Implementing RightsStatements.org at the University of Miami Libraries

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INTRODUCTION Library digital collections have historically contained unstandardized and often inadequate information regarding copyright status in their item-level metadata. The development of RightsStatements.org, a project to create a set of international recommendations for describing rights status, provides an opportunity for libraries to improve their rights metadata and educate users about copyright for digital objects. **DESCRIPTION OF PROGRAM** This paper reports on a two-year project at the University of Miami Libraries to implement RightsStatements.org. Two librarians who did not have previous experience in copyright issues performed a copyright analysis of all 58,000 objects in the libraries' digital collections and developed workflows for updating rights metadata. Workflows for developing new digital projects were also updated to incorporate rights considerations more comprehensively throughout the process. **CONCLUSIONS AND NEXT STEPS** The copyright assessment project uncovered several challenges for analyzing the copyright status of digitized archival and special collections materials, including the need to periodically reevaluate materials as more content moves into the public domain in the United States. The project also reinforced the importance of risk management when planning digitization projects for online access. Project outcomes are discussed, as well as implications for other libraries considering implementing RightsStatements.org.

INTRODUCTION

Over the course of two years (2015–2016), the University of Miami Libraries undertook an effort to examine and improve the rights metadata in its digital collections. Although the library has been digitizing archival and special collections material for online access since the mid-1990s, providing comprehensive item-level copyright information had not been prioritized, and as a result, the University of Miami Libraries' digital collections contained an array of rights metadata that did not always provide useful or accurate information for researchers. Coinciding with the development of RightsStatements.org and the creation of a Florida service hub for the Digital Public Library of America, two librarians undertook a comprehensive project to evaluate and update copyright information for the library's digital collections. The project goals were to implement the RightsStatements.org recommendations, add item-specific copyright information to each object in the library's digital collections, and develop workflows for including copyright information in all future digital projects. The project leads were Head of Digital Production and Electronic Records Archivist Laura Capell and Digital Initiatives Metadata Librarian Elliot Williams. Associate Dean for Digital Strategies Sarah Shreeves was a driving force behind the project, providing invaluable guidance and support throughout.

This paper, reporting on the University of Miami Libraries rights project, describes the need for accurate rights metadata in digital collections, workflows to assess and add rights metadata in bulk to legacy collections, challenges in determining the copyright status for the types of materials often found in digital libraries, and the ways in which the Libraries' digitization workflows changed to better accommodate copyright concerns. It also serves to provide a model for other institutions that do not have access to a copyright lawyer. Neither of us started the project with an in-depth background in copyright or scholarly communication, but over the course of the project, we gained a greater understanding of copyright law and its implications for digital libraries. The goal of this paper is not just to provide a case study of a large-scale copyright analysis project for digital collections, but to also help bridge the gap between digital libraries and copyright librarianship by examining the ways in which copyright issues play out in the context of digital collections.

Background on RightsStatements.org

This paper will not go into great detail about the development of the RightsStatements.org recommendations or descriptions of the 12 rights statements, which can be found on the RightsStatements.org website. However, some brief background is important for understanding the context and rationale of this project.

RightsStatements.org is a joint initiative of the Digital Public Library of America (DPLA) and Europeana, two aggregators of digital cultural heritage materials, to provide cultural heritage institutions with simple and standardized terms to summarize the copyright and reuse status of materials in their online collections.[1] Historically, rights metadata has been characterized by an overall lack of standardization, with institutions using their own terminology when creating rights statements for locally digitized materials. For instance, DPLA analyzed a sample of 1.3 million records, discovering approximately 26,000 different rights statements. When that number is extrapolated to the 16 million records in DPLA in July 2017, that equates to more than 300,000 unique rights statements (Shepherd, Capell, Han, Karl, & McAlister, 2017). These statements vary widely: some are succinct and accurate, others are overly long and deal with topics other than copyright, and some are wholly inaccurate. The statements found in DPLA aligned to a great extent with the patterns found by Schlosser (2009), which indicated that copyright statements in digital collections have not changed extensively in the last 10 years, demonstrating the need for more resources to encourage better rights description.

