



# Assessing Copyright Risk Tolerance for Large Scale Digitization Projects

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ABC Copyright Conference, Halifax, May 27, 2016





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**Canadian Libraries**  
 Internet Archive Canada  
 Welcome to the Canadian Libraries page. The Toronto scanning center of Toronto. From its humble beginnings, Internet Archive Canada has...

MORE

About Collection

SORT BY VIEWS · TITLE · DATE PUBLISHED · CREATOR

 University of Toronto - Robarts Library 210,595 ITEMS	 University of Alberta Libraries 87,565 ITEMS
 University of Toronto - John M. Kelly Library 15,186 ITEMS	 PIMS - University of Toronto 9,337 ITEMS

About

SORT BY VIEWS

**Agri-News**

2007 Prairie Breeders and Owners Conference

Two Weeks

Agri-news  
 by Alberta. Alberta Agriculture, Communications Branch; Alberta Culture and Heritage

1,802 ITEMS

**AGRI-SHOP**

Putting a new paper into food?

**ALBERTA ARTISTS**

Alberta performing artists  
 by Alberta. Alberta Culture; Alberta. Alberta Culture and

575 ITEMS

**ALBERTA**

Alberta Performing Artists 1981

Alberta performing artists  
 by Alberta. Alberta Culture; Alberta. Alberta Culture and

328 ITEMS

**AUDITIONS**

A Perspective for Aspiring Actors in Alberta

*Alberta Performing Artists 1986-87*

Alberta performing artists  
 by Alberta. Alberta Culture; Alberta. Alberta Culture and

528 ITEMS

**ALBERTA PERFORMING ARTISTS 1984-85**

Alberta performing artists  
 by Alberta. Alberta Culture; Alberta. Alberta Culture and

319 ITEMS

**THE ECONOMIC IMPACT OF THE ARTS IN ALBERTA**

THIS REPORT IS BASED ON A STUDY CARRIED OUT BY WOODS GORDON IN 1984

**ALBERTA**

Alberta performing artists  
 by Alberta. Alberta Culture; Alberta. Alberta Culture and

463 ITEMS

**ALBERTA PERFORMING ARTISTS**

Alberta performing artists  
 by Alberta. Alberta Culture; Alberta. Alberta Culture and

211 ITEMS

**CANADIAN PLAYS for Community Theatres**

A Selected Annotated Bibliography

**ALBERTA PERFORMING ARTISTS 1985-89**

Alberta performing artists  
 by Alberta. Alberta Culture; Alberta. Alberta Culture and

403 ITEMS

**A GUIDE FOR MAKEUP**

A guide for makeup  
 by Carson, Robin; Carson, Stuart

54 ITEMS

<https://archive.org/details/ttscribeflyer>

## Large Scale Digitization Projects





# Risk Management: Quantifying Tolerance

## Consequence

**Reputation** (negative media attention): intensity, duration; brief to >2 wks

**Infrastructure** (financial losses): negligible <\$250K to high >\$5M

**Education/Research** (cannot provide): time and number of people affected

**Human Resources** (ability to recruit): comparative

**Safety/Security:** health effects, injuries, fatalities

CONSEQUENCE	High	Level 3	Level 4	Level 4	Level 4	Level 4
	Major	Level 2	Level 3	Level 3	Level 4	Level 4
	Moderate	Level 2	Level 2	Level 2	Level 3	Level 3
	Minor	Level 1	Level 1	Level 2	Level 2	Level 3
	Negligible	Level 1	Level 1	Level 1	Level 1	Level 2
		Rare	Unlikely	Moderate	Likely	Almost Certain
		LIKELIHOOD				

Risk treatment is required for all risks above Level 1.

## Likelihood

Rare: not in 10 years

Unlikely: not at Cdn uni in 10, other uni in 5 yrs

Moderate: once in 10 yrs Cdn uni, 5 yrs other uni

Likely: once in 10 yrs at org, 5 yrs other Cdn uni, 2 yrs other uni

Almost Certain: once in 5 yrs at org, 2 yrs other Cdn uni, 1 yr other uni

# Canadian Case Law: Digitization Projects

The screenshot shows the WestlawNext interface with search results for the query: "advanced: ("digital library!" OR digitiz!) & "copyright act". The results are displayed under the "Cases and Decisions" tab, showing 16 results. The first result is highlighted.

