


Oral History in the Digital Age



What Do You Think You Own

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What Do You Think You Own, or Legal/Ethical Concerns

by Troy Reeves (<https://ohda.matrix.msu.edu/about/authors/reeves/>)

The title for this essay comes from the “question of the Oral History in the Digital Age symposium.” That meeting, in November 2010, brought together all of the key players in Oral History in the Digital Age, the multi-year, Institute of Museum and Library Studies grant. This grant’s leadership convened a group of oral historians, folklorists, technologists, and others in Washington, D.C., for the aforementioned symposium. Among the “others” invited included those deeply involved in intellectual property issues. One of those folks, Sheldon W. Halpern, the Harold R. Tyler, Jr., Chair in Law & Technology at Albany Law School, offered what became the “question of the symposium,” when he asked, “What do you think you own?” This question came out of discussion on what those who hold oral histories can put online.

So, what does this question have to do with legal and ethical concerns? In the twenty-first century or the digital age, as our grant’s title suggests, a lot. While these compiled essays do not intend to reflect much on the twentieth century, or analog age (and, yes, the irony of a group of historians and folklorists choosing not to reflect is not lost on us), a point about it here should assist our narrative.

In the last century, when an oral history narrator signed a release, he or she could assume, safely, that whether their interview stayed in audio (or audio/video) form or included a typed transcript, it would remain under the care and control of an archivist or a

librarian. One would need to go to an archive or library (or other type of repository) to access this material. The repository, with the appropriate documentation of course, owned the interview.

Now, the digital age has opened up oral history to individuals and groups throughout the country. One can do an oral history with anyone at anytime on any topic. Now, oral historians constantly debate whether interviews done on current topics with little or no preparation can constitute an oral history. This essay cannot and will not delve into that argument.

And repositories that house oral history feel incumbent to put more than just cataloging information online. They live under the assumption that, if they keep this type of material under their thumbs inside the physical archives, students, researchers, and other interested individuals will find similar types of material on the Internet. Because of the Web, too, people are able to use interviews and other information to create published works, either traditional books and articles or Web presentations.

OHDA symposium participants called these examples “mash-ups,” or taking points from multiple, different audio or audio/video medium recordings to make a new piece. Mash-ups have happened to some extent in the analog age and occur even more in the digital. Those who watched the TV show *Glee* know exactly what this essayist conveys here. For those who do not watch it, here is an oral history example.

At the 2010 OHA Annual Meeting, Kat Strepko, director of the college archives at Bates College in Maine, discussed the use and possible misuse of material in their online Edmund Muskie Oral History Archives. Strepko acknowledged two “out of context” uses (or mash-ups) of her collection—the Web sites Secret File on Eliot Cutler and CourseHero.com—to make points in those published works. Even with these examples, she concluded that giving universal access to the collection for anyone, anywhere outweighed the few examples of their material being used without proper attribution. As she concluded in her presentation, “It is worth giving up some control for the greater good of having more people use the materials. In the case of oral histories, collections are so often underutilized, or not used at all, when access isn’t easy and readily available.” Some at the symposium echoed Strepko’s thoughts when they argued that the best protection against possible misuse comes with making the full content (audio or audio/video recordings and/or full transcripts) accessible online.

During the symposium, Halpern and John Neuenschwander, the Oral History Association's foremost authority on legal issues, both saw a paradigm shift in oral history as we move towards more universal access and more interviews, both in audio and video. Neuenschwander stated that, "Ethically speaking, I think the new Best Practices for Oral History like the previous ethics guidelines strongly suggest a more detailed explanation of potential future uses including uploading to the Internet."

From Halpern:

Beyond these matters, however, is the overall issue of a form that seems tailored specifically to "oral" work, with a "narrator" and "interviewer" whereas it's now more likely that what you'll get will be audiovisual, which may mean that there will have to be releases relating to people or objects that appear in the work. ... I'm suggesting only that the conceptual paradigm probably needs to shift to accommodate the visual, as well as audio aspects of the product being delivered and transferred.

Another paradigm shift, thanks to the digital age, has become the rise of another choice for final legal disposition of the recordings. In the analog age, anyone doing an oral history interview or project needed, if he, she, or future generations could use it, to have some type of written document that either gave the interviewer or repository the legal rights to the intellectual property or gave the public full rights to the material. Now, folks have placed another option on that menu. Creative Commons (CC), a non-profit organization, provides licensing to retain and manage copyright in a more flexible format. CC's documents can allow open sharing of content while requiring users to attribute the original source. Folks starting an oral history project or program should review the Creative Commons Web site at <http://creativecommons.org/> (<http://creativecommons.org/>) to determine whether this new option would trump traditional copyright or public domain for their purposes.