The RightsStatements.org statements are tools to provide standardization and consistency. They are meant to be simple, flexible, and informational, rather than provide proof of legal copyright status. The statements are an indication of existing rights, not licenses giving permission for reuse, and should be used in cases where Creative Commons licenses do not apply. They only address the copyright status of an item, not other rights that may exist, such as trademark or privacy protection, and they do not cover fair use or other uses that may be permitted for items in copyright. The rights statements are both human- and machine-readable. Each statement has a uniform resource identifier (URI), published as linked data, which can be used to pull in the text or icon of the appropriate statement (for systems with that capability). As a leader in the development of RightsStatements.org, DPLA provides robust support for the new statements, strongly encouraging the use of RightsStatements.org or Creative Commons URIs for all materials contributed by partner organizations (DPLA, 2016, p. 1).

RightsStatements.org has 12 standardized rights statements, providing a minimum, baseline standard for organizations in the United States and the European Union. As other nations join the project, new statements may be added in order to accommodate their needs. The statements are arranged into three basic categories: In Copyright, No Copyright, and Other (http://rightsstatements.org/page/1.0/).

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[1] See Digital Public Library of America, https://dp.la; and Europeana, https://www.europeana.eu.

RIGHTS :≡ STATEMENTS

© IN COPYRIGHT	© UNKNOWN RIGHTSHOLDER	⊘ IN THE UNITED STATES
© EU ORPHAN WORK	⊘ CONTRACTUAL RESTRICTIONS	? COPYRIGHT UNDETERMINED
© EDUCATIONAL USE PERMITTED	⊘ NON-COMMERCIAL USE ONLY	? COPYRIGHT NOT EVALUATED
© NON-COMMERCIAL USE PERMITTED	⊘ OTHER LEGAL RESTRICTIONS	? NO KNOWN COPYRIGHT

Figure 1. List of the twelve rights statements from RightsStatements.org

LITERATURE REVIEW

The first step in the University of Miami Libraries copyright project was a review of the relevant literature. This was especially important because the project leads did not have a background in copyright law, and wanted to be well grounded in current best practices for evaluating the copyright status of both published and unpublished materials. The literature can be grouped into two categories: general copyright resources for cultural heritage institutions and resources related to RightsStatements.org.

For general copyright resources, we found three that were particularly helpful. *Copyright and Cultural Institutions: Guidelines for Digitization for U.S. Libraries, Archives, and Museums* by Hirtle, Hudson, and Kenyon (2009) is a key resource addressing copyright fundamentals for digital projects, and it was invaluable for working through some of the more complex copyright scenarios uncovered during the assessment project. Information on risk management, copyright permissions, and orphan works also proved helpful, especially during the project design phase. Peter Hirtle's copyright chart, *Copyright Term and the Public Domain in the United States* (https://copyright.cornell.edu/publicdomain), is another essential resource for determining the copyright status of published and unpublished works, as well as sound recordings and architectural works. This chart was the basis of the decision

matrix we created to standardize decision making during the assessment project. Melanie Schlosser's (2009) analysis of copyright statements in digital collections provided a useful analysis regarding the role that copyright statements play and was helpful for analyzing the weaknesses of University of Miami's existing rights metadata. Developed to identify books in the public domain in HathiTrust, the Copyright Review Management System Toolkit (Levine, Adler, Bonfiglio, Eden, and Hall, 2016) provides information about performing large-scale copyright review for books, including particularly rich detail about reviewing copyright registration and renewals.

RightsStatements.org was under development when this project began, and we closely followed the initial version of the project's white paper, *Recommendations for Standardized International Rights Statements*, released in October 2015. This paper outlines the rationale for developing RightsStatements.org, and provides an early iteration of the rights statements, including 10 of the 12 final statements. The January 2016 revision added the statement No Copyright – United States, which had a big impact on this project (International Rights Statements Working Group, 2016). The final iteration of the statements on the RightsStatements.org website includes a 12th statement, Rights Undetermined, which was also useful. A subsequent white paper, *Requirements for the Technical Infrastructure for Standardized International Rights Statements*, provided helpful guidance on the use of the URIs for implementation (International Rights Statements Working Group, 2017).