**WestlawNext.CANADA** Find and KeyCite a Statute or Regulat...  
All Content Cases and Decisions  
Q- advanced: ("digital library!" OR digitiz!) & "copyright act" SEARCH ADVANCED

**NARROW:** Undo Filter Select Multiple Filters Search within results Q- "digital lib" Undo search v

Back to Cases and Decisions  
**Cases and Decisions (16)**  
YOUR SEARCH edit  
Any of These Terms: "digital library!" digitiz! This exact phrase: copyright act  
Sort by: Relevance Set Default  
1 - 16 Select all items No items selected

- 1. British Columbia Institute of Technology, Re**  
2005 CarswellNat 4078; 2005 CarswellNat 4079 | Copyright Board | Federal | November 17, 2005 | Docket: 2005-UO/TI-36 | Subject: Intellectual Property  
...Licence Application By British Columbia Institute of Technology for the **Digitization** of Two Film Segments 2005 CarswellNat 4078 Copyright Board Copyright...  
...property --- Copyright --- Licences --- General principles Applicant wished to reproduce, in **digital library** of aviation training programs in British Columbia between 1935 and...
- 2. Keatley Surveying Ltd. v. Teranet Inc.**  
2016 ONSC 1717; 2016 CarswellOnt 7233 | Ontario Superior Court of Justice | Ontario | May 06, 2016 | Docket: CV-10-414169-CP | Subject: Civil Practice and Procedure; Intellectual Property  
...deposited at the land registry offices, were scanned into a **digitized** database. The ELRS was finally completed in October 2010. 14...  
...answered, ideally in their favour: 1. Does copyright under the **Copyright Act** subsist in Plans of Survey? 2. Does the copyright in...

# US Case Law: Digitization Projects

**CBA NATIONAL** THE POWER OF PERSPECTIVES  THE CANADIAN BAR ASSOCIATION / L'ASSOCIATION DU BARREAU CANADIEN

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NATIONAL

## Will the Google Books fair dealing analysis?

April 19 2016 |  

< SHARE

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# THE CHRONICLE OF HIGHER EDUCATION

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COMMENTARY      Comments (7)

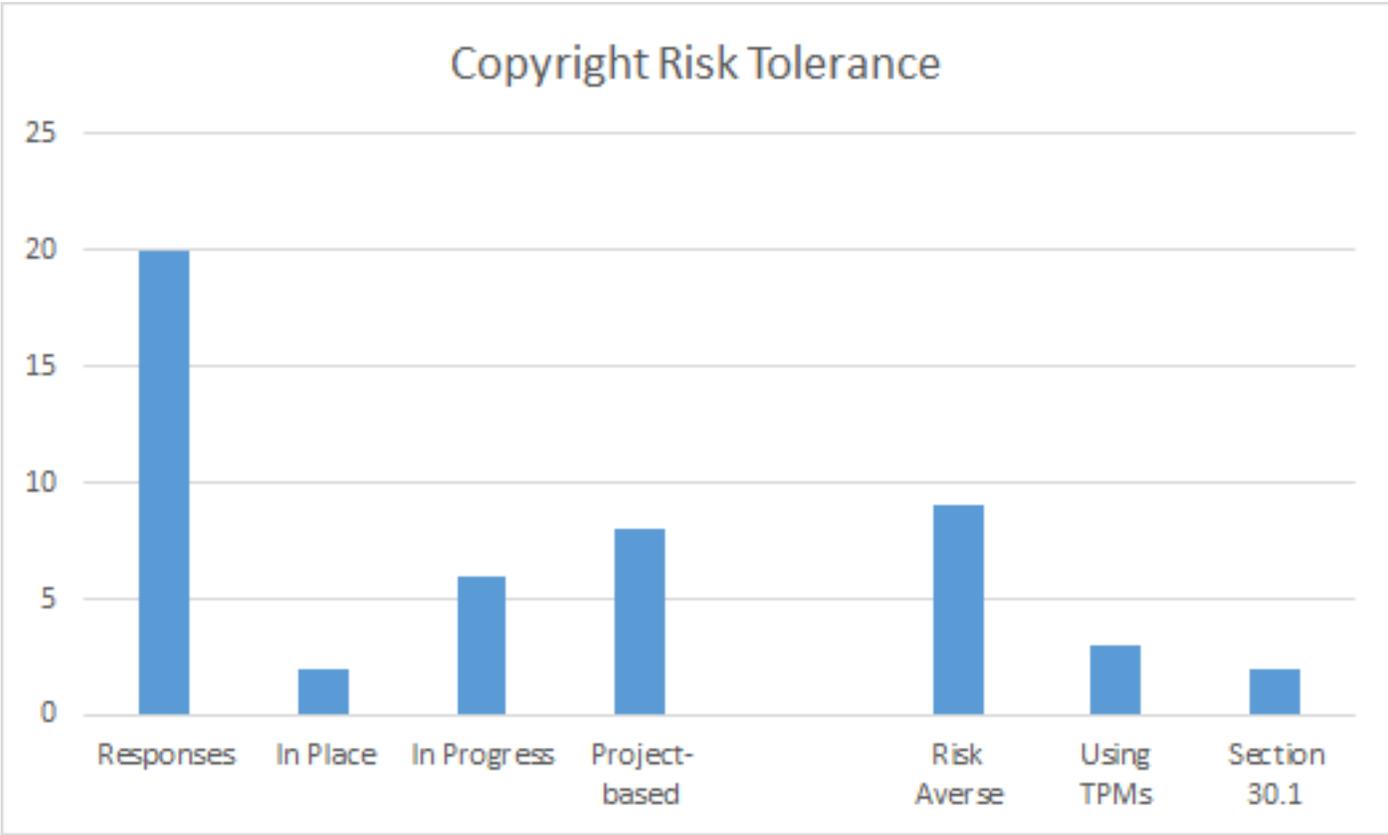
## Colleges Shouldn't Have to Deal With Copyright Monitoring

