

Praxis, Not Practice: The Ethics of Consent and Privacy in 21st Century Archival Stewardship

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Abstract: This article considers ethical issues of consent and privacy during each phase of archival stewardship. The authors examine flaws in traditional archival theory that contribute to oppression and silencing and highlight unique collections and practices at San Diego State University that begin to set the 21st century archive apart. We focus on responsive collection stewardship with two case studies—a collection of correspondence from individuals being held in a detention center and a zine collection. Drawing on a framework of radical empathy and ethics of care set forth by Michelle Caswell and Marika Cifor (2016), we will critically dissect, dismantle, and unsettle traditional approaches to consent and privacy. The first case study scrutinizes privacy and consent issues surrounding the documentation of vulnerable populations with an emphasis on ethics. The second case study examines the need for increased sensitivity and flexibility in collecting zines. The article shares ideas for how to acquire and manage these types of collections in socially and ethically responsible ways, using an archival ethics worksheet that prioritizes consent and privacy throughout the stewardship process.

Archival stewardship refers to a range of actions representing the lifespan of an archival collection, including appraisal, acquisition, arrangement, description, access, digitization and deaccessioning of archival materials, as well as the development of policies and best practices for each. In addition, stewardship encompasses the relationships formed with record creators, subjects, users, communities and other archivists during this lifespan. The first four of these relationships were identified by Michelle Caswell and Marika Cifor (2016) as “key archival relationships” in their article, “From Human Rights to Feminist Ethics: Radical Empathy in the Archives,” and the fifth was subsequently and rightly proposed by the Radical Empathy in Archival Practice group zine distributed at the Society of American Archivists’ annual conference in 2017 (Wooten et al., 2017). Stewardship carries implications of responsibility, care, trust and accountability toward each of these five categories.

This article seeks to situate issues of consent and privacy, including the right to be forgotten, within the *radical empathy framework* as it applies to stewardship, by examining two case studies from San Diego State University (SDSU) documenting vulnerable populations and individuals. The authors discuss how the case studies necessitated an ethics of care in decision making that had not factored into previous practices, and explore how archives contribute to the exploitation of vulnerable subjects on the Internet. An examination of consent and privacy issues allows librarians and archivists to work backwards and consider when and why it is appropriate to disrupt the traditional sequence of stewardship actions. And finally, an archival ethics worksheet, developed by the authors, prompts a process based on the radical empathy framework to supplement established best practices, allowing for a more careful and responsible evaluation of every step

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of the stewardship of archival collections documenting vulnerable populations. Our goal is to enhance the growing body of literature and professional recommendations that contribute to the unsettling of archives through the revision or abolition of actions informed by the power and privilege of Whiteness.

Before going further, a few words on the title of this article are also warranted. “Praxis” as a term distinguished from theory is synonymous with the term “practice”. However, in critical theory, praxis denotes “action,” or perhaps further distinguished, “activism”. These distinctions draw upon the Hegelian and Marxist schools of thought in which praxis denotes transformative action. Praxis in the context of critical archival stewardship would therefore signify a rejection of indiscriminate legacy practices and a shift towards subjective, empathetic actions that consider the archival relationships described by Michelle Caswell, Marika Cifor, and the *Radical Empathy in Archival Practice* group. Critical archival stewardship demands a program for action. The authors have chosen, however, to be intentional in describing our proposed process as “21st century archival stewardship” in a bid to integrate an ethics of care into the work of all archivists and librarians.

Case Study 1: Privacy and Consent in the Detainee Allies Letter Collection

In fall 2018, [Allies to End Detention](#) (formerly Otay Allies, then Detainee Allies), a non-profit organization that “seeks to uphold standards of human decency and government accountability by communicating directly with detained refugees at Otay Mesa and SeaTac Detention Centers,” donated the *Detainee Allies Letter Collection* (formerly named the *Otay Mesa Detention Center Detainee Letter Collection*). The collection documented the experiences of migrants and asylum seekers detained at the Otay Mesa Detention Center in San Diego, CA. The letters, written by detained migrants to members of the Allies, include descriptions of rape, political and gang violence, torture, and LGBTQ+ discrimination in home countries, as well as accounts of asylum journeys and detention center life and conditions. From the beginning it was clear that the collection was of major historic import: it documented the perspectives of people often excluded from the historic record and provided evidence of inhumane treatment by government agencies. However, agreeing to take the collection had serious privacy and safety implications for the correspondents and raised several ethical issues for the SDSU Library.

Before agreeing to take the collection, Lanthorne, along with the dean of the Library, the head of Digital Collections, and the donors, sought guidance from SDSU legal counsel. Lanthorne and others were worried that the collection might be subject to subpoena, putting the correspondents at risk, given relevant issues at another institution. In 2011, the U.S. government, at the request of the Police Service of Northern Ireland (PSNI), subpoenaed audio recordings from Boston College’s Belfast Project. The tapes contained interviews with republican and loyalist paramilitaries active during the Troubles in Northern Ireland. PSNI hoped to use the tapes as evidence to convict individuals for various bombings and disappearances during the Troubles. The tapes were supposed to remain secret and confidential, only being made publicly available upon the death of the interviewee (Boston tapes, 2019). Despite this concern, SDSU legal counsel thought subpoena unlikely. The detained correspondents were held in a facility with government oversight. Letters sent to detainees were already opened by detention center employees to check for contraband, so those same officials could have opened, read, and/or prevented outgoing letters. With this in mind, the Library agreed to take the collection. Lanthorne wrote a gift agreement for the collection, stipulating that access to the original, physical letters would be restricted until the year 2100 to protect the safety and privacy of the correspondents. Since the collection documented events unfolding in real-time, letter donations from the Allies were ongoing and Allies volunteers were granted permission to access the originals if needed.

The donors wanted to provide some form of immediate public access to redacted letters in order to amplify the voices of detained migrants and asylum seekers, highlight the conditions of detention centers and the inadequacies of US immigration policy, and help migrants attain asylum. Immigration and Customs

Enforcement (ICE) contributes to the silencing of detained migrants through mechanisms that prevent them from seeking help or sharing their stories. CoreCivic, the for-profit company that runs the Otay Mesa Detention Center (OMDC) on behalf of ICE, has discontinued stakeholder tours, required visitors to sign a “Volunteer Code of Ethics” (Morrisey, 2018), and suspended the Freedom for Immigrants hotline (Castillo, 2019).

