

Cornell University
Library

75 Years of Archivists at Risk

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Two Topics



- Brief history of archives and copyright
- Practical examples that mitigate potential harm

IP Risk in Archives



- We want to obey the law
- That is impossible
 - The law is too complex
- In doing our jobs, we infringe – *without knowing it!*



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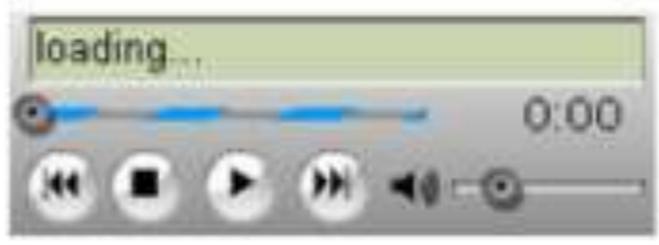
Music | Search | Links | Donate | About Us | Research Station

Home | Performers | Special Collections | Genres | Album List | Song List | 78-rpm List | Help

Google™ Search JSA Website

Connection: Dial-up DSL/Broadband

Cantor Aaron Bensoussan



The Judaica Sound Archives is pleased and proud to present Cantor Aaron Bensoussan as our featured performer.

Aaron Bensoussan comes from a prominent Rabbinic dynasty that can trace its lineage back to Maimonides. He began his cantorial career as Hazzan at the Sephardic Jewish Center in Forest Hills, NY when he was only 24 years old. In addition to his cantorial work, Bensoussan has

BLOG

**New acquisitions!
Exciting developments!
Behind the scenes stories!**

Recent posts:

- [Passover songs the whole family can enjoy](#)
- [FAU's Kultur Festival highlights the work of JSA](#)



Alma Gluck

[Album List](#)

[JSA Home](#)



Born: May 11, 1884 (Romania)

Died: October 27, 1938 (USA)

Voice: Soprano

Notes: Birth name was Reba Fierson. Married Bernard Gluck in 1902.

These recordings were produced prior to 1923 and are in the public domain.

Alma Gluck was a world famous female concert singer and recording star in the early 20th century. She earned a place in recording industry history by creating the first million-selling phonograph record.

In 1890 her family moved to New York City where she first had piano lessons and then voice training by

Asking Permission Isn't Always the Answer



Mrs. E. Watson,
THE THOMAS E. WATSON PAPERS

Home

- Collection Finding Aid**
Browse All Digitized Materials with the Collection Finding Aid
- Advanced Search**
Search correspondence, photographs, and periodical fulltext.

FEATURED MATERIALS

- Correspondence**
- Photographs**
- Oral Histories**

Mrs. E. Watson,
THE THOMAS E. WATSON PAPERS
Digital Collection

Welcome

This digital collection provides comprehensive access to the papers of Thomas E. Watson (1856-1922), a prominent Southern Populist politician, lawyer, and author. Using this digital collection, researchers may search and browse digitized materials from the correspondence and pictures series, or browse digitized materials from all of the series in the collection using the finding aid.

An Old Problem

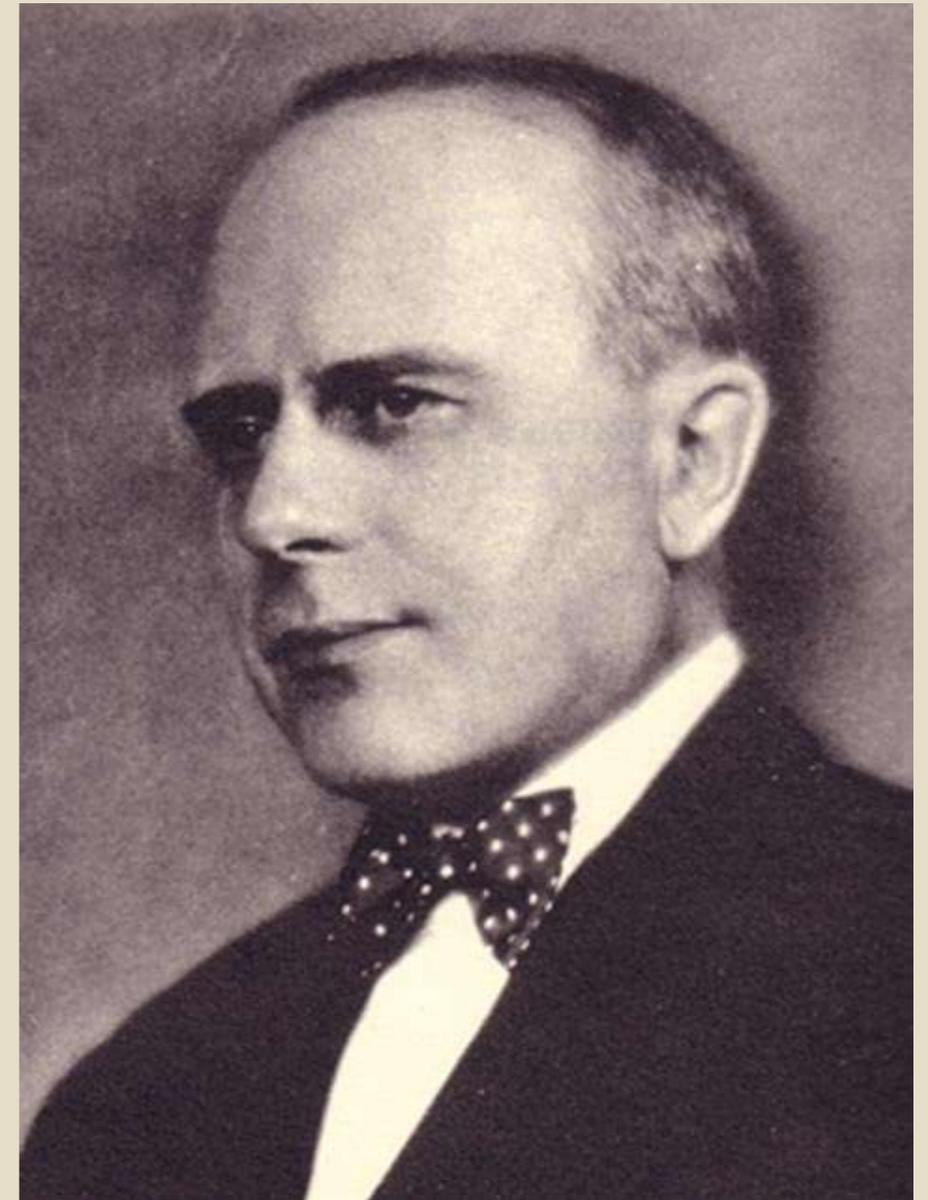


- Robert C. Binkley (1897-1940)
 - Historian at Western Reserve Univ.
 - Founding member, SAA
 - Chair, Committee on Equipment and Mechanical Techniques
 - Chair, Joint Committee on Materials for Research of ACLS & SSRC
- Advocate for reproduction of archives to promote scholarly efficiency
- Gentlemen's Agreement of 1935: published texts only

Waldo Gifford Leland



- SAA Founder
- Director, ACLS
- Committee on Microcopying Manuscripts in English Depositories
 - Deposited in LC
 - Copyright ignored



<http://www.aapra.org/Pugsley/LelandWaldo.html>

1965: SAA & New Copyright Law



A progress report on the proposed Copyright Law was given by the president. The Council adopted the following resolution and asked the secretary to send a copy to every institutional and individual member of the Society:

1. That the new Copyright Law include a provision that will permit libraries, archives, and other repositories to microfilm or otherwise make facsimiles of manuscripts for the purpose of depositing copies in other institutions.

This would not adversely affect copyright interests in the manuscripts in any way. It would, in effect, merely extend the repository's ability to show its manuscripts to scholars and others, and, at the same time, would make it possible to house security copies at a distance from the originals.

- Of course, archives had already been doing this...

Julian Boyd, for SAA, before Congress (1966):



“[The new law] makes librarians, archivists, and custodians of manuscripts do less damage to their consciences when they provide scholars with copies of older manuscripts.”

- Boyd acknowledged that archivists broke the law – and that was ok.



<http://princeton.edu>

Understanding Risk



- We live with risks
- Only one repository has been sued
 - It's copying was a fair use
- Financial risks are low
 - No statutory damages or attorneys fees for unpublished items
 - Expenses associated with suing are high
 - Fair use defense:
 - ✦ A collection (not single items) might be transformative

Other risks do exist



- Non-legal risks do exist
 - Need to act professionally
 - “Reputational” risk
- Procedures to limit risk profile
 - Key: use professional judgment
- Some examples...

Example 1: Ignore the Law



The Ezra Cornell Papers

[Home](#)[Browse](#)[About](#)[Contact](#)[Guide to the Ezra Cornell Papers, 1746-1888](#)

Document name: Ezra Cornell
Manuscripts Box 01

Go to:

page 214 : Folder 1-5: July 15, 1841 - August 13, 1842

View as:

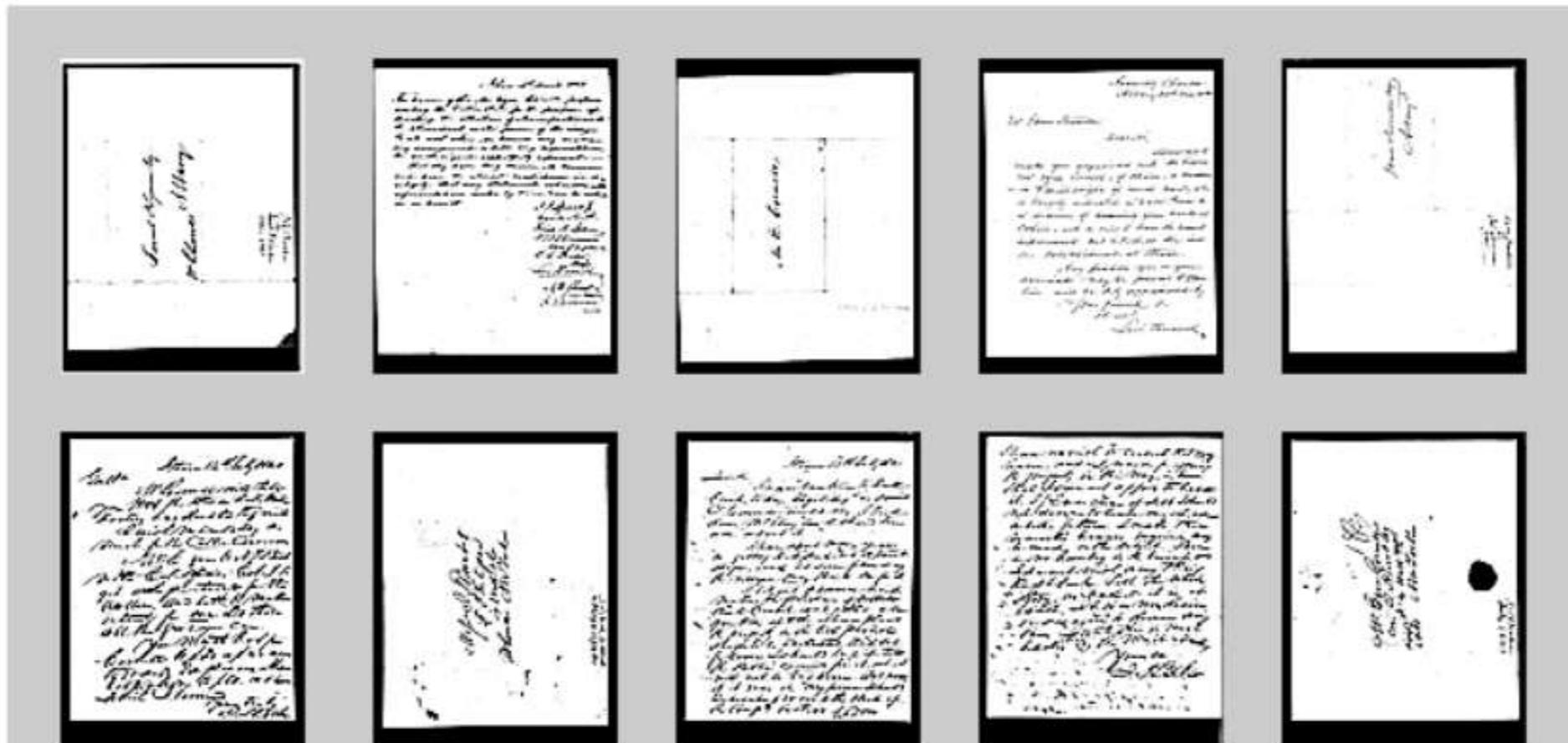
thumbnails

Current page: Page 214 (image 214 of 613)

Go to page:

submit

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Example 2: Limit resolution and/or access



Claire Holt Papers 1930-1969
Cornell University Library

Welcome | Login | Search Catalog Data | Catalog Data & text in Documents

painting Search

Advanced Search

Collections Explore Create Share This Embed This Help

Media Information **Pelabuhan Tuban Dizaman Madjapahit** Printer Friendly Thumbnails Export

Collection: Claire Holt Indonesian Art Collection

Accession: S0182

General Category: Painting, Modern

Place: Djakarta, West Java

Times: 1957

Title: Pelabuhan Tuban Dizaman Madjapahit

Artist: [Trisno Sumardjo](#)

Medium: Oil Painting

