SI 580 Understanding Records and Archives: Principles and Practices

Week 12 – Legal, Policy, & Ethical Issues
Themes of this presentation

- Who owns the archives?
- Who has rights to access records and archival materials?
  - Archival balancing acts
  - Codes of ethics
- When are restrictions justified?
- How will access and restrictions be administered?
- Who controls the past?
Who owns the archives? ...1

- Public archives – presumably owned by the governed – maintain records as part of a public trust to:
  - protect individual rights
  - serve accountability
  - maintain an institutional memory
  - document national history
Who owns the archives? ...2

- Institutional archives
  - owned by the institution
  - maintain records to:
    • protect institutional rights
    • maintain an institutional memory
    • document institutional history
Who owns the archives? …3

Who owns archives?
Who has access rights?
When are restrictions justified?
Access administration
Who controls the past?

- Collecting archives
  - owned either by collecting archives, the donor, or a third party, depending on the nature of the collection and the donor agreement
  - maintain records to:
    - document particular periods, themes, entities…….
Who has rights to access records & archival materials? …1

Who owns archives?
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Access administration
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Access can depend upon:

– archives legislation
  • e.g., 44 USC §2108 - US NARA “responsibility for custody, use, and withdrawal of records”

– other legislation
  • e.g., “Security”, FOIA, Privacy Act, Copyright…

– corporate policy
  • tied to internal needs & external requirements / considerations
Who has rights to access records & archival materials? …2

- Access can also depend upon:
  - administrative will / capabilities to comply with access laws
  - donor agreement
  - researcher access contract
  - status of collection’s processing
Archival balancing acts … 1
(Danielson)

- getting donors to relinquish control over their papers
- accepting collections without excessively long or inequitable restrictions (e.g., selective access)
- dealing with researchers who will go to any length to obtain access

Who owns archives?
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Archival balancing acts ...

- administering institutional policies that you disagree with
- dealing with competitive scholars who want to ‘own’ a collection
- determining the appropriate level of physical / intellectual control to enable access

Who owns archives?
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SAA code of ethics (1992) - previous version

Who owns archives?
Who has access rights?
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- collecting policies
- relations with donors
- description
- appraisal, protection, & arrangement
- privacy & restricted information
- information about researchers
- research by archivists
- complaints about other institutions
- professional activities
Who owns archives?
Who has access rights?
When are restrictions justified?

**Access administration**
Who controls the past?

- Commentary, guidelines, procedures for interpretation, dispute mediation eliminated “on advice from council”
- Individual conduct / institutional best practice removed to “simplify and clarify”
- “aspirational”
- Provide “ethical framework…not…specific solutions to particular problems.”
SAA code of ethics
2005 revision

- professional relationships
- judgment
- trust
- authenticity and integrity
- access
- privacy
- security / protection
- law
ARMA code of professional responsibility (1995) under revision ...

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Social principles “responsibilities to society”

- support free flow and oppose censorship of publicly available information
- support accuracy and integrity of information
- condemn and resist unethical or immoral use or concealment of information
- privacy must be upheld and promoted
- support compliance with laws associated with recorded information
ARMA code of professional responsibility (1995) under revision …2

Professional principles
- responsibility to employers / clients / RM profession
- Pursue appropriate educational requirements and ongoing education
- Accurately represent qualifications and credentials
- Serve employer at highest level of competence
- Recognize illegal or unethical situations and apprise employer of them
- Avoid personal interest or improper gain
- Maintain confidentiality of privileged information
- Enrich profession by sharing experiences and knowledge
- Actively commitment to recruitment of individuals into the profession
ACRL Code of Ethics for Special Collections Librarians (October 2003)

Who owns archives?
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- personal collecting / competition
- personal dealing & appraisals
- gifts & dispensations
- personal research
- confidentiality
When are restrictions justified?

- protect privacy
- protect security
- protect intellectual property
- satisfy legal obligations
- satisfy donor obligations
- others...

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Who controls the past?

*access to records and archives determines in large part what is knowable*

*active control archives and records can involve issues of power, politics, law, ethics … --> deeply connected to notions of “accountability”*

- Examples
  - King Leopold II of Belgium and the archives of the Belgian colony
  - Mau Mau war in Kenya and the archives
  - “Archives of Terror” in Paraguay
  - Other examples from week’s readings…
Thank you!

Paul Conway
Associate Professor
School of Information
University of Michigan
www.si.umich.edu