Good afternoon, everyone. Thank you for joining us today. My name is Ana Cackley. And on behalf of Atla, I’d like to welcome you to today’s program, special topics in copyright: best practices for digitization projects. Before we get started, I just like to point out a few features of the webinars interface. By default, you’ll be listening in using your computer’s speaker system. But if you would like to join by phone, that’s an option as well. At the bottom of your screen, you should see a control panel. It contains a chat box as well as a q&a box where you can type in your questions for the speaker and contact us about any technical difficulties. You can send in your questions at any time, and we will collect all of those and address them during the q&a portion at the end. We now have live transcription for our Atla Webinars, you can find the live Transcript by going to the red button in the top left hand corner of your screen labeled live on custom live streaming service. If you click the carrot, and then click View live streaming service, it will open up the transcript in a new browser window. We will make this transcript available on our on demand learning web page. Today’s presentation is being recorded. And it will also be available on our on demand learning web page. everyone who registered for today’s webinar will receive an email notification when it is up on our website. And now I’d like to introduce our speaker today, we have with us our very own Christine Fruin, who is the scholarly communication and digital projects manager here at Atla. And with that, I will turn it over to her. Thank you so much for your patience, folks while we switch presenters.
Okay, good afternoon, everyone. Thank you so much for joining us on this late April afternoon. I don’t know about the rest of you. But I just cannot wrap my mind around the fact that it’s almost May, it still feels like it should be April last year, I kind of want the last 13 months back. So I was looking through and scrolling through the the list of attendees and saw many familiar names in the list and want to welcome you back. This is actually the fourth and final webinar in a series we’ve been doing all spring The first one in January. This is the fourth fourth of fourth of four webinars we’ve been doing on copyright. So I appreciate those of you who have been here for all four. Welcome back, I hope that you find this one just as helpful as the last. And for those of you that are new, I encourage you to perhaps go back and watch the recordings of the first three, I will make reference to some of the content that was in one of the first three in this series. Because I won’t be repeat, I’ve been trying really hard to not repeat information. I structured this series to kind of build on each on each other. So the first in the series being copyright basics, the second being all about fair use. Last month was another special topic on showing movies. And then today, we’re doing best practices for digitization projects. So I do encourage you to refer back to the recordings, especially where I kind of point out today. Now I think want to say about today’s topic, best practices for digitization projects. Some of you may have come into this, knowing exactly what I was going to talk about today. Some of you may have come into this thinking I was going to talk about some other kind of digitization project. So I want to be clear at the outset. Today we’re going to be talking about best practices for digitization of like Special Collections and Archives collections. We’re going to talk about making those very special items in our libraries available for research for sharing with the world. We’re not going to be talking today about digitizing materials for course reserves, we’re not going to be talking about control digital lending and cop end digitizing materials to lend out to patrons in that manner. So if you came today hoping to hear about course reserves, CDL anything other than digitizing Special Collections and Archives, you’re more than welcome to stay on. Hopefully you’ll find some of this interesting and some of this is going to be somewhat translatable and applicable to most situations, but I’m really talking about a very narrow subset of digitization projects and I was I did attempt to be very clear about that in the in the in the webinar description. So just want to put that out there so that you’re not expecting one thing and then you’re like, well wait a minute, she didn’t talk at all about what I thought she’s going to talk about. Very specific topic today. So this screen if you have been with us for the prior any of the prior three webinars, you’ve seen this screen before. And it really is the driving force behind everything we talk about when we talk about copyright, the very purpose of copyright law is articulated in the US Constitution itself, wherein Congress is given the power and the authority to create legislature around copyright law. And even when we’re talking about digitizing Special Collections and Archives, we still need to refer to this as kind of an underlying foundational principle behind what why we do what we do. So this
screen, as I said, appears, I almost didn’t include it. Like, I can talk about this too much. But I want, again, I’m trying to create this thread and this theme to make this whole series build upon each other. So I had to include it here. So look at the screen, all these different digital collections. Maybe some of you even work at one of these libraries, looking at all these digital collections that are out there, these digital libraries, digital collections, digital exhibits, what do all these digital collections have in common? Well, seeing the subject matter, you may be like, Oh, they all have a religion or theology bent, which would make sense since we’re doing this for Atla. But that’s not what they all have in common. What these all have in common is that all of the content in those digital collections and others was, is or was subject to copyright protection or some other legal rights, can that have that control, they’re sharing and copying and dissemination that had to be considered prior to those libraries digitizing and making that content available online. So that is the common thread behind that and all digital collections that we find online today. So this is kind of a roadmap of what we’re going to be walking through today. These are the copyright issues that arise in digitization and the things you have to consider when you are engaged in this kind of work. And there’s considerations both before you actually do the digitization piece of it. But also some things to consider once digitization is complete. There’s also some other tangential legal issues that you also need to be aware of and consider when digitizing material found it within your special collections and archive collections. So here’s what we’re gonna be walking through. So first, the