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Heard on the Net: Developing the Balance of Discovery and Respect with Primary Resources

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Developing the Balance of Discovery and Respect with Primary Resources

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Within libraryland social media this past spring and summer, an emerging story began to unfold. A relatively new upstart company, Reveal Digital <http://www.revealdigital.com/> has begun developing digital archives of primary resources which are funded by institutions pledging upfront support. The eventual result of this work will be collections made available as Open Access content to everyone. The majority of the content is being sourced from research libraries' archival collections. Those pledging money get early access to the content as it is being digitized and made available. In addition, source libraries obtain digital copies that they can dark archive. Pledging libraries also gain MARC records and COUNTER compliant usage statistics. Reveal Digital makes no claims on copyright to the material. After a designated period, the content will be made available as Open Access resources. All-in-all, this is an exciting new model in regards to primary resources that often cost librarians tens of thousands of dollars with sometimes hefty on-going access fees levied.

However, there were questions being raised by librarians regarding how rights holders may have been contacted or given input into making some of the content available. In particular, the Independent Voices project, <http://www.revealdigital.com/independent-voices/> is a collection that has come under close scrutiny, most specifically, the inclusion of the entire run of *On Our Backs* within this collection. *On Our Backs* (OOB) was an alternative press publication that focused primarily on lesbian erotica/pornography from 1984-2004. As the first all-female-produced content of this type in the United States, it bears historical significance. The publication was produced in San Francisco, California for an independent press and developed a fairly large circulation/distribution model in North America and eventually Australia <https://en.wikipedia.org/wiki/On_Our_Backs>. However there have been concerns about how the rights holders' permissions have been sought in regards to fully digitizing this publication given the nature of its content. [Author's Note: The OOB content has been removed at this point from the Independent Voices Collection due to concerns regarding depiction of pornography in some States.]

One of the librarians who has expressed concerns is Tara Robertson, Accessibility Librarian, in Vancouver, British Columbia. Tara has a personal blog <http://tararobertson.ca/> in which she thoughtfully and eloquently writes about universal design, open-source software, intellectual freedom, and feminism. Her initial post on March 20, 2016, noted:

> "Most of the OOB run was published before the internet existed. Consenting to appear in a limited run print publication is very different than consenting to have one's sexualized image be freely available on the internet. These two things are completely differ-

ent. Who in the early 90s could imagine what the internet would look like in 2016?"

Tara's post was noted by other librarians involved in digital scholarship and used as reference to the need for developing ethical framework when producing digital content. On August 8, 2016, Tara Robertson and Jenna Freedman hosted a CritLib discussion on digitization ethics (the curated collections of posts to that discussion can be found here: <http://critlib.org/ethics-of-digitization/>). Furthermore, Tara was an invited speaker at Code4Lib NYS during the first week of August, which resulted in her sharing her slides as well as further thoughts on this digitization effort <http://tararobertson.ca/2016/oob-update/>. In particular, when performing research at Cornell University Libraries, Tara discovered some of the copyright permission forms indicating that editors' image releases were for the print publication and one-time use only.

As more and more academic librarians consider digitization projects, especially projects that utilize primary source material that was not mass or commercially produced, considering and determining the ethical standards to be instituted are tantamount. As a way of helping librarians frame these discussions at their own institutions, Peggy Glahn, the Program Director at Reveal Digital, and Tara Robertson agreed to answer the following questions posed to them. It is hoped that by reading through their responses and thinking through these issues and concerns, we can all become more conversant in the digital ethical concerns in regards to making our primary resources discoverable in the twenty-first century.

How do you define or present the concept of "the alternative or independent press"?

[PG]: Independent Voices is a collection of alternative press titles published in the 1960s, 70s, and 80s. It is challenging to definitively define the alternative press in a way all can agree upon; it isn't in the nature of the alternative press! We developed the project's target title list in collaboration with librarians who collect in this area and others who were involved in the various social movements of the era. Our criteria for selection includes periodicals that began publishing in the 1960s, 70s, or 80s; titles that were intended for public consumption and distribution; titles for which we are able to obtain copyright permission or are otherwise in the public domain. Zines are outside the scope of this project.

[TR]: I'd define alternative or independent press as publications with a smaller print run than a mainstream press. Alternative or independent presses often represent more diverse opinions than mainstream publishing.

