

CODE OF BEST PRACTICES IN FAIR USE FOR SOFTWARE PRESERVATION: WEBINAR SERIES

Episode 2: Beginning the Preservation Workflow


Welcome!

- **Episode 2** of a 7-part series on the *Code of Best Practices* and Other Legal Tools for Software Preservation
- Every episode is **recorded** and will be freely available online for future viewing
- Today: **Beginning the Preservation Workflow**, with guests Leslie Johnston (NARA) and Henry Lowood (Stanford)

Housekeeping

- Audience is **muted** (audio and video) to preserve bandwidth
- Please **ask questions** by typing them into the chat window
- We will **hold** most questions until the end of the presentation; time has been reserved for Q&A

Roadmap

- Overview of Principles 1 & 2
 - Experiences in the Field
 - Henry on the Cabrinety Collection and the limitations of Agreements
 - Leslie on the joys of digital government documents
 - Discussion
 - Q&A
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Situation/Principle 1:

Accessioning, stabilizing, evaluating, and describing digital objects—including creating multiple disk images from original media, documenting original packaging and other materials associated with software, and running software in order to describe it.



image via: <https://www.forensiccomputers.com/forensic-tower-iv-x10.html>

Limitations

- a. Preservation activities should be related to the overall institutional mission.
- b. Where materials have been donated, their preservation should be undertaken in light of the terms of donor agreements, which may limit reuse and access.
- c. Reasonable care should be taken at this stage to identify software objects with sensitive content such as personal data or national security issues, as these issues trigger legal and ethical obligations that are not overcome by fair use.
- d. Descriptions of preserved objects should be created, expressed, and shared to facilitate discovery by interested researchers within and, where possible, beyond the institution.
- e. At this stage of processing, access to software (including disk images) for preservation purposes should be limited to personnel (including staff, volunteers, and contractors or vendors, whether at the collection's home institution or at a partner institution or entity) who oversee or are engaged in the intake, description, and long-term preservation process, either on premises or in secure on-site environments.

Situation/Principle 2:

Documenting software in operation, and making that documentation available, e.g., using screen captures and video




NoSkill DOOM demo tests
by Henry Lowood



*Replay of DOOM match played by NoSkill, 21 May 1995.
Screenshot from demo test available via Archiving Virtual
Worlds collection, Internet Archive*

Limitations

- a. Such documentation should provide appropriate historical, technical, and other context where available.
 - b. The extent of the documentation should be proportional to the documentary purpose.
 - c. Special care should be taken in providing broad access if it could depress public demand for documentation available from authorized sources.
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SOFTWARE COLLECTIONS

- So 21st century ...
- Primarily gift acquisitions
- Associated I.P. rights never (?) transfer with collections

Library of Congress MACHINE-READABLE COLLECTIONS READING ROOM

The Machine-Readable Collections Reading Room (MRCRR) is an **EXPERIMENTAL PILOT** project to last for one year. The purposes of the project are five:

- determine the best methods for acquiring machine-readable materials for the Library's Collections
- develop procedures for cataloging machine-readable materials
- provide access for research purposes to the Library's collection of machine-readable materials
- develop policies and procedures for servicing machine-readable materials
- suggest service locations for machine-readable materials

Machine-readable materials are:

- executable microcomputer programs on floppy or CD-ROM disks
- data on microcomputer floppy or CD-ROM disks

During the pilot year, only IBM, IBM compatible, and Macintosh titles will be available for use in the MRCRR.

Additional titles and documentation for other hardware are being collected and will be available for manual review only.

Staff from the Library's General Reading Rooms Division will provide services in the MRCRR. Researchers wishing to study these materials are welcome to use these facilities. Staff will:

- consult with researchers to determine their interest and skill in using machine-readable materials
- advise researchers as to what is available
- install or retrieve the desired titles for use

All materials will be handled only by Library staff.

LOCATION Thomas Jefferson Building, First Floor, Room LJ-1400

HOURS Monday through Friday, 12:00 noon - 4:00 p.m.

TELEPHONE 202-287-5278

Library of Congress, MRC Reading Room, 1988



STANFORD UNIVERSITY LIBRARIES

DEED OF GIFT

[Donor Name] ("Donor"), the owner of the physical property [and digital materials] described below [and as added to in the future], hereby gives, transfers, and conveys to Stanford University Libraries, The Board of Trustees of the Leland Stanford Junior University ("Stanford") all the Donor's title and interest to the following materials to become part of its Stanford University Libraries.

DESCRIPTION OF COLLECTION HERE.

The entire gift of papers and materials detailed above is herein referred to as the "Collection."

This gift is [irrevocable and is] made under the following terms and conditions:

1. Donor represents that he/she/it is the owner of the Collection and represents and warrants that the Collection is being donated to Stanford free and clear of any and all liens, claims, and encumbrances.
2. [The Collection will be placed exclusively with Stanford.]
3. Stanford will work with Donor to arrange for packing, shipping, and insurance coverage, designating the agents to pack, ship, and insure the Collection and providing on site consultation during packing, if appropriate and necessary in Stanford's judgment. In the case of digital materials, additional transfer and validation processes may be required and Seller will meet those mutually defined requirements. Stanford will

13. [Choose one option from the below. Option A should be used when Donor is the copyright holder for the Collection, and is assigning that copyright to Stanford. Option B should be used where the Donor is retaining copyright, but granting Stanford a license for use. It is

anticipated that Option B will be most common. Option C should be used where Stanford receives the materials only, and has no rights to reuse. Option C should always be used where Donor is a collector and has no copyright interest in the materials.]