There were few other resources available on implementing RightsStatements.org when the University of Miami project launched, but more resources are becoming available as a growing number of institutions implement the recommendations. One such resource is the Society of American Archivists' (SSA) *Guide to Implementing Rights Statements from RightsStatements.org* (SSA Intellectual Property Working Group, 2016), which provides detailed recommendations on how to apply the four statements most applicable for U.S. archival institutions: No Copyright – United States, In Copyright, In Copyright – Rights-Holder(s) Unlocatable or Unidentifiable, and Copyright Undetermined. The guidance on the distinctions of published versus unpublished materials is particularly helpful, as most copyright literature focuses primarily on published materials.

DPLA has also published its own *DPLA Standardized Rights Statements Implementation Guidelines* (2016), which outlines DPLA's implementation of RightsStatements.org and includes recommendations for contributing institutions on how to map their rights statements for ingest into DPLA. These guidelines are intended specifically for use by DPLA hub partners rather than the broader cultural heritage community, but the overall framework is useful for anyone considering RightStatements.org. Because the DPLA recommendations were still under development at the start of the University of Miami project, we

took a slightly different approach, as discussed below. However, once available, we took the guidelines into consideration and engaged with other DPLA contributors to make sure the library's rights metadata could be mapped for DPLA ingest.

Other institutions are also beginning to publish about their experiences implementing the RightsStatements.org recommendations, allowing us to compare our implementation and determine similarities and differences in approach. For example, Washington University uses a student worker to first evaluate the materials before they are assessed by the copyright analyst, whereas the University of Miami has only one evaluation done by a librarian (Zeller, 2017). Also, Penn State University uses a single rights field in the metadata containing just the RightsStatements.org URI, but we use two rights fields, as described below (Ballinger, Karl, & Chiu, 2017). As more DPLA hubs adopt the RightsStatements.org framework, they are providing training and guidance resources on their websites.[2] The growing number of implementations is leading to a body of documentation and best practices that was not available when we began this project, thus providing a clearer path for future implementers, as they consider the intricacies of applying rights evaluation workflows for their digital collections.

Description of Project

The University of Miami rights assessment project evolved in two distinct phases. The first involved a copyright evaluation of the legacy digital collections, and the second was the implementation of a rights assessment workflow for new digital projects.

Over the past 15 years, the University of Miami Libraries has digitized tens of thousands of items for online access, including publications, photographs, manuscripts, architectural drawings, maps, oral histories, and audio and video recordings. These materials are grouped into over 120 digital collections that represent a range of geographical locations across a wide time span. While this diversity is beneficial for researchers, it presented challenges for assessing copyright across the collections. The library's descriptive practices have evolved over time, and metadata is not consistent across the digital collections. The collections are stored in a CONTENTdm repository, which uses a customized form of Dublin Core metadata.

The legacy assessment began in fall 2015 after a review of the digital collections revealed

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[2] See PA Digital, "For Contributors," https://padigital.org/for-contributors/; and CARLI, "Using Rightsstatements.org for DPLA Collections," https://www.carli.illinois.edu/products-services/content-dm/dpla/rights.

that most metadata records contained little to no rights-related information. Rights status at the collection level was discussed during project planning, but it was not systematically documented, and specific rights information was generally not included in the item-level metadata. Only about 10% of the items in the library's digital collections had specific rights information in the metadata. For the other 90%, the rights information was at best unhelpful, and at worst, incorrect. In most cases, the only rights information in the metadata was a link to the library's copyright webpage. In a few cases, the metadata claimed that copyright was held by the University of Miami Libraries from the date the material was digitized, an incorrect claim that can be considered copyfraud (Ballinger et al., 2017, p. 146).

The RightsStatements.org initiative provided an important framework for conceptualizing the project. The goal for the project was to record rights information in a more formal, systematic way in the item-level metadata. Not only would this better facilitate management of the content over time, but it would empower researchers to make better-informed decisions about potential uses of the library's online resources. This project was also in alignment with the University of Miami's participation in the development of a Florida DPLA service hub. Since rights metadata is a prerequisite for ingest into DPLA, the rights assessment project became a priority in order to help prepare the metadata for harvesting.