The Gen Hic

# How are CARL libraries assessing copyright digitization risk?

Results of an informal environmental scan of Canadian Association of Research Libraries (CARL) members with digitization 'programs' in November 2015.

“Does the University of xxx have a formal copyright risk assessment procedure for digitization projects? If so, does it include a risk matrix (e.g., with risk tolerance scenarios determined by factors like type of material and access level, etc.)?”



Risk Assessment Procedures

Information offered by respondents (not requested). Actual values likely higher.



# SFU: Timeline

**2014-2015**

Copyright Office consulted by SFU Archives re: “Virtual Reading Room” ([atom.archives.sfu.ca](http://atom.archives.sfu.ca));  
Peter Hirtle presented “Understanding Rights and Responsibilities” at *Digital Directions* conference (NEDCC 2014)

**Spring 2015**

Copyright Office began developing risk management approach for use in Library

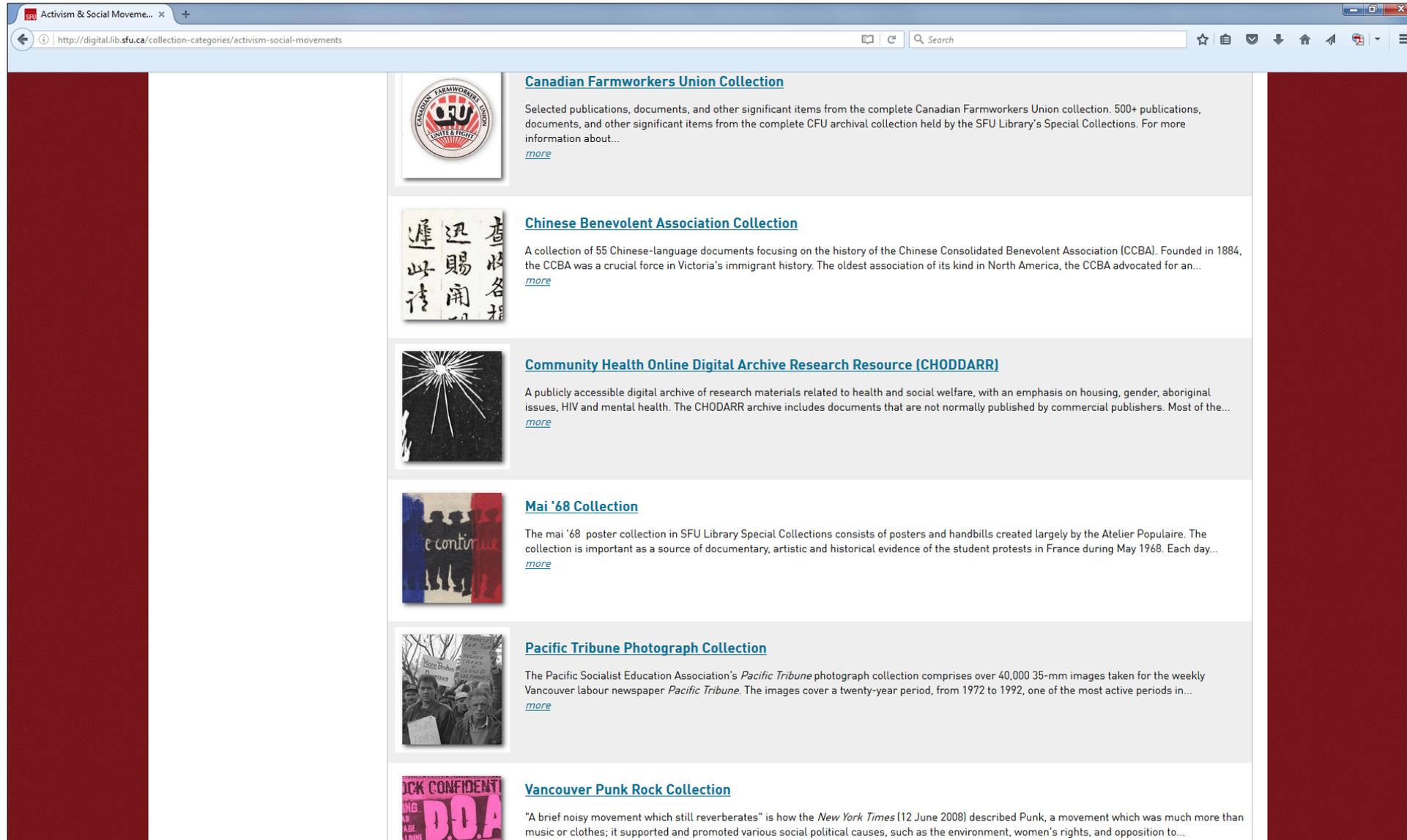
# SFU Digitized Collections

The screenshot shows the SFU Digitized Collections website. The browser address bar displays <http://digital.lib.sfu.ca/>. The page header includes the SFU logo and the text "SIMON FRASER UNIVERSITY ENGAGING THE WORLD LIBRARY SFU Digitized Collections". A search bar is located in the top right corner, and navigation links for "CAMPUSES", "A-Z DIRECTORY", and "SIGN IN" are present. Below the header, the page is divided into several sections:

- Search our digitized collections:** A search bar with a dropdown menu set to "All collections" and a "search" button.
- Featured Collections:** A featured collection titled "Blair Henshaw HIV AIDS Stamp Collection" with a thumbnail image.
- Grid of Collections:** A grid of eight collection categories, each with a representative image:
  - Activism & Social Movements:** Canadian Farmworkers Union logo.
  - British Columbia / Canada:** A scenic landscape photo.
  - Images & Photographs:** A photo of a young man in a red sweater.
  - Immigrant Experience:** A historical photo of a group of people.
  - Indigenous Collections:** A colorful indigenous mask.
  - Literature & Poetry:** A drawing of a globe.
  - Newspapers:** A newspaper clipping titled "CANADIAN UTTISET".
  - Oral Histories & Collections:** A photo of a person in a boat.

The footer contains navigation links for "Admission", "Programs", "Learning", "Research", "Community", and "About". It also includes "Maps + directions", "Library", "Academic Calendar", "Road conditions", and "Give to SFU". Social media links for "CONNECT WITH US" (Facebook, Twitter, YouTube) and "CONTACT US" (Feedback) are provided. The footer concludes with "Terms and conditions" and "© Simon Fraser University".

