collect the things that you collect.

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00:40:40.940 --> 00:40:47.079

Sandra Aya Enimil: But when you're collecting these items as part of the collection practice that you might be taking on,

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00:40:47.210 --> 00:40:49.289

Sandra Aya Enimil: you might want to also think about

248

00:40:50.540 --> 00:41:07.099

Sandra Aya Enimil: possible intellectual property rights and not just copyright here. So there may be things that have patent protection, or things that might implicate or indicate brands, or some kind of thing that might be inclusive, where you might want to think about privacy

249

00:41:07.120 --> 00:41:16.829

Sandra Aya Enimil: and what kind of materials are being collected. If you have material that belongs to indigenous communities or marginalized communities,

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00:41:16.870 --> 00:41:29.089

Sandra Aya Enimil: how might they react to whatever your plans are with this grant, and what you intend to do with the digitized content there? Would they have concerns about that material and what's happening with it?

251

00:41:39.650 --> 00:41:42.879

Sandra Aya Enimil: There are, you know, many things, and I'm familiar with

252

00:41:42.910 --> 00:42:08.449

Sandra Aya Enimil: you know, at least a few places that have uncomfortable items in their collections. And then there's the decision and determination of what can be done, what can happen with this material? So the examples that I have here are records from a twin study. Some of you may have seen this documentary from a few years ago. Three identical strangers, research project that was done on

253

00:42:09.090 --> 00:42:10.569

Sandra Aya Enimil: multiple birth

254

00:42:11.490 --> 00:42:15.450

Sandra Aya Enimil: families where they separated twins and triplets

255

00:42:15.530 --> 00:42:18.309

Sandra Aya Enimil: to test out nature versus nurture.

256

00:42:18.370 --> 00:42:23.689

Sandra Aya Enimil: Which sounds, you know, very wild right now, but they did it.

257

00:42:23.710 --> 00:42:36.349

Sandra Aya Enimil: And these records are now at Yale, so you know, then, not to say like, this is the wildest thing at Yale. I'm not saying that, but I'm just, you know, pointing out that there are things that we have in our collections that we that

258

00:42:36.490 --> 00:42:45.789

Sandra Aya Enimil: we have to be careful with these items. We don't want this material, these records to be made available while people are still alive

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00:42:46.050 --> 00:42:54.580

Sandra Aya Enimil: where they could be impacted by some of the information that's contained within them. And maybe some of these things are also in your collections, as well.

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00:42:54.840 --> 00:42:55.725

Sandra Aya Enimil: Another

261

00:42:56.810 --> 00:43:00.540

Sandra Aya Enimil: case that I have up here are these images

262

00:43:00.810 --> 00:43:22.369

Sandra Aya Enimil: from Harvard, which contains images of enslaved people. This is one of the images, and then the second image is of someone who is a descendant of the enslaved folks, and she wanted to, she made a claim against Harvard to say that these belong to her. The images belong to her, and she wanted to have them back.

263

00:43:22.730 --> 00:43:31.130

Sandra Aya Enimil: And so Harvard had to deal with that. And they're still still dealing with that. And so this is just, I'm gonna take a pause here to

264

00:43:31.530 --> 00:43:40.339

Sandra Aya Enimil: I'm thinking about what we're collecting and how we're collecting things, because I know we have the break coming up so I can. I can pause here, and then we can come back to that.

265

00:43:43.880 --> 00:43:48.120

Sharon Burney: That sounds good. I'll put on the break if you wanna stop screen sharing.

266

00:43:48.130 --> 00:43:50.129

Sharon Burney: I'll go to the break. Thank you.

267

00:43:54.040 --> 00:44:00.159

Sharon Burney: Okay, we're gonna get back. It's 2:49 now, and we'll finish up our presentation.

268

00:44:03.940 --> 00:44:05.440

Sharon Burney: There you go, Sandra.

269

00:44:20.600 --> 00:44:25.649

Sandra Aya Enimil: Sorry it took me a minute to find a mute button. Okay, so

270

00:44:26.570 --> 00:44:33.100

Sandra Aya Enimil: when we left off, we were talking about collections and collecting practices and and what it might mean

271

00:44:33.110 --> 00:44:36.970

Sandra Aya Enimil: for you and your collections. And so I'll go to

272

00:44:37.690 --> 00:44:39.110

Sandra Aya Enimil: my next slide

273

00:44:39.740 --> 00:44:42.419

Sandra Aya Enimil: still on the same topic of

274

00:44:43.670 --> 00:44:49.809

Sandra Aya Enimil: what types of things that you have in your collections, and if there needs to be concerns for you about

275

00:44:50.441 --> 00:45:06.959

Sandra Aya Enimil: how you might be able to fulfill the needs of this grant, and also fulfill the needs of your mission if you have things that may be impacted by some of the issues that I've highlighted here of why you're collecting certain things. What sort of things might be in your

276

00:45:06.960 --> 00:45:21.429

Sandra Aya Enimil: collections. What things that might be of interest to you in either preserving, digitizing, making more widely available, and what you should be thinking about in terms of the ability to do that.

277

00:45:24.220 --> 00:45:34.309

Sandra Aya Enimil: So some of the things I highlighted before are thinking about, of course, intellectual property rights, particularly copyright with them, with a lot of the things that you might be

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00:45:34.340 --> 00:45:43.719

Sandra Aya Enimil: wanting to make available or digitize or preserve, but also thinking about thinking forward in things that you might be collecting now.

279

00:45:44.310 --> 00:46:04.810

Sandra Aya Enimil: That may perhaps not be subject to this particular grant or this time, but how you might go move forward and thinking about what what you're collecting, how you're labeling the things that you collect, how you're talking about some of the things and engaging with what you have in your collections, for items that you have,

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00:46:05.460 --> 00:46:12.300

Sandra Aya Enimil: excuse me, for items that you might have where your organization is not necessarily part of the community.

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00:46:12.460 --> 00:46:21.570

Sandra Aya Enimil: How are you engaging the community and conversation? How are you connecting to them to determine how this work should be dealt with? Managed?

282

00:46:22.168 --> 00:46:24.709

Sandra Aya Enimil: Particularly this is important for

283

00:46:25.520 --> 00:46:29.719

Sandra Aya Enimil: marginalize communities, people of color,

284

00:46:30.060 --> 00:46:47.180

Sandra Aya Enimil: indigenous communities that may have items that are within your collections where you maybe don't have a connection with them. How do you make that connection? How do you talk to those communities, organizations and groups that might be represented about what it is that you want to do.

