Open Access and Cultural Heritage Collections: Legal Tools and Practical Considerations

Mikka Gee Conway
Assistant General Counsel
J. Paul Getty Trust
Panelists:

- Angela Riggio
  - Head of Scholarly Communication and Licensing, UCLA Library
- Jane Park
  - Director of Platforms and Partnerships, Creative Commons
- Shun-Ling Chen
  - Assistant Research Professor, Institutum Iurisprudentiae, Academia Sinica, Taipei
• Angela Riggio
  • Head of Scholarly Communication and Licensing, UCLA Library
Open Access at UCLA

Angela Riggio
Head of Scholarly Communication and Licensing
UCLA Library
August 17, 2016
Pacific Neighborhood Consortium Annual Conference
About Open Access and OA Policies
GREEN!

GRATIS!

OPEN!

LIBRE!

Free!
Open Access by the “Bs”: Budapest, Bethesda, Berlin (BBB)

- Budapest: “…free availability on the public internet, permitting any users to read, download, copy, distribute, print, search, or link to the full texts of these articles, crawl them for indexing, pass them as data to software, or use them for any other lawful purpose, without financial, legal, or technical barriers other than those inseparable from gaining access to the internet itself…”
- Bethesda: author grants license to users; author deposits into an institutional OA repository
- Berlin: see above
Open Access Literature Defined

“Open-access (OA) literature is digital, online, free of charge, and free of most copyright and licensing restrictions.”

—Peter Suber,
“Open Access Overview” http://www.earlham.edu/~peters/fos/overview.htm
Why Open Access?

- Exorbitant cost of “traditional” peer-reviewed journals prevents libraries from providing access
- Academic authors don’t usually get paid for scholarly output
- Academic authors usually give up their copyright

So…
Why not make the content free?

- Access for EVERYONE
- Timely access allows for better scholarship and research
- Economic models for OA journals are evolving and are making sense
OA policies worldwide*

• More than 550 institutional 70+ sub-institutional
• 9 multi-institutional
• 130+ Funder/research organization

*Based on ROARMAP (http://roarmap.eprints.org/) ©University of Southampton
UC OA Faculty Policy

- Approved by UC Academic Senate, July 24, 2013
- Became effective on Los Angeles, Irvine, and San Francisco campuses on Nov. 1, 2013*
- Became effective on the remaining campuses on Nov. 1, 2014

*UCSF had implemented its own OA policy in 2012
Deposit agreement

“I grant the California Digital Library on behalf of The Regents of the University of California the non-exclusive rights to reproduce, publicly display and publish certain content (the "Work") for the purposes of making the Work available for eScholarship in any format in perpetuity…”
UC Presidential OA Policy

- Effective October 23, 2015
- Covers non-Senate members of the University of California
- Scholarly articles authored by UC employees must be deposited into an open access repository (such as eScholarship)
- In essence, extends the Faculty OA Policy to all UC employees
Who?

- **Employees:** All faculty, academic appointees (includes academic administrative officers, Cooperative Extension and University Extension appointees, librarians, residents, interns, and postdoctoral scholars), students who are employed by UC, staff, and administrators who are paid a salary, stipend, or hourly rate, excluding those holding “Without Salary” appointments, volunteers, and recalls.
UC Issues Presidential Open Access Policy

Expands OA rights and responsibilities to all UC employees

» Learn more

Manage Your Publications

Books
Publish online. Print on demand.

Journals
Peer review and MS management made simple.

Working Papers
Share your research before it gets stale (or scooped).

Previously Published Works
Open your publications to the world.