considerations prior to digitization. First of all, are these items still even protected by copyright? Are they in the public domain? Are they perhaps protected not by us, but by foreign copyright? If they if you determine that they are copyrighted, do you need permission prior to digitizing them? We’re going to talk very, very briefly about fair use. Because as I said, we went we did a deep dive into fair use in February. So I’m not going to spend much time they’re going to touch very briefly on orphan works. We’re going to talk about what if you have to get permission, what does that permission look like? What should it look like if you do have to get permission from the rights holder? And kind of interweaving all of this is going to be considerations of risk. What risks are there with digitizing, and really what the really true underlying questionnaire is, how risk averse is your institution, there really is no bright line test for risk is oftentimes come at comes down to what is your institution? What is your general counsel’s office? What is your administration comfortable with you doing? What kind of boundaries are they willing to push, then once the once the digitization work is complete, and you’re ready to put your Collections Online and make them accessible and available to others who may want to utilize them is managing copyright afterwards. We typically do this through Creative Commons licenses. Sometimes if we’re putting together perhaps an exhibit or other kind of digital assembly of items, communicating rights to users around the world of what the copyright status of those items are, typically through various write statements, and also giving permission to others to use. We’re going to talk briefly about copy fraud, and
requiring copyright permission for things that are in the public domain and asserting copyright over items that you have no right to assert copyright over because copyright had already expired. Then we're going to talk very briefly about some of the other legal issues that arise when we are doing this digitization work. We're talking about privacy and ethics concerns that you need to consider. So even if even if items are clear for copyright issues, are there privacy matters that we should be considering before we put this material available publicly and openly online. Are there ethics issues that we need to address. And then finally, takedown procedures say we put something up someone asks us to take it down. What kinds of procedures need do we need to have? Are we obligated by law to have in place to help that to help that transaction should take place. So let's dive in. This is kind of our roadmap. So we're going to go to our prior to digitization, as I said, this first big question is, are the materials that I wish to digitize protected by copyright? So as I said, Well, the first thing you want to look at is are they copyrighted still at all, oftentimes, in our Special Collections and Archives, usually a lot of old content, in which case, sometimes what makes this work really, really easy. So is this material in the public domain. So works enter, enter the public domain, at least I'm talking about here in the us right now. So we're gonna talk about conforming copyright in just a moment. Right now we're talking about us copyright, couple different ways that works enter the public domain that is enter into a state, wherein they are no longer protected by copyright and can be freely used, shared, disseminated, how, however we wish, is if the term of copyright protection for that work has expired. Meaning, then and I, we talked a little bit about this in the very first webinar in this series, and I referred you all to the public domain chart, as well as the public domain booklet from Berkeley law school. So those are two resources linked here, I also will put out there real quick, because I know that these links are probably really small and hard to see, I always do make a PDF of the slides available to registrants and attendees. And our wonderful member Programs Coordinator, Ana who got started today, we'll be sending that PDF out to you probably later this week. So just know that you don't have to worry about furiously writing everything down, you will get a PDF, which should have the live links embedded in it as well. So just wanted to put that out there that you will get a PDF of the slides today. So term of copyright protection for that work has expired. In cases where it might have been an item that was like pre 1978, there was a span of years and us copyright law, where we had requirements of registration or notice. And so sometimes items fall into the public domain, because the copyright holder at that time failed to provide the requisite notice or failed to, which was usually done through registration, or failed to renew copyright in those years in which renewal was required. Again, I refer you to the Cornell public domain chart, which kind of really well breaks this down of what that span of years was when we used to have that renewal requirement after 28 years, and so forth. Um, some works are automatically by law in the public domain. And these are primarily works of the US federal government, by law, they cannot be protected by copyright. As far as state government works, it really varies from
state to state. And sometimes even agency by agency, sometimes state governments will
not copyright the entirety of their output. Sometimes certain agencies have to leave it up
to individual agencies, and then you have to kind of look at the administrative code of
your state, um, Harvard several years ago, put out a wonderful resource that helps you
determine what the copyright status is of state government works. The final way that
works can be can fall into the public domain is if the copyright holder specifically pushes
them there, or dedicates them to the public domain. This is typically done with a creative
commons zero license. So when you're looking at the copus, or the corpus of works that
you're wanting to digitize, usually public domain, those are the ones you want to pick first,
those are the ones you want to digitize first, those are when you can feel safe. And I guess
that's all the consideration I need. We can digitize these and put those out there. Like I
said, a lot of special collection. archival content, thankfully falls into this, this class of
works. But sometimes we have works that are subject to foreign copyright. And that's an
additional consideration that we have to make. So I'm going to talk about this very briefly,
I did go into it a little bit more deeply. Back in January during the copyright basics. I have
repeated some of the information here. But we're not going to spend as much time here
on that as we did in January. So the primary kind of law relates a treaty that governs
treatment of foreign copyright works when you're looking at them in the US is the Berne