285

00:46:48.030 --> 00:46:51.285

Sandra Aya Enimil: And then also, there's an idea around

286

00:46:51.940 --> 00:47:03.650

Sandra Aya Enimil: shared caretaking of this material and content or repatriation of the content, and what that might mean. So you are preserving, digitizing this material

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00:47:03.650 --> 00:47:25.429

Sandra Aya Enimil: with the idea of maybe sharing in upkeep and care of this or sharing with the community to say. Okay, we will have a digital representation of this, but we're giving you the physical item back. These are things that are happening now in our communities and cultural heritage institutions. and it might be something that you might want to think about. You also want to think about how,

288

00:47:25.770 --> 00:47:44.799

Sandra Aya Enimil: you know, just because you're digitizing or preserving content doesn't necessarily mean that then that material should be or can be made available online, there may still be a need to have restricted access, limited access to this content, maybe it's only to the community that it belongs to.

289

00:47:44.820 --> 00:48:11.609

Sandra Aya Enimil: Maybe it's only to, if you're at an institution, it's only to the institution, and people have to come to your institution to be able to interact and see this material. But what's important is that you are, have the ability, you've preserved it and people, if they want to engage with it, it won't be made available online. They have to come and see it in person, and that might be something that you think about. It might be something that's important for your organization as part of your mission. It might be important for the community where this content represents.

290

00:48:12.530 --> 00:48:23.619

Sandra Aya Enimil: So you might want to think about that. Are you willing to do this and have this behavior? Have these conversations and some of the things that you have within your collections?

291

00:48:29.650 --> 00:48:47.399

Sandra Aya Enimil: I want to move in for the last few minutes to talk about re-use of this material that you have in your collections, and how you might make it available if you have the opportunity, or if it makes sense, to do for your collection how you might make it available online, and how you might want to communicate issues around rights.

292

00:48:51.940 --> 00:49:05.139

Sandra Aya Enimil: Some of you may be familiar, if not super familiar with creative commons. It is a rights holder solution for a rights holder to be able to communicate with others on how people can make use of their content.

293

00:49:05.180 --> 00:49:16.080

Sandra Aya Enimil: So going from the top to the bottom are least restrictive to most restrictive options under creative commons. The first one I alluded to earlier. It is,

294

00:49:16.980 --> 00:49:30.199

Sandra Aya Enimil: excuse me, if there's something that a rights holder can do which is to disclaim rights, so you could put this badge on to say, I am not reserving any rights in this content. It is available for anybody to use however they want to use it.

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00:49:31.660 --> 00:49:34.419

Sandra Aya Enimil: And then the rest of the the

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00:49:35.377 --> 00:49:48.629

Sandra Aya Enimil: options that you see there are licenses. So from the CC BY license down to the CC BY NC, ND, SA license, those are licenses that communicate

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00:49:48.740 --> 00:49:49.730

Sandra Aya Enimil: that

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00:49:49.940 --> 00:49:56.659

Sandra Aya Enimil: you can use this content, but you have to use it in the particular ways that I am explaining to you as the rights holder.

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00:49:56.900 --> 00:50:26.349

Sandra Aya Enimil: So someone who may come upon content will say, oh, so this is creative commons, let me go and look and see what non commercial means, what share alike means, what no derivative means. And so they can make use of that content. So it's important to note here that only a rights holder can use any of these options. If you don't own the content that's in your collections, meaning the copyright, not the physical item, you don't own the copyright in that content, you're not able to make use of these things. So

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00:50:26.600 --> 00:50:38.879

Sandra Aya Enimil: if there's material that's been transferred to you, that these are options that are available to you, if there is content that you create it yourself that's a part of the collections that you have,

301

00:50:38.950 --> 00:50:47.180

Sandra Aya Enimil: you can determine how you want to make use of that, or your organization can determine how they want to share things for which they own copyright.

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00:50:50.470 --> 00:51:04.670

Sandra Aya Enimil: So there are non rights and rights holder solutions here on this slide. So this is the public domain mark. This is another badge from creative commons, where cultural heritage institutions,

303

00:51:05.100 --> 00:51:16.169

Sandra Aya Enimil: if they are aware of something, they know that it's in the public domain. Maybe it's just it's so old that it more than likely is in the public domain. They can use this mark on things where they are not

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00:51:16.240 --> 00:51:23.119

Sandra Aya Enimil: the rights holder. They did not create the content, but they believe it to be in the public domain. They can use public domain on that.

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00:51:23.210 --> 00:51:44.130

Sandra Aya Enimil: Again, this does involve, you know, probably doing some research if you're looking for something that's within the twentieth century. And you're thinking about that black hole period that I talked about of 1929 to 1977, where you did the research, you figured out that they didn't do the formality that they need. This work is in the public domain.

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00:51:44.270 --> 00:51:47.260

Sandra Aya Enimil: You might want to see if you could use this public domain mark.

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00:51:47.670 --> 00:51:57.030

Sandra Aya Enimil: What I've seen, though, mostly is that people use it for things that are very clearly in the public domain. So items from the 16, 17 hundreds

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00:51:57.340 --> 00:52:05.190

Sandra Aya Enimil: they would, you know, use this mark, for I've seen people use. It'd be very cautious and using that for items for which they are not the rights holder.

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00:52:06.070 --> 00:52:29.449

Sandra Aya Enimil: There's also the right statement badges that were created for cultural heritage institutions to try to indicate some information about what they've figured out about some of the work that's in their collections. So they have determined that it's in copyright. There's no copyright. There's some other issue that should be considered.

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00:52:29.530 --> 00:52:33.508

Sandra Aya Enimil: And usually with that other category, there's some other

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00:52:35.160 --> 00:52:58.280

Sandra Aya Enimil: determinant that might be of concern. So it might be a donor issue. It might be privacy issues, or write a publicity or some other issue that's at play there. But these were created so that cultural heritage institutions, if they've done the research, they can utilize some

of these options to try to give some information to people who might want to make use of material that's been made available through them.

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00:52:58.760 --> 00:53:12.939

Sandra Aya Enimil: And then, lastly, are the local contacts which has the traditional knowledge symbols available to for indigenous communities themselves, to kind of, indicate what material is and what can be done with that material.