Given these attempts to silence detention critics, the justifications for public access to the redacted letters were directly in line with a rights-based framework in which archives serve as a mechanism for governmental accountability and as a means for legal redress (Caswell & Cifor, 2016). The letters served as important evidence documenting human rights abuses both abroad and in the United States. Because the project presented an opportunity to document this issue, it was not immediately obvious how complicated issues surrounding informed consent, privacy and safety might be. Working from within a radical empathy framework prompts archivists and librarians to equally weigh and consider the needs and wishes of the correspondents as creators and subjects (Michelle Caswell & Marika Cifor, 2016, p. 37).

Before SDSU received the letters, the Allies had already begun a social media campaign to amplify the stories of detained persons. They shared redacted letters on their website, hoping to humanize migrant experiences and illustrate the deplorable detention conditions. Whenever the Allies corresponded with a detained person, they asked if they could share their story. After the Allies donated the collection, the Library decided to thoroughly redact letters and post them online in a public-facing database. Online access exposed a global problem. The Allies promoted the database to government officials, policymakers, and immigration lawyers and organizations. Various media outlets, including *The New York Times*, also covered the collection and the work of the Allies, but the Library itself did little promotion to publicize the collection to migrant communities. In hindsight, this was a serious misstep.

Moreover, the issue of consent remained an ever-present dilemma. At the Library’s request, the Allies included a paragraph in their letters of introduction to detained persons about the digital archive and asked correspondents whether or not they wanted their letters posted in the archive. Only a small number of correspondents said no. Most didn’t say anything or wrote that they wanted their story told but didn’t specify if they fully understood what they were agreeing to be a part of. Although the letter of introduction was written in English and Spanish, many of the migrants didn’t know either language. That, coupled with varying levels of literacy and the immense situational stress of migration and detention, raised the question of whether or not it was even possible for a detained person to provide informed consent. This issue came up repeatedly and led to several lengthy conversations amongst library staff. Staff prioritized the *legal rights* of the correspondents, forgetting that creators are sometimes also subjects and that both should be approached with care and included in decision-making processes (Caswell & Cifor, 2016, p. 36). The Library continued to revisit the consent question and discussed alternatives, including onsite access via a secure computer. Although this would have greatly reduced access and discoverability, onsite access offered a safer, more respectful approach.

Besides consent, the safety of the correspondents was a paramount concern. If personally identifiable information (PII) was not redacted properly or thoroughly, detained persons could have faced retaliation, either in detention or in their countries of origin if they were forced to return. The Digital Collections department created a thorough process for redacting all PII, including names, family members, mention of physical traits or medical conditions, dates and ages, names of villages and towns, gangs or government agencies, and other applicable details. Three to four different staff, including a volunteer from the Allies, read each letter to ensure accuracy and completeness of redactions. Despite the care given to redaction, there was no way to track or know if retaliation occurred. The Library had no way of knowing if it was actually compromising the safety of the correspondents or not. By applying an ethics of care, this fact should have been discussed more thoroughly before digitization began.

In December 2019, the Library received an open letter from the Digital Library Federation (DLF) asking that it remove online access to the collection, citing privacy and safety concerns (Digital Library Federation, 2019). Project staff were split on the proper course of action and once again reviewed onsite access to the redacted letters as an alternative. The issue also went to campus administration. Ultimately, the Library came to a mutual agreement with Allies to End Detention to withdraw and return the collection. Providing access in any form was problematic within a radical empathy framework since the Library was unable to implement any form of shared stewardship with the correspondents. After all, shared stewardship requires partnership with the community (Wurl, 2005), so that the community maintains autonomy over their materials (Caswell, 2014, p. 312). Returning the collection to the Allies still allowed the organization to continue to amplify migrant voices and lobby for immigration reform, albeit on a more limited scale. The letters are still potentially subject to subpoena, no matter where they are located.

Case Study 2: Zines and the Right to be Forgotten

Special Collections and University Archives began collecting zines and other underground publications in the early 2000s, under the leadership and vision of a progressive department head and through the initiative of an employee who was a founding member of the San Diego-based feminist DIY collective, [Grrrl Zines A Go-Go](#). The *Zines and Minicomics Collection* includes over 2,000 zine titles, dating as far back as 1979. Early on, many of the zines in the collection were acquired through direct calls for submissions, but owing to the highly collaborative nature of zine authors and the zine library network, the collection expanded in size and scope through purchasing, trading and sharing of duplicates. This is an important detail to note in a zine collection's history, since it emphasizes the complexity of maintaining a comprehensive record of author permissions. At SDSU, such a record would be impossible.

In 2019, a former zine author contacted Culbertson, curator of the *Zines and Minicomics Collection* at SDSU, to request that she remove their zines from the collection. The author explained that they had been a minor at the time of creation and had never imagined their zines might someday end up in an archive. They described feeling as though their privacy had been invaded and explained that, while they were glad zine libraries existed, it was a shame that libraries were acquiring so many zines without their authors' consent. They also pointed out the many zines contain authors' home addresses, typical of an era when these publications were shared by mail between friends and within smaller distribution networks. Culbertson's immediate reaction was one of distress. These particular zines were among her favorites in the collection and she used them often in classes on riot grrrl. Yet, she was also mortified that this person felt violated and vulnerable, not to mention the fact that they were a minor when they created them. Culbertson felt that this situation was the antithesis of everything zine culture represented. She also knew that she had the right to deny the request, but her instinct was that it deserved thoughtful consideration.

Culbertson contacted a professional colleague who is heavily involved in the zine librarianship network to seek advice and find out if they had also encountered this situation. This colleague had, in fact, communicated with the same zine author, and shared many aspects of Culbertson's perspective. The colleague pointed out the difference between legal and ethical considerations of ownership, and indicated that they deal with requests for removal on a case-by-case basis, with a goal of eventually formulating and sharing a policy in the professional network, and removed the author's zines. After the discussion, Culbertson decided that although she was deeply disappointed to part with the zines, the right thing to do was remove and return them to the author. She removed all descriptive information on the author's zines from the finding aid, apart from the titles, and noted that they were no longer available. The author was hoping to have the entries deleted altogether, but this was where Culbertson saw a potential gray area in the process. Given the fact that Special Collections hosts visitors conducting zine research from all over the globe, she was concerned about the possibility that the title(s) had been previously cited, and how that might affect the accuracy and credibility of their work. She explained that she'd need some time to consider and research what impact a complete deletion might have. To Culbertson's relief, the interaction was positive,

but the zine author did share that their request was in limbo with a curator at another institution who flatly refused to remove the zines despite a resort to begging.