Convention, that's kind of the primary copyright treaty that we look at for for navigating
this, the United States didn't enter into the burn treaty until 1989. What does the burn tree
do essentially assures national treatment meaning that authors from other countries who
are also signatories to this treaty, are given the same degree of copyright protection as
that country's own citizens so that means an author from Hopefully I'll pick a country that
is actually a burn signatory, an author from France, would be entitled to the same degree
degree of copyright protection as an author here in the US. In order to be a signatory to the Berne
treaty, there are certain minimal protections that your own national copyright law has to
have, which is why the US didn't sign on to this until 1989. Many years after this treaty was
first enacted, because we had too stringent of protections that were in excess of or didn't,
you know, didn't meet these minimum requirements. So the copyright duration has to be
at least lifeless, 50 years, there has to be some some degree of moral rights protection,
which in the US is only for works of art under the visual artists Rights Act. And there has to
be No formalities, meaning you cannot require notice, and you cannot require registration.
That was one of the things that was kind of tripping up the US from entering into this is
that we used to have those requirements of notice and registration. Um, there is this other
law out there, or this other kind of Treaty, or these arrghh way round agreements act, this
really turned treatment of foreign works in the US on its head and made it kind of
challenging, there were a whole lot of foreign works that were treated as if they were in
the public domain in the US, because they had not complied with those former
requirements of notice and registration. Once we signed on to the Berne Convention, and
we had to get rid of those, then suddenly, all of these works were then brought back into
copyright status. And there were some entities that kind of got into some trouble. And it went to the Supreme Court and about how to interpret and apply this, apply this change in the law. So we went into some depth about this in the January webinar. So just know that when the bottom line is, if you are looking at digitizing and making available, foreign works on that, it’s going to take some analysis to determine whether or not they are copyrighted or, or not, and whether you can feel comfortable putting those freely online. So, um, next piece of this then next question to address part of digitizing, do I need permission? So if you determine that the corpus of works that you’re wishing to digitize are indeed copyrighted, they’re not in the public domain here or, or elsewhere in the world? Do you need to get permission? Well, as we learned in February, there are and also even talked about somewhat in March, there are numerous exceptions within the US Copyright Act, that allows us to make copyrighted works available to copy them, to disseminate them to share them to alter them. There’s numerous statutes that that permit us to do this, under certain circumstances, the biggest of those of which is fair use. So Fair Use even has applicability to these kinds of digitization projects. So we walked through in February, the four factors of fair use, and talked about the varying things that you need to look at, in terms of balancing this question of fair use. So you know, here we’re looking at very many of the same kinds of things. And so I’m not, as I said, I’m not going to walk through this, I’m encourage you to go back and look at that webinar in February. And we’re going to also talk about a another resource that actually does some of this for us, we’re going to be talking about in a few minutes, I’m gonna I’m going to hold it up here, because this is one of the things that is your friend, I keep mine right here on my desk. So if you are even talking about course reserves, or if you’re talking about making works accessible for persons with disability, this code of best practices for fair use in academic and research libraries, very thin little book, but super, super helpful. And we’re gonna actually be we’re gonna be walking through a part of this in a moment, which kind of also translates application of fair use to the to the specific kind of project. And here we go. I forgot it was the next slide, fair use best practices for digitization projects. So again, this document walks through eight scenarios that are very common in academic and research libraries today. And I want to specify it This was a document that was put out by afrl, the Association of Research Libraries, I think sometimes we get hung up on library type. And if you are at a very small seminary library, if you are at a K through 12 library, this document can still be useful for you. So if you don’t consider yourself a big research library, it’s okay, this still works for you. This is still good. So there are eight scenarios or what they call them principles in here that are very common activities in libraries and it walks through kinds of these If best practices these things you want to make sure you’re doing or want to avoid doing to help bring you into the it’s not it’s not a sure thing, don’t if you follow this to the letter doesn’t absolutely mean that it’s going to be fair use nothing’s, you know, 100%. But you’re going to feel on really safe ground, that your practices are going to more than likely be characterized as being fair use. This document was produced about almost 10
years ago in 2012. And is the product of interviews with librarians, with lawyers with copyright holders, with content producers with publishers, that kind of all came to a group understanding, there’s over 70, people that were interviewed, kind of a group understanding and consensus that yes, these things are considered fair use. So this document is freely available online. And it’s going to guide the next piece of this as we kind of talk a little bit more about fair use. So one of the first things you want to do, when you are digitizing copyrighted works for this purposes of making these special collections, archives available online, is being very selective when choosing your content. So you want to think about the overall objectives and purposes of this digital collection that you are creating. And you want to make sure that you are choosing materials that specifically advance the objectives and the goals of that project. You want to be very mindful when selecting those materials, if there are any active or current markets for those included materials. So you want to make sure you’re not you’re even though you’re saying Well, yeah, this is relevant to this project. But it’s a book that was published last year that I’m by like a textbook producer that that you can readily go to the store or to Amazon and purchase. That is even if it’s specifically advances the objectives of your project, that’s not going to be