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00:53:13.000 --> 00:53:16.620

Sandra Aya Enimil: And there's one that there's a section that's available for

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00:53:16.840 --> 00:53:26.330

Sandra Aya Enimil: institutions and researchers who are using indigenous materials. And this definitely involves a lot of research and making sure that you understand what

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00:53:26.781 --> 00:53:40.359

Sandra Aya Enimil: is covered under this and what and how you can make things available. It may be that you can't make things available that you're not able to make things as accessible, even though you've done the preservation work, or you've done some

316

00:53:40.770 --> 00:53:51.910

Sandra Aya Enimil: part to do some digitizing to try to save content in some way. It may be that the answer is not that it can go online, maybe it still becomes that people need to come and see that material in person.

317

00:53:53.110 --> 00:54:04.310

Sandra Aya Enimil: So I have reached the end of my slides and the things that I wanted to formally talk with you about today. So now it, you know, I think we're okay to open up for questions.

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00:54:05.820 --> 00:54:09.869

Sharon Burney: Yeah, sounds good. It's question and answer time. It looks like

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00:54:10.220 --> 00:54:21.180

Sharon Burney: we have about 7 or 8 that have already been submitted. As a reminder, please submit your questions into the Q&A box so they don't get lost in the chat.

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00:54:21.420 --> 00:54:28.830

Sharon Burney: The first question for you, Sandra, is life of the author starts at their death.

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00:54:30.580 --> 00:54:32.190

Sharon Burney: That's the question.

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00:54:32.410 --> 00:54:45.549

Sandra Aya Enimil: Yeah, I know it sounds weird where life for the author, plus so many years. Yeah, no. So. And I'm sorry I maybe spoke too fast through that, but it is essentially that the person lives their whole life.

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00:54:45.600 --> 00:54:50.569

Sandra Aya Enimil: They die. And then, 70 years after they die

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00:54:50.790 --> 00:54:57.259

Sandra Aya Enimil: that is, when the thing that they created whenever they did through their lifetime, that is, when that item goes into the public domain.

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00:54:58.500 --> 00:55:02.730

Sandra Aya Enimil: So the author has their life, however long that is, you know, people are living to a hundred now.

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00:55:02.820 --> 00:55:05.039

Sandra Aya Enimil: And then, 70 years after that,

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00:55:05.060 --> 00:55:06.680

Sandra Aya Enimil: whatever they created

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00:55:07.147 --> 00:55:13.060

Sandra Aya Enimil: goes into the public domain. So to think about it, when I started we talked about how

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00:55:13.220 --> 00:55:21.420

Sandra Aya Enimil: with the statute of anne, life it was 14 years, and then you could renew for another 14 years if you were still alive.

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00:55:21.460 --> 00:55:26.969

Sandra Aya Enimil: So what that indicates to me indicates to me is that was a right that was for you.

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00:55:27.350 --> 00:55:31.039

Sandra Aya Enimil: So now the right is for you, and also for your heirs.

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00:55:31.440 --> 00:55:36.450

Sandra Aya Enimil: and maybe even several generations of your heirs, to benefit from something that you created.

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00:55:38.780 --> 00:55:44.710

Sharon Burney: Next question is community meeting archives- does the board own the archives?

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00:55:51.910 --> 00:55:53.490

Sandra Aya Enimil: Community meeting.

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00:55:53.540 --> 00:55:54.630

Sandra Aya Enimil: What does that mean?

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00:55:55.290 --> 00:56:02.559

Sharon Burney: I'm not sure. Whoever asked that question, if you want to expand in the box now, or the chat.

337

00:56:03.510 --> 00:56:03.813

Sandra Aya Enimil: So

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00:56:04.420 --> 00:56:12.140

Sharon Burney: I guess the reference to what you said earlier, where it says community meeting archives- does the board own the archives? That's the question.

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00:56:13.030 --> 00:56:13.935

Sandra Aya Enimil: So

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00:56:14.910 --> 00:56:18.393

Sandra Aya Enimil: I don't know who the board or the community is. So

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00:56:19.300 --> 00:56:27.959

Sandra Aya Enimil: I'm gonna take it. And if this is not correct. Please feel free to type in the chat, or in the Q&A

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00:56:28.480 --> 00:56:36.429

Sandra Aya Enimil: if this is not correct. But if I'm reading it as there's an organization that has that

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00:56:36.510 --> 00:56:37.529

Sandra Aya Enimil: that has

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00:56:38.800 --> 00:56:40.759

Sandra Aya Enimil: a community archive

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00:56:40.890 --> 00:56:43.960

Sandra Aya Enimil: that's not necessarily created or owned by the board.

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00:56:44.150 --> 00:56:47.880

Sharon Burney: So yeah, they said in the chat, yes, the Cultural Committee Center

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00:56:47.920 --> 00:56:51.219

Sharon Burney: archives containing meeting notes.

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00:56:51.610 --> 00:56:53.870

Sandra Aya Enimil: For the community center?

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00:56:53.870 --> 00:56:54.660

Sharon Burney: Yes.

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00:56:54.660 --> 00:57:05.939

Sandra Aya Enimil: So those are likely created for the benefit of the community center. So then the entity would be the owners of those notes. Yeah, so

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00:57:05.960 --> 00:57:13.480

Sandra Aya Enimil: I was, I was starting to answer it like it was not related. So thank you for clarifying. So yeah, so if it

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00:57:13.640 --> 00:57:16.989

Sandra Aya Enimil: if it is the organization's meeting notes,

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00:57:17.600 --> 00:57:20.679

Sandra Aya Enimil: those are being created for the benefit of them.

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00:57:20.700 --> 00:57:28.009

Sandra Aya Enimil: Whoever is writing them up is doing it for the institution, so the institution would likely be the author of that.

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00:57:28.950 --> 00:57:29.977

Sharon Burney: Thank you.

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00:57:30.580 --> 00:57:43.470

Sharon Burney: Thanks for this session. We have archival material created by the U.S. government, which contains some identifying information (address of business, people's age, and distinct physical characteristics)

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00:57:43.560 --> 00:57:48.169

Sharon Burney: How to square copyright (or lack thereof) with privacy with use?