Ultimately, this zine author is seeking to erase this part of their history. There are certainly valid reasons a zine author might be motivated to do so, particularly in this era of unfettered online access to personal or private information. For one, any personal information, including health and directory information, that may have been included in zines renders an individual newly vulnerable to a level of exposure that did not exist at the time of creation. Even authors who once published their zines fully or semi-anonymously are now at risk of having their identities exposed and exploited. Today's search tools are far more sophisticated than the directory resources that were available to the general public prior to the development of the Internet. For another, the individual may have been a minor at the time of creation, which legally complicates how consent is defined and renders the possession of any personal information questionable. Consent laws vary from state to state, with differing conditions under which a minor's willful consent is even considered legally binding. Given the minor status of the zine author in question, the decision was relatively straightforward.

Another important consideration that further complicates the notion of consent is that zines frequently feature multiple contributors. Were they also minors at the time of publication? Would the contributors' consent to a minor-aged editor to publish their content be considered legally binding? Such details bring into question the ethics and legality of the ownership of such a publication. A more personal reason to request removal might be that this person was simply at a different place in their life when they created a zine (or other publication), and regret having released certain ideas out into the world. This, again, was applicable to the case examined here and is where the "right to be forgotten," a concept with legal footing in the European Union and Argentina but not in the United States, comes into play. The bottom line is that whether an item or collection was appropriate for inclusion in a collection in the first place, responsible stewardship means it is never too late to make things right. Materials should be evaluated more responsibly, and using an ethics of care model, at the point of acquisition, but the lifecycle of an archival collection can and should be disrupted at any point when these ethical questions arise. The following discussion explores consent, privacy, and how the right to be forgotten might offer an ethical model for decision-making.

Consent, Privacy and the Right to Be Forgotten

Consent

Consent from donors, creators, and subjects is imperative for providing digital access to materials. Informed consent for digitization implies that an individual has given permission to have their data or content shared digitally, and that they understand the risks and implications of digital access to their personal data. By providing or refusing consent, creators decide how they want their private information shared. In the case of migrants and asylum seekers in the *Detainee Allies Letter Collection*, their letters were publicly posted without their explicit permission by a large state institution. Although the Library agreed to acquire the collection to ensure its long-term preservation, there was no obligation to digitize it. At the time, project staff believed digital access was important in order to amplify the voices of detained persons on a broad platform. Although the Library attempted to establish consent via the Allies' letter of introduction, it was likely not *informed* consent due to previously described barriers. There was a strong chance that many correspondents might not have fully understood the introduction letter. Nevertheless, the project relied on those responses and interpreted statements such as "please tell my story" as *implied* consent. As Sara Vannini, Ricardo Gomez, and Bryce Newell (2019a) argue, privacy self-management, or the ability of an individual to make an informed decision about access to and use of their personal data is deeply problematic, especially for vulnerable communities, because of emotional and structural barriers (p. 5). In the case of the detainee letters, it was impossible to meet with the imprisoned correspondents to explain the

public database and clarify consent, so there was no way to know if they truly understood what they were agreeing to.

Even when an archivist is able to obtain informed consent from a creator, creators should have the right to revoke their permission in the future. Although many digital projects, especially in community archives, already include clauses in their forms or memoranda of understanding that allow creators control over their digital content, many institutional archives do not (Caswell, 2014, p. 312). This requires a shift from custodianship to shared stewardship (Caswell, 2014; Cook, 2013; Wurl, 2005). San Diego State University has long held a custodial model, in which custodianship implies ownership. Donors sign a “Transfer of Ownership” document, created by university administration, that transfers legal and physical custody to the university. Librarians and archivists are somewhat limited in their ability to implement shared stewardship by institutional policies regarding gift and transfer agreements. These custodial policies reinforce an unbalanced power structure between predominantly White institutional stewards and the minoritized communities and individuals they seek to document. The Library’s digital permissions form is similar, however, SDSU librarians and archivists have more freedom to dictate these terms since they are internal library forms and there is no obligation to digitize. At minimum, librarians and archivists should consider and implement revocation clauses for *all* digital permissions. As the Internet and modes of access continue to evolve, so too might an individual or community’s understanding or level of comfort with digital access to their material. A revocation clause empowers those individuals or communities to determine what they want available online, and when, at any given time. This shared stewardship allows the individual or community to retain control over digital access even after granting permission to digitize. It also acknowledges power differentials between communities and large institutions. The authors recognize that changing paperwork to reflect a shared stewardship model and ethics of care framework may be difficult since many institutional administrations maintain control and power over gifts and permission language. Nevertheless, archivists can and should continue to advocate for and promote a shared stewardship model to administration.

The Right to be Forgotten

The *right to be forgotten* (RTBF) relates to consent and privacy in that it serves as a protective mechanism where consent is withdrawn or was never obtained and where unnecessary exploitation or defamation threaten an individual’s livelihood. In the European Union, it is governed by the General Data Protection Regulation and allows individuals to request that personal data held by organizations be erased (Regulation (EU) 2016/679, 2016). The request must meet applicable conditions and the organization does not always have to grant the request. The regulation exempts data that is deemed necessary “for archiving purposes in the public interest, scientific or historical research purposes or statistical purposes [...] in so far as the right referred to in paragraph 1 is likely to render impossible or seriously impair the achievement of the objectives of that processing” (Regulation (EU) 2016/679). The International Federation of Library Associations and Institutions (IFLA) Statement on the Right to be Forgotten emphasizes the right to freedom of access to information first and foremost, but acknowledges the individual’s right to privacy and therefore, the discretion of libraries and librarians in evaluating RTBF-related situations on a case-by-case basis (International Federal of Library Associations, 2016). IFLA’s position on RTBF corresponds to the legislation set forth by the General Data Protection Regulation, stating that “some information on the Internet can be unfairly damaging to an individual’s reputation or security where it is untrue, where it is available illegitimately or illegally, where it is too personally sensitive or where it is prejudicially no longer relevant, among other possibilities.” In these cases, IFLA advocates careful consideration of the particular circumstances, citing as an example that “the removal of links to references to a minor juvenile crime or to sexually explicit photographs of a ‘private citizen’ would seem more acceptable than would the removal of links to references to a business failure; an injudicious statement by a public figure, such as a politician or a

corporate CEO; or to public records that have not been sealed by court order or judicial practice” (International Federal of Library Associations, 2016).