something that you would want to select to choose. So be mindful of current markets Be mindful of any licenses that might be attached. So if it is content that you purchased subject to a license or to a contract, be mindful of whether the terms of those agreements would in any way, govern your further sharing digitizing that material through your own digital library, repository, wherever you might be hosting your digitized collections and archival material. Second thing you want to do, usually, digital collections are usually a collection of images. And very rarely is it just you know text back, sometimes it is but it’s usually very multimedia very image centric. I love this example of the Grateful Dead archive. And there’s wonderful, there’s wonderful kind of copyright story behind the creation of this digital archive. The general best practices is that for content that is still in copyright, that is still protected by copyright, that the images themselves that you are displaying and your digital collection should be small size, low resolution, and that you take other kinds of technological steps to either reduce the the ability of users to download, or reduce the quality of what of what they can download. Again, those are things that are kind of considered to be steps to take to bring your activity within fair use lots of case law out there about this, as well. Many of those cases involving pornography. Generally, small size, low resolution is kind of a best practice for creating these Digital Collections and Archives. You also want to display your content in a manner in a manner that indicates that you are sharing this specifically for the purposes of these non commercial purposes of scholarship and research. This means that you’re usually including some kind of curatorial statement or commentary on that you have some very rich metadata that goes along with your content, or other kind of added value to the assemblage of these digitized resources that, you know, that gives the user the impression that this is very much for teaching, for learning for research for scholarship, and not in any
way to infringe upon any other commercial markets or the rights of the copyright holders. I love this project at Duke, the ad Access Project making all of these product ads available online. And so it’s just a fun thing to look through. So I suggest you go check it out just because it’s just fun to look through. So those are some of the best practices that are outlined in this document. Now another thing we want to talk about in terms of status, our orphan works, this might be this is kind of a term that was really really hot about 10 years ago. It’s kind of fallen out of use after the hotte. Trust orphan works project, um, kind of put a stop to it after the threat of lawsuit. But we still kind of say that orphan works are those works that are still copyrighted, but whose rights holder cannot be determined or located. So it may be works for which, um, it might be a publisher that is no longer in business whose assets were not obtained by any successor business, or someone who, perhaps the author is deceased has no identifiable or locatable errors, works that just can’t I cannot determine who he or she is something that you just have no idea who the rights holder would even be. So, um, is it fair use to still go ahead and digitize these if there’s nobody to go to to ask permission? Fair Use? Yeah, more likely with these kinds of works? Risk Assessment. So we’re talking about, you know, knowing, again, kind of all what’s your behind all of these inquires. inquiries is, is there a risk? Is there a risk of being sued? Is there a risk of getting a takedown notice? Again, this is something has to be institutionally determined, less risk of harm, if there’s no identifiable rights holder, because there’s no one to be harmed, potentially. So a lot of times, we’ll find these orphan works in our Special Collections and Archives, we will have photographs, we have no idea who took them, or sometimes even when we just know that they are of this place, or of this person, or we may have some other letters or things that we don’t know who wrote it, but the content is historically or culturally very significant. So those are some ideas of orphan works that we might find in our Special Collections and Archives, that would be have great research value, great scholarship value, but we have, and we’re fairly certain of the date, that we know that Oh, it’s probably copyrighted, perhaps, you know, there’s still that there’s still that, you know, notice and registration requirement that was, you know, from certain years. So it could be that they’re actually in the public domain. Lots of things to, to unpack and to determine in these works, but all things that kind of push you into feeling like you’ve got Fair Use grounds for making the material available online. So if you find that you are in a situation that you can’t, if the stuff is copyrighted, you cannot, you know, in good conscience, or because risk assessment at your either risk, kind of the risk culture at your institution will not let you push the Fair Use boundary? How do you get permission? Who do you ask? And what do you ask them. So, in the case of a single author, I’m know that it’s rarely especially if it’s something that was published rarely is it going to be the author who is going to give you permission on very often the rights are going to have been transferred to a publisher or some third party agent. So sometimes you’re going to have to go to that entity to get permission. If it is something that perhaps you know, it was unpublished, and you need to get the creator if you don’t always Can I
use the word author, but it might be the artist, or maybe the photographer, or it may be
the recorder, the filmmaker or you know, any any of those things. So I'm using author very
broadly here, you need to go to them, but perhaps they are deceased. Well, just like other
forms of property, intellectual property passes through the creators estate. So sometimes
you have to find locate their heirs. If they are someone who was an artist, a lot of times
they will create special estates to which their rights pass on, they'll set up trusts or other
kinds of things, or they may have bought, they may have bequeathed other intellectual
property rights to an institution may have left those. So sometimes, I mean, I've been
involved in situations where a creator had a large body of work, and they didn't really
have an airson having children, and they left everything to their college or university that
they attended, or they've left it to a museum. So sometimes you really have to kind of do
some investigation to determine who you are getting permission from, in the case of joint
authors, or joint creators, and I'm not talking about a, like a contribute in the case of a
contributed volume where you have an editor, but it's truly a co created co authored work.