OPTION A: Donor hereby assigns, as part of this gift, all of the intellectual property rights, including but not limited to copyrights that Donor may possess in the Collection. Donor understands that **he/she/it** is forever and irrevocably granting to Stanford all exploitation rights in the Collection, including but not limited to the exclusive right to publish unpublished materials in the Collection in all media now known or hereafter created.

OPTION B: No rights to any copyright in the Collection are being transferred to Stanford. Donor hereby grants to Stanford an irrevocable perpetual royalty-free **[exclusive]** license to use and exploit the works of the Collection for which the Donor has copyright, individually or collectively, for educational and not-for-profit purposes. This **[exclusive]** license includes the right to copy the works of the Collection or published materials for which the Donor holds copyright, collectively or individually, for educational and/or not-for-profit purposes in all media now known or hereafter created, including but not limited to print, audio, electronic, video, optical disc, photographic, digital, and film. Without limiting the foregoing, to the extent not prohibited by copyright, the Stanford University Libraries is permitted to provide access to a digital copy of the works of the Collection, either individually or collectively, via Stanford University web servers.

OPTION C: No rights to any copyright in the Collection are being transferred to Stanford.



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SALES AGREEMENT

This agreement is made as of 15 July 2016, by and between Stanford University Libraries, The Board of Trustees of the Leland Stanford Junior University ("Stanford"), and XXXXX ("Seller").

RECITALS

Seller desires to sell to Stanford all of the Seller's intellectual property rights, including but not limited to copyrights, that Seller may possess in [collection of audio recordings, digitized]. The recordings themselves were acquired by Stanford from XXXXX per the sales agreement dated XXXXX, which is appended to this agreement.

WHEREFORE, Seller and Stanford agree to a sale of the Collection on the terms and conditions set forth below.

TERMS OF SALE

1. Seller represents that it is the owner of the Collection and represents and warrants that the Collection is being sold free and clear of any and all liens, claims, and encumbrances.
2. Seller also represents and warrants that he/she/it is not in the business of selling archives or other papers and that this is an occasional sale. Seller agrees to sign "Bill of Sale and Warranty of Title" and "Occasional Sale" forms provided by Stanford.
3. Seller will defend, indemnify, and hold Stanford harmless from any claims, costs, losses, or expenses resulting from breach of any representations and warranties.
4. Seller agrees to transfer the rights described above to Stanford and Stanford agrees to accept and pay Seller for the Collection. The transfer will occur upon execution of this agreement prior to 31 August 2016.



STANFORD UNIVERSITY LIBRARIES

Henry Lowood

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Film & Media Collections

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Stanford University Libraries

Stanford, CA 94305-6004

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August 8, 2014

Subject: Access to Copyrighted Materials in the Stanford University Libraries

To: XXXXXXX at Strategic Studies Group Pty. Ltd.

We are writing to request a statement of your preferences concerning access to digital materials held in our collections for which we believe that you own the copyright.

Background: The Stanford University Libraries holds the *Stephen M. Cabrinety Collection in the History of Microcomputing, circa 1975-1995*¹, one of the largest archival collections of historical microcomputing software anywhere in the world. The collection contains more than 15,000 titles, representing hundreds of application types and media formats. For nearly two decades it has provided scholars both at Stanford and around the world with hands-on access to a historical treasure trove of microcomputing history.

To the extent possible we have captured data from original software media in a forensically sound manner. In addition to then creating data “images” from these media, we have also photographically scanned box covers, manuals and other printed inserts at high resolution.

Request: After this project is completed, the collected data as described above will serve as a unique, valuable, and practical resource for information about the history and evolution of the microcomputing platform. Due to the scale of the project and the high profile of this collection within the software and videogame preservationist community, we expect a significant level of interest from scholars desiring access to this data.

We are contacting you for specific guidance about the level of access you will allow us to provide to materials in your copyright. As a research library, our goal is to provide access to the collections in a manner that respects copyright. For this reason, we are asking for your advisement concerning access to two classes of potential researchers: (1) the general public; and (2) the Stanford community (faculty, staff, and students).

Appendix A

Please place a check mark next to the titles for which you currently own the copyright. **If you own the copyright on ALL listed titles, you only need to put a check mark in the first box.** If you do not own the copyright, but know the correct owner; please list the person/organization next to the respective title.

<input type="checkbox"/>	Strategic Studies Group Pty. Ltd. owns copyright on all listed titles.	
<input type="checkbox"/>	Battlefront	
	Europe Ablaze: The Air War over England	
	Fire King	
	Gold of the Americas	
	Panzer Battles	
	Reach for the Stars	
	Warlords	
	Selected issues of Run5 magazine	

Permissions for ~~Cabrinet~~-NIST Project Data

Please refer to the options below and first choose one option for users seeking access to software. Next, please choose a second option for access to photographic images of physical components.

1. Software Files –Disc images, executable files, etc.

- ☐ **World:** Unrestricted access.
- ☐ **Research use only:** Research access only; no permission to redistribute or copy.
- ☐ **Restricted research use:** Research access, with restrictions TBD after negotiation of additional terms between Stanford and Strategic Studies Group Pty. Ltd.

2. Photographic images of physical components–Manuals, box scans, etc.

- ☐ **World:** Unrestricted access.
- ☐ **Research use only:** Research access only; no permission to redistribute or copy.
- ☐ **Restricted research use:** Research access, with restrictions TBD after negotiation of additional terms between Stanford and Strategic Studies Group Pty. Ltd.

Questions?

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