Conferences
Plan your meeting. Publish the results.

eScholarship by the Numbers
Views Since 2002: 32,246,953
Publications: 111,287
Research Units: 367
Journals: 84
Discoverability

- Google Scholar
- eScholarship is known to researchers
- Need for metadata
  - To distinguish versions
  - To communicate degrees of “openness” (aka communicate downstream uses)
  - To enhance discoverability
Publication Management System
Symplectic Elements (aka “The Harvester”)

- Monitors data sources for new UC-authored publications
- Sends email notification to authors
- Authors use a streamlined deposit tool to upload the appropriate version of the article to eScholarship
- Plans to integrate with other tools
About Open Access Policies

• Designed to promote open access, but respect academic freedom

• Open access = more readers, more citations, more engagement

• OA policies work by changing the default. From weak individual negotiation to strong collective power

• Strength and weakness of the policy = opt out/waiver
UC Policy is **GREEN**

- Green policies reserve rights (under copyright law) to **make a version of any publication available in a public repository**

- UC OA policy **does not require that anyone pay** to publish or publish in an OA journal

- **Advantage?** Reserves strong, flexible rights without committing to any particular business model
Many varieties of "open" in eScholarship

• CC licenses are encouraged, not mandatory
• Copyright retained by author – “All rights reserved”
• Copyright owned by publisher
• No indication of rights whatsoever!
• Green, libre, gratis, but not gold
When and How to Deposit

- Article can be deposited anytime after it is accepted for publication (‘by the date of publication’).
- Author can choose a limited embargo (6 months, 12 months)
- Author determines the license rights that apply
  - Commercial or Non-commercial uses?
  - Derivative works?
  - “Share Alike” (license applies to all subsequent users)
The U. of California’s Open-Access Promise Hits a Snag: The Faculty

By Paul Basken | JULY 07, 2016  ✔ PREMIUM
Not bad, really!
The Digital Ephemera Project is an initiative to digitize, preserve and provide broad public access to print items, images, multimedia, and social networking resources produced world-wide. Learn More »
Thank you!
• Jane Park
  • Director of Platforms and Partnerships, Creative Commons
A simple, standardized, legally robust way to grant © permissions to cultural works and data
CC Licenses

- Enable © holders to grant copy and reuse permissions to the public
- 6 licenses:
  - Some grant commercial uses
  - Some grant derivative uses
  - All require attribution
4 Elements

- Attribution
- ShareAlike
- NonCommercial
- NoDerivatives
CC Zero =
I want to waive all of MY rights to a work.
(legally operable)
Statement of Purpose

The laws of most jurisdictions throughout the world automatically confer exclusive Copyright and Related Rights (defined below) upon the creator and subsequent owner(s) (each and all, an “owner”) of an original work of authorship and/or a database (each, a “Work”).

Certain owners wish to permanently relinquish those rights to a Work for the purpose of contributing to a commons of creative, cultural and scientific works (“Commons”) that the public can reliably and without fear of later claims of infringement build upon, modify, incorporate in other works, reuse and redistribute as freely as possible in any form whatsoever for any purposes, including without limitation commercial purposes. These owners may contribute to the Commons to promote the ideal of a free culture and the further production of creative, cultural and scientific works, or to gain reputation or greater distribution for their Work in part through the use and efforts of others.

For these and/or other purposes and motivations, and without any expectation of additional consideration or compensation, the person associating CC with a Work (the “Affirmer”), to the extent that he or she is an owner of Copyright and Related Rights in the Work, voluntarily elects to apply CC0 to the Work and publicly distribute the Work under its terms, with knowledge of his or her Copyright and Related Rights in the Work and the meaning and intended legal effect of CC0 on those rights.

1. Copyright and Related Rights. A Work made available under CC0 may be protected by copyright and related or neighboring rights (“Copyright and Related Rights”). Copyright and Related Rights include, but are not limited to, the following:

   a. the right to reproduce, adapt, distribute, perform, display, communicate, and translate a Work;
   b. the right to modify a Work; and
   c. the right to use a Work in connection with other materials.

2. Waiver. A Work subject to CC0 may be made available without any consideration, or on a noncommercial basis, by Linking Entities (who may or may not be Affirmers) with not less than 30 days prior written notice.