The University of Miami Libraries identified 6 of the 12 RightsStatements.org statements for use in our digital collections:

- In Copyright: used when the item is in copyright and the creator or copyright holder is known

- In Copyright – Rights-Holder(s) Unlocatable or Unidentifiable: used when the item is in copyright, but there is not enough information to determine who actually held the copyright

- No Copyright – United States: used for items that are in the public domain in the United States

- Copyright Undetermined: used when there is not enough information to determine if the item is still in copyright or not

- No Known Copyright: used when the creator indicates that the item is free of copyright or when copyright does not apply to the type of material

- Copyright Not Evaluated: used if no attempt has yet been made to determine the rights status of an item

Initially, we hoped to assign rights statements on a collection-by-collection basis, but soon

realized that most collections contained materials with varying rights status. This was especially true for manuscript collections where the materials spanned a large date range and had multiple creators. Therefore, one of the first steps was reviewing the donor files and deeds of gift to better understand the rights landscape for each collection. Not all collections had a deed of gift, and the deeds did not always contain useful or substantive rights information. In general, newer deeds of gift had more information regarding rights than the earlier ones, and they were more likely to clarify when donors retained copyright or transferred it to the library. However, as discovered over the course of the project, this was no guarantee that the donors actually held the copyright to all of the materials in their collections. In some cases, the deeds of gift contained information that was useful in determining the rights status of the materials, such as when the creator passed away. We also met with collection curators at this stage to gain a better understanding of the collections and particular rights issues that might be present. Although this process did not always yield substantive answers, the enhanced contextual understanding of the collections was beneficial when assessing the rights status.

With over 55,000 items to assess, in-depth research into the copyright status of individual items was not feasible in most instances. There were some collections where the assessment was more intensive than others, based on the nature of the materials, the dates, or the risk potential. However, for most collections, the decision was based on information available in the existing metadata. A brief amount of basic research was done for sizable groupings of material by the same creator, such as checking for the death date of the creators of personal papers. However, if that information was not found easily, the rights statement was assigned based on the information at hand. We determined this was an acceptable risk given that many of these materials had been available online for years, and if new information becomes available, the rights status for those materials can be updated.

To facilitate consistency, we created a copyright matrix listing the most common rights scenarios found in the legacy assessment project for published and unpublished materials with personal, corporate, or government creators. It also included the country of origin, since a large percentage of the University of Miami's digital content originated in Cuba, whose copyright laws differ from those in the United States, such as when corporate and government works move into the public domain. The matrix did not address the intricacies of registration and renewal for published works, or the presence of a copyright symbol. Since the legacy project dealt largely with unpublished materials, we decided to set those questions aside and default to the more conservative estimation, with the understanding that the published materials can be reevaluated as time allows. Overall, the matrix proved to be a useful reference tool that helped to standardize and simplify the decision-making process for a project where multiple people were making copyright assessments.

Figure 2. Matrix developed for the legacy copyright evaluation at the University of Miami, updated in 2018

Unpublished, personal authors

Published or Unpublished?	Country of Creation	Creator	Date of Creation	Copyright Code	Change from 2016 to 2018	Notes
Unpublished	US or Cuba	Any	Created before 1896	Public Domain	Date of creation now 1898	Date of creation now 1898
Unpublished		Creator is known, and died after 1946	Any	In Copyright	Author death date cut-off is now 1948	
Unpublished		Creator is known, and died before 1946	Any	Public Domain	Author death date cut-off is now 1948	
Unpublished		Creator is known, but dates of death aren't known	Created after 1946	In Copyright	Author death date cut-off is now 1948	
Unpublished		Creator is known, but dates of death aren't known	Created between 1896 and 1946	In Copyright – Copyright Owner Unlocatable or Unidentifiable	Author death date cut-off is now 1948	
Unpublished		Creator is unknown	Created 1946 or after	Rights Undetermined	Author death date cut-off is now 1948	
Unpublished		Creator is unknown	Created between 1896 and 1946	Rights Undetermined	Author death date cut-off is now 1948	
Unpublished		Creator is unknown	Date of creation unknown	Rights Undetermined		