Know that under the law, there is joint ownership, but each person has their own right,
they can each independently license or give permission to use the work. But what you
may not be aware of and it's good to ask is to make sure that those joint authors, those
joint creators didn't have some kind of written agreement between them. that would that
would say otherwise, that would say both had to sign off on it. Right With that said the
group had to sign off on it. Or that said that they mutually agreed ahead of time that we
would not allow the word To be used this way. I personally haven't encountered that
situation, thankfully, because I think that can be very tricky and to navigate but just
realize that that's something to ask about. To not even though you know that each
individual person has their own rights to give their own permission to give without
involving the other person to ask the question, Well, did you have an agreement with your
coworker, sometimes it's just a good practice to go to everybody, if you can find
everybody works for hire, these are works where it's a work created by an employee, in the
course of his or her employment, it's part of their job to take this photograph, or to record
this film or to write this paper, right, this white paper. And in that case, typically, I mean,
the law, the presumption under law is that copyright belongs to the employer, not the
employee, unless there is some agreement, some policy, employee handbook, or
otherwise, that would give it back to the employee. So be aware of that, if you're looking
at works for hire some other works that require special consideration our musical
performances. You know, in the case of the composer and the performer or the entity that
recorded the work, sometimes there's just you know, it's music has many, many layers of
copyright and potential rights holders. interviews, I see this so frequently, when folks want
to digitize Oral History Collections, there is a presumption of joint authorship between the
interviewer and interviewee. And that but often times and a best practice in oral histories
is that there should be pre interview, some kind of interview agreement between the
interviewer and their interviewee about how that interview can be transcribed, how it can
be shared, how it can be used. So it's really crucial. And unfortunately, their organizations are getting better about this. But in the past, we're always really good about getting those kinds of agreements up front before doing those kinds of interviews. So just be cautious when digitizing oral histories to ask about any kind of agreement. And and just know, you may need to get permission to both the interviewer and the interviewee. And also, we're going to talk a little bit about privacy also to be very mindful of the content as well. So what should this permission say, there's definitely some examples floating around out there that you can look at. But you want to be you want to be over inclusive in your in your when you are drafting this permission agreement out getting permission from the copyright holder, to give to you to digitize this content, you want to be you want to specify the the where this where this content is going to live, what you know, the web address the name of the digital collection, the name of the institution, you want to specify how what's your intention of how it's going to be used, perhaps even what other kinds of materials it's going to be included with. You want to be very clear about any other future downstream uses. So if someone comes and asks you for permission to use it, are you directing it back to the copyright holder? Are you being vested with the authority to grant those permissions, you want to negotiate with the rights holder? What the right statement is going to use? Are they open to this content being digitized and made available under a Creative Commons license, which Creative Commons licenses that rights holder comfortable using? Are they only granting you permission to use it for this purpose and no other other purposes. So you want to make sure that all of that is discussed and memorialized in that in that permission agreement that you write with the rights holder prior to digitizing and making this content available to the whole wide world. So let's talk a little bit more about I kind of mentioned those, you know, a situation where you want to articulate write statements. Let's talk about attribution and write statements a little bit more. So always, this is a, this is a must. To me, this isn't even a best practice. This is a must practice, when you are doing digitization of Special Collections and Archives or really any content honestly, to always provide attribution to the copyright holder. And always provide right statements for your users. Don't make your users have to second guess the copyright status of the content you're putting out there. Don't make them have to do the research that you yourself have already done. Whether it's in the public domain, whether it's subject to a Creative Commons license, if the rights holder is saying no, I'm only giving you permission to display this and I don't want to use any further in any context. Don't make the user guess that or have to go ask those questions again. So, um, again, attribution. So giving credit giving citation. The law doesn't require it. But ethics does. So just as you require citations and papers you should require you should require of yourselves citations in these digital collections. It shows good faith, it shows good ethical conduct. It's just practicing on what I say appears practicing responsible scholarship. These permission agreements, make sure that you keep records of all of those, any other licenses, permissions, and so forth. keep records of those somewhere, if you have some