Most zines and alternative/independent presses are compilations of works of multiple contributors. In many instances, the main editors/authors did not seek permissions and/or releases from the producers providing submissions to their publications. Given this situation, to what extent should copyright permissions be sought?

[PG]: The Independent Voices project contains no publications we would classify as a zine, so my response is only related to publications from independent presses. We are creating Independent Voices under the precedent set by the Greenberg vs. National Geographic Society ruling related to 17 U.S.C Section 201(c) of the Copyright Act. This ruling came after the Tasini case. The ruling stipulates that publishers do not have to secure additional rights from contributors to digitize and display their previously published works, regardless of the media selected for redistribution, as long as the original printed context is maintained. This position is supported by ALA, ARL, AALL, and MLA through their joint amicus brief in support of the National Geographic Society.

[TR]: It can be complex figuring out who has copyright, but it's necessary. Zine Librarians' Code of Ethics has good information on this subject. While it may be possible to argue fair use, they recommend respecting the wishes of content creators. I like that they also explicitly acknowledge community: "in the name of community respect, we advise getting explicit permission whenever possible." This makes good legal and ethical sense.

In Tara's criticism of Reveal Digital, she cites the people involved in the creation of the Mukurtu <http://mukurtu.org/> project as a positive example of how to engage with various communities when creating digital collections. Given the scope and breadth of the Independent Voices project, how could that same feedback be scoped that would result in a worthwhile engagement with the communities involved?

[PG]: The Mukurtu project is a thoughtful innovative approach to opening up access to cultural material in a positive and affirming way. I love what they are doing. I hope there will be opportunities in the future to incorporate concepts and features Makurtu has developed into our platform when we develop new projects.

For now we are limited in our ability to add new platform functionality to Independent Voices. The project is being funded by contributions from libraries. As of today, we are $140,000 away from reaching the $1.794M cost recovery goal. We are very close, but only have until December 31, 2016 to reach the goal. It won't be an easy task. Every dollar that is contributed now is going toward digitizing the content originally scoped for the project. There are no dollars available to add new platform functionality, unless we vastly exceed the goal.

As we transition our investment fund approach to Open Access in 2017, we will be building an editorial board composed of librarians and faculty from funding libraries. The editorial board will provide the mechanism for funding libraries to have a voice and a vote in how their dollars are spent. Should future projects approved by the editorial board include unpublished cultural material, we will be looking to projects like Mukurtu for best practices in engaging cultural communities in the digitization of their material.

[TR]: It's important to talk to the editors and the original content creators: writers, photographers, and their models, and find out what their wishes are with this magazine. Most of the models wouldn't have had copyright of the images that they appeared in, yet it's their bodies on the page. In this situation, the models are the ones with the least amount of rights and who can be harmed the most.

Several people who modeled shared their thoughts and feelings with me. One said, "When I heard all the issues of the magazine are being digitized, my heart sank. I meant this work to be for my community and now I am being objectified in a way that I have no control over. People can cut up my body and make it a collage. My professional and public life can be high jacked. These are uses I never intended and I still don't want." Another said, "It's one thing to have regrets over what you've published, but I actually never consented to have this photoshoot published by *On Our Backs* in the first place, let alone digitally."

Consultation should also include researchers, academics, librarians, and archivists. Members of the queer community also have a stake in this, though defining who is representative of the queer community could be difficult. I think it's possible to design a way for people to engage online or through social media to allow for broad consultation without it costing too much.

The New Zealand Text Collection consulted various communities in deciding if and how to digitize *Moko, or Maori Tattooing*. Their report is online and would be a good place to start when planning community consultation on culturally sensitive materials. <http://nzetc.victoria.ac.nz/tm/scholarly/tei-MokoDiscussionPaper.html>

What are the best practices or proper steps to be taken in obtaining permission for creating digital archives of content produced by third parties?

[PG]: The answer depends on the kind of content that will be included in a digital archive. Different content types have different rules regarding their use. For a collection like Independent Voices, which is composed of published periodicals, our process for obtaining rights was and continues to be properly conducted.

The first step is identifying the legitimate rights holder for a publication. That isn't always easy, particularly with alternative press content. It can take a good deal of detective work to find the right person or people and their contact information. If we are not able to identify or reach the legitimate rights holder and obtain their written permission, we do not include the title in the collection.