# SFU Digitized Collections



The screenshot shows a web browser window with the URL <http://digital.lib.sfu.ca/collection-categories/activism-social-movements>. The page features a list of six digitized collections, each with a representative image, a title, a brief description, and a 'more' link.

- Canadian Farmworkers Union Collection**: Selected publications, documents, and other significant items from the complete Canadian Farmworkers Union collection. 500+ publications, documents, and other significant items from the complete CFU archival collection held by the SFU Library's Special Collections. For more information about... [more](#)
- Chinese Benevolent Association Collection**: A collection of 55 Chinese-language documents focusing on the history of the Chinese Consolidated Benevolent Association (CCBA). Founded in 1884, the CCBA was a crucial force in Victoria's immigrant history. The oldest association of its kind in North America, the CCBA advocated for an... [more](#)
- Community Health Online Digital Archive Research Resource (CHODDARR)**: A publicly accessible digital archive of research materials related to health and social welfare, with an emphasis on housing, gender, aboriginal issues, HIV and mental health. The CHODARR archive includes documents that are not normally published by commercial publishers. Most of the... [more](#)
- Mai '68 Collection**: The mai '68 poster collection in SFU Library Special Collections consists of posters and handbills created largely by the Atelier Populaire. The collection is important as a source of documentary, artistic and historical evidence of the student protests in France during May 1968. Each day... [more](#)
- Pacific Tribune Photograph Collection**: The Pacific Socialist Education Association's *Pacific Tribune* photograph collection comprises over 40,000 35-mm images taken for the weekly Vancouver labour newspaper *Pacific Tribune*. The images cover a twenty-year period, from 1972 to 1992, one of the most active periods in... [more](#)
- Vancouver Punk Rock Collection**: "A brief noisy movement which still reverberates" is how the *New York Times* (12 June 2008) described Punk, a movement which was much more than music or clothes; it supported and promoted various social political causes, such as the environment, women's rights, and opposition to... [more](#)



# SFU: The Approach

Aligns with SFU *Risk Management Policy's* guiding principles: transparency, congruency, integration, engagement, leveraging institutional strength.