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00:57:49.370 --> 00:57:58.657

Sandra Aya Enimil: Oof, so yeah, so this is not necessarily a copyright question. You definitely hit it as a privacy issue. So

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00:58:00.110 --> 00:58:26.069

Sandra Aya Enimil: I think there's the ethics part of- that is, if you, if it's of concern that it has things that could personally identify people who may be still alive. What is that? What is that content? Is this something that they might feel is detrimental to be made available? You know, I think there's definitely a difference between the address of a business and someone's age

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00:58:26.403 --> 00:58:30.400

Sandra Aya Enimil: or description of them. So you might want to think about like

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00:58:30.540 --> 00:58:34.907

Sandra Aya Enimil: Is it important to have that? Is there a way for us to

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00:58:35.390 --> 00:59:02.070

Sandra Aya Enimil: de-identify or to suppress that information? But yeah, it gets to a different question related to privacy. And it definitely is something that you know you might want to think about, like how you make that available, even if the even if it is possible that whoever might be impacted is no longer alive, do they have family, or an estate that might be concerned about this content being made available about them, especially if it's

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00:59:02.070 --> 00:59:16.220

Sandra Aya Enimil: easy to identify particular people. Would there be an issue or concern for them having this content out there? If that's in the intent, it might not be an intent for you to make it available online, but that is something that you want to think about.

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00:59:17.460 --> 00:59:22.820

Sharon Burney: Next question: Creating an online exhibit or a physical space

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00:59:22.880 --> 00:59:27.320

Sharon Burney: or maybe that's of a physical space, are the copyright factors the same?

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00:59:28.600 --> 00:59:33.600

Sandra Aya Enimil: So what's different here is

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00:59:33.820 --> 00:59:39.200

Sandra Aya Enimil: in the face-to-face thing. So an online exhibit is not face-to-face. It is

368

00:59:39.310 --> 01:00:08.720

Sandra Aya Enimil: available for everybody who's able to access it online. In a physical space, you do have a lot more leeway because you can do some things. You can do things because only the people who come into that space are able to actually see and engage with the content that you've made available in a physical exhibition. Now, things to think about here, too, even with a physical exhibition, is creating a catalog. So creating a catalog of content that appeared in the exhibition, it's

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01:00:08.750 --> 01:00:19.559

Sandra Aya Enimil: closer to doing an online exhibition because the audience becomes bigger with you creating a catalog that could go beyond a space that you might have held something. So

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01:00:19.790 --> 01:00:41.320

Sandra Aya Enimil: maybe thinking about the fair use factor. So if you're relying on fair use to make copies or to distribute content then that now you wanna think about like. So now, my audience is much bigger than if they were coming to my facility to see this. If it's online, or if it's in a catalog, you wanna think about this fair use still help me? Still

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01:00:41.599 --> 01:01:10.120

Sandra Aya Enimil: makes sense for me to rely on? Or does it make more sense for me to try to get permission to include certain types of content? So you wanna make sure if there are things that are still covered by copyright that you're able to make a case, either because you got permission from the rights holder to be able to include that content, or you're able to work through fair use to determine - okay, I think that you know we're good. If, as we work through those 4 factors. And again, when you're having it in a

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01:01:10.380 --> 01:01:22.509

Sandra Aya Enimil: space that's beyond the physical place. So either online or through some other network or way, you might be distributing content. You have to think about those 4 factors: the purpose of your use,

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01:01:22.600 --> 01:01:28.380

Sandra Aya Enimil: What is the material nature of the material being used? How much of it are you using, and, you know, is there a

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01:01:28.580 --> 01:01:42.900

Sandra Aya Enimil: engagement and relation to the purpose? And then whether there is an impact for the market of the person who created that content. So if you put it into an online bulletin, you put it into a catalog,

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01:01:43.170 --> 01:01:53.819

Sandra Aya Enimil: would that create competition for the rights holder? Would there create some issue for the rights holder to be able to, also be able to make money? That should have an impact on how you're thinking about it.

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01:01:55.440 --> 01:02:05.939

Sharon Burney: Wonderful, great questions. If an archive meets the requirements of Section 108, can an archive make the copyrighted content publicly available on their website?

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01:02:10.170 --> 01:02:20.050

Sandra Aya Enimil: This is a great question, and thank you for asking it. Section 108 is about copies, and how you distribute.

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01:02:20.430 --> 01:02:43.430

Sandra Aya Enimil: So making it available online is not one of the things that it is. It is specifically geared towards personal research and study of an individual, or in some cases under section 108, another library or archive. So you wanna think you would if you are thinking about how I have a copy, or I can make a copy for something.

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01:02:43.745 --> 01:03:04.580

Sandra Aya Enimil: You might have to think about whether fair use would allow you to be able to make it available online. Sometimes you can't. The fair use case is not that great and so maybe it doesn't make sense to make it available online, but just because you're able to do preservation to make a copy for someone for research or study, doesn't mean then the access

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01:03:04.590 --> 01:03:12.699

Sandra Aya Enimil: could become or be wider than that necessarily. You definitely want to see whether or not you can make of an actual fair use case or

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01:03:12.900 --> 01:03:22.780

Sandra Aya Enimil: allow someone to, with their copy, make their own fair use case or get permission to be able to do something beyond just making that copy.

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01:03:26.150 --> 01:03:26.730

Sharon Burney: Good.

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01:03:27.568 --> 01:03:51.790

Sharon Burney: Some of our digitization partners are concerned with getting permission from the heirs or descendants of the record creators of the archival collections that have been selected for digitization. Can you share cases where this would be good to do? There's a mixture of copyright for these collections. Some were transferred to the institution, and some retain the copyright for the individual record creator.

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01:03:57.420 --> 01:03:58.180

Sandra Aya Enimil: So

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01:03:59.950 --> 01:04:24.464

Sandra Aya Enimil: I would never say that you shouldn't get permission or try to get permission first from someone, but I am aware that you might not be able to. So, for reasons of folks just not responding, or they're not interested, or the answer is, no, but they don't want to tell you no. You might not hear back from folks that you reach out to regarding the work of their,

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01:04:25.950 --> 01:04:29.970

Sandra Aya Enimil: the person that they are a descendant of. And so,

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01:04:31.103 --> 01:04:32.250

Sandra Aya Enimil: excuse me,

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01:04:33.390 --> 01:04:50.399

Sandra Aya Enimil: you wanna think about, what is the possible risk to try to make things available if you digitize this material? If you have a case where it's something that is falling apart, you need to do something to intervene. You need to preserve this content.

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01:04:50.667 --> 01:05:05.100

Sandra Aya Enimil: The preservation part, I think you're on good grounding to be able to preserve it, but I know for some of you, if there's interest, now we've preserved it and now we want to make sure people can access it, or we want to have a way to provide access.

