

## Appendix 2

### **Legal, Copyright and Intellectual Property Issues for an Audio Digitizing Project, with Sample Release Forms**

It is necessary to address the complex issues surrounding intellectual property before undertaking a project to digitize audio recordings. Whether it is a commercially produced recording of a musical performance or an oral history taped by the local historical society, any audio recording that is a creative expression fixed to a tangible medium is protected by copyright.

Sound recordings are complex from an intellectual property perspective. Multiple individuals can hold copyright to different facets of the work. The performer, more broadly defined as the individual or group being recorded, has rights to the performance. The individual or group that makes the recording holds the rights to the recording itself. Furthermore, if it is a performance of music, then the composition (music and lyrics) may also be copyrighted.

To determine whether an audio recording made in the United States is in the public domain and can therefore be digitized legally, consider each of these facets independently. Compositions that were published before 1923 or compositions published before 1964 for which copyright was not renewed are in the public domain. Rights to the sound recording itself are more complex. Recordings made prior to 1972 were not covered by national copyright laws, but were subject to state anti-piracy laws.

If the material is not in the public domain, the institution undertaking the digitization project should seek permission from the copyright holder to reformat the recording and make it accessible. When the copyright holder originally donated the material, ownership of rights and terms of use may have been elucidated. Check the records for deposit agreements to determine if the institution has been granted the permissions necessary to digitize and provide access to the sound recording. Records of such an agreement may not exist or, more likely, the agreement may not specifically address digitization. In this case, the institution must contact the copyright holder to get permission.

Ideally, institutions should conduct an intellectual property audit of their audio collections and resolve any rights issues that are unclear, as a regular practice. If this is not possible, institutions can still effectively manage rights for incoming collections. As new items are accessioned, the institution should sign agreements with the donors that spell out terms of use. These agreements can be negotiated to give the institution the broadest possible terms of use and the language should not exclude the use of future technologies for reformatting or delivery. In general, broader statements (“all known and future formats” rather than “for digitization and the World Wide Web”) are better.

Institutions with questions about rights should review relevant copyright law and consult with legal counsel. For further reading, Georgia K. Harper presents a useful overview in *Copyright Law and Audio Preservation* from the 2003 [Proceedings of the Sound Savings: Preserving Audio Collections Symposium](#). Anthony Seeger addresses rights management of sound recordings in *Intellectual Property and Audiovisual Archives and Collections*, a chapter in [Folk Heritage Collections in Crisis](#) (2001).

## 4.2 Ethical Issues

Some audio materials—oral histories or field recordings of religious ceremonies, for example—may contain sensitive information that was not intended for wide broadcast. Digitizing and mounting audio recordings on the Web promises, in essence, a vast audience, with little, if any, control over who accesses the material, how they use it, or, potentially, how they distribute it. For this reason, institutions should respect the individuals involved in the creation of the recording and disseminate the material appropriately.

In the case of oral histories, publishing interviews on the Internet can have several negative consequences. Narrators may become less than candid in interviews; may ask for broad restrictions on usage; or may not even consent to interviews at all. Some narrators will request anonymity, but anonymous interviews are troubling for oral historians since they create problems of historical authentication and place additional burdens on repositories.

With the possibility for vast new audiences, opportunities for quoting narrators out of context are heightened. In addition, some oral history projects don't require narrators to edit their interviews before they are made accessible. With wide dissemination, once again, the opportunities for quoting out of context, misunderstanding comments, and compromising the integrity of narrators and misrepresenting them are greatly enhanced. Many students, researchers and the general public now use the Web indiscriminately for historical research, often quoting out of context and not pursuing traditional sources for verification of facts.

Publishing oral histories on the Internet could be especially troublesome for interviewing populations that have been traditionally underrepresented in history or presented stereotypically. The Oral History Association guidelines ([http://www.dickinson.edu/oha/pub\\_eg.html#Principles%20and%20Standards](http://www.dickinson.edu/oha/pub_eg.html#Principles%20and%20Standards)) warn oral historians to be sensitive to issues of exploitation of these people through the wide dissemination of interviews. This could also be a problem for oral historians working with corporations that naturally wish to maintain proprietary information, or fear the consequences of airing institutional information in public.

### **4.3 Release Forms**

When institutions accession these types of materials, it is important to request the release forms that accompany the recordings. Without them access to the material is limited.

A release form is a statement signed by the interviewee that he or she understands the terms upon which the parties agreed to conduct the interview, including its final usage. The release form should be mentioned prior to the interview. If the interviewee has any objections to questions that might be asked or topics to be covered he or she should make that known before the interview begins. Obtain a signature from the interviewee and interviewer on the release form for each interview that is completed so that if there are specific restrictions, they can be applied to each individual interview. Individuals involved in the recording—interviewee and interviewers alike—have a right to place restriction on the terms of use. Some examples of restrictions include:

- Scholarly use only
- Staff use only
- Not using the person's real name
- Release the interview only after the person's death
- Omitting some information in the published interview that is on the tape
- Not releasing the interview for public use until a certain date
- Allowing access to the public but no duplication allowed
- Allowing access to the public but not available on the Internet
- Allowing access only with written permission of the narrator
- Allowing access only with an accompanying written record of who accesses it
- Cannot be shown publicly
- Cannot be copied
- Cannot be published