3. Notice and Warning. For purposes of CC0, the notice required in Section 2(b)(1) above must include a plain English statement stating that your use of a Work in accordance with CC0 is restricted to non-commercial purposes only, and a short description of the nature of those purposes.
PD Mark =
For works already in the public domain.
(legally-operable)
No Copyright

This work has been identified as being free of known restrictions under copyright law, including all related and neighboring rights.

You can copy, modify, distribute and perform the work, even for commercial purposes, all without asking permission. See Other Information below.

Other Information

- The work may not be free of known copyright restrictions in all jurisdictions.
- Persons may have other rights in or related to the work, such as patent or trademark rights, and others may have rights in how the work is used, such as publicity or privacy rights.
- In some jurisdictions moral rights of the author may persist beyond the term of copyright. These rights may include the right to be identified as the author and the right to object to derogatory treatments.
- Unless expressly stated otherwise, the person who identified the work makes no warranties about the work, and disclaims liability for all uses of the work, to the fullest extent permitted by applicable law.
- When using or citing the work, you should not imply endorsement by the author or the person who identified the work.
Creative Commons Corporation ("Creative Commons") is not a law firm and does not provide legal services or legal advice. Distribution of Creative Commons public licenses does not create a lawyer-client or other relationship. Creative Commons makes its licenses and related information available on an "as-is" basis. Creative Commons gives no warranties regarding its licenses, any material licensed under their terms and conditions, or any related information. Creative Commons disclaims all liability for damages resulting from their use to the fullest extent possible.

Using Creative Commons Public Licenses

Creative Commons public licenses provide a standard set of terms and conditions that creators and other rights holders may use to share original works of authorship and other material subject to copyright and certain other rights specified in the public license below. The following considerations are for informational purposes only, are not exhaustive, and do not form part of our licenses.

Considerations for licensors: Our public licenses are intended for use by those authorized to give the public permission to use material in ways otherwise restricted by copyright and certain other rights. Our licenses are irrevocable. Licensors should read and understand the terms and conditions of the license they choose before applying it. Licensors should also secure all rights necessary before applying our licenses so that the public can reuse the material as expected. Licensors should clearly mark any material not subject to the license. This includes other CC-licensed material, or material used under an exception or limitation to copyright. More considerations for licensors.

Considerations for the public: By using one of our public licenses, a licensor grants the public permission to use the licensed material under specified terms and conditions. If the licensor's permission is not necessary for any reason—for example, because of any applicable exception or limitation to copyright—then that use is not regulated by the license. Our licenses grant only permissions under copyright and certain other rights that a licensor has authority to grant. Use of the licensed material may still be restricted for other reasons, including because others have copyright or other rights in the material. A licensor may make special requests, such as asking that all changes be marked or described. Although not required by our licenses, you are encouraged to respect those requests where reasonable. More considerations for the public.

Creative Commons Attribution 4.0 International Public License

By exercising the Licensed Rights (defined below), You accept and agree to be bound by the terms and conditions of this Creative Commons Attribution 4.0 International Public License ("Public License"). To the extent this Public License may be interpreted as a contract, You accept and agree to be bound by its terms and conditions. You grant the Licensor a world-wide exclusive right and license to exercise the Licensed Rights in the Work as specified in these terms and conditions.

Creative Commons Attribution 4.0 International License

The Work must carry appropriate legal notices and discretionary credits.

The Author(s) and the Licensor may have provided additional rights under separate agreement. Any such additional terms shall apply in addition to the terms specified herein. If the Work is modified or衍生, the terms of the Public License shall remain applicable except that, in doing so, You may create new and derivative works from the Work by the processes of adaptation, transformation, and derivation, so long as You do not alter, transform, or derive the Work so that resulting material is no longer derivative of the original and instead the result is an independent creation. You may exercise the Licensed Rights in the Work only as expressly permitted under this Public License. Any rights not expressly granted are reserved by the Licensor.

The right to exercise the Licensed Rights under this Public License is perpetual and in no way affected by the expiration or termination of the License.