With the awareness that the U.S. lacks comparable legislation beyond limited protections at the state level, the authors acknowledge the law’s value as an ethical model, with emphasis on the wording: *is likely to render impossible or seriously impair the achievement of the objectives*. In simpler terms, does a piece of information serve the public interest or critically inform the historical record? In the context of archives, this question applies to a range of processes, from appraisal and acquisition to access, digitization, and/or eventual deaccessioning. It is not without reason, then, that the right to be forgotten (or in some cases, *to never have been exposed*) would have applicability to critical archival practices.

In order to contextualize how the right to be forgotten might serve as an ethical decision-making tool for archivists and librarians, it’s useful to explore its unique, troubled location falling somewhere between the right to privacy and the right to information. On July 5, 2020, Fox News apologized to the American people for “mistakenly” cropping President Donald Trump out of a group photo from February 12, 2000, picturing Jeffrey Epstein, Ghislaine Maxwell and Melania (Knauss) Trump (Pengelly, 2020). At the time of the cropped version’s publication, Maxwell had recently been arrested for her alleged role in Epstein’s sex trafficking ring, and there was heavy media buzz surrounding her presumed knowledge of high-profile clientele in politics, Hollywood, and finance. One thing is clear about this action: it was intentional and its purpose was to obscure President Trump’s affiliation with Epstein and Maxwell. Here, we have an example of a media outlet deliberately “forgetting” an individual’s past on their behalf. On the other hand, in 2017, BBC News reported on the rise of left-wing, anti-Trump “fake news.” The BBC indicated that at the time of reporting, Snopes had notably “debunked many more anti-Republican party stories than pro-Republican ones” (BBC Trending, 2017). Media outlets routinely spin stories by withholding damaging and unfavorable information about individuals they seek to protect and elevate, or spreading decontextualized or misleading information about individuals they seek to defame. However, it is unsettling indeed that the mainstream media has begun directly participating in photo fakery and other activities intended to erase or change history.

To make matters worse, the Internet is currently in a state of informational freefall, where any claim, factual or false, may be willed into existence by a simple search, and people are subjected to every crude, childish and vulgar photo manipulation imaginable. In classic American style, however, freedom is sometimes possible...for a price. In her book *Algorithms of Oppression: How Search Engines Reinforce Racism* (2018), Safiya Noble discusses how even though RTBF legislation does not exist in the U.S., certain delisting options exist for a fee (p. 124). The same websites that publish mugshots from police databases allow people to pay to have their mugshots removed, and “as a courtesy,” request on the individual’s behalf to be delisted from Google search results—a process that’s not guaranteed and can take weeks (Safiya Noble, 2018, p. 124). The point here is that the right to be forgotten is obviously not *so controversial* that the U.S. government is unable to enact legislation—if that were the case, companies like Mugshots.com would be illegal. Something more insidious is at play, and vulnerable individuals and groups are caught in the crosshairs.

Conversely, we are living in a dangerously post-truth world where the right to be forgotten—that is, the erasure of a person’s personal information, typically from a data-collecting organization on the Internet—is a potential weapon against the right to information. Every day, the media demonstrates how damaging a public figure’s past actions can be to their current status. Society has the ability to take down people in positions of power based on information (or misinformation) dredged up from their past, whether deserved or not. Yet, people *do* have a right to know about a public figure’s actions, especially to the extent that they represent abuse, fraud, racism, or any number of harmful actions bringing into question that person’s fitness in their position. Stephen Wyber (2018) details the complex relationship between these fundamental rights and their impact on library values and work in his article on libraries and the right to be forgotten. Wyber (2018) describes how privacy, access and archival responsibilities were already in tension with one

another prior to the development of the Internet, and now further warrant “a re-evaluation of the tools available for finding this balance” (p. 84).

How might librarians justify allowing the average, *unpowerful* individual to protect or erase a part of their history, when “the Truth” is prioritized at all costs, and librarians and archivists are held to an invisible code of neutrality barring us from interfering with how knowledge is used once obtained? A logical start, the authors argue, is to examine the right to be forgotten and other issues of consent and privacy from within the theoretical framework of radical empathy, as proposed by Michelle Caswell and Marika Cifor (2016), and to put these rights to work for the people they were designed to protect.

Privacy and Federal Regulations

Privacy issues have always played an important role in archival stewardship and access. From sealed records to redaction to researcher agreements, archives attempt to protect the privacy and confidentiality of creators and subjects, as well as donors and users. Federal regulations, such as the Family Educational Rights and Privacy Act (FERPA) and the Health Insurance Portability and Accountability Act (HIPAA), exist to protect specific types of private information, such as student records and health data. These acts provide guidelines and protections, making it clear that archivists should either avoid accepting materials that fall under FERPA and HIPAA to prevent code violations, or at least restrict those materials from public access. Similarly, institutional review boards (IRBs) and ethics committees also attempt to protect the safety and privacy of research subjects. However, the Electronic Code of Federal Regulations section 46.102(l)(1) exempts archival donations from IRB approval since collecting activities are not considered research. In addition, many institutions, including SDSU, do not have an ethics review committee to review complex cases, such as the *Detainee Allies Letter Collection*.

So, what happens when there are no clear guidelines? How can archivists protect creators, subjects, and users from government interference to prevent another Belfast Project fiasco? Certificates of Confidentiality (COCs) offer a potential avenue for protection from subpoena. They were created to protect the privacy of human subjects from government intervention. The SDSU campus administration considered using a COC to protect the *Detainee Allies Letter Collection*. However, COCs require a principal investigator and IRB approval. They were initially intended for human subjects participating in medical and science-related research, so their applicability and legality for humanities-based collections and research is untested (Haney-Caron, Goldstein, & DeMatteo, 2015). This is especially true for research with undocumented human subjects (Lunca-Lucero, 2019). Even if COCs were ironclad, they would greatly reduce accessibility to a collection since all researchers would need IRB approval to use it. Therefore, the best way to avoid subpoena and the exposure of creators and subjects to government interference is to refrain from taking the collection. Although a decision such as this is difficult (it was certainly difficult for the *Detainee Allies* project team), it recognizes power differentials and ultimately best protects vulnerable communities and individuals.