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01:05:05.100 --> 01:05:07.700

Sandra Aya Enimil: And it's not necessarily the case that

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01:05:09.670 --> 01:05:24.510

Sandra Aya Enimil: copyright law can necessarily get you there. So some other things that you might want to think about is, would there be an issue from a descendant or an heir if you decided okay, we've now preserved and digitized this work, we want to make it available online.

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01:05:24.720 --> 01:05:28.400

Sandra Aya Enimil: Would somebody from the family or their estate

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01:05:28.450 --> 01:05:42.560

Sandra Aya Enimil: come forward to say, no, you can't do that. You need to take it down. Would they do something, you know, through social media or in person to say, Hey, this organization is doing this and we said, no, we didn't want them to do it.

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01:05:42.570 --> 01:05:45.759

Sandra Aya Enimil: You know. And you have to think about that risk of

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01:05:46.120 --> 01:05:52.659

Sandra Aya Enimil: that. Is that something that you want to engage with or not engage with? So there are,

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01:05:52.920 --> 01:05:57.500

Sandra Aya Enimil: I think you should always try to get permission if it's important for you to do

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01:05:58.078 --> 01:06:07.899

Sandra Aya Enimil: certain things, and you're not sure that you have that right, or you're not sure that copyright law covers what you're talking about. If you can get permission, you should try to do that.

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01:06:08.252 --> 01:06:23.960

Sandra Aya Enimil: But you definitely have to be prepared, and I know some of you, probably on the call, are well aware that you sometimes can't get into or get in touch with the people who could give you permission, or could weigh in on what you're planning to do. And so

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01:06:24.260 --> 01:06:40.939

Sandra Aya Enimil: I'm not saying, you know you're just stuck, and you can't do anything, but you do have to think about what the possible risks are with if you want to keep moving forward with an action to be prepared for a reaction or a response that may not align with what you want.

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01:06:43.697 --> 01:06:57.181

Sharon Burney: There are 2. Okay. This next one is related to privacy, privacy concerns. In our collection, we have materials from a community that has expressed concerns about revealing information about undocumented individuals and families.

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01:06:57.650 --> 01:07:03.750

Sharon Burney: This isn't a rights question, but rather an ethical one. Are there guidelines available for navigating this?

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01:07:06.400 --> 01:07:20.879

Sandra Aya Enimil: So I don't, I don't have guidelines for this, but I think you know you do have to listen to the community, right? And I think it is important and imperative to listen to folks who are expressing to you that this is an issue for them.

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01:07:22.480 --> 01:07:23.769

Sandra Aya Enimil: Because I think

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01:07:24.260 --> 01:07:33.811

Sandra Aya Enimil: you want, if it's a community that you're working with, and you want to continue to work with. If you decide to move forward, however, you would like to

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01:07:34.150 --> 01:07:42.560

Sandra Aya Enimil: without taking into consideration what the community wants, I think that challenges your ability to continue to work with them.

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01:07:42.670 --> 01:07:49.910

Sandra Aya Enimil: So you want to think about like, what does it mean to keep this information in because we think it's important to be in?

407

01:07:51.640 --> 01:08:09.549

Sandra Aya Enimil: Is it important to the story that you're hoping to convey or display? If it's not, then you need to think about how you can share without that information being shared as well, or, if you need to remove certain perspectives or certain parts, to be able to honor that request.

408

01:08:11.300 --> 01:08:20.339

Sharon Burney: These next two are probably more program officer oriented. But Sandra feel free, after I respond to maybe give your

409

01:08:21.060 --> 01:08:34.229

Sharon Burney: input on these. And also in regards to what you just spoke about, maybe referencing professional practice guidelines produced by museums, archival or library organizations would be also recommended in that case.

410

01:08:34.250 --> 01:08:51.529

Sharon Burney: The next question is, we've received excellent feedback in our initial application to fund the creation of a governance group with the grant to inform the accessibility of our digitized collection. Is it okay for our organization's access plans to shift based on the expertise to this governance group?

411

01:08:51.930 --> 01:09:09.719

Sharon Burney: This might be okay, but it's important to outline in the proposal any issues that you anticipate arising and how decisions about access will be made by the group, including the options you anticipate offering, be they total restriction, access on site, only limited online access,

412

01:09:10.056 --> 01:09:26.210

Sharon Burney: full access to part of the materials and restriction on sensitive items, etc. And if it seems that to, it seems if it seems to reviewers that you have no idea what the issues that might come or arise that might damage the competitiveness of the proposal.

413

01:09:27.069 --> 01:09:30.589

Sharon Burney: Did you want to add anything to that, Sandra as a former reviewer?

414

01:09:30.590 --> 01:09:34.410

Sandra Aya Enimil: Yes, I just wanted to to chime in to say that

415

01:09:34.600 --> 01:09:54.050

Sandra Aya Enimil: when I was looking at some of the grant applications, I'm always kind of looking to see if there is an acknowledgement of their copyright considerations, their ethical considerations. There are other things that they are thinking about in terms of doing this this project and then that they have

416

01:09:54.050 --> 01:10:10.653

Sandra Aya Enimil: a plan of action. So you know, I definitely wanna see that you know that there's something that you have, you have something set up, you're thinking about how you can address it. I always kind of, I won't I wanna say, ding, but I would give, you know, kind of

417

01:10:11.250 --> 01:10:14.098

Sandra Aya Enimil: lower scores to

418

01:10:15.030 --> 01:10:20.539

Sandra Aya Enimil: applications where I didn't feel like they even recognized that there was an issue around

419

01:10:20.928 --> 01:10:44.249

Sandra Aya Enimil: legal issues. There was any issue around either cultural heritage privacy. You know, like there, there's no acknowledgement that there's something to be concerned about with the material that they're working with. And then they definitely didn't have a plan. I would give lower scores. So I just wanted to, part of my, you know, wanting to do this work was to just talk about what you should be thinking about.

420

01:10:44.310 --> 01:11:05.039

Sandra Aya Enimil: If you have any of the items, anything that's in your content that is of concern you need to be able to show like this is how we're planning to mitigate that, manage that, or we have already been in contact with. you know, the heirs, we have their permission. We, you know, we are planning to do this. We're planning to restrict it, you know, whatever the case may be.

421

01:11:05.040 --> 01:11:14.719

Sandra Aya Enimil: You know I want to just to reiterate, to say that you, you need to have something in place that shows that you've been thinking about it, and you have a strategy.

422

01:11:16.180 --> 01:11:17.349

Sharon Burney: Perfect. That's correct.

