

# ARCC RWG - LEGAL ISSUES IN RELIGIOUS ARCHIVES PRACTICE - JUNE 2, 2021

## Q&A SUMMARY

*\*Please note that names of participants have been redacted for privacy concerns.*

### ARCHIVES OF THE DIOCESE OF YOUNGSTOWN AND KENT STATE UNIVERSITY

QUESTION: "How has the arrangement between the Diocese of Youngstown and Kent State University served to model this approach? (Kent State has hosted Youngstown's archives for years.)"

ANSWER: During the seminar, presenters were not aware of that specific case.

RELATED INFORMATION: <https://www.library.kent.edu/special-collections-and-archives/catholic-diocese-youngstown-ohio-records>

### ARCHIVES OF ARCHDIOCESE OF NEWARK AT SETON HALL UNIVERSITY

CONTRIBUTING STATEMENT RELATED TO ABOVE OFFERED BY A PARTICIPANT: "...The archives of the Archdiocese of Newark, NJ have been at Seton Hall University for many years. The archivist works closely with the chancery. Not every record is sent over, and time restrictions are placed on the Archbishop's papers at Seton Hall."

RELATED INFORMATION: <https://library.shu.edu/collections-guide/archdiocese-of-newark>

### COPYRIGHT

QUESTION: "How do we determine ownership of a work (like a book) written decades ago but still covered by U.S. Copyright Code? Is it the property of the religious order, the province, or the deceased sister-author's estate? Who decides?"

COMMENT BY ATTENDEE: "An additional comment related to copyrights, from a university archives with religious records: we do offer an option for donors to retain copyrights/intellectual property rights, and royalties while transferring physical property ownership to the university. In cases where donors retain those rights, we have language included in the gift agreement that the donor grants the university a non-exclusive license to make materials accessible (except those with embargoes) for research, and as part of digital collections." *\*Should you wish additional information from this attendee, the ARCC RWG may be able to facilitate the connection.*

ANSWER BY ARCC, MALACHY MCCARTHY IN CHICAGO, ILLINOIS: "We are doing this copyright search right now for Claretian Publications. You need to have a professional search done by L[ibrary] of Congress at the cost of \$200 an hour. You can contact me directly, [mccarthy@claretians.org](mailto:mccarthy@claretians.org)"

RELATED INFORMATION: <https://www.copyright.gov/>

U.S.: <https://copyright.cornell.edu/publicdomain>

CANADA: <https://www.ualberta.ca/faculty-and-staff/copyright/intro-to-copyright-law/licensed-royalty-free-content/pd-flowchart---types.html>  
<https://www.ualberta.ca/media-library/ualberta/faculty-and-staff/copyright-office/can-pd-flowchart-14jan2020.pdf>

## INSURANCE

QUESTION: "Insurance. I caution archivists to place too much importance on insurance. Our materials are unique, invaluable and irreplaceable. Other thoughts?"

ANSWER BY ARCC, MARY GRACE KOSTA, IN LONDON, ONTARIO: We need to insure archival collections both onsite and offsite including archival materials that are on loan to other institutions in case of damage or loss during transport, set-up or display. While insurance cannot replace irreplaceable archival records, it can cover the costs of conservation treatment, new enclosures and boxes, and digitization so that records can be restored and accessible. For this reason, we need to add an endorsement to our insurance policy. We need wall to wall, nail to nail, all risk coverage for valuable papers to insure our archival collections, in case of flood, or other damage, and also in case of loss or damage while with a bailee such as a conservator or shipper.

The value of special collections (reference library books and vertical file materials), as well as the archival collection should be insured for its replacement value. This coverage should include books, manuscripts, letters, maps, drawings, deeds, mortgages and other documents, slides, photographs, negatives, films, VHS tapes, audiocassette tapes, DVDs, computer data, and artifacts. The insurance coverage should provide all risk coverage to cover the costs of reconstructing damaged records, or to provide a monetary replacement cost value to items which cannot be recreated in the event of a loss.

The challenge is assigning a monetary value to collections. It is important to make sure you have enough insurance to cover the costs of cold storage, transport, supplies, conservation, etc. in case of disaster such as flood or fire. It's also important to have a **Disaster Management Policy**. Our **Archives Policy Manual** contains one which can serve as a model: <https://csjarchive.org/about-us/archives-policy-manual/>

NOTE: In the U.S., it is generally necessary to get additional insurance for transportation, loan, or for when with a conservator in the form of a rider. This will need to include dates of travel, destinations, purpose, etc.

