

Nudist Research Library Consortium Charter and Best Practices Sharing Agreement

Whereas at the time of this agreement there are existing libraries (hereafter “participating libraries”) serving as archives, rare book rooms, and museums preserving the historical materials of various social nudity activities and publications for the United States of America and the world; and

Whereas there have been, and are, other such libraries and collections of the same nature, for which a formal affiliation may be desired now or in the future; and

Whereas there have been several efforts to collect publications, photos, printed documents, personal journals, moving images, oral history recordings, and memorabilia of the over century–old formal activities of social nudity and its various organizations; and

Whereas the collections are purposefully redundant as a form of protection from theft and defacement, as well as natural and structural disasters such as wildfire, flood, hurricane, blizzard, earthquake, broken pipes, and conflagration; and

Whereas due to the nature of the content of these collections, with special concern that photographic images could be misconstrued if taken out of the context of healthy family activities, and so require close monitoring for use; and

Whereas academic institutions are loath to accept these materials due to the costs of monitoring their use and keeping them secure; and

Whereas there is a desire to make these materials available for research, investigation, and inquiry by students, faculty, writers, and others interested in legitimate exploration of topics related to social nudity; and

Whereas there is great concern to do due diligence to protect these aging materials from physical and contextual damage or misuse; and

Whereas technology and efforts to digitize these materials have now enabled them to be made available to investigators without the need to handle the originals; and

Whereas copyright laws have specific requirements, which are and will continue to be honored by each of the participating libraries; and

Whereas the participating libraries are physically distributed around the United

States of America, offering regional access, albeit other similar international collections would be welcomed to join this Consortium using their national laws and protocols for the protection of copyright or similar fiscal benefit;

Therefore, be it agreed:

That for the most efficient and effective means to share the maximum amount of materials to the greatest number of interested parties, the participating libraries form this Consortium; and

That each participating library has, and will continue to have, its own independent organizational structure and ownership of a collection for which best practice policies are to be in place for the materials' access, use, and protection, which conform to the fair use protocols and specific exceptions of 17 U.S.C. Section 108, allowing for digital preservation of materials in archival and special collections, without regard to their status as orphan works; and

That each participating library subscribes to the commonly accepted best library practices attached as Appendix 1—with the caveat that these libraries operate as rare book rooms, and not generally as lending libraries; and

That each participating library will notify patrons of their legal and ethical responsibilities on the use of the information and images accessed through these collections; and

That each participating library will have its own policies and will not permit any copying or distribution of an article, photo, or document unless they physically own that specific item; and

That any patron wishing to make a copy of scanned text or pictures should be directed to the library that physically owns the material, subject to that library's copying policies, recognizing that Fair Use Doctrine generally limits copying to a single article, or up to ten percent of a publication under copyright; and

That each participating library may have donor agreements so that materials gifted could have a clearly distinguished "intellectual property profile" with the rights for its use; and

That each participating library will provide, as soon as possible, an inventory or catalog of its own holdings in order to assure effective, efficient, and comprehensive access to all potential materials for patrons making use of Consortium collections, and will update its posted inventories at least annually; and

That this Consortium shall proceed in two phases, and that during Phase 1, each library that has digital scans shall post most of them in "read only"

condition where they can be viewed only on the premises of the other participating libraries, whether they have yet contributed scans, or not; and

That the development of new technologies shall in no way invalidate these agreements; and

That individual libraries may, on a case-by-case basis, allow another participating library access to copy limited scans for such traditional and legitimate purposes as replacing lost or damaged pages of publications both libraries physically own, or distributing copies of articles from publications both libraries physically own; and

That each library shall give scanning priority to items not already available in good-quality scans from another participating library; and

That during Phase 2, a very few trusted researchers may be allowed access in their homes to Consortium files—such arrangements to be reviewed and renewed annually, and that there may be a fee for such services; and

That no library or individual shall profit financially from this Consortium arrangement, that the costs of storing information may be divided between the libraries based on their collection size and ability to pay; however, access fees from trusted researchers may be used to cover such costs; and

That any participating library may solicit donations of materials as well as seek fiscal or professional support for the improvement of the stated conditions and purposes of this Consortium; and

That each participating library will, when possible and practical, offer surplus physical materials for trading, for sale with a first right of refusal, or as outright gifts, to the other participating libraries of this Consortium; and

That any participating library may work in partnership with an academic institution or professional association to expand awareness and access to these collections; and

That the Consortium may elect officers if and when so desired, with each participating library having one vote; and

That technical matters shall be laid out in a Procedure Manual; and

That additional libraries with similar collections may join this Consortium, with the consent of all participating libraries at that time; and

That as this Consortium is voluntarily comprised of independent organizations

and has no assets other than the good-will sharing of information, that any issues of liability which may arise regarding the use of the materials, will be addressed by the participating library providing the access to and holding the material that becomes the reason for the concern, and

That any participating library may withdraw from the Consortium knowing that when it does, it shall no longer have access to any Consortium files, it may retrieve only the materials, in whatever medium, that it has contributed, and that the other participating libraries will no longer have access to those withdrawn materials, the exception being that each library's latest available inventory shall remain part of the permanent record, so that researchers know where to look, and who to approach; and

That this agreement may not be modified except in writing by signed agreement of the participating libraries. Any unwritten understandings or addenda to this agreement shall be deemed extinguished, invalidated, or construed subordinate to the terms of this agreement; and

That this agreement shall be governed by the laws in and for the state of Florida; and

That if any portion of this agreement be deemed unenforceable by a court, it shall not render any other portions of this agreement invalid or unenforceable; and

That this agreement may be executed by individuals by such means as electronic signature, facsimile copy, or other generally accepted means, which shall not affect the validity of this agreement.