Going beyond obtaining permission from rights holders to obtaining permission from individual contributors is not required, nor is it desirable, nor is it economically feasible. It is not required due to the Greenberg ruling described above. It is not desirable because of the gaping holes the process would inevitably lead to in the historic record for every publication included in a collection. It is not economically feasible because of the exponentially higher number of person hours it would require to identify and contact rights holders and negotiate permissions.

[TR]: [Author's Note: Tara felt she wasn't sure what to say for question #4 as she doesn't work in that area and copyright in Canada is different from the U.S.]

In 2001, there was the case the New York Times, Co. versus Tasini which outlined some fundamental problems between the digitization of works where permissions had not been fully granted to a third party <https://en.wikipedia.org/wiki/New_York_Times_Co._v._Tasini>. More recently, there have been the takedown concerns involving the Getty Research Institute images. How can librarians, as a profession, be better informed on these types of copyright permission concerns with our locally created digital collections?

[PG]: The Tasini case is one that is often raised in the context of digital periodical collections. It is very well-known among librarians. The Greenberg ruling is equally important as it directly builds on the Tasini ruling, but seems to be less frequently raised in discussions. Without Greenberg, most of the archival periodical collections available today would never have been created.

Copyright permission concerns will always be a tricky area when it comes to creating digital collections. Unless you are a copyright librarian or lawyer, most librarians are not going to have time to keep up with the case law. I have seen good, informative discussions of copyright issues on listservs like ScholComm or blogs like the Scholarly Kitchen. These venues can offer food for thought, but ultimately, consulting with a copyright lawyer will enable librarians to understand all the issues as they pertain to their particular collection and enable them to make the right decisions for their institution.

[TR]: As with most areas of librarianship, you end up developing a depth of knowledge in the area that you are working in. The copyright librarians and the librarians who work in digital collections are particularly knowledgeable in this area as it's part of their everyday work.

I think as a profession we need to have a broader conversation about the ethics of digitization. Even if we've got the copyright clearances to digitize, there are cases where it's inappropriate. Central to librarianship is a concern about increasing access to information. We also need to talk about where it's not appropriate for us to be providing access. Many librarians bring up intellectual and academic freedom, which while important misses the point that we have a responsibility to honour and respect other cultural protocols around information sharing. At the IPinCH Cultural Commodification, Indigenous Peoples & Self-Determination Public Symposium, Kim Christen Withey said,

> Many Indigenous knowledge systems rely on protocols. Many of the protocols have to do with not seeing, which very much is the antithesis of the Western "seeing is believing." You have to see it to know it. And these systems are saying you don't get to see it or know it—deal with it.

We need to learn more about this in libraries.

Should textual works and two dimensional works be treated differently than photography or other visual and audio media?

[PG]: I think the answer to this question depends on the context of the project. A collection of photographs from an archive are treated differently under copyright law than photographs that are part of a published work. Likewise, audio media is covered by a raft of copyright requirements. Anyone creating digital collections must first adhere to the applicable copyright in addition to any ethical or privacy concerns that the content itself may raise.

[TR]: The content is more important than the format. Textual works can be published newspapers, love letters, or journal entries. That said, in our society sexually explicit content images and video are generally more controversial than sexually explicit text.

In your opinion, should any library or library consortium offering digital collections provide a mechanism for authors or members of their community to request redaction of digital content?

[PG]: Sure. The mechanism can be as simple and inexpensive as providing an e-mail address for redaction requests. The trickier question for librarians will be how to respond to those requests. Librarians have traditionally stood firm against censorship of any kind. Redaction is a form of censorship. However, there may be circumstances where redaction is the right thing to do for legal or privacy reasons. The choice to redact or not to redact is not always obvious or easy.

[TR]: I used to think a clear public takedown policy and contact was important, and maybe it still is, however I think it's more important to know who you could have a conversation with if you had concerns. It's difficult when you're outside an organization or university to know how things are structured and who you can contact. By making this clear, you're making it possible for people in the community to start a dialogue with you.

Libraries need to consult with communities before putting sensitive collections online in the first place.

Reveal Digital's Independent Voices began digitization in 2013 and the Zine Librarian's Code of Ethics <http://zinelibraries.info/code-of-ethics/> came out in October 2015. For Peggy Gahn to answer: What is the review cycle in place for updating the procedures and processes of the copyright permissions sought? For Tara, what would be the best practice for reviewing and updating the process and procedures for seeking copyright permissions?

