Rights Management Policy

Kansas State University Libraries provide openly accessible digital access to many of its collections and archives to advance teaching, learning, and scholarship. However, digitization of archival materials and other library publishing initiatives present complex intellectual property challenges. The Libraries are committed to providing access to digital materials while respecting and upholding U.S. copyright law and the intellectual property rights of authors/creators. It is also important that we address our responsibilities to users by offering clear and accurate information regarding any restrictions or conditions of use of digitized materials.

The Libraries affirm copyright, including fair use, and make reasonable efforts to locate rights holders to negotiate permissions or mutually acceptable terms of publication. All rights management actions will be documented and rights information will be retained with digital content and in permanent files of the Libraries. Digital resources licensed from external sources (e.g., library databases) are excluded from this policy.

Rights management should be addressed as part of collection development and accession procedures and be built into strategies for digitization and preservation. Rights will vary, but strategies can be employed to help guide operational procedures that are based on thoughtful assessment of the potential risks and reasonable efforts to reduce those risks.

Rights Management: Strategies and Recommended Procedures

The document, "Well-intentioned practice for putting digitized collections of unpublished materials online" (OCLC, 2010) provides a good basis for establishing standard operating practices that will increase and significantly improve access to collections of unpublished materials while minimizing risks associated with rights management. It promotes a practical approach to identifying and resolving rights issues that is in line with professional and ethical standards. It has been endorsed by numerous professional organizations such as The Society of American Archivists (SAA) and The Art Libraries Society of North America (ARLIS/NA). The procedures outlined below are suggested sound practices that the Libraries will endeavour to follow:

1. Assess which materials are owned (copyrighted) by the university or are already in the public domain.
2. Obtain permissions and rights when and where practical and reasonable. Efforts to do so will demonstrate the Libraries’ good faith efforts to pursue all due diligence in avoiding infringement.
3. Document all efforts to determine copyright status and to obtain permissions. Retain all information concerning copyright investigations, correspondence, etc.
4. Consider using the fair use exception based on an analysis of the four factors using the Fair Use Checklist www.k-state.edu/copyright/use/FairUseChecklist.pdf
5. Provide liberal take-down policy statements and disclaimers to users of online collections
6. Work proactively with donors on rights issues
   - Identify possible intellectual property issues and get relevant contact information in order to pursue permission agreements
   - Develop or adapt model letters, model deposit agreements, model deeds of gift and model licences and clauses covering preservation-related activities to streamline and simplify negotiations. (see Appendix A and B for current deed of gift and agreement in use). General Counsel should be consulted when drafting or adapting such models and provide guidance for staff on implementation or permissible variations in negotiations with rights holders. Deposit Agreements and Deeds of Gift should include statements that:
     o Ensure that no restrictions are placed on content that is already in the public domain
     o Grant license to digitize the materials for unrestricted access even when donors retain the rights,
     o Guard against limitations or restrictions on fair use
     o Include permissions needed for future migration of content to new formats for the purposes of preservation
   - Ask donors to state any privacy concerns and identify sensitive materials that may be in the collection.
   - Suggest that donors transfer copyright to Kansas State University or license their works under a Creative Commons license.
7. Avoid making commercial use of digitized reproductions of copyrighted works
8. Provide a clear and accurate statement regarding the conditions or restrictions on use to all users of materials. If this information pertains to an entire collection, it should be captured in collection-level metadata. In all instances users should be informed of:
   - Their rights to view and use the information and objects in the collection
   - Applicable copyrights; however, copyright statements should not be construed to limit the user’s exercise of fair use or other exceptions to copyright law
   - Restrictions on use
   - Contact information for obtaining permission when use is restricted
   - Materials in the public domain will be indicated as such
Appendix A

MORSE DEPARTMENT OF SPECIAL COLLECTIONS

Deed of Gift

For the purpose of furthering scholarly research and teaching at Kansas State University, I ________________________________________, as the owner or legal agent for ________________________________________, hereby donate the materials described below to the Department of Special Collections, University Libraries, Kansas State University.

Description of property:
______________________________________________________________________________

______________________________________________________________________________

______________________________________________________________________________

______________________________________________________________________________

______________________________________________________________________________

Upon transfer to Special Collections of the property described above, all of the donor’s right, title, and interest are granted irrevocably to the University. Any copyrights such as the donor may possess in these materials are hereby relinquished to the university unless limiting conditions are stated as follows:

______________________________________________________________________________

______________________________________________________________________________

______________________________________________________________________________

The University reserves the right to dispose of items which lack historical significance, duplicate other holdings, or fall outside its collecting areas. Items not retained by Special Collections shall be: discarded ______; returned to the donor _______; other _______ (describe below).
K-State Libraries Rights Management Policy

Researchers may have full access to this property beginning: ____________________________

Other conditions:
______________________________________________________________________________
______________________________________________________________________________
______________________________________________________________________________

In full accord with the provisions of this Deed of Gift, I hereby donate the items described herein to the Department of Special Collections of Kansas State University.

____________________________________  _____________________________  __________
Donor/Legal Agent Signature          Printed Name                        Date

Kansas State University accepts the gift of property described herein and agrees to the terms stipulated in this Deed of Gift.

____________________________________  _____________________________  __________
Department Representative Signature  Printed Name                        Date
Appendix B

Current agreement used as a non-exclusive license to digitize and distribute materials
(Scholarly Communications & Publishing Department)

NON-EXCLUSIVE DISTRIBUTION LICENSE

By agreeing to this license, you (the author or copyright owner) grant to Kansas State University Libraries (KSUL) the non-exclusive right to reproduce, translate (as defined below), and/or distribute the [book, report, manuscript, etc], worldwide in electronic format.

You agree that KSUL may, without changing the content, translate the [document] to any medium or format for the purpose of preservation.

You also agree that KSUL may keep more than one copy of this submission for purposes of security, back-up and preservation.

You represent that the [document] is your original work, and that you have the right to grant the rights contained in this license. You also represent that your [document] does not, to the best of your knowledge, infringe upon anyone’s copyright.

If the [document] contains material for which you do not hold copyright, you represent that you have obtained the unrestricted permission of the copyright owner to grant KSUL the rights required by this license, and that such third-party owned material is clearly identified and acknowledged within the text or content of the [document].

IF THE [document] IS BASED UPON WORK THAT HAS BEEN SPONSORED OR SUPPORTED BY AN AGENCY OR ORGANIZATION OTHER THAN Kansas State University, YOU REPRESENT THAT YOU HAVE FULFILLED ANY RIGHT OF REVIEW OR OTHER OBLIGATIONS REQUIRED BY SUCH CONTRACT OR AGREEMENT.

KSUL will clearly identify your name as the author or owner of the [document], and will not make any alteration, other than as allowed by this license.

Signed______________________________ Date________________________
K-State Libraries Rights Management Policy

References:


