

Copyright Risk Assessment Criteria

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Purpose

Use these criteria when deciding whether or not to disseminate third-party protected materials over the Internet via the Archives' online access system.

- *Low-risk* materials – Archives may disseminate without requiring the copyright owner's permission.
- *High-risk* materials – Archives will seek copyright owner's permission before disseminating.

"Risk" is understood here to mean the likelihood that online dissemination of materials without the permission of the copyright owner would lead to claims of copyright infringement or expose the university to liability or other damage.

See *Managing Copyright in SFU's Archival Holdings: Overview and Guidelines* (GDL-41) for a fuller description of the Archives' overall policy approach to copyright, including rationale for particular policy choices and the workflow implications.

See *Copyright Analysis Tools* (GDL-40) for more detailed considerations when applying the general criteria to specific types of material.

Criteria

Criteria are grouped under four headings, depending on whether they relate to:

1. An owner's economic rights.
2. An author's moral rights.
3. An owner's history of copyright defense.
4. An author / owner's relationship to SFU.

| <i>Criterion</i> | <i>Application</i> | <i>Indicators of high risk</i> | <i>Materials to watch for</i> |
|---|---|--|---|
| 1. Owner's economic rights | | | |
| <p>Materials are <i>high-risk</i> if:</p> <p>There is a reasonable possibility that the material has a commercial value and online dissemination without permission would harm the copyright owner's ability to obtain economic benefits from their protected material.</p> | <p>Determine whether there is a reasonable basis for thinking that the material – taken in isolation from the other archival records to which it is linked – could circulate on its own as an "article of commerce" from which the copyright owner could obtain economic benefits.</p> <p>This criterion weighs heavily in assessment of risk.</p> | <p>The material is commercially available elsewhere.</p> <p>The material was produced with commercial intent, whether realized or not.</p> <p>The artistic or literary qualities of the material exhibit a high degree of skill and judgment.</p> <p>The informational content of the material could be commercialized.</p> <p>The author of the material is a prominent public figure for whom there may be a market for their unpublished works and associated ephemera.</p> | <p>Publications included in the records.</p> <p>Unpublished manuscripts created with an intent to publish.</p> <p>Records containing proprietary commercial information or research data.</p> <p>Correspondence with prominent literary, artistic, scholarly or public figures.</p> |
| 2. Author's moral rights | | | |
| <p>Materials are <i>high-risk</i> if:</p> <p>There is a reasonable possibility that the presentation of the material online would in some way alter it to the detriment of the author's moral rights.</p> | <p>Determine whether the online presentation of the digital access copy significantly distorts the appearance or meaning of the material such that its literary or artistic integrity is damaged and author's honour or reputation is potentially harmed.</p> <p>Generally it is expected that this criterion will rarely lead to a high-risk assessment.</p> | <p>The material is a highly creative work produced in digital form in an uncommon file format that does not easily normalize into a standard access format.</p> | <p>Artistic or multi-media works created in digital form.</p> |

| <i>Criterion</i> | <i>Application</i> | <i>Indicators of high risk</i> | <i>Materials to watch for</i> |
|--|--|--|---|
| 3. Owner's history of copyright defence | | | |
| <p>Materials are <i>high-risk</i> if:</p> <p>The copyright owner of the material is known to have a history of actively defending their copyright and online dissemination without permission could expose the university to liability for claims of infringement.</p> | <p>Consult the <i>Copyright Creators and Owners: Research Register</i> to determine whether a particular owner is known to have actively defended their copyright in the past.</p> <p>Generally this factor should not weigh too heavily on assessment of risk: the Archives' notice-and-takedown procedure should handle most complaints.</p> | <p>The owner has engaged in copyright litigation in the past</p> | <p>Correspondence with prominent literary, artistic, scholarly or public figures.</p> |
| 4. Author / owner's relationship with SFU | | | |
| <p>Material is <i>high-risk</i> if:</p> <p>The author or copyright owner has a relationship with the Archives, with SFU or with significant communities important to the university and online dissemination without permission could damage that relationship or the university's reputation in the community</p> | <p>Consult the <i>Copyright Creators and Owners: Research Register</i> to determine whether a particular author or owner is known to have a relationship with the university that justifies treating their protected materials more conservatively than materials belonging to others.</p> | <p>Author / owner is a donor of archival materials to the Archives.</p> <p>Author / owner is a donor to SFU.</p> <p>Author / owner is a prominent figure in the local community.</p> | <p>Correspondence in a fonds authored by persons with a significant relationship to SFU</p> |

Standard
Copyright Risk Assessment Criteria

STN-8

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