Works are deemed low-risk or high-risk by the Copyright Office, based on a series of factors.

- Low-risk: disseminate
- High-risk: seek permission before disseminating

Acknowledgement that dissemination of low-risk works without authorization may be infringing.

Takedown protocol enables copyright holders to easily contact the Library with concerns.



# SFU: Timeline

- 2014-2015** Copyright Office consulted by SFU Archives re: “Virtual Reading Room” ([atom.archives.sfu.ca](http://atom.archives.sfu.ca)); Peter Hirtle presented “Understanding Rights and Responsibilities” at *Digital Directions* conference (NEDCC 2014)
- Spring 2015** Copyright Office began developing risk management approach for use in Library
- Fall 2015** University-wide *Risk Management Policy* (GP 42) approved; Risk management approach approved by SFU legal counsel; Library stakeholder consultations
- Winter 2016** Library approved *Risk Management Copyright Policy Framework for SFU Library Digitization Projects* and related documents



# SFU: Stakeholder Concerns

## Liability to the Library

What are the limits to the Library's responsibility or ownership of projects?

How will this approach work when researchers external to the Library submit material?

## Complaint response and takedown

What will the process look like?

What are the technological implications?

What will the administrative burden be?

Concerns, process, and stakeholders' input will be revisited as we proceed.

# SFU: Documentation



Risk

## Introduction

When undertaking digitization projects, the University Library respects the rights of copyright holders and digitizes material respectfully with the copyright owner's permission. The R30.04 Copyright Committee's guidelines state that students have responsibility for ensuring that digitization projects respect copyright policy and relevant legislation (including economic and moral rights of the creator).

The types of material that are digitized are part of a specific collection and are not third party copyright protected. The University Library, adopting an open access approach, is more than other Canadian copyright institutions adopting a similar approach, supported by the Association of Canadian Universities, as Cornell University, and Peter Hirtle<sup>1</sup>. Also, staff in cultural heritage management framework



## Copyright

Date: [Click here to enter date](#)

Client and Department

Description of material and additional information

Confidential information

Protected by copyright? If yes, copyright owner

License? Choose an item. If yes,  Creative Commons

Amount copied:  All

Insubstantial? Choose

Fair dealing analysis notes

Commercial value? Check

Owner history of copy



## Fair Dealing Analysis

1. Purpose of the copying (parody, satire, etc.)
2. The character of the copying (distributed). The digitized items are for personal consideration.

3. The amount of copying (entire work, part copied, the structure of the work, Property Law 2



Risk Management Copyright Policy Framework for

## Takedown Protocol for Digitized Material Disseminated Under a Risk Management Decision

The University Library digitizes material under six different situations:

1. The material is in the public domain
2. The material is made available under an applicable Creative Commons or similar licence
3. The copyright owner has granted permission
4. SFU owns the copyright in the work
5. The SFU Copyright Office conducted a risk assessment and determined that the material defined in the Risk Management Preamble.
6. The material is deteriorating or at risk of deteriorating or becoming damaged or lost, and digitized for preservation purposes. [Note that digitization for preservation purposes only – public dissemination – is permitted under the terms of the “Libraries, Archives and Museums” exceptions in section 30.1 of the *Copyright Act*. Such material would not be subject to takedown requests.]

*Why would the Library be asked to remove material?*

The University may be asked to take down material if it was made available under the risk management protocol since it would have been made available without the copyright owner's permission. If it comes to the attention of the Library that the digitized material is a violation of the relevant privacy legislation or policies.

*Who can request that material be removed?*

Those who may request material be taken down are the copyright holder; the individual or organization that made the material available; the individual or organization that requested the material be taken down; the individual or organization that requested the material be taken down; the individual or organization that requested the material be taken down.