Professional Ethics

In the absence of relevant federal regulations or ethics committees, how can archivists navigate the muddy and swirling waters of privacy ethics on their own? The Society of American Archivists’ (SAA) Core Values Statement and Code of Ethics address privacy and recommend that “archivists place access restrictions on collections to ensure that privacy and confidentiality are maintained, particularly for individuals and groups who have no voice or role in collections’ creation, retention, or public use” (Society of American Archivists Core Values, 2012). The Code encourages archivists “to consult with colleagues, relevant professionals, and *communities of interest* [emphasis added] to ensure that diverse perspectives inform their actions and decisions.” Although access to the original letters in the *Detainee Allies Letter Collection* was restricted, issues arose with the digitization of the redacted letters. Project staff consulted with Allies to End Detention,

immigration lawyers, and other library and archives professionals; questions were posted to professional listservs; and feedback was sought at professional conferences, but there was no way to directly contact or consult with the detained correspondents due to a number of barriers mentioned earlier. Within an ethics of care framework, archivists would give creators, subjects, users, and the community equal consideration and care when determining conditions of access and description (Caswell & Cifor, 2016). Anne Gilliland and Sue McKemmish (2014) suggest a participatory archive model for human rights collections in which multiple parties and stakeholders inform the decision-making process. In the case of the detainee letters, the creators and subjects were the same. Looking back, project staff could have reached out to former asylum seekers or individuals released from detention to seek their perspective on the digitization of the collection at the project's onset. As Zinaida Manzuch (2017) points out, large institutions frequently have contradictory interests that further complicate the decision to digitize without community involvement (p. 4). Such involvement would have helped with overtly subjective decisions, including redactions. In addition to removing all PII, project staff also removed exceptionally graphic, detailed or personal stories, such as descriptions of rape and/or torture. This was entirely subjective and dependent on the opinion of the redactors. Moreover, redaction effectively turned the letters into orphan works so that anyone could potentially publish the content of a letter without the correspondent's consent. Whether intentional or not, this gave no control or agency to the very population the Library was trying to advocate for and protect.

Lessons Learned and Professional Recommendations

The authors recognize the challenge of attaining a universal level of applicability to the results and recommendations resulting from the case studies described in this article. They work in an institution that operates under shared governance principles and in which librarians have faculty status, so they enjoy a great deal of autonomy. They also recognize that not all institutions operate in this way, and since librarians have varying degrees of autonomy based on the organizational structure at their respective institutions, it's difficult to recommend one universal approach. Autonomy comes with its own set of challenges. For example, at SDSU, librarians and archivists generally agree upon a requisite level of professional responsibility towards stewardship, but this does not necessarily mean they are all in philosophical agreement about the norms or standards that apply to the work. While autonomy allows for the freedom to make changes to practices that are ideologically outdated in the wake of emerging standards and values, it also means that one may find themselves at odds with colleagues and competing to claim the winning decision on a policy or process. In addition, the autonomy of many individuals working across multiple departments that interface with a collection may result in a lack of consistency in actions and communication, diminishing the confidence and trust of donors, record creators, and users. On the other hand, librarians and archivists lacking autonomy struggle to change policies and practices that are comfortable, broadly embraced and/or controlled by administrators whose philosophical values don't align with their own. Change will likely come about more slowly in such institutions, but that doesn't mean it won't come about at all. It may feel exhausting to constantly struggle against oppressive ideas and practices, but it's important to stay mindful that by nature, this work is challenging. A commitment to praxis, and more specifically, to a feminist ethics of care, or to radical empathy, or anti-racist library work, means a commitment to difficult conversations, struggle, frustration, and being subjected to regressive or retaliatory actions. Given the conversations taking place in the larger profession, a shift towards a more equitable and inclusive field of work will eventually materialize through leadership-by-example.

In the case of the *Detainee Allies Letter Collection*, several library staff across two departments as well as library administrators were involved with the project. Lanthorne, as university archivist in the Special Collections & University Archives department, was responsible for the intake of the collection, enforcing the restrictions laid out in the gift agreement, and ensuring the preservation and security of the physical collection. The Digital Collections department managed all redactions, digitization workflow, and digital access. Each department has differing areas of expertise. Given the extraordinary issues surrounding a real-

time collection, staff from each department had numerous consultative meetings regarding myriad concerns. Project staff consulted other professionals, reviewed relevant literature, presented at conferences to ask for feedback, and posted on listservs. They also deliberated with immigration lawyers and activists, but never directly communicated with migrants. Yet, given their different backgrounds and areas of expertise, they occasionally held conflicting opinions about how to approach the collection, and in the end, how to address the concerns in the open letter from DLF.

In the case of the *Zines and Minicomics Collection*, Culbertson felt comfortable exercising independent judgment with the zines in question as their curator, but she also knew there may be others in the institution who disagreed with her decision. She was prepared to make her argument about these specific zines based on the fact that the creator was a minor, but she realized that the best decision might not seem so clear in future cases. Some strategies for protecting radically empathetic decisions against status quo immobility might include: documenting the due diligence and research involved in the process in order to strengthen one's argument; seeking input from others in one's professional network (which was indeed helpful in this case); forming a "community of praxis" with like-minded individuals within one's institution; identifying library literature that supports the chosen actions; and emphasizing how one's expertise qualifies them to make such ethical decisions. In this case, the American Library Association and the Society of American Archivists, as parent organizations in the profession, guide overall archival stewardship, but radical empathy means there can be no monoliths when it comes to evaluating the needs of diverse creators, subjects or users. The Zine Librarian Interest Group and other related groups have developed and adopted a code of ethics and practices that are specific to this unique and complicated form of self-publishing. There are many such groups covering a wide range of topics and issues in the field, and the authors encourage researching the recommendations, policies, and practices they develop. Further, librarians and archivists are encouraged to get involved in interest groups in the profession that examine and confront issues of direct relevance and importance to their work. Such professional affiliations are an important resource for acquiring the expertise needed to responsibly steward collections.

Archival Ethics Worksheet

The authors have developed an archival ethics worksheet, appended below, to supplement and evaluate practices and encourage implementation of the radical empathy framework, with a focus on consent and privacy. Inspired by the "Identifying and Dismantling White Supremacy in Archives" poster created by Gracen Brilmyer and Michelle Caswell's Fall 2016 *Archives, Records and Memory* class at UCLA, this worksheet, which should be treated as an open access template and adapted as needed, prompts the librarian or archivist to ask critical questions at every stage, from appraisal and acquisition to processing, providing access, and deciding whether or not to digitize or deaccession collections. The worksheet emphasizes centering individuals or communities in the act of archiving their own history. This applies to all points of contact with an archival collection, whether at the appraisal and acquisition stage or in providing access to a preexisting collection that may have been acquired decades ago or prior to evolving practices and ethical considerations. Repatriation is the act of returning an item or collection to the creator(s) or community as rightful stewards. It is a unique form of radical empathy that acknowledges prior lack of consent. It can be considered at any stage, whether when exploring options for deaccessioning or advising a prospective donor on an appropriate course of action involving cultural heritage materials.