way to link those permissions to the digitized file itself, if you have some kind of document management system that you can link it even better. So always in the Manage metadata document the right statements for the work, there’s two kind of primary systems out there right now. For for write statements works, Creative Commons is one and then write statements.org is the other those are kind of the two standards out there. Some institutions might devise their own language, whatever system you use, just make sure that you have it out there front and center for your users to know what the copyright status of that work is, and how they can reuse that work if at all. Again, choose if you are assigning your normally it would be the rights holder who would assign what rights statement or what Creative Commons license to use, make sure that you all are choosing the licensor write statement that reflects how the items can be used downstream. Also, in document how, also talking about your whole site, you even so even think about this, when you’re thinking about the entirety of your digital collections. So each individual item that you may have within any digital collection may have its own right statement. But you should even have a copyright statement for your entire site provide. Provide procedures for your users about who do they contact if they want to reuse an item? How do they you know, who do they contact for questions is can any other content on your site, if you have curatorial notes or other kinds of value added materials, or even your metadata itself, talk about whether if that other kinds of content, if it can be used, it’s good just to have a statement on your site. Again, as I said, include policy and procedures for permissions requests. However, and I’ve seen libraries do this time and time again, do not require copyright permission for items that were originally in the public domain. By digitizing public domain content, you do not get a new copyright in that digitized item. All it is is a copy, you don't get a new copyright. And I've seen libraries and institutions and other cultural heritage organizations require copyright permission require money to use content found on their sites, that is in the public domain. So don't do that. It’s one thing if you are charging a fee, perhaps to maybe recoup your overhead costs, perhaps a little cost recovery, maybe for the work of digitizing, or the work of creating of Crete of downloading or creating perhaps a higher quality file, and to transmit that or if you’re mailing it somewhere or something. But try to keep it to a cost recovery, not a profit making entity and don't commingle that with the notion of copyright make clear that your own that you are you are just collecting a fee to cover the labor involved. It's not a copyright fee, and it's not a copyright permission, okay to require attribution, that you are the institution that provide the file or to drive people back to your site to see the rest of the items perhaps in the collection. So just make sure that you are not conflating or confusing copyright with other kinds of permissions and attributions. So real quickly, some other legal considers considerations when you're engaging in this kind of digitization work. As I said on your site, you should have particularly if you are digitizing content, that is either copyrighted or perhaps is sensitive for other ways or perhaps is subject to other kinds of moral or ethical or legal rights. Make sure that your site provides a process for a copyright holder to issue
a notice of copyright ownership to stay up to date. So perhaps you've made an assumption that something's an orphan work, and have stated somewhere in the metadata the copyright owner is unknown. Someone comes forward and says I'm I am and I've got the proof provide a promise. access by which a copyright holder can alert you to this, also provide a process by which a copyright holder can ask for their material to be taken down. Now, if that happens, you do have to act and this is required by law, you have to act expeditiously to remove or disable access to the allegedly infringing material, however, totally appropriate for you to then open up a dialogue with that, with that, claim it with that copyright holder? Hey, you know, um, you know, we're sorry, but we think that this stuff has high research value, high scholarship value, you know, we would love to still include it. Um, you know, if you have, if you have usage statistics that you can share with them, or, oh, you know, we've included it with all this other stuff. And this is why work to get that permission to go ahead and include work with them to perhaps agree to a Creative Commons license or some other kind of permission or restriction that will allow you to still at least display it. Don't I mean, take it down, but then engage in a dialogue, because obviously, if you included it, it had, there's a reason why you included it. And don't feel like you are forbidden from trying to engage in a dialogue with them to still go ahead and keep it up there. Also, you know, sometimes you really, you might want to do a little if they don't present you any proof at the SDR In fact, the rights holder, you can require proof, you can require proof, you can you can consider whether or not this is truly a legitimate request. And I already talked about the last bullet point and contract, talks about things here little out of order. So also privacy ethics concerns. So these are some other things to look at before putting content online. No privacy torts and photos. So this is privacy issues of photographs with people. So considering does the subject in the photo have rights over the use. So this might be a case with perhaps celebrities, and might be the case of photos of children, where it's photos of specific children, um, perhaps some cultural heritage issues as well. Thinking about texts documents, really look at HIPAA and FERPA in particular. So this is the health information Portability and Accountability Act, and FERPA and