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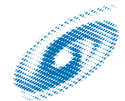
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# SI 580 Understanding Records and Archives: Principles and Practices

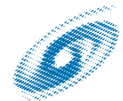
Week 12 – Legal, Policy, & Ethical Issues



# Themes of this presentation

## Themes

- 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

## Who owns archives?

Who has access rights?

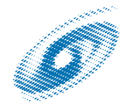
When are restrictions justified?

Access administration

Who controls the past?

## ■ 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

## Who owns archives?

Who has access rights?

When are restrictions justified?

Access administration

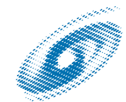
Who controls the past?

## ■ 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?

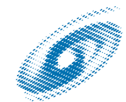
When are restrictions justified?

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?

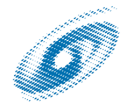
**Who has access rights?**

When are restrictions justified?

Access administration

Who controls the past?

- 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

Who owns archives?

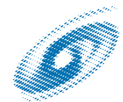
**Who has access rights?**

When are restrictions justified?

Access administration

Who controls the past?

- 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)

Who owns archives?

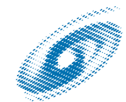
Who has access rights?

**When are restrictions justified?**

Access administration

Who controls the past?

- 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



# Archival balancing acts ...2

Who owns archives?

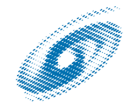
Who has access rights?

**When are restrictions justified?**

Access administration

Who controls the past?

- 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



# SAA code of ethics (1992) - previous version

Who owns archives?

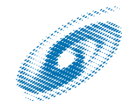
Who has access rights?

When are restrictions justified?

## **Access administration**

Who controls the past?

- collecting policies
- relations with donors
- description
- appraisal, protection, & arrangement
- privacy & restricted information
- information about researchers
- research by archivists
- complaints about other institutions
- professional activities



# SAA code of ethics

## 2005 revision ...1

Who owns archives?

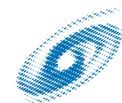
Who has access rights?

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 ...2

Who owns archives?

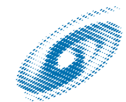
Who has access rights?

When are restrictions justified?

### **Access administration**

Who controls the past?

- professional relationships
- judgment
- trust
- authenticity and integrity
- access
- privacy
- security / protection
- law





# ARMA code of professional responsibility (1995) under revision ...1

Who owns archives?

Who has access rights?

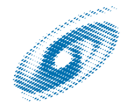
When are restrictions justified?

## **Access administration**

Who controls the past?

## ■ 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

Who owns archives?

Who has access rights?

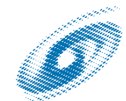
When are restrictions justified?

## **Access administration**

Who controls the past?

## ■ 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?

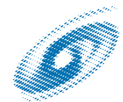
Who has access rights?

When are restrictions justified?

**Access administration**

Who controls the past?

- personal collecting / competition
- personal dealing & appraisals
- gifts & dispensations
- personal research
- confidentiality



# When are restrictions justified?

Who owns archives?

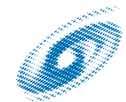
Who has access rights?

When are restrictions justified?

**Access administration**

Who controls the past?

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



# Who controls the past?

Who owns archives?

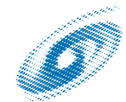
Who has access rights?

When are restrictions justified?

Access administration

**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!

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