So legally and ethically, anyone who will conduct interviews in the digital age must discuss informed consent differently than before. Most practitioners—whether they are an archivist within an official repository, a student fulfilling an assignment, or a community member looking to increase their community's knowledge of a person, place, or thing—now know that a wide distribution (i.e. putting it on a Web site) is likely. Therefore, they should let their narrator know that their words (or more precisely their voice and/or image) will appear on a Web site sometime in the future.

With more interviews being conducted in an audio/video format, the collector needs to be aware of what he/she records. Objects, others than those owned by the narrator, could appear in the frame. These objects could fall under the intellectual control of someone else. The example given in the symposium of audio/video recording someone with someone else's piece of art in the background could violate that owner's intellectual property rights. While this essayist does not know how often that would occur, the oral historian or folklorist doing interviews in audio and video format need cognition of that possibility. And they need to inform the narrator why keeping the dialogue and images to those that are under the narrator's (or interviewer's) ownership will make for far fewer future headaches.

The digital age also offers a far easier way to redact audio (and audio/video) than the analog age. So, if a narrator tells a story that in hindsight he or she feels uncomfortable in present and future folks hearing or seeing, then the collector could permanently delete that section from the oral history. They could also negotiate a public restriction on that section. This essayist has wondered if those not as well trained in the art and science of oral history will immediately delete, perhaps preventing a story from being told in the future.

As Linda Shopes argues in a chapter of the *History of Oral History*, legal and ethical issues mainly are cleaved (apart) but primarily should be cleaved (brought together). Where they cannot be linked, however, is the fact that legal issues have their grounding in the law and that ethical issues, as Shopes' astutely points out, have their grounding in the relationships between the interviewee and interviewer or project leader and community and the judgment calls made by the interviewer or project head. In the digital age, the legal issues, for the most part, have not changed. There are one current and one future possible exception. Currently, there needs to be specific language about the possible Web use. Since most projects seem to be Web-driven in their communication phase, the narrator should be able to opt out of current Web presentation. Also, while one still needs to get some type of written permission to use an interview, this reviewer feels that eventually- as audio/video interviews become more ubiquitous- some type of verbal/visual release will become the norm.

Ethically, the digital age has changed the paradigm in two ways. In terms of consent, a practitioner will need to clearly state the possible uses of the recording. Second, an oral historian- particularly those conducting audio/video interviews- will need to understand the complexity of moving out of the "talking head" paradigm to include the recording of images that are the intellectual property of others. A possible example of the second point is as follows.

An interview is conducted here at the University of Wisconsin at Madison's (UW-Madison) agricultural campus, with a long-time faculty member on the history of the Land Tenure College, a topic imbued in our campus history. The interviewer and narrator decide to conduct the interview outside to get more than what a talking head interview can give us. While doing one of these oral histories, the skateboarders that spend time outside Steenbock Library—which not only stands as the agriculture library but also the home of the UW—Madison's Oral History Program—are videotaping too. (This essayist cannot explain it but the way the library was built, there are some great places for tricks). During this oral history interview, the oral history and skateboarder's videographers capture each other on their respective video cameras. What happens? In theory the oral historian should get the permission of all the skateboarders, right? Is s/he going to do that? And what if the skateboarders post their video first? Can the oral history program really try (or want to try) to stop them?

We also, in both ages, have an ethical commitment to the communities in which our projects take place. With the digital age, the relationship is enhanced because the material we collect from these locales can be put out on the Internet for all to see quickly. Or, the community themselves, on occasion, could communicate those results just as easily as the collectors who came in and gathered the material. Here in Wisconsin, where this essayist has recently transplanted, the campus leadership takes pride in The Wisconsin Idea, a credo which states that the boundaries of campus are the boundaries of the state. In the digital age, it is incumbent on collectors coming into a locale to be communal and collaborative, not colonial.

This essayist holds no law degree. Or, to paraphrase the old commercial, "I'm not a [lawyer] [nor] do I play one on TV." The US, in its litigious ways, has made some type of disclaimer vital when talking about legal matters. I do consider myself a decent oral history practitioner, which means that, by necessity, I comment on legal issues. Furthermore, I do not consider myself an ethicist. But I do consider myself a caring, feeling human who does not want to harm another person, either physically or emotionally, making me enough of an ethicist to comment on that subject, too.

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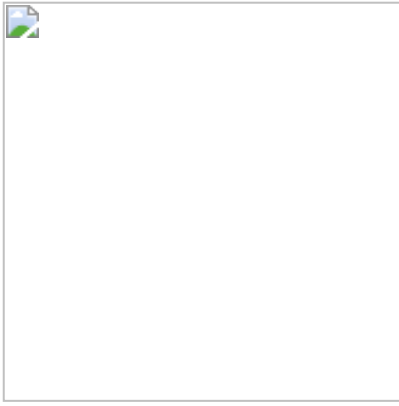
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