Participating Library Signatories to this Consortium:

signature Paul LeValley date 4/26/2019
American Nudist Research Library, Florida

signature Doug Michal date 4/22/2019
Naturist Education Foundation Research Library, Wisconsin

signature Mal P. P. date 05/11/19
American Association for Nude Recreation—Northwest Region—Library and
Archive, Oregon

signature Richard Stuf date 4/20/19
Western Nudist Research Library, California

Appendix 1 to the Nudist Research Libraries Consortium Agreement

Though currently staffed by volunteers, the participating libraries are committed to sharing general best practices to advance the science of archiving, acquiring, and preserving the available body of library materials—as follows:

Preservation

DESCRIPTION:

Library professionals strongly believe that preservation is foundational to any other mission they could perform, and that fair use is available to them for this purpose, in addition to the specific preservation exceptions of 17 U.S.C. Section 108.

PRINCIPLE:

Fair use supports the digital preservation of materials in archival and special collections, without regard to their status as orphan works.

Access

DESCRIPTION:

Library professionals believe that providing access to their collections is the ultimate goal of our institutional activities, including preservation. They believe that fair use is available to them for this purpose, but also recognize both the idiosyncrasies of particular collections, and a common set of issues that a responsible professional must consider before allowing access. They believe that certain best practices for acquisition, cataloging, and management are important to the responsible exercise of their fair use right.

Fair use is a fact-specific doctrine, and library professionals believe that these additional best practices should inform professional decision-making about what measures are appropriate in any particular circumstance. Not every practice will be relevant for every contemplated access project, in light of the respective participating library's mission and other institutionally unique characteristics. The practices are presented here in chronological order of typical decision-making, not in order of importance.

PRINCIPLE:

Fair use supports professionals' efforts to provide on-premises and online public access to archival and special collections that can reasonably be expected to contain significant numbers of orphan works, including collections

that include other copyrighted materials. This general principle should be applied along with the seven additional best practices described on the next pages of this document. These additional best practices relate to:

1. Acquisition
2. Clearances
3. Selective Exclusions from Access
4. Curation
5. Conditions on Availability
6. Dialogue with the Public
7. Providing Copies to Members of the Public

Additional Best Practices for Providing Access

1. ACQUISITION

DESCRIPTION:

The case for fair use in libraries is stronger if both procedures for the acquisition and processing of new material are structured with appropriate diligence in mind. Opportunities to make prudent decisions that facilitate fair use occur at the level of donor agreements, cataloguing and description, and storage.

BEST PRACTICES FOR ACQUISITION:

Donor agreements: In cases where donors are believed to own rights, archives and special collections should, where reasonably possible, attempt to secure affirmative permissions from donors to make collection materials available, including by digital means.

Cataloguing and describing rights information: Wherever information about provenance and authorship is available, it should be firmly and permanently associated with the relevant items. This should happen at the folder or box level, not that of the individual item (memory institution professionals no longer expect to engage routinely in item-level processing). Library professionals should:

- i. Make a reasoned assessment of a collection's overall "intellectual property profile," including an estimate of the prevalence of orphan works, based on a sample of the whole.
- ii. Adapt their systems for collection assessment to respond to new information technologies and new demands on their resources.
- iii. Collect as much data as is reasonably possible about the creators and

sources of the different categories of items contained in a collection.

Storage: Data security should be used for these materials, whether they are locally or remotely stored, in accordance with current general practices employed in digital collections.

2. CLEARANCES

DESCRIPTION:

Library professionals strongly believe that seeking permissions to provide access to materials is desirable in some particular cases. As a matter of legal doctrine, a fair user never is required to obtain a rightsholder's prior consent, but under some circumstances seeking such consent may be advisable to document the absence of market harm. Indeed, in order to sustain the strength of libraries' fair use claims generally, many professionals believe it was desirable in certain special cases to seek permission before providing digital access. They believe that in particular instances they should refer to the best professional judgment of the community, reflected in the best practices below, to determine whether clearances should be sought.

BEST PRACTICES FOR CLEARANCES:

Seeking permissions for use: Make attempts to secure copyright clearance in certain situations where this is reasonable, especially those characterized by the significant presence in the collection of the following types of works:

- i. Significant clusters of items traceable to a known or easily identifiable copyright owner (or groups of related owners);
- ii. Significant clusters where contacting rights owners can be automated;
- iii. Individual items representing works that have readily identifiable and significant market value, including material related to high-profile individuals;
- iv. A predominance in the collection of materials created within 25 years.