423

01:11:18.471 --> 01:11:37.849

Sharon Burney: There's some complicated questions in some of our materials regarding copyright. Is it possible to include funds for a copyright consultant in our grant? If so, are there recommendations available for legal consultants? And, as program officers say, I'm going to say this is not recommended or fundable. Unfortunately,

424

01:11:38.196 --> 01:11:52.760

Sharon Burney: It's not an allowable expense with the budget. An advisory group may offer some input on ethical considerations, but applicants are expected to outline the copyright issues at play in the proposals at the time of submission, just as Sandra elaborated on

425

01:11:53.239 --> 01:11:57.080

Sharon Burney: previously. Did you want to add anything to that, Sandra? Good.

426

01:11:57.780 --> 01:12:06.589

Sharon Burney: Okay. Can you explain copyrights for correspondence? Does each sender or recipient retain the rights to their side of the conversation?

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01:12:07.470 --> 01:12:17.719

Sandra Aya Enimil: Yes, so this is considered unpublished unless people do publish the letters at some point. But yeah, it's an unpublished work, and the person who

428

01:12:17.890 --> 01:12:22.049

Sandra Aya Enimil: is, they retain rights for their part of the conversation.

429

01:12:22.190 --> 01:12:36.170

Sandra Aya Enimil: So if I write a letter to Sharon, I have copyright in that letter. Sharon has a physical letter, but I still have the copyright. So Sharon decides she wants to donate it to her Alma mater

430

01:12:36.540 --> 01:12:44.819

Sandra Aya Enimil: In order for somebody else to make use of it that's beyond fair use, or beyond some other statutory allowance, they should come to me to get permission.

431

01:12:47.100 --> 01:13:06.089

Sharon Burney: Next question is, we want to make our collection accessible online, but we are concerned about the unauthorized commercial re-use of the collection since we do not own a copyright, and cannot ask every creator for permission to share online. What are some strategies for balancing access and preventing unauthorized re-use?

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01:13:10.260 --> 01:13:32.910

Sandra Aya Enimil: So some strategies, you may see from other cultural heritage institutions, libraries, archives, and museums who make content available, content where they do not have permission, and many of them are relying on fair use to be able to make that material available openly online and saying it's for scholarship or educational purposes.

433

01:13:32.960 --> 01:13:47.898

Sandra Aya Enimil: One of the things that I would highly recommend doing is whatever information you have about this content, you may not, you may not have much, but you can have language that says this material may be covered by copyright, that people need to

434

01:13:48.550 --> 01:14:14.619

Sandra Aya Enimil: contact rights holders in order to re-use content beyond scope of fair use, or beyond any other kind of statutory exemption that might allow them to re-use it. So you want to have language that tells people this is covered by copyright. It's not our copyright, but if you want to do something beyond just looking at it here, you need to make sure you either have permission or you have a fair use

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01:14:15.007 --> 01:14:19.000

Sandra Aya Enimil: that you're able to rely on to make another use of that material.

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01:14:19.430 --> 01:14:24.242

Sandra Aya Enimil: So as things kind of go these days where we have

437

01:14:24.750 --> 01:14:43.269

Sandra Aya Enimil: AI, large language modeling, a lot of, you know, AI training, we, now as cultural heritage institutions, it's hard for us to then control what people do or how people are able to make use of things, of things that we put online. So some things are beyond our control.

438

01:14:43.270 --> 01:14:55.300

Sandra Aya Enimil: But we, you can have language that talks about the fact that this content you're making it available under fair use, or you're making it available with permission, or however you're at making it available, you can have that language there to say.

439

01:14:55.460 --> 01:15:25.250

Sandra Aya Enimil: But if you try to do you- general, you- public who's come to this website. You try to do something different than what we have made this available for. That's on you to figure out how you do that, and so you can look. I would. I would recommend looking at different examples of cultural heritage institutions that have, like, you know big, like large corpus of content available online and see what language they use to make that material available, and how they talk about copyright and how they talk about re-use

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01:15:25.250 --> 01:15:30.469

Sandra Aya Enimil: and kind of model that language for your use to see how that might work for you.

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01:15:41.440 --> 01:15:42.749

Sandra Aya Enimil: Sharon. You're muted.

442

01:15:44.133 --> 01:15:53.460

Sharon Burney: I thought I hit the button. This question isn't specifically related to this grant, but related to copyright. I've often wondered, if we have historic photographs, for instance,

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01:15:53.650 --> 01:15:58.929

Sharon Burney: that have entered the public domain, can we still, legally or ethically charge a use

444

01:15:59.020 --> 01:16:09.079

Sharon Burney: fee for, or licensing fee for them, even though they're in the public domain? I assume not but that the user should still credit the image to our institution.

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01:16:10.880 --> 01:16:15.249

Sandra Aya Enimil: Okay, so there are a couple of things here, so I'm glad this is still up on my.

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01:16:15.280 --> 01:16:17.011

Sandra Aya Enimil: So let me look at this.

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01:16:22.590 --> 01:16:23.590

Sandra Aya Enimil: So

448

01:16:23.960 --> 01:16:39.700

Sandra Aya Enimil: even if this work were still covered by copyright for you to provide a copy to someone, and let's say, if you're a library or an archive, and you're relying on Section 108 to provide a copy to someone who's made a request, you can charge for that.

449

01:16:39.840 --> 01:16:45.110

Sandra Aya Enimil: So the US Copyright law doesn't consider cost recovery

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01:16:45.180 --> 01:16:52.309

Sandra Aya Enimil: as a commercial activity or commercial practice. So for content where it is in the public domain,

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01:16:52.600 --> 01:16:59.040

Sandra Aya Enimil: the public domain means there are no rights attached to it. So, whether ethically

452

01:16:59.280 --> 01:17:08.270

Sandra Aya Enimil: you talk about whether you should give it away for free or not, it's up to you, but legally, if it's in the public domain, you could do whatever you want with it.

453

01:17:08.470 --> 01:17:14.212

Sandra Aya Enimil: Now, talking about citation practice, and citation, which is

454

01:17:14.900 --> 01:17:15.750

Sandra Aya Enimil: a

455

01:17:18.410 --> 01:17:30.480

Sandra Aya Enimil: something that kind of moves in tandem with copyright, but is not copyright. So there are citation practices around, you have found something in an archive, and so you.

