UC Libraries Digital Collection Program
Checklist for Determining Access Options

INTRODUCTION

UC Libraries should adhere to a practical approach in identifying and resolving rights issues for submitting digital collections to a digital repository. The purpose of the UC Libraries Digital Collection Program *Checklist for Determining Access Options* is to provide a rights management framework to be used in conjunction with non-licensed collections being considered for deposit into the UC Libraries Digital Collection. Digital content contributors should use the checklist as a tool in determining whether a campus has rights to distribute digital works, whether digitized or born-digital. [1]

Contributors may also find the *ARL Code of Best Practices in Fair Use for Academic and Research Libraries (2012)* helpful when evaluating whether and how fair use may apply to specific digitization projects. [2] In many cases, the UC Libraries may have rights to use materials, and a fair use analysis does not have to be conducted where the desired use is permitted under the terms of an applicable license or donor agreement. Beyond issues relative to fair use, additional conditions that should be considered when determining access rights include:

- Restrictions in donation or loan documentation;
- potentially sensitive cultural heritage or indigenous collections or objects;
- privacy rights, e.g., collection contains private facts or images that may infringe rights if openly accessible;
- other restricted or special access conditions as stated by the donor or copyright holder, e.g., campus-use only restriction.

DIRECTIONS FOR COMPLETING THE CHECKLIST

Section 1: General Information - Required

Section 2: Description - Required

Section 3: Copyright Status - Required; please provide supporting documentation where indicated

Section 4: Fair Use Analysis - To be completed if the copyright status of the collection or object(s) described in Sections 1 and 2 meets at least one of the following:

- is held by a third party and no license agreement exists;
- copyright is unknown.

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[1] The *Checklist for Determining Access Options* draws significantly upon the extensive work of the UC San Diego Library staff in the area of digital content and rights determination. We thank them for their generous support.

[2] "Code of Best Practices in Fair Use for Academic and Research Libraries," Association of Research Libraries (2012). See: www.arl.org/pp/ppcopyright/codefairuse/code

Section 5: Special Access Conditions - To be completed if special conditions beyond fair use should be considered when determining access rights.

Section 6: Campus Recommendation on Access Level Assessment - Required

Section 7: UC Library Digital Collection Steering Committee Recommendation on Access Level - To be completed by the UC Library Digital Collection Steering Committee

Submit completed forms and supporting documentation to:

UC Libraries Digital Collection Program
xxxx@ucop.edu

Questions?
xxxx@ucop.edu

UC Libraries Digital Collection Program
Checklist for Determining Access Options

Prepared by:

Library:

Department/Unit:

Date Submitted:

1. **GENERAL INFORMATION ABOUT COLLECTION OR SINGLE OBJECT**

   ▪ Collection or object name:

   ▪ Collection or object accession or other identifying number:

   ▪ If a collection, portion of collection to be included, e.g., pages, items:

2. **DESCRIPTION** (**check all boxes that apply**)

   ☐ Single object

   ☐ Collection of objects

   Format of material to be made accessible:

   ☐ Text

   ☐ Audio

   ☐ Video

   ☐ Data sets

   ☐ Graphic materials, e.g., photographs, posters, slides, drawings, architectural records

   ☐ Other (please specify):

3. **COPYRIGHT STATUS (check all boxes that apply)**

   ☐ Public domain - *provide evidence indicating collection or object is in the public domain*

   ☐ UC Regents - *provide evidence indicating UC Regents hold copyright for collection or object*

   ☐ 3rd Party holds the copyright and license agreement exists - *provide copy of license agreement*

   ☐ 3rd Party holds the copyright and <u>NO</u> license agreement exists

   ☐ Unknown - *provide a summary of the provenance of the collection*

   ☐ Mixed status - *additional consultation with the UC Library Digital Collection Steering Committee may be needed if a collection has mixed status, e.g., some materials may be public domain, some may have copyright restrictions*

4. FAIR USE ANALYSIS

The ARL *Code of Best Practices in Fair Use for Academic and Research Libraries* (2012) documents a consensus among academic research libraries about fair use practices for several commonly occurring situations. It is not prescriptive and is not intended to set limits to fair use; rather, it enables libraries to assess their own approach to fair use in relation to best practices within the research library community.