Width: 46.5"

Height: 38.5"

Date: 1957

Comments: No. 9 in FASCO series

Photographers: C. Holt

Collection: Claire Holt papers, 1930-1969

Call Number: Archives 14-27-2648

Add To Workspace

General public only has access to medium-sized images

Access to larger images limited to authorized users

Export limited to 192 pixels

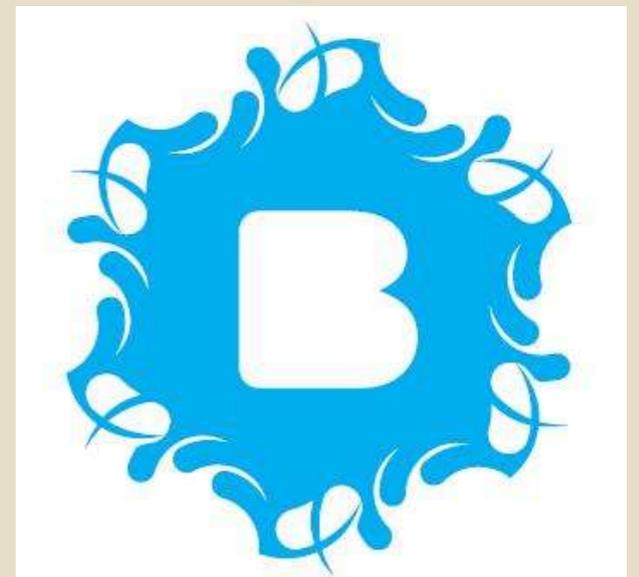
Brooklyn Museum of Art Copyright Project



Reputational risk varies by institution.

BM Goals:

- Make as much of the collection available as possible
- With as few restrictions as possible
- As openly as possible
- While respecting the rights of artists



Its Working Rules...



- Paint with broad strokes, dividing the collection into under copyright and no known copyright (i.e. we think it's in the public domain) using broad rules of thumb
- Open the website to comment and draw on community knowledge to correct and refine.
- *Err on the side of protecting artists' rights.*
- Use thumbnails, likely to fall within the Fair Use exception to copyright protection, whenever a work may be protected by copyright.
- Take the risk to get the information out there
- Provide links to authoritative resources on copyright.



Why is this image so small? This image is presented as a "thumbnail" because it is protected by **copyright**. The Brooklyn Museum respects the rights of artists who retain the copyright to their work.



Power Flight

Power Flight takes painting off the wall and into the space of the gallery. Freed from the confines of a rectangular stretcher, the artwork is suspended in the air, creating a dynamic and three-dimensional composition.