RELATED INFORMATION:

U.S.: <https://www.archives.gov/research/alic/reference/archives-resources/archival-material-intrinsic-value.html>

<https://www.loc.gov/preservation/emergprep/insuranceevaluation.html>

[https://www.imua.org/Files/reports/Libraries%20%20Archives %20An%20Overview%20of%20Risk%20%20Loss%20Prevention.html](https://www.imua.org/Files/reports/Libraries%20%20Archives%20An%20Overview%20of%20Risk%20%20Loss%20Prevention.html)

[http://www.archives.nysed.gov/records/mr\\_advisories\\_insurance\\_coverage\\_f\\_or\\_records\\_and\\_dat](http://www.archives.nysed.gov/records/mr_advisories_insurance_coverage_f_or_records_and_dat)

<https://www.linkedin.com/pulse/how-approach-insurance-archival-materials-galleries-mary-pontillo/?articleId=6726508931407060992>

CANADA: The **National Archival Appraisal Board** can provide appraisers and delivers training: <https://naab59175.wildapricot.org/events/>

\* The National Archival Appraisal Board appraised values for manuscript collections for 1997-1999 was \$1000.00 per linear foot.

<https://archivesalberta.wordpress.com/2016/07/25/cover-all-the-bases-collections-insurance/>

## **PERSONNEL, LAY STAFF, SISTERS, ORPHANAGES, SCHOOLS, ETC.**

***\*You must abide by local, state, and federal laws.***

QUESTION: "A Canadian Question: I would like to know how to get access to the records for the "**Order of the Good Shepherds**" in St. Georges-de-Beauce, in Quebec. In 1947, 100 Polish girls from displaced persons camps in Europe were brought to the Convent – where they stayed while they worked in the Dionne Mills. I would like to know the names of these 100 girls. Thank you."

ANSWER: The archives holding the records for this camp will have to abide by the law. This may have restrictions, even for that time. For further information, the archives will have to be contacted.

COMMENT BY ATTENDEE: "Comment re Canadian Question - we have records from various facilities (**Orphanages**) and are limited as to what and to whom we can provide information. Privacy laws in Canada limit the release of information."

ANSWER: Orphanages in Canada and within the United States fall under various privacy laws. It is important to follow existing legislation but provide access where possible to serious researchers. In the United States, it can vary from state to state. Some states are very strict.

ANSWER BY ARCC, MARY GRACE KOSTA: We have an **Archives Privacy and Access Policy** which states: Information from orphanage records will only be released directly to the person to whom the records relate, or to his/her authorized representative, or with the written permission of the named individual. If that person is not living, information can be released to their next of kin. Ontario, Canada law prevents the release of any identifying information about birth parents. Records which are 100 years old, or more, are open to the public.

QUESTION: "**Records of schools.** Do you mean boarding or any school, day school?"

ANSWER: School records (boarding or day) fall under state and federal guidelines that include privacy and retention. This includes student transcripts. In Ontario, Canada, the *Education*

*Act* applies to school records. Archival retention can only be by the school board or the Archives of Ontario.

QUESTION: "Would you give us an opinion on what to do with files of **program participants** in our care such as the question above about individuals in the care of the Order of Good Shephard sisters. Should they be separated from the religious sisters who cared for them?"

COMMENT BY ATTENDEE: "This is a comment regarding **personnel records**. I've been in the archives profession for decades, and in my experience archivists do not accept personnel records. The problem with some congregational/provincial records is that personnel records are mixed with minutes. Minutes are ideal for research, but personnel records are not in most circumstances."

ANSWER:

- The personnel records for **lay staff** are generally kept by Human Resources under a given retention schedule and do not enter archives to manage this retention schedule. If it did, it would need to be restricted and clearly labeled for date to be destroyed following a defined disposal schedule.
- **Non-HR Files** of lay staff, volunteers and/or Associates that contains writings or documentation as to how they contributed to events, programs, etc. of the organization may be brought to archives.
- Individual records should be kept separate from **Minutes**. Minutes related material can be given different levels of restrictions. For instance, Agendas and Summaries/News can be less restricted than the Minutes themselves or Supplemental Information. Know your collections and work with your administration to understand this and define what works for your collections.

ANSWER BY ARCC, MARY GRACE KOSTA: Have an **Archives Mission Statement** and an **Archives Collection Policy**. Also, have a **Records Management Policy**. Lastly, have a **Records Management Program** which implements and monitors a **Records Management System** under which files are classified according to an organization wide file plan (functional file classification is the ISO standard) and organization wide retention schedules. If these are all in place, you should be able to manage risk by not keeping inactive records longer than necessary and be able to ensure inactive records of enduring value are transferred to the archives.

- **Deceased Sister Records** should be reviewed. Photographs, academic writings, individual ministries, or personal interests should be separate from the defined core records that holds the death certificate, etc. The core should have a defined restriction but the photographs, academic writings, artwork, etc. generally should be accessible. A similar evaluation should be made of Transferred Sisters, Final Vows Who Left, Temporary Vows Who Left, Novices Who Left, or Postulants Who Left.