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01:17:30.560 --> 01:17:37.589

Sandra Aya Enimil: cite, you know, for the thing itself, using whatever citation system or method makes sense, or what whatever's

457

01:17:37.600 --> 01:17:56.430

Sandra Aya Enimil: the norm for your practice area. But there are parts, especially in archival practice, where you acknowledge or have some statement about getting something from a particular place. And so that is part of the practice to say that it's come from this place. There isn't a legal obligation to do that necessarily,

458

01:17:56.805 --> 01:18:16.349

Sandra Aya Enimil: but with citation it is an academic expectation. It is you know somewhat even considered an ethical expectation that you would give credit to where this thing came from, and for some that includes the institution or the repository where you may have gotten something to, or gotten access to, something.

459

01:18:16.370 --> 01:18:17.070

Sandra Aya Enimil: So

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01:18:18.030 --> 01:18:32.069

Sandra Aya Enimil: to make copies of things as cost recovery is not considered commercial activity, necessarily. If you're having things where it's in the public domain, and you're making bags and buttons and selling that.

461

01:18:32.330 --> 01:18:43.159

Sandra Aya Enimil: You know whether you consider that to be ethically not great, I don't know, but it's not illegal to do. Now of things that are still covered by copyright,

462

01:18:43.920 --> 01:19:08.489

Sandra Aya Enimil: if you're making bags and t-shirts of still copyrighted content and there's also a rights holder that also wants to make bags and get caught, you know, things that's probably impacting their ability to like exploit the thing that they created, and make, you know, money off of T-shirts, as well. So if that person is still alive, if their heirs are still alive, that might be something where you would contact them and say, Hey, here we have an idea.

463

01:19:08.490 --> 01:19:17.809

Sandra Aya Enimil: Can we partner with you to do this? You split the, you know, income, or whatever it is you do, but that's something where you would, if it's in copyright that makes it a little different.

464

01:19:19.460 --> 01:19:35.289

Sharon Burney: Okay, we have about 4 more. I'd like to get through. One is a program officer response. Our collection and holding institution is in Canada, do we need to explicitly refer to the relevant and equivalent sections of the Canadian Copyright Act

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01:19:35.550 --> 01:19:46.129

Sharon Burney: to the US Copyright Act in our application? So in your case the Canadian Copyright Act would apply. Canadian law is based on some of the same principle, but this

466

01:19:46.470 --> 01:19:51.119

Sharon Burney: is different in meaningful ways. Regarding fair dealing and fair use.

467

01:19:51.460 --> 01:20:01.179

Sharon Burney: So that was the easier one. Okay, the next question for you, Sandra, is a producer of poetry, jazz, live recordings just passed away yesterday.

468

01:20:01.670 --> 01:20:27.349

Sharon Burney: He deeded the physical reels and audio cassettes that contain over a hundred musicians, but he did not secure releases from the performers. We would like to create online access to some of the recordings that have national and area musicians on the tapes. Would the right statement, badges work for online access? I believe the Library of Congress uses disclaimer statements and puts the onus of copyright on the researcher.

469

01:20:28.730 --> 01:20:47.050

Sandra Aya Enimil: Yeah, so the disclaimer statements is kind of what I was referring to earlier in the question of, you know, how can we make things available online. So and this, this gets into kind of a risk analysis, as well as you know, kind of dealing with copyright and all the layers of copyright, especially for music.

470

01:20:47.456 --> 01:21:06.170

Sandra Aya Enimil: So because you have sound recordings, you have the performer and performer rights, you have the music rights as well, so there's a lot of stuff that's going on with this. So I think for institutions for whom you know, there's interest in making this content available, you have to think about

471

01:21:06.240 --> 01:21:18.820

Sandra Aya Enimil: what happens if somebody says that they want this taken down or they want to sue you, or they want, you know, some kind of payment for having this material. Like what is your response to that?

472

01:21:19.600 --> 01:21:20.340

Sandra Aya Enimil: And

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01:21:20.600 --> 01:21:25.989

Sandra Aya Enimil: think about what that means for you or your institution. So you know not to

474

01:21:27.920 --> 01:21:52.632

Sandra Aya Enimil: I am definitely not trying to be shady. But the Library Congress, you know, is a Library of Congress, and they can work with folks, or you know they also risk being sued, as well. But people are probably not going to sue. They might try to work something out with the Library of Congress, or with their things, and you might want to think about what that might mean for you as a different kind of institution. So what what does your language say about

475

01:21:53.270 --> 01:22:06.499

Sandra Aya Enimil: how people can engage with or access this content? Would it make more sense for people to come into your space to be able to hear and listen to this, this content? Would it make sense to do,

476

01:22:06.530 --> 01:22:08.629

Sandra Aya Enimil: you know, short snippets?

477

01:22:08.890 --> 01:22:15.810

Sandra Aya Enimil: To have that available and say, if you want to, you know, hear the whole thing, you need to come into our space to be able to engage with it.

478

01:22:16.272 --> 01:22:25.059

Sandra Aya Enimil: You know you have to think about what the risk versus you know, what the mission is, and what that conflict might mean for your institution.

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01:22:25.890 --> 01:22:32.359

Sandra Aya Enimil: And unfortunately, I can't tell you what you should do, but there are a number of things that you might want to think about.

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01:22:34.020 --> 01:22:53.109

Sharon Burney: Thank you. Two more. We will be digitizing news newspapers from 64 to 74, 1964 to 1974. Many of these articles have "work for hire" authors. Does this change how we might want to be thinking about copyright in terms of the "life plus author" rule?

481

01:22:53.120 --> 01:23:01.409

Sharon Burney: And there was a follow-up question to the same question that says, are newspaper articles in a scrapbook under the same copyright issues?

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01:23:03.290 --> 01:23:14.719

Sandra Aya Enimil: Oh, you guys are coming with really great questions. Okay, so 64 to 74 falls into that black hole period of where you would want to research to see if that material is still actually covered

483

01:23:14.720 --> 01:23:33.360

Sandra Aya Enimil: by copyright. So it is possible, you know, with a newspaper unlikely but possible that they didn't follow whatever formality was in place during that time period, and maybe that work has gone into the public domain. But you would have to do some research to figure out if that's true. If you wanted to just scrap that and just operate as

484

01:23:33.390 --> 01:23:36.419

Sandra Aya Enimil: let's just go with it, it's still covered by copyright.

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01:23:36.690 --> 01:23:40.503

Sandra Aya Enimil: Then you're right to think about whether these,

486

01:23:41.000 --> 01:23:48.260

Sandra Aya Enimil: the articles are considered work for hire. Things with newspapers to keep in mind is, that is,

487

01:23:48.500 --> 01:24:07.050

Sandra Aya Enimil: they often carried stories where it wasn't done by their reporters. They may have done wire service articles, so you have to think about that. Then that's not work for hire. That is something that they contracted to include in their newspaper. So you have to think about that, and whether that article then belongs to the author

488

01:24:07.070 --> 01:24:16.869

Sandra Aya Enimil: or to whoever wherever that article may have originated. So you have to think about a little bit more, sometimes with newspapers. So.

489

01:24:17.130 --> 01:24:38.209

Sandra Aya Enimil: And then, if there is content where the newspaper is the rights holder, then you're thinking about institutional copyright. So that term is different. So it is 95, or 120 years. So you have to think about when it was created, and whether the institution is considered to be the rights holder.

490

01:24:38.530 --> 01:24:42.269

Sandra Aya Enimil: And then, in terms of newspaper articles in a scrapbook.

491

01:24:42.780 --> 01:25:02.710

Sandra Aya Enimil: So there's still copyright. But what makes a scrapbook a little bit different is typically with a scrapbook, is someone cutting out different parts and different elements and putting together these different things to tell a particular story or to capture different elements or different parts of things. And so

492

01:25:03.230 --> 01:25:24.969

Sandra Aya Enimil: sometimes you can look at that and think of it more of a compilation. And you might want to think about whether fair use might apply to you being able to digitize and make that work available, if that's possible. So you wanna look at it as a different kind of thing where someone has like built together, built up this scrapbook, using different elements and different things that they've taken from places

493

01:25:24.970 --> 01:25:34.309

Sandra Aya Enimil: and looking at it more from a fair use perspective, and whether fair use would make more sense for you to think about if you can digitize it, and then what else you can do beyond that.

494

01:25:40.170 --> 01:25:42.312

Sharon Burney: Okay, we have one last question.

495

01:25:42.700 --> 01:25:59.180

Sharon Burney: Our collections have a mix of materials that people collected over time as scholars, ie. pamphlets or flyers, which have various, sometimes unknown creators. If the attempts are made to track down the creator, can we claim that we did our due diligence?

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01:26:04.540 --> 01:26:15.269

Sandra Aya Enimil: So the unknown, unknown creators or unknown, you know, date of creation. Those things are often called orphan works.

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01:26:15.370 --> 01:26:27.479

Sandra Aya Enimil: And so it might be difficult to try to figure out who actually created the thing. And this actually could be the case with a lot of things. So it could be photographs, or even books, could fall into orphan. Where,

498

01:26:27.820 --> 01:26:56.500

Sandra Aya Enimil: you know, yes, it was published by a certain publishing company, but the publisher has gone out of business, and you can't, you haven't found that anybody succeeded them, or you have a pamphlet that was made for an organization that's now defunct. No organization succeeded them. Who should you reach out to for permission, or or is there even anybody to reach out to. Something that was created for a short short term event that now exists as part of a collection

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01:26:57.040 --> 01:27:19.300

Sandra Aya Enimil: there. You don't know who to ask to get permission for that. So I know that many of these things, these orphaned things. There, there is a certain element of diligence, due diligence that you can try to do, and then you can document that to show like we try to like, retrace who should be the person to reach out to, and then it becomes, you know, like many things do kind of turn into

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01:27:19.400 --> 01:27:22.250

Sandra Aya Enimil: a risk analysis to think about. So

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01:27:22.290 --> 01:27:31.070

Sandra Aya Enimil: who would be harmed if we try to use it in these types of ways? who might come forward to say something about how we're making this re-use?

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01:27:31.070 --> 01:27:53.279

Sandra Aya Enimil: And some in some cases with some orphan content, nobody's gonna come forward, but in some cases it might surface folks who are like Oh, wait! I know something about this. I have information about that, or this was created as part of this thing. And that could actually be used to to kind of build and have more context and information for the thing. And it could be part of relationship building.

503

01:27:53.280 --> 01:27:56.000

Sandra Aya Enimil: Or it could turn into something where someone's like

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01:27:56.140 --> 01:28:01.070

Sandra Aya Enimil: I know, that belongs to me or that's my thing. And now I want to talk to you more about that,

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01:28:01.560 --> 01:28:27.060

Sandra Aya Enimil: which could be good or bad. But I think there's still, you know. Yeah, there's definitely in any of these instances where you need to do research, showing how you've tried to find more information, try to find the appropriate rights holder, try to find out more information about the content, only helps, you know, in cases where you're set. Maybe copyright doesn't exactly help you out here, or there's no person to get permission from. It just helps

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01:28:27.190 --> 01:28:28.680

Sandra Aya Enimil: with those cases.

507

01:28:30.410 --> 01:28:31.919

Sharon Burney: Wonderful! Hold on.

508

01:28:42.090 --> 01:28:54.799

Jane Larson (she/her): Alright. We have just a few quick reminders before we end. First, we want to do a quick check in with you again about today's topic. So we'll launch another poll now, and if you can take just a moment to complete it.

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01:29:05.970 --> 01:29:10.189

Jane Larson (she/her): And as that poll is wrapping up,

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01:29:12.850 --> 01:29:21.770

Jane Larson (she/her): as you work on your final application, remember that there'll be two additional sessions over the next month. The next one will be on April 10th

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01:29:21.970 --> 01:29:25.060

Jane Larson (she/her): and we'll address staffing and budget.

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01:29:25.741 --> 01:29:29.969

Jane Larson (she/her): And you can sign up for this session on our [Apply for an Award](#) page.

513

01:29:40.350 --> 01:30:02.300

Jane Larson (she/her): And finally, we're so glad that you were able to join us today and extend a huge thanks to Sandra for leading. As we continue our assessment of the program, we appreciate your continued feedback. We've shared the link to the survey for today's webinar in the chat, and we look forward to hearing how this session went, what you might like to see in future sessions, and how we might improve.

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01:30:02.632 --> 01:30:13.259

Jane Larson (she/her): Please don't hesitate to send questions to the CLIR Grants team at hiddencollections@clir.org as they come up between now in that final submission deadline of May 8th.

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01:30:13.330 --> 01:30:22.990

Jane Larson (she/her): And as needed, our team will also be able to reach out on questions specific to Sandra on today's topic. Thank you, and we hope to see you at another session soon.