FAIR USE CHECKLIST

The fair use checklist is intended to help UC libraries and archives determine whether proposed digitization projects fall within fair use under U.S. copyright law (Section 107 of the U.S. Copyright Act). The checklist supports a fair use analysis based on a balanced consideration of four factors as laid out in the statute:

1. The purpose of the use;
2. the nature of the work used;
3. the amount and substantiality of the work used;
4. the effect of the use upon the potential market for or value of the work used.

These four factors form the structure of the fair use checklist, which is intended as an aid to considering each factor in relation to the specific circumstances of a project. Though some factors may weigh more strongly than the others for a specific project, it is important to note that no one factor by itself is necessarily determinative of fair use. Taken as a whole, the checklist can serve as a reasoned approach to a fair use decision. In addition, it can serve as documentation of the analysis process and an indication of a good faith effort to follow the law.

	Fair Use Factor 1: Purpose of the Use		
	✓ **Favoring Fair Use**		✓ **Disfavoring Fair Use**
	Transformative use (changes, repurposes, or re-contextualizes the work)		Verbatim/exact copy or use is similar to original
	Digitizing to preserve items that are at-risk, likely to deteriorate, or that exist only in difficult to access formats, and to make available copies of otherwise inaccessible materials		Fully equivalent digital copy is available at a reasonable cost There is an intention to provide access to or circulate the original and digitized versions simultaneously
	Creating digital collections of archival and special collections materials		Published works are available in unused copies on the commercial market at reasonable prices
	Using selections from collection materials to publicize the libraries' activities or to create physical and virtual exhibitions		The amount digitized exceeds what would be considered appropriate for illustrative purpose, i.e., tailored to support the goals of the exhibit
	No fee charged		Profit-generating use

	Fair Use Factor 2: Nature of the Copyrighted Material		
	✓ **Favoring Fair Use**		✓ **Disfavoring Fair Use**
	Factual, nonfiction, news		Creative (art, music, fiction) or consumable work (workbooks, tests)
	Published work		Unpublished work
	Collection of material gathered, posted and made available on the Web		Material cannot be presented as it was displayed and/or captured
	Material posted is non-public domain Web content and does not include a "bot exclusion" header Material posted is public domain Web content and does or does not include a "bot exclusion" header		Material posted is non-public domain Web content and includes a "bot exclusion" header

	Fair Use Factor 3: Amount and Substantiality of the Work Used		
	✓ **Favoring Fair Use**		✓ **Disfavoring Fair Use**
	Small quantity, e.g., single chapter, journal article, or other excerpt consisting of less than 10% of the work		Large portion or entire work
	Portion used is not central to entire work as a whole		Portion used is central or the "heart" of the work
	Amount is appropriate for educational purposes		Includes more than necessary for educational purposes

	Fair Use Factor 4: Effect on the Market for the Original		
	✓ **Favoring Fair Use**		✓ **Disfavoring Fair Use**
	No significant effect on the market or potential market for the copyrighted work		Cumulative effect of copying would be to substitute for purchase or license of the copyrighted work
	No longer in print; absence of licensing mechanism		Reasonably available licensing mechanism for obtaining permission to use the copyrighted work currently available, e.g., CCC licensing or off-prints available
	Will restrict access (limited to an appropriate group)		Will be making it publicly available on the Web or using other means of broad dissemination or less limited access

Notes *(optional):*

5. SPECIAL ACCESS CONDITIONS

Please describe any special access conditions beyond fair use that should be considered when determining access rights. Provide supporting documentation where appropriate. Examples of special conditions include:

- Restrictions in donation or loan documentation;
- potentially sensitive cultural heritage or indigenous collections or objects;
- privacy rights, e.g., collection contains private facts or images that may infringe rights if openly accessible;
- other restricted or special access conditions as stated by the donor or copyright holder.

Special access conditions:

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6. CAMPUS RECOMMENDATION ON ACCESS LEVEL

□ Public

□ Metadata only

□ Metadata and thumbnail only

□ Metadata, thumbnail and medium resolution

□ UC only

□ UC campus only

□ UC campus library only (identify campus)

□ Curator view only (restricted; cannot be displayed to public, UC campuses, or the UC local library)

□ Other (please describe exception and requirements needed)

Please provide a brief written assessment for your recommended access level:

7. UC LIBRARY DIGITAL COLLECTION STEERING COMMITTEE RECOMMENDATION ON ACCESS LEVEL

Approved for (specify use):

Approved by:

Date Approved: