

Liberating History: Reflections on Rights, Rituals and the Colored Conventions Project



During the past three years I've had the opportunity of working collaboratively with the Colored Conventions Project (CCP), a dedicated team of scholars, students, and library professionals whose goal has been to unlock the history of the Colored Conventions movement that for decades has been relegated to the pages of long out-of-print texts or buried within the millions of pages reproduced by the Google Books Library Project, the Internet Archive, and similar mass digitization projects. The CCP is a highly diverse working group with respect to ethnicity, age, scholarly discipline, professional expertise, and educational attainment. The work of the project is carried out by many—from first-year college students to endowed professors—and while we have varying levels of knowledge about African American history and culture, one thing that challenges us all are the complexities presented by intellectual and physical property rights within the context of a digital humanities project. Rather than be daunted by copyright issues, we've tried to embrace them and seize teaching

moments as they arise.

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To be sure, anyone building a Website needs to have a working knowledge of copyright, but for a project such as the CCP that regularly works with issues pertaining to race, class, and gender, copyright and intellectual property rights (i.e. copyright, patents, and trademarks) take on broader significance. Too often copyright discussions focus on specific disputes while ignoring larger questions as to how knowledge and ideas are created and expressed, which ideas are protected, and which are denied such protection. [Julie Cohen](#) and [Olufunmilayo B. Arewa](#), along with other legal scholars and social science theorists, have developed a body of literature that calls into question the neutrality of many legal assumptions pertaining to Black cultural expression. For example, Caroline Picart in *Critical Race Theory and Copyright in American Dance: Whiteness as Status Property* examines why ballet is more easily copyrighted than African American dance forms that are said to be derived from social dance steps, which are excluded from copyright protection. Richard Schur's *Parodies of Ownership: Hip-Hop Aesthetics and Intellectual Property Law* discusses the courts' shortcomings in making sense of hip hop music's liberal use of parody and musical sampling. Are such uses transformative, one of the measures of fair use of copyrighted material? Schur further questions why Alice Randall had to legally defend her creative use of Margaret Mitchell's characters in writing *The Wind Done Gone*, a novel stripped of romantic ideas about the antebellum South that reinterprets *Gone with the Wind* from an African American perspective. Noted critical race theorist Richard Delgado says of Schur's *Parodies of Ownership*: "Whites used to own blacks. Now, they accomplish much the same thing by insisting that they 'own' ownership. Blacks shouldn't let them. A culture that makes all artists play by its rules will end up controlling new ideas and stifling change."

The educational venues for CCP to engage copyright issues are many: formal classroom settings at the University of Delaware where the conventions are being taught as units within English and History Department courses; the classrooms of CCP's national teaching partners from Texas to California to Pennsylvania, and weekly project meetings comprising paid and volunteer students, alumni, librarians, and professors. We also wrestle with questions of copyright within our online community using Basecamp, the project management software we use to archive discussions and internal documents. As one might imagine, undergraduates undertake project work with motivation and enthusiasm, and many are passionate about creating work with a larger, long-term imprint; a few see their research as an assignment they must complete to gain a reasonable grade in their course. Most—and this is especially true of project members

working outside the classroom—embrace the work enthusiastically and see it as an opportunity to build on what is often a very meager offering of African American history provided in high school curricula. Further, they find it empowering to know that their research, which often includes wonderful digital images freely available on the Internet, might be published on the CCP Website and used to advance our collective understanding of the condition of African Americans, both free and enslaved, during the nineteenth century. They are often stunned by convention goers'—and related women's—achievements, mobility, and commitment. Why, they ask over and over again, didn't I know this? For those African American students unfamiliar with the Colored Conventions movement and the fight that African American men and women made for Black rights during the nineteenth century, the research is especially empowering and liberating. Students are incredibly eager to publish what for them and many scholars is newly discovered historical information. It's vitally important that the CCP's professionals urge those students to take the time to consider their legal right to do so.

While undergraduate students have very uneven knowledge of this period of African American history, their knowledge of intellectual property rights and license agreements is virtually nonexistent. They certainly are aware of the concept of academic honesty and the necessity to properly credit others' ideas and employ good citation practices. Yet even students with a general understanding of copyright are perplexed by the limitations that exist on the use of material made freely available on the Internet. Perhaps more baffling are restricted uses of materials found online that were originally created before 1922 and are now in the public domain. It becomes the challenge of the project's faculty and professional staff to harness students' sometimes unbridled enthusiasm to bring forth newly found historical items, to clarify the sometimes murky matter of legal rights, and to create opportunities to teach students about copyright. The project's graduate students, who themselves are in the process of writing dissertations and articles, are especially fascinated by discussions that juxtapose authors' rights with publishers' rights.

The open access movement, which is gaining significant traction in the academic community, highlights the merits of authors making their work freely available on the Internet and emphasizes the benefits of increased readership, easy online sharing, and more frequent citation. As Richard Schur points out, such arguments often incorrectly assume a level playing field among authors without recognizing that some authors, to overcome perceived racial bias, are particularly anxious to publish in their discipline's most prestigious journals, even if it means assigning their individual rights to the journal. Similarly, graduate students are sometimes cautioned against placing their dissertations into an open access repository because it may deter publishers from offering them contracts for their work. Despite these cautionary tales, the Colored Conventions Project—as a collective endeavor composed of work from hundreds of today's students coupled with the powerful voices of nineteenth-century African American activists—is strongly committed to producing work that

is open to all readers. While protected by copyright, the CCP site will be licensed under Creative Commons with the BY-NC-SA license that “lets others remix, tweak and build upon your work non-commercially, as long as they credit you and license their new creations under the identical terms.”

Dating items, especially images, and distinguishing derivative works from original works of art can be a particularly perplexing task for student researchers. For example, let us take a particular photograph made of Mary Ann Shadd Cary, a forthright critic of national anti-Black policies, the first Black woman newspaper editor in North America and a native Wilmingtonian whose connections to Delaware made her a person of special interest. A student researcher found a nice [rendering](#) of Cary on a commercial Website and offered it for publication on the CCP Website. The site where the student found the drawing provided cryptic information on the artist and no date of the image. Further research by the CCP team leaders determined that the image was a contemporary drawing made by illustrator Christian Elden, that it was indeed copyright-protected, and that he had marked this territory in no uncertain terms. “Don’t steal images,” his site warned, “or I will slap you silly with legal problems.” The project, not wanting to be slapped silly, opted to instead use a [nineteenth-century image](#) that we were able to identify within the collections of the National Archives of Canada.



Mary Ann Shadd Cary, ca. 1845-1855. Courtesy of the Library and Archives Canada / C-029977.

The project could have opted to contact Elden, secure permission to publish the drawing and pay appropriate license fees, but considerations regarding project resources (staff and monetary) brought us to instead select the original photograph. Choices such as these have allowed project members to engage in artistic decisions facing all exhibition curators—the necessity to balance

content with design within the constraints of time, money, and space.

Because they *are* in the public domain, many nineteenth-century materials have been digitized by commercial entities and compiled into proprietary databases. When libraries purchase access to such databases, they sign strict vendor license agreements regarding their use. CCP staff members have had to explain to student researchers that when dealing with public domain materials found in proprietary databases, signed license agreements are binding legal contracts that take precedence over copyright law, and concepts such as “fair use” or “transformative use” don’t neatly pertain. Terms negotiated vary from institution to institution, so a necessary first step is to become familiar with those terms and convey them to student researchers. After initiating a dialogue with library staff regarding license agreements, CCP members found librarians eager to join them in discussions with publishers about publication rights.

Researchers must also consider the rights of property holders, i.e. libraries and archives that own rare and unique materials, since as the owners of the physical material they may determine who can access material and how it may be used. Repositories of cultural materials are generally enthusiastic supporters of digital humanities projects such as CCP, but do want to ensure that resulting publications/Websites are properly attributed. While richly illustrated library and archival Websites showcase unique research materials of value to digital humanities projects, online exhibitions are costly to build and maintain. Researchers seeking digital images of materials should not be surprised if owning institutions require them to pay reproductions fees. Digital humanities projects will likely find nonprofit institutions with strong educational missions to be supportive allies, so complying with use policies and guidelines poses no significant barriers to scholarship.

Previous generations of scholars, when seeking to reproduce or reuse materials, had only two parties to contact: copyright holders and physical property owners. Scholars today may have a third party to contend with—the owner of the digital object. Commercial sites such as Google, which may own neither the original object nor its copyright, do claim ownership to the digital object and therefore control its use. Use of transcribed text, however, is an allowable exception permitted by Google. Materials provided through interlibrary loan pose special challenges since the source of an item may not be obvious. For example, some license agreements permit libraries to loan the content of a commercial database, but further reproduction is prohibited.

Individual scholars may find that working collaboratively with digital humanities projects such as the CCP gives them greater backing to negotiate with publishers for various rights. The Colored Convention Project, working in conjunction with the University of Delaware Library and Gale Cengage Learning, has arrived at a mutually beneficial agreement whereby select items from the *Nineteenth Century U.S. Newspapers* database may be hosted on coloredconventions.org. The agreement allows the CCP to showcase visually

intriguing items that complement convention minutes: announcements calling for delegates to attend upcoming conventions, ads outlining key convention resolutions, and letters to the editor giving added voice to Black delegates, speakers, and attendees. Highlighting such items at coloredconventions.org allows researchers and librarians to better appreciate the tremendous value of such databases to nineteenth-century African American scholarship, thereby driving use and sales, which ultimately benefit the vendor.

What then are the “best practices” of a digital humanities project in light of the tangled world of rights—copyrights, property rights (digital and physical rights), and license agreements? First and foremost is the obligation to educate not only student researchers but all team members on the importance of staying abreast of rights associated with the use of cultural properties. Second, we must attempt to put in place a triage system whereby materials are scrutinized for rights clearances before they are hosted. Also, we should try to sequester materials until all rights have been secured and practice due diligence in identifying rights holders and citing materials. We should also work with librarians and database vendors to secure amended license agreements that permit appropriate publication. Scholars reap no benefits from databases that cannot sustain modern forms of scholarly production, and vendors may face a declining market should they fail to recognize this. It is in the best interest of both scholars and publishers to work out agreements whereby materials may be used fairly and incorporated into new forms of digital scholarship. As James G. Neal, vice president for information services and university librarian at Columbia University, has eloquently argued, librarians and faculty are well-positioned to serve as strong advocates for the public interest in intellectual property, and with respect to fair use and exceptions to copyright, we should “re-commit to the education of our campuses, to political advocacy, and to collective risk taking.”

Digital humanities projects provide unique opportunities for faculty to teach students about ever-transitioning intellectual property rights, and for all team members to learn more about the responsibilities of being good stewards of cultural property. Working with publishers, libraries, and archives, digital humanities projects can work to liberate African American history from obscurity and misinterpretation and can shine light on movements such as the colored conventions movement—a movement solidly devoted to education, political advocacy, and collective risk taking.

Further Reading

For an excellent discussion of copyright law and its relation to the creative process, see Julie E. Cohen, “[Configuring the Networked Self: Law, Code, and the Play of Everyday Practice](#)” (accessed on September 29, 2015). For a fuller discussion of intellectual property and Black creative expression, see Caroline Joan Picart, *Critical Race Theory and Copyright in American Dance: Whiteness As Status Property* (New York, 2013) and Richard L. Schur, *Parodies of Ownership: Hip-Hop Aesthetics and Intellectual Property Law* (Ann Arbor, Mich., 2009).

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Carol A. Rudisell is a librarian at the University of Delaware Library where she serves as the subject specialist for history, African American studies, women's studies and several other interdisciplinary areas. She currently edits the African American section of *Magazines for Libraries*. Working with the Colored Conventions Project since 2012, she has advised student researchers and served on the project's grants committee.