

Legal & Ethical Considerations for Born-Digital Access

Access the
publication



<https://osf.io/h3cwg>

Record creation is now an almost entirely digital process. As archival repositories continue to grow their born-digital collections (information created in a digital environment), the need to develop sustainable access systems and practices becomes increasingly urgent.

The legal and ethical issues surrounding access to digitized archival material is well covered in professional discourse, but born-digital content is rarely addressed in this context.

A recently published resource fills this gap: “**Legal and Ethical Considerations for Born-Digital Access**” (June 2022). It offers a practical starting point for archivists and librarians working in a variety of institutional settings.

Note: the authors present viewpoints and interpretations that reflect United States legal and ethical values.

Themes

Attorney-Client privilege

Copyright

Donor Agreement

Family Educational Rights and Privacy Act (FERPA)

General Data Protection Regulation (GDPR)

Health Insurance Portability and Accountability Act (HIPAA)

Indigenous materials in the United States

Institutionally Mandated Confidentiality

Personal Identifiable Information (PII)

Privacy

Terms of Service

Key recommendations

Develop policies on...

Access to unprocessed collections.

Inadvertent user access to privacy protected information.

Retention of deleted, hidden, or otherwise unintentionally acquired files recovered via disk imaging.

Before acquisition...

Avoid accepting collections with use restrictions.

Negotiate open licenses with creators.

Ask donors to identify files subject to privacy protections or attorney-client privilege. Separate these from the acquisition.

Before access...

Identify and separate files subject to privacy protections or attorney-client privilege.

Undertake a fair use assessment before making content available online. Maintain documentation of this assessment.

Provide a communication mechanism for the public to correct or request removal of online content.

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