Corporate or government authors

Published or Unpublished?	Country of Creation	Creator	Date of creation	Copyright Code	Change from 2016 to 2018	Notes
Unpublished	US	Corporate body (or work for hire) - still in existence	Created 1896 or after	In Copyright	Date of creation now 1898	Reasoning is that it is often unclear who owns the copyright for materials created by a corporate body that no longer exists. The copyright doesn't disappear, but the owner is unknown without further research.
Unpublished	US	Defunct corporate body (organization or business)	Created 1896 or after	Unlocatable or Unidentifiable	Date of creation now 1898	
Published	US	Defunct corporate body (organization or business) - still in existence	Created 1923 or after	In Copyright – Copyright Owner		Published materials created in the US by non-existent corporate bodies follow the same rules for published materials below. If they are in copyright, though, the owner is considered unlocatable or unidentifiable.
Either	Cuba	Corporate body (organization or business) - still in existence or defunct	Created 1896 or after	Unlocatable or Unidentifiable	Has this changed?	
Either	US	Created by an officer or employee of the US or Florida government as part of their official duties	Any	Public Domain		
Either	Cuba	Cuban government	Before 1959	Public Domain		Pre-revolutionary government materials
Either	Cuba	Cuban government	1959 or after	In Copyright		Post-revolutionary government materials

Published material

Published or Unpublished?	Country of Creation	Copyright Notice	Date of Creation	Copyright Code		Notes
Published	US or Cuba	Any	Before 1923	Public Domain		
Published	US or Cuba	No	1923-1977	Public Domain		
Published	US or Cuba	Yes	1923 to March 1, 1989	In Copyright		Could be in public domain, if pre-1963 and not renewed. But how often do we check for this? When items post-1963 come into the public domain varies based on several things, but all will be in copyright for a while longer.
Published	US or Cuba	Unknown	1923-1977	Rights Undetermined		These are cases where looking at the item could be useful. But as a rule, we aren't going back and doing that for existing collections. This depends on if the material was registered with the Copyright Office. But in general, we don't check for registration, so use Rights Undetermined.
Published	US or Cuba	No	1978 to March 1, 1989	Rights Undetermined		
Published	US or Cuba	Any	Date of creation unknown	Rights Undetermined		

To assess the items in each individual collection, we worked independently, using item-level metadata exported from CONTENTdm into Excel spreadsheets. We listed the rights status for each item in the spreadsheet, based on information about creation date and creator, along with questions for particular items. We documented the rationale behind our decisions, in case future reevaluations were needed. In order to speed up the process, we split the collections and each worked on half. We started with the easiest collections, which helped build momentum and allowed us to gain confidence before tackling the more challenging ones. We also met regularly to review questions and work through the more complex copyright scenarios.

After assessing the materials, two rights-related fields were added to the Dublin Core metadata records in CONTENTdm. One field, labeled "Standardized Rights Statement," contains the RightsStatements.org URI. This enables users to access the formal rights statement and provides a consistent identifier so that both DPLA and the University of Miami's local system can sort and filter materials by rights status. The other field is a local rights statement, labeled "Rights," and it includes a human-readable statement indicating the copyright status of the item and any known information about the copyright holder, along with a link to the library's digital collections copyright webpage. In instances where a specific rights holder is known, it is listed in the local rights field, but in cases where there is no additional information, the local rights field simply provides a text version of the RightsStatements.org label. A set of standardized local statements, or common phrases for specific situations, was developed for the local rights field, providing consistency and streamlining the creation of those statements. However, because the local rights field is designed for more detailed descriptions of rights information, that language was modified as necessary for specific situations.

This approach differs from DPLA's recommendations, which call for using local rights statements only to provide additional information to what is included in the RightsStatements.org statement. However, we decided that having the local rights field was important for usability, since CONTENTdm displays the URI as a simple hyperlink, requiring users to link out to the RightsStatements.org website to access the rights information. Using these two distinct metadata fields allows for the provision of both customized local rights information and a standardized, machine-actionable rights statement as recommended by RightsStatements.org. In order to comply with the DPLA recommendations, only the field with the RightsStatements.org URI is mapped for ingest into DPLA.