Conclusion

Unsettling archival stewardship requires an empathetic approach grounded in a feminist ethics of care. With shifts in collecting priorities to fill archival silences and a seemingly endless and gruesome procession of global and national crises, archives will continue to see an influx of collections documenting vulnerable populations. While much has already been written about shared stewardship, community archives, and

radical empathy, it is becoming increasingly important to normalize and advocate for these modes of praxis in a 21st-century archive. A focus on consent and privacy in the stewardship process centers vulnerable creators and subjects and affords them agency and autonomy in the decision-making and dissemination of their collections. This focus on centering and care also allows us to avoid the ethical dilemmas that arise from a rights-based approach and a focus on legality. Legality does not infer ethicality, nor does it excuse unethical behaviors or actions.

Inevitably, archivists and librarians will make ethical missteps when stewarding collections documenting vulnerable people. When this happens, it is imperative to acknowledge the mistake and attempt to rectify it. That can mean returning a collection or item, as was the case with the detainee letters and zines, or reimagining access, or saying no to a potential donation, or redescribing a collection. Archivists and librarians are in a position to radically transform our own profession, even if our actions seem to betray the traditional Western archival standards handed down to us. We are under no obligation to rely on outdated or oppressive archival practices. Our obligation is to be thoughtful and deliberate stewards of everyone's histories.

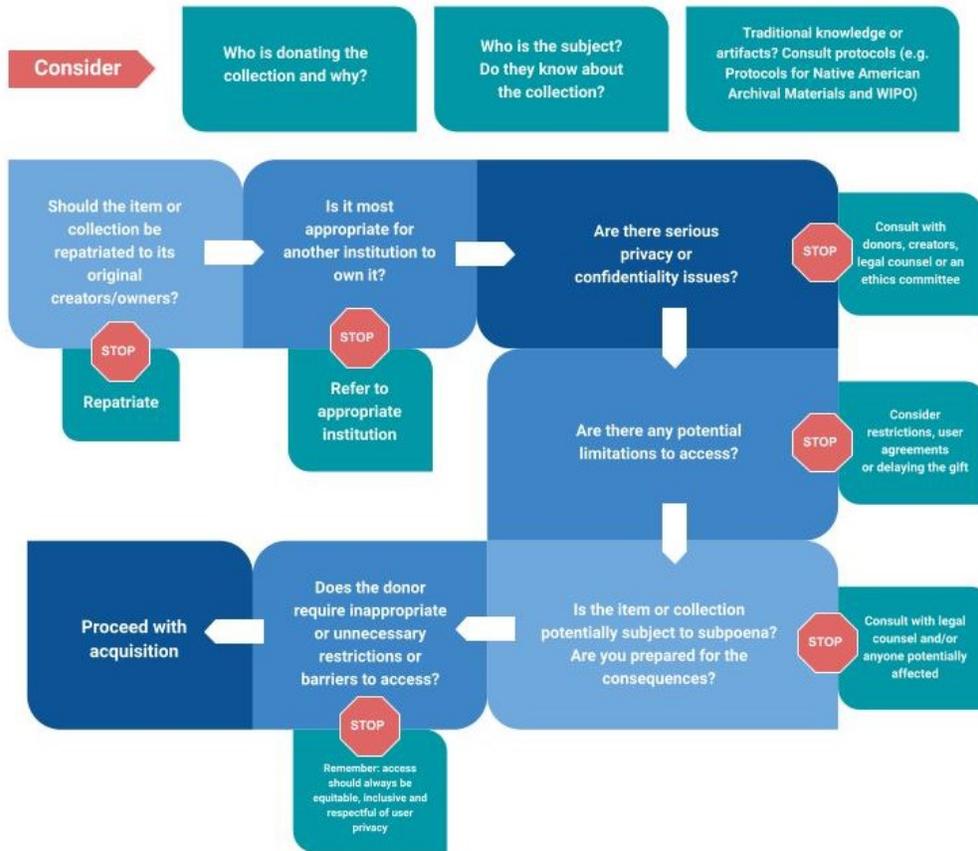
References

- BBC Trending. (2017, April 15). The rise of left-wing, anti-Trump fake news. *BBC News*. <https://www.bbc.com/news/blogs-trending-39592010>
- Boston tapes. (2019, October 17). Boston tapes: Q&A on secret Troubles confessions. *BBCNews*. <https://www.bbc.com/news/uk-northern-ireland-27238797>
- Brilmyer, Gracen & Caswell, Michelle. (2017). Easy to print: Identifying and dismantling white supremacy in archives. *UCLA*. <https://escholarship.org/uc/item/0zn923k8>
- Castillo, Andrea. (2019, August 23). ICE shut down a hotline for detained immigrants after it was featured on 'Orange Is the New Black'. *Los Angeles Times*. <https://www.latimes.com/california/story/2019-08-23/ice-shut-down-a-hotline-for-detained-immigrants-after-it-was-featured-on-orange-is-the-new-black>
- Caswell, Michelle. (2014). Toward a survivor-centered approach to records documenting human rights abuse: Lessons from community archives. *Archival Science*, 14:3–4, 307–322. <https://doi.org/10.1007/s10502-014-9220-6>
- Caswell, Michelle & Cifor, Marika. (2016). From human rights to feminist ethics: Radical empathy in the archives. *Archivaria*, 81, 23–43. <https://www.muse.jhu.edu/article/687705>
- Cook, Terry. (2013). Evidence, memory, identity, and community; four shifting archival paradigms. *Archival Science*, 13:2–3, 95–120. <https://doi.org/10.1007/s10502-012-9180-7>
- Digital Library Federation. (2019). Open letter to the San Diego University Library Detainee Allies Letter Collection. <https://wiki.digilib.org/Transparency-Accountability/SDSULOOpenLetter>
- European Parliament and the Council of the European Union. (2016). Regulation (EU) 2016/679 of the European Parliament and of the Council. <https://eur-lex.europa.eu/legal-content/EN/TXT/HTML/?uri=CELEX:32016R0679&from=EN#d1e2589-1-1>
- General Data Protection Regulation. (2020). Everything you need to know about the “Right to be forgotten.” <https://gdpr.eu/right-to-be-forgotten/>
- Gilliland, Anne, & McKemmish, Sue. (2014). The role of participatory archives in furthering human rights, reconciliation and recovery. *Atlanti: Review for Modern Archival Theory and Practice*, 24, 77–88.
- Government Printing Office. (2018). Electronic code of Federal regulations. https://www.ecfr.gov/cgi-bin/retrieveECFR?gp=&SID=83cd09e1c0f5c6937cd9d7513160fc3f&pitd=20180719&n=pt45.1.46&r=PART&ty=HTML#se45.1.46_1102
- Haney-Caron, Emily; Goldstein, Naomi E.; and DeMatteo, David. (2015). Safe from subpoena? The importance of Certificates of Confidentiality to the viability and ethics of research. *Akron Law Review*, 48(2), 348–382.