ANSWER BY ARCC, MARY GRACE KOSTA: We have an **Archives Deceased Sisters' Personal Records Policy** and an **Archives Withdrawn Sisters' Personal Records Policy**. All our policies are available in our **Archives Policy Manual** which can be downloaded at <https://csjarchive.org/about-us/archives-policy-manual/>

## ALL THINGS DIGITAL

\*Please note that the focus of this seminar was on Legal Issues. While the world of digital (Born Digital or Digitized) is important, it requires resources, maintenance, upkeep, and long-term finances. There are National and International Standards. Please review the following resources:

- The Society of American Archivists (SAA): Digital Archives Specialist (DAS) Program: <https://www2.archivists.org/prof-education/das>
- Digital Preservation Coalition: *\*Offers excellent digital preservation courses for free!* <https://www.dpconline.org/digipres/train-your-staff/n2kh-online-training>
- FADGI (Federal Agencies Digital Guidelines Initiative): <http://www.digitizationguidelines.gov/>
- OAIS (Open Archival Information System): <https://libguides.bodleian.ox.ac.uk/digitalpreservation/oaismodel>

QUESTION: "Should we get all documents **scanned** or when transferring will it be paper documents?"

ANSWER BY ARCC, MARY GRACE KOSTA: The archives prefer **original** records so if the original is paper, send the paper. If the original is digital, send the digital. We have three policies that relate: An **Archives Electronic Records Collection Policy** which explains how to transfer digital records to the archives, an **Archives Preservation Policy** which explains how we preserve digital and analogue records, and an **Archives Website Collection Policy**. We have an in-house digital preservation system based on the **OAIS** model which ingests digital records for long term preservation.

NOTE: Scanning documents requires intellectual control of your collection and a system in place for scanning or working with a vendor. Standards must be defined to include file naming convention tied to the collections to a folder level, standard dpi, etc. If working with a vendor, you also must have all documents prepared for the process. Scanning takes time and resources. Born Digital documents within the Administration and Archives should be evaluated, discussed, file management systems in place, as well as policy and procedures to determine what and how documents would enter the Archives and therefore transfer when the archives are moved.

CONTRIBUTING STATEMENT RELATED TO ABOVE OFFERED BY A PARTICIPANT: "A comment: I write to affirm the **importance of transferring and maintaining print originals**. Digitization/scanning is a great means to preservation, and increasing accessibility, but digital files can corrupt over time and have their own needs for controlled digital storage environments." *\*Should you wish additional information from this attendee, the ARCC RWG may be able to facilitate the connection.*

CONTRIBUTING STATEMENT RELATED TO ABOVE OFFERED BY A PARTICIPANT: "And a plug to **consider keeping second or third copies of print publications**, as these can be used for scanning and allow maintaining one copy that has less handling (especially if disbinding or removing staples/fasteners is necessary or helpful for scanning)." *\*Should you wish additional information from this attendee, the ARCC RWG may be able to facilitate the connection.*

CONTRIBUTING STATEMENT RELATED TO ABOVE OFFERED BY A PARTICIPANT: "My understanding is to try to **digitize** materials that are fragile or one of a kind and used often, so that they do not have to be handled as much."

ANSWER BY ARCC, MARY GRACE KOSTA: Yes, digitization can create a surrogate for a fragile original. It also is a way to share access. BUT digitization must be done to **FADGI** standards to be worth doing at all. Each time you digitize, you do some damage to the original through handling and light exposure. You should aim to digitize once and do it right the first time, which means creating a high resolution, non-lossy, surrogate saved in an open format such as TIFF or WAV with embedded metadata, then deriving service masters and access copies from it.

NOTE: Collections surveys to identify priorities (condition, value to the collection, etc.) for scanning are important.

QUESTION: "When you say that **all records** are donated fully, does this include **all digital** records like **podcasts** and **web pages**?"

CONTRIBUTING STATEMENT RELATED TO ABOVE OFFERED BY PARTICIPANTS: "**Archive-IT** that is part of **Internet Archive** can assist with archiving **websites**" – "**Facebook, Instagram** as well!"

ANSWER: It depends. If you have born digital records in various formats, these can and should be considered. If you are already implementing systems such as Archive-IT, it would be beneficial in assisting with capturing digital content. It would be beneficial to have a SAA DAS consultant visit to appraise and make recommendations.

ANSWER BY ARCC, MARY GRACE KOSTA: Make policy! We have an **Archives Website Collection Policy**. We use **Internet Archive** and **Conifer** to archive websites.