Annual Report for 1949
Pan American World Airways Collection
Special Collections
University of Miami Libraries

Rights	This material is in the public domain in the United States. The Pan Am brand remains under trademark. For additional information, please visit: http://merrick.library.miami.edu/digitalprojects/copyright.html
Standardized Rights Statement	http://rightsstatements.org/vocab/NoC-US/1.0/

Figure 3. Example showing two rights fields in the metadata

We also updated the Copyright Guidelines page on the digital collections website for the University of Miami Libraries to better reflect the library's approach to copyright.[3] This page is linked from the digital collections homepage, as well as the local rights metadata field. It provides more information about copyright for digitized materials than is possible within the item-level metadata and enables users to access additional information about how they can use materials. The page includes use cases for three rights categories: Public Domain, In Copyright, and Copyright Status Unknown or Undetermined. During discussions about the project, there was concern that labeling items as In Copyright could deter researchers from using those materials in ways that are allowed by fair use or other copyright provisions. Therefore, the Copyright Guidelines page seeks to clarify that just because an item is under copyright, it does not mean it cannot be used, but rather that its use has to be considered more deliberately.

The Copyright Guidelines page also emphasizes that the user has the ultimate responsibility to satisfy copyright and other use restrictions for items they wish to use, despite the rights analysis done by the library. It states that the rights status assigned to an item is based on the descriptive information available, and if new information comes to light, the rights status will be updated accordingly. It also contains a takedown policy in case a rights holder comes forward, as is standard practice with digital libraries. Thus, the page aims to both educate

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[3] http://merrick.library.miami.edu/digitalprojects/copyright.html

users and provide a certain level of legal cover for the institution. The Copyright Guidelines page is intended as an extension and amplification of the rights metadata, because users may have limited knowledge of copyright. We are interested in thinking about other ways to educate users about copyright, and hope this will continue to be an active area of development.

The University of Miami's approach to managing risk for digital collections greatly informed the legacy copyright project. The digital collections include materials protected by copyright that were put online with consent from the copyright holder or under the auspices of fair use. With an emphasis on access under fair use, all materials in the digital collections are available for download, and this project did not change that. Rather, it focused on providing rights statements to help users better understand how they could use materials. Keeping this in mind, we decided that since copyright determinations were often based on limited information, we would default to the more conservative analysis. For example, for early 20th century materials where there was not enough information to clearly show that the items were in the public domain, we applied the status Rights Undetermined even if the odds were in favor of those materials being out of copyright. Thinking about the project from a risk-assessment perspective also helped us determine which collections warranted more scrutiny. Thus, high-profile collections or collections with particularly engaged donors or other interested parties received more in-depth analysis.

Over the course of the project, we found that more materials were in copyright than initially anticipated, but we worked with the understanding that most of the digital collections had been online for years and no one had come forward with rights issues. Thus far, adding more comprehensive rights information to the digital collections has not resulted in any disputes over rights, though the library will actively work to resolve any issues that arise.

LESSONS LEARNED

Over the course of the legacy assessment project, we encountered several challenges due to the often complex nature of copyright for digital collections. One of the primary challenges was the lack of information needed to accurately determine copyright status. This was particularly problematic for unpublished materials. Since the project relied primarily on information available in the existing metadata, it exposed the limitations of that metadata. Local metadata practices had not been designed with copyright considerations in mind, so information that would have facilitated rights assessment was often not included. For example, date ranges were not always recorded if an exact date was not known, even though it may have been possible to determine an approximate date range. Similarly, knowing the creator's date of death is highly relevant to copyright assessment, but this was not typically

included for creators without Library of Congress authority records. As a result of this project, the library is working to improve local metadata standards to encourage recording such information for new collections.

Orphan works were another serious challenge. Given the nature of the library's digital collections, undated and unpublished works with no known creator are very common. For example, the Floyd and Marion Rinhart Photograph Collection includes a large number of photographs of early Florida that were collected by the Rinharts; many of those photographs do not have an identifiable photographer. It is likely that no amount of research would uncover the copyright holder for these items, or whether they had been previously published. The best choice for these materials was In Copyright – Rights-Holder(s) Unlocatable or Unidentifiable. These items could be considered orphan works, but because the United States does not have an orphan works law, there is no rights statement equivalent to In Copyright – EU Orphan Work for use in the United States.