- International Federation of Library Associations. (2016). IFLA statement on the right to be forgotten. <https://www.ifla.org/node/10272>
- Lunca-Lucero, Myra. (2019) Reflections on research with undocumented immigrants. In: Ampersand. Boston: Prim&r. <https://blog.primr.org/research-with-undocumented-immigrants/>
- Manzuch, Zinaida. (2017). Ethical issues in digitization of cultural heritage. *Journal of Contemporary Archival Studies*, 4:2(4), 1–17. <http://elischolar.library.yale.edu/jcas/vol4/iss2/4>
- Morrissey, Kate. (2018, November 5). ICE moves to silence detention center volunteer visitors. *San Diego Union Tribune*. <https://www.sandiegouniontribune.com/news/immigration/sd-me-immigration-detention-visitors-20181105-story.html>
- Noble, Safiya Umoja. (2018). *Algorithms of oppression: How search engines reinforce racism*. New York: NYU Press.
- Otay Mesa Detention Center. US Immigration and Customs Enforcement. (2019). <https://www.ice.gov/detention-facility/otay-mesa-detention-center>
- Pengelly, Mark. (2020, July 7). Fox News apologizes for cropping Trump out of Epstein and Maxwell photo. *The Guardian*. <https://www.theguardian.com/media/2020/jul/07/fox-news-trump-epstein-maxwell-photo-cropped-out>
- Society of American Archivists. (2018). SAA core values statement and code of ethics. <https://www2.archivists.org/statements/saa-core-values-statement-and-code-of-ethics>
- Vannini, Sara & Gómez, Ricardo & Newell, Bryce. (2019a). Documenting the undocumented: Privacy and security guidelines for humanitarian work with irregular migrants. In: N. Taylor, C. Christian-Lamb, M. Martin, B. Nardi (Eds.), *Information in Contemporary Society*. iConference 2019. 236–244. Cham, Switzerland: Springer. https://doi.org/10.1007/978-3-030-15742-5_23
- Vannini, Sara & Gómez, Ricardo & Newell, Bryce. (2019b). Mind the five. <https://sites.uw.edu/rgomez/mind-the-five/>
- Wooten, Kelly, O’Neil, Shannon, Arroyo-Ramierz, Elvia, Brown, Molly, Handel, Dina, Mattson, Rachel, Mecagni, Giordana, Smith, Holly & Jones, Jasmine. (2017). *Radical Empathy in Archival Practice Zine*. <https://drive.google.com/file/d/1LryGuU1blZpk1Ts2L3nfNe40NY1Ck82r/view>
- Wurl, Joel. (2005). Ethnicity as provenance: In search of values and principles for documenting the immigrant experience. *Archival Issues*, 29:1, 65–76. <https://www.jstor.org/stable/41102095>
- Wyber, Stephen. (2018). “A balancing act: The right to be forgotten and libraries.” *Journal of Information Ethics*, 21:2, 81–97