Avoiding repetitive permissions requests: When requesting permissions, phrase requests broadly so as to avoid the costs and complications of seeking additional permissions for future uses.

Respecting rightsholders' preferences: Honor the wishes of copyright holders who, once contacted, withhold permission.

Documentation: Document all actions and processes relating to permissions.

3. SELECTIVE EXCLUSIONS FROM ACCESS

DESCRIPTION:

In some cases, libraries have collections in which there is information that offers significant challenges to public access. The professionals in deliberative groups believe that they can bolster their fair use arguments by paying careful attention to areas of particular concern, especially in two areas: privacy and third-party media. They also believe they should fully disclose online the nature of any exclusions they make, to document the fullness of the collection. Opinions differ on the severity of the measures to be taken. Where privacy is concerned, some believe that where redaction or exclusion could not take place, professionals can consider delaying online access. Some believe that unpublished copyrighted works by high-profile literary authors, composers, and other culturally resonant figures should be held offline. Others caution that access to the historical record should not be impeded unduly.

BEST PRACTICES FOR SELECTIVE EXCLUSIONS FROM ACCESS:

Personal privacy: Balance the general interest in access to information with privacy considerations, and consider selectively excluding from broader online access, at least for a period of time, material that cannot be cleared if there are special ethical concerns, such as the privacy of people who are or are likely to be living, risk management considerations, or both. Library professionals believe they should consider the feasibility of identifying and limiting the online availability of items that may prove especially embarrassing to, or serve as significant evidence of wrongdoing on the part of, living individuals.

In all cases, reasonable efforts should be undertaken to redact appropriate information, especially where this can be accomplished by automated or semi-automated means (as, for example, with social security numbers).

Third-party media: When collections, for example personal papers, include published third-party books, journals, DVDs, media files, or other material, where possible such materials should be held offline, unless they contain significant annotations or are otherwise important to the story the collection has to tell.

4. CURATION

DESCRIPTION:

Sometimes collections include copyrighted material that is of special interest or concern—for instance, a well-known figure's correspondence. Professionals

believe that in these circumstances it would be possible to employ fair use when the institution is adding value in some way. The most common method discussed was the addition of curatorial value, which can take a variety of forms. Depending on resource considerations and the nature of the collection and institutional mission, and by way of example only, a collection could do one or more of the following: limit the resource to items chosen for special significance; provide context through curatorial narratives; provide users with specialized search tools; or embed metadata with specific rights-related information.

BEST PRACTICES FOR CURATION:

The rationale for including potentially copyrighted material in an online resource is stronger when the institution adds significant value to the digital collection.

5. CONDITIONS ON AVAILABILITY

DESCRIPTION:

Library professionals believe that establishing a shared good-faith understanding with their users about appropriate use of a collection is important. They also place a high value on users' ability to access materials anonymously. They believe click-through contracts that prescribe appropriate use of materials, even if not enforceable, would be valuable because they attract user attention and reinforce an educational message.

BEST PRACTICES FOR CONDITIONS ON AVAILABILITY:

First-time users of a digital resource should read and agree to basic terms of use, including promising not to use materials from the site in violation of copyright or other laws. Library volunteers may preserve use anonymity wherever possible.

6. DIALOGUE WITH THE PUBLIC

DESCRIPTION:

Our libraries believe that communication about collections is important to successful employment of fair use, because it demonstrates good faith and offers potential rightsholders the ability to request changes in the online presentation. Communication with the public offers ancillary benefits as well. Dialogue with users is important to them, not only to honor the value of transparency and good practices by users, but also because users can be valuable contributors and even help in providing additional information about collection materials.

BEST PRACTICES FOR DIALOGUE WITH THE PUBLIC:

Our libraries should be as transparent as possible about their practices, explain why they are making a collection public, and make public background information about the project's goals and procedures. They should also offer the public a way to give feedback, such as a prominent link on the website of the resource and a dedicated email address for the submission of questions, comments, concerns, and other additional information. Institutions should not simply promise takedowns in the event of receiving a complaint, but should always engage in dialogue as a first step. They also should provide prompt feedback to user comment and inquiry.

7. PROVIDING COPIES TO MEMBERS OF THE PUBLIC

DESCRIPTION:

Many users have legitimate scholarly and other interests that are facilitated by the creation of their own copies. Providing such copies should not impair their reliance on fair use. But professionals believe that they should engage with users to make them fully aware of their own obligations with respect to the materials, and to demonstrate the institution's good faith in providing those materials. End-user agreements, currently used in many physical settings, may not be effective to limit institutional liability, but memory institution professionals think they could be useful to demonstrate good faith toward known and unknown copyright owners. They also think that institutions should limit access fees to recovery of costs when they facilitate user access to actual or virtual copies.

BEST PRACTICES FOR PROVIDING COPIES TO MEMBERS OF THE PUBLIC:

Users who seek digital copies should identify themselves and be informed of the importance of using such copies only in copyright-compliant ways, by means of an agreement or otherwise.