yet it's the student ones and I can never remember federal. I never remember what that but look at that content, if there is personally identifiable information in there, especially for persons that are still living, not as big of a concern for disease deceased persons because your right to privacy dies with you. But definitely look for addresses, phone numbers, God forbid social security numbers, or any other kind of identity, personal identifying information, redact that out if you can it look for medically sensitive information and so forth. So there's just some privacy things to be just to be considered when you are evaluating content to put up online ethical concerns. As I say this is a conversation way bigger than this presentation. This is a whole webinar in and of itself and probably more of a discussion group than anything, but be aware of potential ethical concerns especially when you are talking about digitizing material of certain religious groups or indigenous groups or other groups that may be subject to or be under cultural
heritage protection laws and rules. You want to make sure that you are not digitizing material that would be offensive to make publicly available, things that might have to do with cultural or religious traditions, recordings of practices or and I've seen this with, particularly with in religious groups, Eastern religions, or Haitian religions or like Voodoo and things that you want to make sure that you are not putting out there things that they would consider very offensive to be shared. There's a wonderful article out there that I do have linked about ethical issues in digitization of cultural heritage, that really does a nice deep dive in to this topic of digitizing donated material. So as I mentioned, I think earlier about sometimes you will get someone who donates their materials to a library to a museum to some other institution, cultural heritage institution are so forth. So critical and so important to cover digitization rights in that donor agreement. Right those licenses as broadly as possible and account for all potential uses. Don't just think about what immediate you know, immediate use as you may have. Think about classroom uses. Think about digitization and where licensing permission to share it with, you know, do they want to restrict who it may be shared with further make these agreements as broad as possible. This is this is one place where a lot of libraries, a lot of times, it's because they are working with, if they are part of a large institution, usually it’s out of their hands at some other campus entity who deals with donor relations that are doing this and don't understand the work of libraries. So it's really important to try to have regular meetings with those folks to make sure that your needs might be represented. afrl, the Association of Research Libraries has a wonderful model deed of gift out there, I recommend that you look at it, use it adapted, adopted. for these purposes, there's other examples out there. But that's a really, really excellent place to start. So donor agreements are critical, and often over overlooked in this process. So that is all that I had for today. Thank you so much. We have a few, about 10 minutes left, I'm going to look and peek at the chat and see what kind of in the q&a and see what kind of questions we have. Again, thank you for joining us this afternoon. And for you know if you’ve been here for the whole series of so I'm going to look at the see here. Let me open up my chat first. And it looks it's probably my wonderful. coworker Ana has probably yes, of course, she's been giving you all the links as I have been putting them out there. And so thank you, Family Educational Rights, privacy. Thank you, Victoria. I can never remember that whole. That whole acronym. So thank you so much, Victoria, for sharing that. I appreciate it. So let's look at the questions. I think my question about requesting permission credit for public domain items, has already been answered by Christine, I got ahead of myself, Oh, perhaps that's an answer to quit for public domain items that we have digitized from our Archives and Special Collections. It's still okay to ask folks to request permission to use them and request and give appropriate credit to the seminary. And then I think you wrote the same thing. I think my questions are Yeah, I think we answered that. But if there's, if you need follow up, I'm happy to follow up. And that looks like all the questions. Wow, I must have answered them all. But we still have time. Also for those of you who are Atla. Members, I want to remind you that
tomorrow is the last copyright office hour. So we have been I've been holding copyright office hours every other week, since January. It's an hour where I am just hanging out in zoom, and you're welcome to come in with any copyright questions or other scholarly communication questions you may have that you can pop in, we have made that zoom link available through a multitude of ways to our Atla members. So I will be hanging out there tomorrow at two o'clock central for the last one. Because of their popularity, I am sure that I will redo it in the fall. So I'll be looking for announcements about that later this summer about the schedule for that come fall. So hopefully I will see maybe some of you pop in there tomorrow. Otherwise, I hope that you all have a healthy rest of the semester that you find some time for some relaxation and refreshment in the in the weeks ahead that you have great summers. And thank you all for those of you who just joined us today. Thanks for coming today. If you've been in on another one. Thanks for joining us. I hope that you found this all useful. You're welcome to email me as well with questions or any suggestions for topics in the future? Question just popped into the chat. I'm happy to take that really quick. We received a television show Oh T. Oh, that was taped