ETUDIANTS  
OUVRIERS

COMITES D'ACTION: REPRISE



A TOUS LES FRANÇAIS

LA REPUBLIQUE  
EST EN DANGER

NON au

AUTOUR DE  
DE GAULLE

Mai '68 Collection  
<http://digital.lib.sfu.ca/mai68-collection>

**FRANCAISES, FRANCAIS,**  
**EN DIX ANS**  
La V<sup>e</sup> République nous a apporté :  
**LA PAIX** après plus de 20 ans de guerres ininterrompues  
**L'INDÉPENDANCE** et la considération après les humiliations et la mendicité de la IV<sup>e</sup> République.  
**LE PROGRES** par une augmentation de 50% de notre Revenu National, en réalisant le Marché Commun et en faisant du Franc la monnaie la plus respectée du monde.

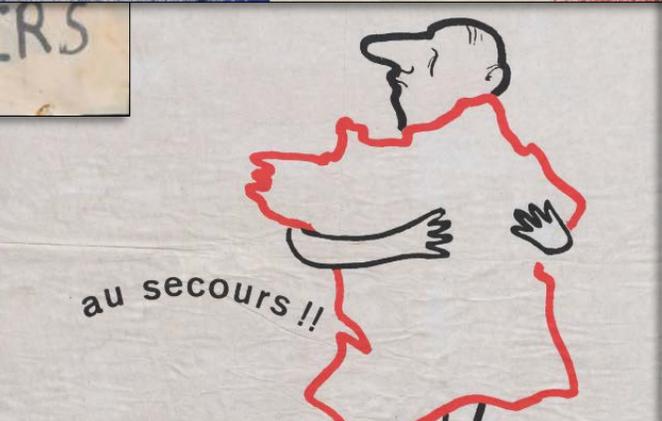


et SOCIALE : PAS AVANT la MORT DU PROFIT, la disparition de L'ETAT et la soumission à la loi naturelle du TRAVAIL UTILE...  
Le Probleme de la classe Ouvrière n'est donc pas de se donner des Maîtres, des gouvernements, mais d'entrer dans un age nouveau celui de L'Administration des Choses par l'AUTOgestion Directe de la production et de la consommation par les Travailleurs intellectuels et

POUR LE PROGRES  
AVEC LA JEUNESSE  
**PARTICIPEZ**  
NOUVEAU DE LA  
**FRANCE**  
ES DÉMOCRATES POUR LA IV<sup>e</sup> RÉPUBLIQUE



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**LE PROGRES** par une augmentation de 50% de notre Revenu  
National, en réalisant le Marché Commun et en faisant du  
Franc la monnaie la plus respectée du monde.



## Copyright Risk Analysis for SFU Library Digitization Projects

Date: May 11, 2016 (for 2012)

Client and Department: Special Collections - Library and History dept. (Prof. M. Leier, SDF 2011)

Description of material (title, creator, medium, dates of creation and/or publication, source, additional information): Posters from the Atelier Populaire from the mai '68 protests in Paris. These posters were designed by members of the AP would meet to discuss the day's events and coordinate a message for the following day via posters, a form of wall newspaper. Are considere art works.

Confidential information / trade secrets / privacy concerns? No

Protected by copyright? Yes  
If yes, copyright owner: Unknown

License? No  
If yes,  Creative Commons  Other: Click here to enter text.

Amount copied:  All or much  Little or some

Insubstantial? No

Fair dealing analysis needed? No

Commercial value? No. Digitization will not compete with any commercial exploitation of the works. Commercial value lies in the 1968 originals, not with any digital reproduction.

Owner history of copyright defence? No  
If yes, details: Click here to enter text.

Is owner/author relationship with SFU a factor? No  
If yes, details: Click here to enter text.

Potential effect on moral rights? No  
If yes, details: Click here to enter text.

Other reason for careful consideration? No  
If yes, details: Click here to enter text.

Copyright Office's final recommendation and comments: This is a true orphan work and is also anonymous. Copyright term is 75 years (display of art works does not qualify as publication). Atelier Populaire has been disbanded since 1968 and there is no way to contact it. These works were displayed during student protests as a way to transmit and coordinate messages for the day. Based on the ideology of the creators and the purpose to which they were put, it is highly unlikely the creators will object to the making available of the posters.