A related issue was tracing rights holders over time, particularly in the case of corporate bodies that no longer exist. For example, we frequently encountered early 20th-century photographs from studios that have long been out of business. The copyright term for unpublished works with corporate creators is 120 years (Hirtle et al., 2009, p. 42), and since copyright does not cease when a company goes out of business, these materials are still in copyright. However, tracing how rights have been passed along over time is difficult and time consuming, and it may not yield any results. An additional complication is the issue of works-for-hire, since it can be difficult to determine if copyright was retained by the creator or their employer. Again, in these instances, due to the lack of available information, the label In Copyright – Rights-Holder(s) Unlocatable or Unidentifiable was used.

Issues concerning ownership also arose around several collections where the donor had transferred copyright to the University of Miami upon donation of the collection. Although the transfer was recorded in the deed of gift, it was not necessarily clear what rights the donor actually held, and could therefore transfer to the university. Donors can only transfer the copyright that they hold in materials, and in cases where the donor was not the creator of materials, the extent to which they held copyright was not always clear. Discussions with curators when reviewing the deeds of gift revealed that such detailed information about copyright ownership was not always discussed with donors or recorded in collection records, a situation that is not unique to the University of Miami (Ballinger et al., 2017, p. 153).

Determining publication status could also be challenging, as it is sometimes difficult to decide whether an item should be considered published or unpublished. Publication status is

important under U.S. copyright law, but legal definitions of publication do not necessarily take into account the wide variety of materials found in modern manuscript collections.[4] Materials such as ephemera, early photographic postcards, and mimeographed handouts can seem to fall on the borders of published and unpublished (SAA Intellectual Property Working Group, 2016). Early photographic postcards are a good example: during the early 20th century, photographic postcards could have been printed for sale and wide distribution, or printed individually using personal photographs. Given the time period of those materials, knowing whether the postcard was published could determine its copyright status. In many cases, it was impossible to determine if the creator intended the materials for public distribution, particularly with the limitations of the existing metadata in the library's digital collections.

Deciphering international copyright issues was another challenge. Our rights assessments are based on United States copyright law. However, the country of origin plays an important role in determining copyright, even within the United States. Due to the large amount of Cuban materials in the University of Miami's digital collections, we paid particular attention to Cuban copyright considerations. The RightsStatements.org framework was helpful in providing a model for thinking through the intricacies of international copyright. The clear distinction between materials that are free of copyright in the United States and materials that are in the public domain worldwide (which would be covered by the Creative Commons Public Domain Mark) meant that we felt comfortable working within the copyright framework of the United States (http://rightsstatements.org/en/documentation/#use-by-cultural-heritage-institutions). However, centralized information about copyright law for various countries and how it applies to materials held by institutions in the United States can be difficult to locate; creation of further resources in this area would be beneficial to the library and archives community.

The issues described above meant that rights assessment was rarely straightforward or clear-cut. Initially, we hoped to provide a definitive copyright statement for all items in the library's digital collections, but that was not always possible. Thus, the labels In Copyright – Rights-Holder(s) Unlocatable or Unidentifiable and Rights Undetermined were used frequently, when not enough information was available to make a more concrete determination. However, these statements are beneficial for researchers, in that they clearly identify the presence of knowledge gaps regarding the precise copyright status of materials. If additional information becomes available in the future, rights statuses may be reevaluated and updated as necessary.

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[4] Currier, Gilliland, and Hansen (2016) make a similar point about state government documents.

Copyright Evaluation for New Digital Projects

For the next phase of the project, we began incorporating the assignment of rights statements into the workflows for new digital projects. Although the planning phase for new projects had always involved a general collection-level copyright evaluation, that evaluation did not extend to the item level during the digitization process. Now, during the planning phase, a more extensive risk assessment is carried out in order to determine which materials warrant a more detailed copyright evaluation based on the nature of the materials, the information available about the creators, and the visibility of the collection. This enables the library to establish priorities for digitization with a focus on projects with clearly defined rights that allow for broad public access.