Brooklyn Museum 

Joe Overstreet (American, born 1934), *Power Flight*, 1971. Acrylic on canvas with metal grommets and white rope. - Brooklyn Museum, Gift of Mr. and Mrs. John de Menil, 72.165. © artist or artist's estate

Seek Permission *When Appropriate*



Orphan Works: Statement of Best Practices

January 12, 2009
Rev. June 17, 2009

1. INTRODUCTION

Purpose of the Report

"Orphan works" is a term used to describe the situation in which the owner of a copyrighted work cannot be identified and located by someone who wishes to make use of the work in a manner that requires permission of the copyright owner. Proposed orphan works legislation, such as the Orphan Works Act of 2008 (H.R. 5889) and the Shawn Bentley Orphan Works Act of 2008 (S.2913), would reduce penalties for infringement if an infringer "undertakes a diligent effort to locate the owner of the infringed copyright." This statement describes what professional archivists consider to be best practices regarding reasonable efforts to identify and locate rights holders. It is based on the authors' knowledge of the kinds of materials that are likely to qualify as orphan works and on their professional experience in trying to obtain rights information for such works in the past.

Although the statement focuses on unpublished materials because these are the types of materials that are usually found in archives, the authors recognize that many of the techniques that are useful in identifying rights holders for unpublished materials may also be useful in identifying and locating rights holders of published materials.

Acknowledgments

Heather Briston, Mark Allen Greene, Cathy Henderson, Peter Hirtle, Peter Jaszi, William Maher, Aprille Cooke McKay, Richard Pearce-Moses, and Merrilee Proffitt are the primary authors of this statement, which was approved by the Society of American Archivists Council on June 1, 2009.

Seek Permission *When Appropriate*



Orphan Works: Statement of Best

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1. INTRODUCTION

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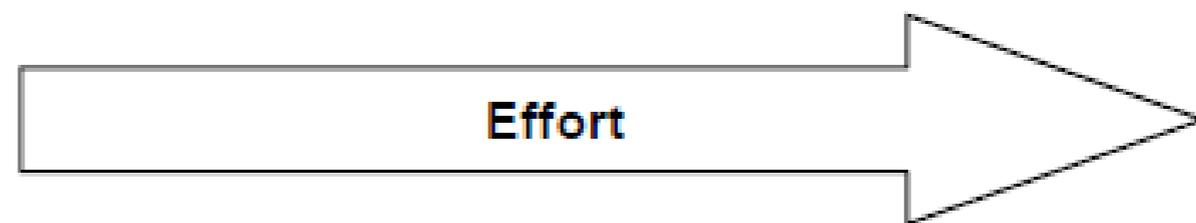
"Orphan works" is a term used to describe the situation in which the owner of a work cannot be identified and located by someone who wishes to make use of the work in a way that requires the permission of the copyright owner. Proposed orphan works legislation, such as the Orphan Works Act of 2008 (H.R. 5889) and the Shawn Bentley Orphan Works Act of 2008 (S.2913), provides a safe harbor for infringement if an infringer "undertakes a diligent effort to locate the owner of the work." This statement describes what professional archivists consider to be reasonable efforts to identify and locate rights holders. It is based on the experience of archivists with orphan works and on their professional judgment about what reasonable efforts to obtain rights information for such works in the past.

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Cost / Effort of Search



Unlikely to be able to locate information leading to rights holder

Likely to be able to locate information leading to rights holder

Older work

Recent work

Anonymous, obscure, non-professional creator

Prominent or professional creator or prominent rights holder

Narrow distribution, easy takedown, non-prominent use

Wide distribution, rescinding use difficult, prominent use, promotional use

Use a Disclaimer & Encourage Takedowns



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Don't Charge Permission Fees



- Destroys potential defenses
- 108 for textual materials:
 - Reproduction or distribution must be “made without any purpose of direct or indirect commercial advantage”
- 107 (Fair Use) for photographic materials:
 - Factor One considers “whether such use is of a commercial nature”
- You *can* charge fees for reproductions you make
- You *can* charge permission fees when the © owner approves

Conclusions



- We need to be respectful, but not afraid
- We need to encourage others to use and build on our collections