[PG]: Independent Voices is a collection of alternative press periodicals that were originally created for as wide a public distribution as possible. While the publications in Independent Voices share some characteristics with zines (often published by marginalized populations, sometimes short runs), they are not considered to be zines. Our copyright permissions process adheres to the principles upheld by Greenberg. We have no plans to change our copyright permissions process for the remainder of titles targeted for inclusion in Independent Voices.

One of Reveal Digital's future projects will focus on zines. We will be working in close partnership with librarians who are currently following the Zine Librarian's Code of Ethics. We intend to be in full compliance with this document when we do work with zine content.

[TR]: I know I'm sounding like a broken record, but I think for culturally sensitive collections we need to go beyond just looking at copyright.

Since scholarship and research are now sourced in many cases from social media and from mechanisms that once were considered realms of smaller communities, how can librarians engage their academic communities with the concept of "the right to be forgotten"?

[PG]: I think everyone from my era and older (GenX and Baby Boomers) feel very fortunate that we and our friends did not have social media sources on which we discussed and posted pictures documenting our youthful exploits! Everyone has done, said, or written

something at some point in their life they regret. Before social media, those things were largely undiscoverable and therefore forgotten. It is a very different picture today. Social media itself may be the answer to how librarians engage with academic communities around the concept of the right to be forgotten. Tara Robertson through her blog and other social media outreach has done much to advance the discussion within scholarly circles.

[TR]: For people who modelled in *On Our Backs*, I understand why some of these people would not want their photo shoots online. Our society isn't terribly sex positive. The models who I talked to did not consent to have images of their bodies online and some were also worried that this could hurt their careers or lives. We often think about these things as a balancing act—where there's a need to balance the freedoms of researchers and queers who want access to that history with the freedoms of people whose lives could be hurt by this access. I don't actually think it's a balancing act. I think that in this case we need to prioritize the voices of people who could be hurt by this content being freely available on the internet.

I can see how in other cases, like people who committed crimes against humanity or other atrocities, shouldn't be allowed to erase them from history. Perhaps we should be able to erase embarrassing things we've done? Perhaps not? I'm not really sure where to draw the line.

DocNow is "a tool and community developed around supporting the ethical collection, use, and preservation of social media content" (<http://www.docnow.io>). I'm enjoying listening to the thoughtful conversations that are exploring these questions.

Are there any last thoughts or considerations to be shared?

[PG]: Reveal Digital's inclusion of *On Our Backs* (OOB) in Independent Voices has generated a lot of good discussion about ethical issues related to digitization. As we said in our public statement <http://www.revealdigital.com/wp-content/uploads/2016/08/Statement-re-garding-On-Our-Backs-20160824-Rev-1.0.pdf> on this issue, it was only after careful consideration and consultation with librarians and scholars that we arrived at the decision to include OOB in Independent Voices. It is considered by many in the academic community to be an essential artifact of the "feminist sex wars," when feminists split into factions based on their attitudes towards women's sexual expression.

The reaction from librarians to our removal of OOB from Independent Voices has been universally positive. Many have expressed their hope that we can find a way to bring the material back into the collection. We have also heard from a number of scholars who were actively using OOB in their research. They have expressed disappointment but understanding about our decision as well.

Heather Findlay, who was the final publisher of OOB and is the current rights-holder was sad to see the material removed. As Ms. Findlay reflects on her experience with OOB she characterizes the models and contributors as incredibly brave women who participated in the publication as a political statement and an act of power and rage. They wanted the material to be seen by as many people as possible. In Ms. Findlay's experience, OOB's contributors were delighted about the digitization of OOB and its inclusion in the Independent Voices project.

There are many different voices to be heard in this debate. We will continue to listen and look for a path forward that is sensitive to all.

[TR]: Although I've publicly critiqued Reveal Digital, figuring out best practices for the ethical digitization of independent media from just before the internet existed is not easy or simple. Reveal Digital is in a great position to figure out what best practices look like in terms of community consultation, ethics beyond just looking at copyright and digital access. They are intelligent folks who have figured out a great business model, so I'm hopeful that they'll also be able to figure this out. ∎