The Work as made available for public access is available under the terms of this Public License. In no event shall any Legal Entity be entitled to modify, restrict, boycott, or penalize any user or party in respect of the Exercise of the Licensed Rights under this Public License.
Human Readable Deed

Creative Commons Attribution 4.0 International (CC BY 4.0)

This is a human-readable summary of (and not a substitute for) the license.

You are free to:

Share — copy and redistribute the material in any medium or format
Adapt — remix, transform, and build upon the material
for any purpose, even commercially.

The licensor cannot revoke these freedoms as long as you follow the license terms.

Under the following terms:

Attribution — You must give appropriate credit, provide a link to the license, and indicate if changes were made. You may do so in any reasonable manner, but not in any way that suggests the licensor endorses you or your use.

No additional restrictions — You may not apply legal terms or technological measures that legally restrict others from doing anything the license permits.

Notices:

You do not have to comply with the license for elements of the material in the public domain or where your use is permitted by an applicable exception or limitation.

No warranties are given. The license may not give you all of the permissions necessary for your intended use. For example, other rights such as publicity, privacy, or moral rights may limit how you use the material.


<a cc:attributionURL="http://joi.ito.com/my_photo" cc:attributionName="Joi Ito"

is licensed under a

<a a="license" a="http://creativecommons.org/licenses/by/3.0/" <Creative Commons Attribution 3.0 License<a>

<sp dc:source="http://fredbenenson.com/photo" Permissions beyond the scope of this license may be available at <a cc:morePermissions="http://ozmo.com/revenue_sharing_agreement" <OZMO<a>

span

<amp>
Wow! Over 1 billion CC licensed works in the Commons in 2015.

CC licensed works have nearly tripled in the last 5 years.
2015 Impact: CC + Cultural Heritage

Creative Commons has fundamentally changed the way the world can share, use, and preserve our cultural heritage now and generations to come.

Museums and cultural institutions are choosing to share every day.

Over 50 cultural institutions have made their permanent collections or records available for unrestricted use around the world under CC licenses or public domain tools, including:

RIJKS MUSEUM  Brooklyn Museum  europeana
York Museums Trust  MoMA  SMK

Thanks to CC’s public domain tools, digital images of outer space are made freely accessible and more broadly available to the public than ever before.

A collaboration with NASA, the Project Apollo Archive makes available thousands of images of the iconic Apollo moon missions of the late 1960s and early 1970s under the Public Domain Mark.

SpaceX, a private corporation, dedicates its photos to the public domain using CC0.
Museums
The Getty

- Select digital publications, eg. Ancient Terracottas, Mellini (CC BY)
- Teaching & learning resources (CC BY-NC-SA and CC BY-NC-ND)
- Collection guides, inventories, finding aids (CC0)
- The Getty Iris (blog) (CC BY)
Pietro Mellini’s Inventory in Verse, 1681

A Digital Facsimile with Translation and Commentary

Edited by Murtha Baca and Nuria Rodriguez Ortega
With notes and essays by Murtha Baca, Francesca Cappelletti, Helen Glanville, and Nuria Rodriguez Ortega

Published by the Getty Research Institute
Mori Art Museum (Japan)

- CC license policy for photos taken of exhibits since 2011 (CC BY-NC-ND)
- Launched with Ai Weiwei exhibit
- Museum of Contemporary Art in Tokyo followed suit
Blog: Doubled since Ai Weiwei

Photography NOT Allowed

Photography Allowed

History in the Making
Anette Messager
Chalo! India
Kaleidoscopic Eye
Ai Weiwei
Medicine and Art
Roppongi Crossing 2010

Viewpoint: Not Allowed
Museum Victoria (AU)

- 1.15 million records; 150k+ images
- CC0 for metadata records
- CC BY for curatorial texts
- 100k+ images are CC-licensed or marked public domain
Diary - David Yuile, 'City of Dunedin' & S.S. 'Albion', 1872
Leisure, Migration & Cultural Diversity, Public Life & Institutions
Diary written by David Yuile who came to Victoria via New Zealand from Scotland on 21 September 1872, for his health. The diary contains daily entries which ...