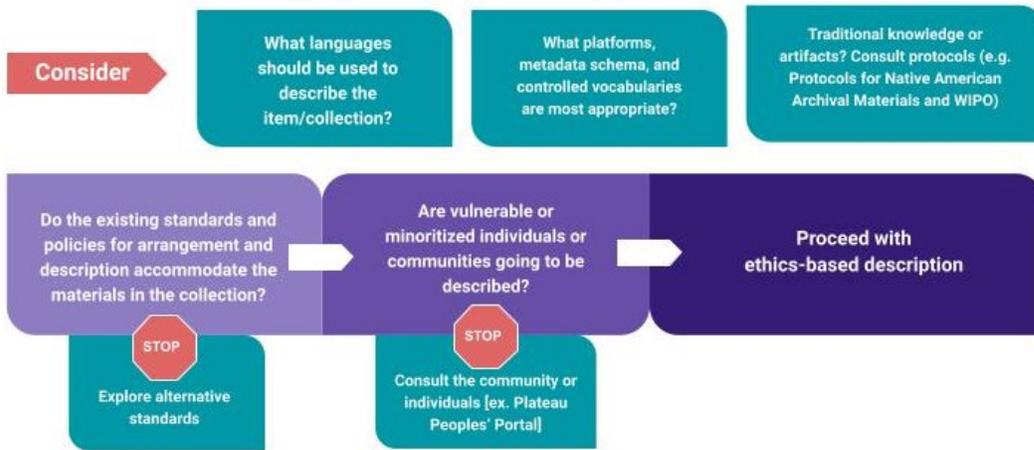
Appendix: Archival Ethics Worksheet

Appraisal and Acquisition

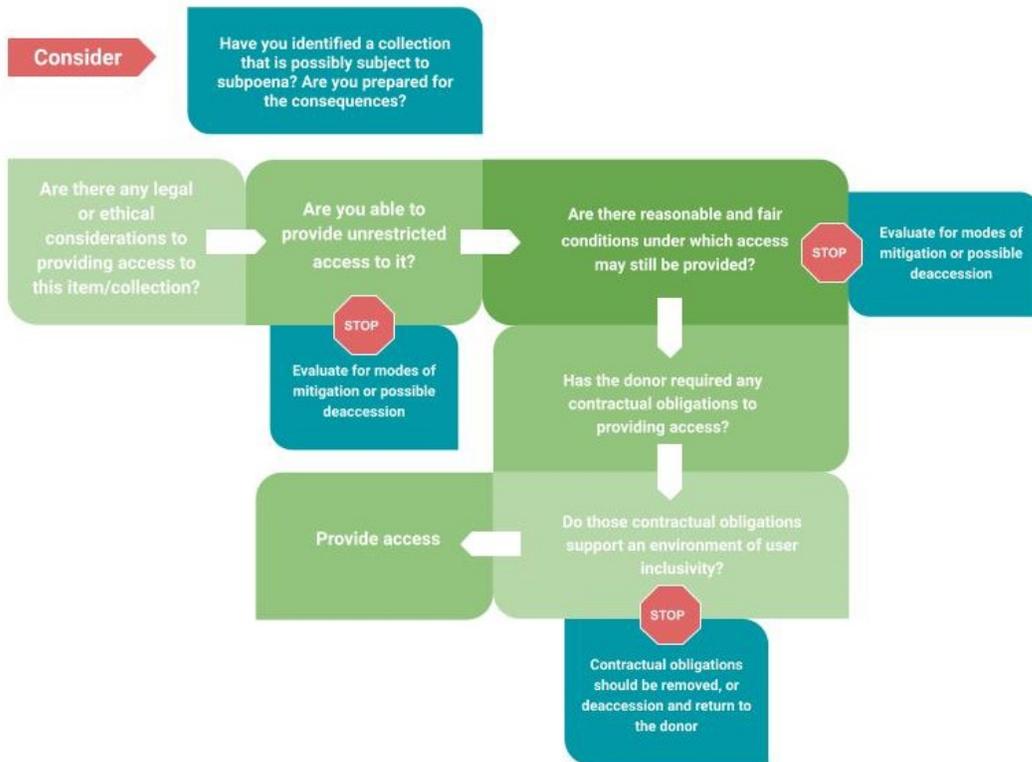


Arrangement and Description

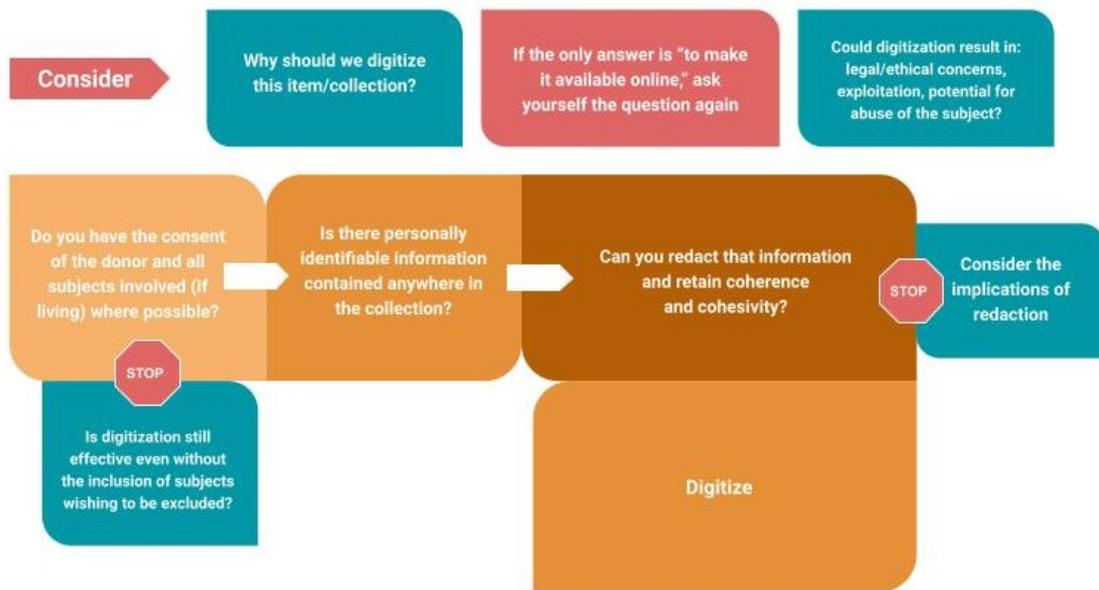
(All remaining steps can apply to NEW and EXISTING collections)



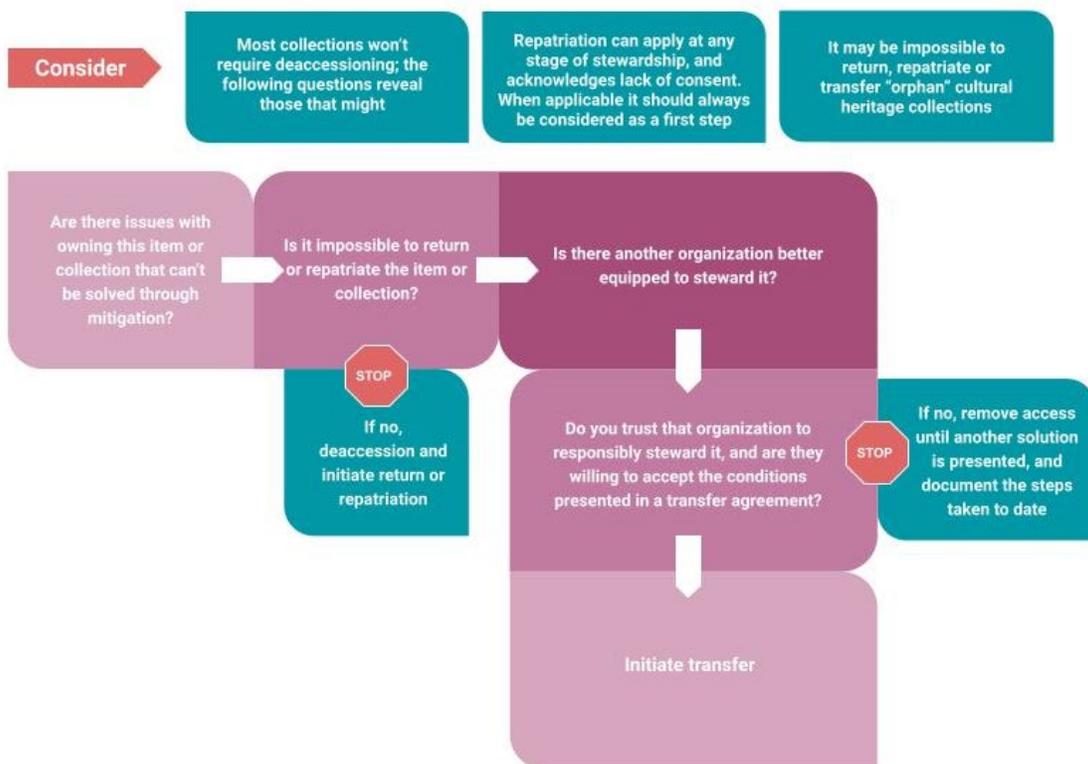
Access



Digitization



Deaccessioning



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