Some projects are in need of more intensive copyright analysis, such as the University of Miami's grant from the National Historical Publications & Records Commission to digitize the Printed Materials series of the Pan American World Airways corporate records. Pan Am went out of business in 1991, and when the collection was purchased in U.S. Bankruptcy Court, the company conveyed all of its rights, title, and interest in the records to the purchaser, which was the Pan Am Historical Foundation. Immediately thereafter, the ownership and rights, along with the records, were conveyed to the University of Miami. This does not include the trademark for the Pan Am logo, which is still active and is held by an independent third party. Because of the complex rights background and the active trademark, the University's legal counsel evaluated the rights situation before digitization, and determined that making the materials full-text searchable online adds value and is considered transformative under the auspices of fair use. At the suggestion of legal counsel, a variation of our local rights statements was drafted for use in the Pan Am digital collection with information about the trademark.

Pan Am is a high-profile, high-use collection, and the library anticipates that the digital content will be heavily used by scholars and researchers worldwide. Although the project is large, with approximately 100,000 pages, it is receiving a very thorough level of copyright assessment. The materials selected for digitization consist of published materials, primarily brochures, periodicals, annual reports, and timetables from the mid-20th century. That means a large number of items could likely be in the public domain, depending on three factors: if a copyright notice is printed on the item, if it was registered with the copyright office, and, when applicable, if copyright was renewed. The rights assessment is being performed as the materials are prepared for scanning, since each item is already being inventoried individually as part of the preparation process. The grant project manager is checking for the presence of a copyright notice, and then checking for registration and renewal as appropriate. This adds time to the project, but we have found that many of the items are

in the public domain, so it is worth the effort. The tools and processes developed for the legacy collections project have proven to be extremely useful for training purposes, with a few modifications for the specifics of the Pan Am materials.

NEXT STEPS

The primary challenge moving forward is the need for periodical reevaluation as materials that are currently in copyright eventually enter the public domain in the United States. For example, when the initial assessment was performed in 2016, unpublished materials were in the public domain if the creator died in or prior to 1946. At the time of this writing, two years later, that date is now 1948. Additionally, in 2019, works published in 1923 will enter the public domain. The library does not yet have workflows in place to systematically update copyright status over time, but ideally, this process would not involve a manual review of each item in the digital collections. The process for reviewing published materials would be simple: looking for all items published in 1923, and then updating the rights status. Unpublished materials would be more complicated, since the relevant dates are not consistently listed in the metadata, and this review would likely need to be done collection by collection.

After implementing the RightsStatements.org recommendations, the rights landscape of the University of Miami digital collections is much clearer, providing a better understanding of how rights vary within and across the collections. As of December 2017, of the approximately 57,000 objects in the digital collections, just under two-thirds were under copyright. Approximately 14% were in the public domain, and 20% were labeled Copyright Undetermined. Only a very small number, less than one-tenth of one percent, were assigned the status of No Known Copyright. Of the 126 digital collections then available online, 49 contained only one statement, meaning that everything in that collection had the same rights status. All other collections contained between two and four statements.

The results of this analysis were somewhat surprising, because at the start of the project, we had assumed that a larger percentage of the collection would be in the public domain. However, for a substantial portion of the materials in copyright, the rights are held by the University of Miami. The findings serve to underscore the importance of risk assessment, because there are instances when the library decided to make materials available online that are either in copyright or could potentially be under copyright.

Although the copyright assessment project was time consuming and presented a number of challenges, the end results were worth it. All of the items in the University of Miami's digital collections now contain rights information at the item level, making it easier for research-

ers to understand potential uses of the materials. The presence of consistently formatted rights information also facilitates better management of the digital collections and brings us into closer alignment with DPLA recommendations for ingest. Moreover, workflows are now in place to ensure the continuation of rights evaluation for all new materials as they are added to the digital collections. Finally, discussing this project with others in the DPLA community brought us into contact with a range of cultural heritage professionals also interested in copyright for digital collections. The presence of this community of practice is a positive sign for the field, leading to a growing number of resources that can help to alleviate some of the intimidation often associated with copyright. Further implementation of the RightsStatements.org recommendations across a range of institutions will continue to strengthen copyright knowledge across libraries and archives, allowing us to better serve our users by enhancing the accessibility of online resources.

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