Scrapbook - Caroline Chisholm, circa 1844-1861
Migration & Cultural Diversity, Public Life & Institutions
Scrapbook of newspapers and other flyers compiled by Caroline Chisholm, circa 1844-1861. The scrapbook includes hundreds of original newspaper cuttings, flyers and public ...
Virtual Collection of Asian Masterpieces

- Digital archive of Asian art by Asia-Europe Museum Network
- CC BY-NC-SA for all text and images on site
- 130 museums from 35 countries have contributed masterpieces
All contributors to the Virtual Collection of Masterpieces

More than 130 museums from 35 countries have contributed their masterpieces. Click on a tag to see a museum and zoom in by double "left" clicking to see all the museums of a city.
Rijksmuseum

- 150,000 images of its public domain collection released via CC0
- API + Rijksstudio – 177k user contributions
- 2,000+ images feat. In Wikipedia articles – 10 mil+ views
- First results in Google Image Search
Discover the possibilities of 200,000 masterpieces

Rijksstudio Award 2015
What can you do with your Rijksstudio?
Winter in Holland

Now in 177,719 Rijksstudios

Search in Rijksstudio
CC licenses are robust, built on © law
Clarity and specificity regarding use
Data embedded w/assets; enables browse/search filters
Minimizes overhead for individual transactions
Clear way to share PD collections
Promotional & educational tool
Increases reach + impact of museum
Good will w/public, creative industries
Enable unexpected, creative & delightful results
Lead to refocusing of resources, new funding + revenue models
Except where otherwise noted: CC BY
creativecommons.org/licenses/by/4.0

Creative Commons and the double C in a circle are registered trademarks of Creative Commons in the United States and other countries. Third party marks and brands are the property of their respective holders.
• Shun-Ling Chen
  • Assistant Research Professor, Institutum Iurisprudentiae, Academia Sinica, Taipei
Politics of Freedom and Openness: two stories from Taiwan

Shun-Ling Chen
Academia Sinica
Aug 17, 2016
Open source software v.s. Free software

Free Software Definition (Free Software Foundation)
Open Source Software Definition (Open Source Initiative)

Largely similar, despite language difference, both include:

Freedom to run the program, to study and to change the program, to redistribute copies, to distribute modified versions
OSSF/Open Foundry (I)

Hosting platform for local F/OSS developers, an incubator to support community (2002-2016)

Reaction to Microsoft deal with TW Government

Brainchild of a few computer scientists at Academia Sinica

Focuses: Tech (platform building), operation (recruit projects/developers), and law/policy (licensing)
Conflicting ideologies:

Open (as an efficient software development method) vs. Free (to guarantee digital civil liberties)

Problematic start: funding initially came from the Ministry of Economic Affairs (MoEA), Industry Development Bureau, focusing on “open” and aim to promote “economic growth”

Serving the industry vs. serving the community
OSSF/Open Foundry (III)

OSSF itself as an early open access campaign for gov’t-funded projects

- MoEA IDB’s regulation disallowed giving project results away for free
- OSSF unable to release source code in its first year
Creative Commons Taiwan

Preparation began in 2003, launched in 2004
Spin-off from OSSF’s policy team
Hosted at Academia Sinica

2015, initiative to gradually transfer the project to an NGO (Open Culture Foundation, founded in 2014 by activists/ open data evangelists to support open gov’t data projects)
Taiwan E-Learning and Digital Archive Project (TELDAP) and CC-TW

Digital Archive Project - 2002-2007; TELDAP - 2008-2012

CC-TW began promotion within Academia Sinica in 2003

TELDAP adopted CC-BY-NC-SA for catalog metadata, since 2008 requiring all projects to publish images under CC licenses (default choices: CC-BY-NC-SA, CC-BY-NC-ND)

TELDAP contents largely not “free”
Definition of freedom for content?