at some stations but not owned by them. There were no guest release forms. Can it be assumed the guest knew this was to be used in perpetuity? So I think I'd have to know a little bit more. So guests were the guests that were being interviewed. So Dwayne, were they guests that were being interviewed on this television program? And you're not talking about like audience members, interviewed guests? Um, oh, man. I hate when people don't get release forms. Um, I mean, honestly, I mean, over 20 years ago, um, I mean, was to be used in perpetuity. I mean, you mean that? I mean, was, I guess, 20 years ago? Would you assume that these would be digitized and made available online? Probably not. Um, I mean, I would really, I mean, they had no practices whatsoever. No permissions at all from guests that were being interviewed. I mean, in that situation, I would probably unless I mean, not knowing what the nature of the interviews were the people being interviewed. I mean, I would first do this like Even if it was a television show, not necessarily an oral history, so they knew they're going to be, hopefully they have the rights. And they're the ones that donate it to us. I mean, this would be that situation where I probably like, I would probably digitize a book. And I'm not also, I am a lawyer, but I'm not giving you legal advice. I'm just telling you, I'm just kind of I mean, I would do kind of the privacy, although if it was being on television, privacy, privacy really flies out the window, I would just kind of do a real quick risk assessment. Is there any is or do we feel if there's any risk here? My guess is not because it's instead of this was a publicly broadcast television joke. I pride digitize it and put him up. And if someone that was interviewed comes back and objects, be willing to take that episode down, if they have a really good reason why object, you know, if they have a reason for objecting, but um, I would, you know, try to work with them to get permission. But my I mean, my guess is that if they agreed to be interviewed and recorded on television show, they probably really don't have much complaint they can make in your, if the television pro at the television studio that owns the rights to the program gives
you the permission, a person being interviewed, probably right doesn't have much of a leg to stand on. Um, yeah, I have. Melody says, I have control over photographs for an institution that go back to the 1890s. I would assume that the early ones, actually, I'm gonna stop sharing my screen so I can see see all I can't see you all, I'm just here. controller photographs for an institution, I go back to 1890. That was two of the early ones are in the public domain, even if not published. However, I don't know if they were ever published, I can insist only that they use that they use proper citation and if so, back to the 8090. So I mean, if they're even unpublished, even if anonymous, if it's more than 120 years, which in this case, they would be there in the public domain. I don't really feel like you've probably got any concerns. These are probably old enough malady. If we reach Oh, reading children's books and recording and posting our children's library page, this is a tricky one. Angela, Angela, there has been I there was a lot written about with the pandemic last year, there was a lot written about this about um, recording and hosting children's story hours. Um, and whether that's fair use or not, there were a lot of children's book authors that objected to this even though they have no problems with it being you know, live in person. Um, oh, thank you, Jan. Jan put up but yeah, I'm gonna say I thought maybe I thought maybe I may have put some guidance out. I know, there were a lot. And I and and honestly, I remember me reading one thing, I don't feel comfortable. I'm giving like guidance about that or not. Um, could you share what Jan said in the chat? Angelina? There's a link that Jan just put in if you open up the chat, you'll see a link there. Oh, she only put it to me. That's all people not to all panels. There. She Oh, thank you. So odd to put it out? Um, you should be able to see it. Now. Angelina, there is a link. Check that out. That that I'm going to defer to the AMA on this one. Thank you, Ana for I didn't realize folks couldn't see questions posted the chat. malaise is at what year should I start being concerned about publishing these photographs? These unpublished photographs? Um, honestly, I would start being concerned probably like after night SC I have to look at the chart is at 95 years or 120 years. I'd have to look at the Cornell yard chart. I'm malady so I had put in the I think and I think on a did to Ana. One of the first things on a posted was the Cornell public domain chart on if you scroll up in the chat, look there I can't for some reason, I can't remember if it's 95 years, it's 120 years if it's anonymous, or is that corporate works, I always get these kids. So look at that chart. And either it's either the 95 year or the 120 year mark. If they are if they are unpublished, and if it's anonymous, really otherwise. And if Yeah, because if it's anonymous, meaning you don't know who took them. Yeah. And if you know who took them, it's their life plus 70 years, but if you don't know who took them, I think it's 95. I think it's corporate works or 100. It's one of the two. I could open it up and look at it, but it's either So it'll either be 1901 or, man, I can't do that math 2021 minus 95 years. We have about two more minutes. Any other questions? Thank you all for the great questions. I always like questions because usually it makes me go look something up and learn something because I still have a lot to learn. Especially if it's not
something I am in all the time. If we don't see any more questions, we can wrap it up. And again, my thanks and my gratitude for you all for spending some time with us this afternoon.