مذكراتي  
في العراق

الجزء الأول  
١٩٢٧ - ١٩٢١

يوحنا خلدون  
سليم الجعفر



منابرة

منابرة

محاضرات

عن

الامير شكيب أرسلان

القاهرة

مكتبة

( على هيئة قسم الدراسات الآرية والخرية )

١٩٥٩

١٩٥٩

الطريق

تأليف

إبراهيم

الطبعة الأولى



مكتبة الدراسات الأدبية

٣٢

تطور الرواية العربية الحديثة

في مصر ( ١٨٧٠ - ١٩٣٨ )

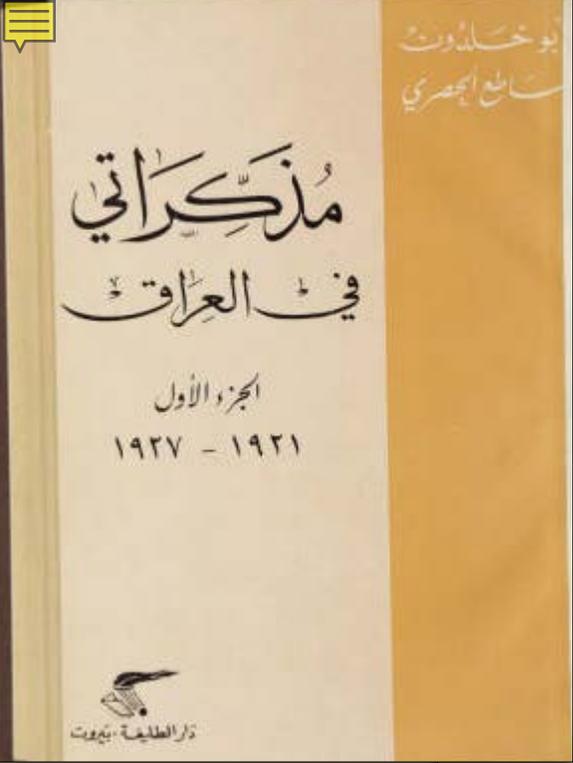
تأليف

الرازي وعبد المحسن طه بدر

Cleveland Arabic Collection  
<http://digital.lib.sfu.ca/cleveland-collection>

جموعات أدونيس الشعرية التي سبقت ( اغاني

. كنا نرى بطلاً ( الانسان ) وعالماً . وك  
البطل يتطور من بطولة الحماسة والتفاؤل ك  
ت الأرض » و « قصائد اولى » حيث يجابه الانس  
لم الهائل برؤوسه المتعددة ( الجوع ، الموت  
اليأس ، الرعب ) إلى بطولة تعانق الحيرة والح  
والمشاشة والموت كما في « اغاني مه



### Copyright Risk Analysis for SFU Library Digitization Projects

Date: May 11, 2016 (for June 2015)  
Client and Department: Library Special Collections and History / CCSMSC (Prof. D. MacLean SDF 2014/15)

Description of material (title, creator, medium, dates of creation and/or publication, source, additional information): Memoirs of Iraq : 1921-1941. Author - al-Ḥuṣṣarī, Abū Khaldūn Ṣaṭīṭ Published 1968, Dār al-Ṭalī'ah. Author died 1968. Publisher out of business.

Confidential information / trade secrets / privacy concerns? No

Protected by copyright? Yes  
If yes, copyright owner: al-Husari estate or Dar al-Taliyah publisher.

License? No  
If yes,  Creative Commons  Other: Click here to enter text.

Amount copied:  All or much  Little or some

Insubstantial? No

Fair dealing analysis needed? No. Cannot see a plausible fair dealing defence.

Commercial value? No. A digitized book online of only page images with no online features is unlikely to compete with the market for the original.

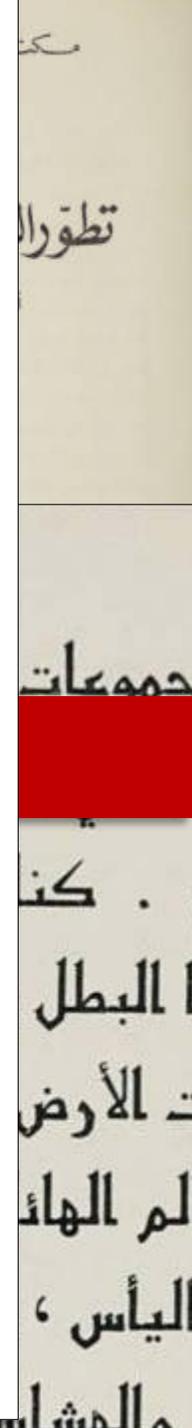
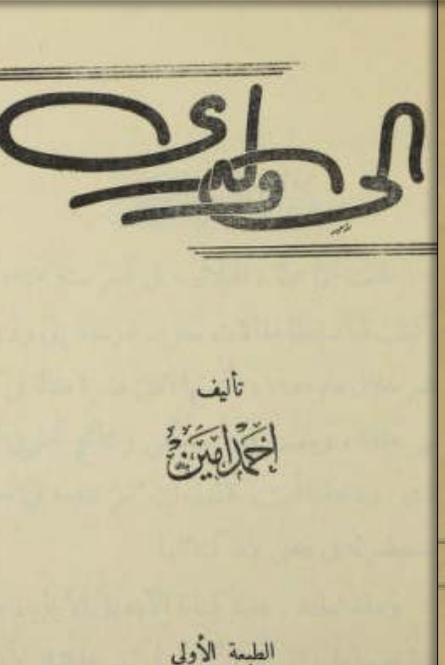
Owner history of copyright defence? No  
If yes, details: Click here to enter text.