**Sample release forms follow**

# UNIVERSITY OF WYOMING

## AMERICAN HERITAGE CENTER

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e-mail: [ahc@uwyo.edu](mailto:ahc@uwyo.edu) / [www.uwyo.edu/ahc](http://www.uwyo.edu/ahc)

## LEGAL RELEASE FORM

### (RELEASE OF RIGHTS IN ORAL OR VIDEO RECORDINGS)

I, \_\_\_\_\_, hereby give, grant, assign, and transfer, forever, to the University  
of \_\_\_\_\_  
(Interviewee/Lecturer)

Wyoming, as a donation, all my rights, title and interest in and to the recorded oral or video  
recording made

by the American Heritage Center on \_\_\_\_\_ and any copies thereof, and any  
documentation

(Date)

accompany the recordings, for the use by said University of Wyoming and its patrons in any  
lawful way

including publication and broadcast, except for the conditions specified below, if any:

\_\_\_\_\_  
(Signature)

\_\_\_\_\_  
(Address)

\_\_\_\_\_  
(City) (State) (Zip)

\_\_\_\_\_  
(Date Signed)

Acceptance by the University of Wyoming:

\_\_\_\_\_  
(Representative)

\_\_\_\_\_  
(Date Accepted)



**Naropa University, Inc.**  
a Colorado nonprofit corporation

## RELEASE FORM

*Audio/Video/Photo*

**NAROPA UNIVERSITY**  
a Colorado nonprofit corporation

**MEDIA RELEASE**  
**Naropa University Archives**

**I, the undersigned**, hereby consent, grant and assign to, and authorize the use by, Naropa University, a Colorado nonprofit corporation, or anyone duly authorized by Naropa University, its assigns and legal representatives, the right to use, reproduce, and distribute on a royalty-free basis the audiotape and/or videotape and/or photographs of my readings/ performances/ lectures/ concerts/ panel discussions/ and plays held at or through Naropa on/or during \_\_\_\_\_ (date), and any that are currently a part of the Naropa University Archives and/or Special Collections, (hereinafter individually and collectively referred to as the "Work")

The Work is released for the following uses, unless otherwise indicated. USES NOT PERMITTED are indicated by striking and initialing the related clauses:

**Educational and Archival Uses.** Naropa shall have the right to use all or any portion of the Work for educational and archival purposes. These uses shall include, but are not limited to:

- i. The right to duplicate the recording of the Work for the purpose of physical preservation;  
and
- ii. The right to make the intellectual content of the Work accessible to any individual or entity that requests a copy for research purposes; and
- iii. The right to replay and/or rebroadcast all or any portion of the Work on a worldwide basis in all educational arenas such as schools and school classrooms, libraries, museums, businesses, clubs, and organizations as well as over the radio, in motion picture theaters, on cable, satellite and commercial television, and over the World Wide Web; and
- iv. The right to incorporate all or any portion of the Work, or any adaptation thereof, into classroom or other educational curriculum; and
- v. The right to create, produce, and distribute fundraising CD/DVDs and subsequent editions and to incorporate the Recording therein.

**Promotional Uses.** In addition to the foregoing, Naropa shall have the right to use all or any portion of the Work for the promotional and other uses set forth below:

- i. Naropa may incorporate all or any portion of the Work, and any adaptation thereof, into Naropa's advertising materials, catalogs, news releases and other promotional presentations.
- ii. In conjunction with the foregoing, I authorize Naropa to use my name, together with photographs of me, as necessary, in conjunction with the uses of the Work.

**Other Uses** I further agree that Naropa may make or cause to be made literary, dramatic, speaking, stage, motion picture, photographic, television, radio or other adaptations of the Work of every and any kind and character, and may edit the recording of the Work, and/or combine all or any portion of the Work with the Recordings of others for any and all purposes deemed reasonable and appropriate by Naropa.

**Waiver of royalties.** The undersigned hereby waives any royalties or future consideration for the foregoing assignment and release in order to support the enhancement and preservation of the Naropa University Archives and/or Special Collections.

I declare that I am eighteen (18) years old or older and am legally competent to execute this release or that I have acquired the written consent of my parent or guardian. I understand that the terms herein are contractual and not a mere recital, that this instrument is legally binding, and that I have voluntarily signed this document.

Signature of Presenter: \_\_\_\_\_

Date: \_\_\_\_\_

Printed Name of Presenter: \_\_\_\_\_

Address of Presenter: \_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

Email Address \_\_\_\_\_

Phone: \_\_\_\_\_

Naropa Representative: \_\_\_\_\_

Signature \_\_\_\_\_

**If Subject is under 18, the parent or legal guardian, if any, must sign.**

**Spelling of Parent/Guardian Name Phone** \_\_\_\_\_

**Signature of Parent/Guardian Date** \_\_\_\_\_

Address \_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

Witness Signature: \_\_\_\_\_

Witness Name (please print): \_\_\_\_\_