CC - a spectrum of rights: Author’s liberty to dispose exclusive rights
“Approved for Free Cultural Works” button added in 2008
CC and Wikipedia (I)

Distinction between free/unfree CC licences not clearly labeled until 2008

Definition of Free Cultural Works (DFCW, 2006)

Freedom to use, to study, the make and redistribute copies, to make changes and improvements
Wikipedia’s long dissatisfaction with GFDL (by the FSF) as impractical

But some Wikipedians regard FSF a more “principled” license/freedom steward than CC

In response to the WP community, CC issued a Statement of Intent for BY-SA licenses in 2008, accepting the DFCW

Wikipedia became dual licensed (CC-BY-SA, GFDL) in 2009
Observations, take-aways

Language is often not neutral

Clear definitions help to mitigate differences/misunderstanding/distrust

License stewardship matters

Community can have an influence on setting the political goals and standards
Open Access and Cultural Heritage Collections: Legal Tools and Practical Considerations

Mikka Gee Conway
Assistant General Counsel
J. Paul Getty Trust
# The Open Access Continuum

<table>
<thead>
<tr>
<th>CLOSED</th>
<th>OPEN</th>
</tr>
</thead>
<tbody>
<tr>
<td>Non-commercial use only</td>
<td>Any use, even commercial</td>
</tr>
<tr>
<td>Low resolution files</td>
<td>High resolution files</td>
</tr>
<tr>
<td>No modifications or redistribution</td>
<td>Free to re-mix and redistribute</td>
</tr>
<tr>
<td>Attribution required</td>
<td>Attribution optional</td>
</tr>
</tbody>
</table>
COPYRIGHT

• Protects the creator of an original work
  – Generally for 70 years after death
• Prevents unauthorized reproductions
• Do you know the copyright status of all the parts of your project?
CONTRACT LAW

- Gift agreement restrictions
- License terms
- Permissions from lenders
- Do any of these restrict your ability to be open?
Open Licensing of Publications: Pietro Mellini’s Inventory in Verse
THE PROJECT

• A born-digital publication
  – Images
  – Texts
  – Translation

• Intended to be open access
THE GOAL

- Eliminate unnecessary copyright restrictions
- License the project so that users know that the work may be freely reproduced, reused, remixed, redistributed
THE PROBLEM

• Lack of clarity around “open access”
  – Free of charge?
  – Or also free to reuse and redistribute?
• Initially published without express open license – mixed message
  – Getty’s general website Terms of Use applied
  – i.e., Getty reserved rights
THE PROBLEM

• Third-party content
• Image permission requests silent on open licensing
• Needed to exclude these from the license
  – CC licenses contemplate selective licensing
  – Licensors told to “clearly mark or indicate in a notice” what material is licensed and what is not
  – How exactly?
THE SOLUTION

• Writing a clear statement regarding rights and which parts of the publication are CC-licensed and which are not
• Adding machine readable HTML-level tagging to communicate rights status of individual elements to web crawlers and search engines
Open-Source Software: Getty Scholars’ Workspace™
GNU-GPL v.3
THE PROJECT

• Getty Scholars’ Workspace is:

  – Open-source software

  – To build an online environment to support collaborative art-historical research
THE GOAL

• Further the Getty’s open access goals

• Apply an open-source software license so that users know exactly how the source code can be used
THE PROBLEM

• Not enough discussion of licensing considerations during project development

• Lack of clear policies and standard approaches to software development and open licensing
THE PROBLEM

• Source code from many different places
• Different open-source licenses governing these components
• No in-house legal expertise on software licensing
• Short timeframe to fix it
THE SOLUTION

• Short-term: Hiring a knowledgeable consultant with technical and legal expertise

• Long-term:
  – Set institutional policy when VP of Computing and Digital Initiatives position is filled
  – Share information and experiences across programs, learn and foster best practices in OSS development
Questions & Discussion