Is owner/author relationship with SFU a factor? No  
If yes, details: Click here to enter text.

Potential effect on moral rights? No  
If yes, details: Click here to enter text.

Other reason for careful consideration? No  
If yes, details: Click here to enter text.

Copyright Office's final recommendation and comments: the book can be scanned and made available. The risk is marginal, as the Egyptian publisher is out of business, the work is only 3 years from public domain, Egyptian copyright holders are not known for enforcing their rights, there are well known sites of infringing digitized books in the Arab world (Shamila and alwaraq) which do not come under scrutiny. Finally, there is no OCR of the Arabic text, so it can only be found via a known title or author search. Pages are only images, so not all that easy to re-use for other purposes as well. Advice of the head of the McGill Islamic Studies Library was that there was no risk in digitizing this material.







# Risk of Litigation

## Large-Scale Digitization of Copyrighted Materials

CONSEQUENCES	High	Level 3	Level 4	Level 4
	Major	Level 2	Level 3	Level 3
	Moderate	Level 2	Level 2	Level 2
	Minor	Level 1	Level 1	Level 2
	Negligible	Level 1	Level 1	Level 1
		Rare	Unlikely	Moderate
	LIKELIHOOD			

Potential treatments to reduce Level 2 risks to Level 1 (reliance on section 29 or 30.1):

- TPMs to restrict access to authorized users, limit number of concurrent users, limit uses to viewing and/or partial downloading (could be graduated if needed).
- Click-through agreements explaining acceptable uses.
- Takedown notices / communication plan for queries from rights holders.

LEVEL 1 RISK : A low risk that requires no additional risk treatment.

LEVEL 2 RISK : The University will accept a risk at level two as long as it is reduced to a lower level of risk in the long term using low resource options.



# Risk of Loss of Materials

## WITHOUT Large-Scale Digitization of Copyrighted Materials

CONSEQUENCES	High	Level 4	Level 4	Level 4
	Major	Level 3	Level 4	Level 4
	Moderate	Level 2	Level 3	Level 3
	Minor	Level 2	Level 2	Level 3
	Negligible	Level 1	Level 1	Level 2
		Moderate	Likely	Almost Certain
LIKELIHOOD				

RISK: EDUCATION / RESEARCH, REPUTATION CONSEQUENCES

- Not all print works in the library collection are commercially available. When these works are lost or removed timely access is denied to the university community.

RISK TREATMENT:

- Create a backup copy.

LEVEL 3 RISK : Uni will accept as long as it is reduced to a lower level of risk in the midterm through reasonable and practicable risk treatments.

LEVEL 4 RISK : Uni will not accept unless fully reviewed and approved by the President’s Executive Committee - Operational.



# Risk of Major Event / Sustained Losses

WITHOUT Large-Scale Digitization of Copyrighted Materials

CONSEQUENCES	High	Level 4	Level 4	Level 4
	Major	Level 3	Level 4	Level 4
	Moderate	Level 2	Level 3	Level 3
	Minor	Level 2	Level 2	Level 3
	Negligible	Level 1	Level 1	Level 2
		Moderate	Likely	Almost Certain
LIKELIHOOD				

- RISK: EDUCATION / RESEARCH, REPUTATION, HUMAN RESOURCES
- Loss of print resources due to major event (flood, fire, etc.) would impact services.
  - Lag time / inability to restore access would damage competitiveness to attract and retain staff.

RISK TREATMENT:

- Create a backup copy.

LEVEL 2 RISK : The University will accept a risk at level two as long as it is reduced to a lower level of risk in the long term using low resource options.

LEVEL 3 RISK : Uni will accept as long as it is reduced to a lower level of risk in the midterm through reasonable and practicable risk treatments.



Where do we go from here?





# Questions?



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@awakaruk

# Resources and References

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