CHAPTER 15

Not All Information Wants to be Free:
The Case Study of *On Our Backs*

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Introduction

"Information wants to be free" is one of those slogans that I see on t-shirts and tote bags at library conferences. Generally, librarians advocate for open access to information. In this chapter, I will look at the digitization of *On Our Backs* (*OOB*), a lesbian porn magazine that ran from 1984–2004, as a case study of where digitization and publishing this content online is inappropriate. First, I will locate myself and explain why I've been critical of Reveal Digital putting *OOB* online. Second, I will examine why it was problematic for Reveal Digital to put *OOB* online and will also look at why the reasons they gave for temporarily removing *OOB* were also problematic. Third, I'll look at some of the copyright issues associated with digitizing this collection and I will argue that we need to go beyond just looking at copyright. I'll conclude with a survey discussion of some other digitization projects that are approaching tricky ethical issues from a nuanced and thoughtful perspective and describe best practices, including having clear contact information, using appropriate technology, and working with communities from a community development perspective.

Locating Myself

I am a queer, mixed-race systems librarian who works in accessibility. I am a feminist. Also, I am a former sex worker. I have first-hand experience of what it's like to have content about myself online that I didn't consent to. In my case, it was a newspaper article that appeared in the *Montreal Gazette* that identified me as a sex worker and a librarian.[1] Earlier in my career, I was terrified that in a job search process a potential employer might find this out about me. We live in a judgemental society where there are many negative stereotypes about sex workers. I was worried that this would undermine my professional reputation as a librarian. I was especially worried that this would undermine my reputation among my library technology peers.

Coming out as a former sex worker is one of the scariest things I've done in my career and, thankfully, I've only experienced support from colleagues. By coming out, I turned this potentially theoretical conversation about ethics into an honest and messy conversation. This conversation is about how we do good work in and with our communities. As a librarian, I have the privilege to speak from within our institutions. I choose to use that privilege to engage other librarians to consider the lives and perspectives of other queer sex workers.

Problems with *OOB* Online

In March 2016, I learned that Reveal Digital digitized *OOB*. It was online for several years before I learned about it. For a brief moment, I was excited that I could easily access porn that was nostalgic for me. That feeling quickly evaporated. I remembered friends who appeared in this magazine before the internet existed. I worried that this kind of exposure could be personally or professionally harmful for them.

Later that month, I spoke to Peggy Glahn, Project Director for Reveal Digital, about my concerns about this project. First, I was concerned about the privacy of people who appeared in this magazine. Second, while I imagined that Reveal Digital had copyright permissions to digitize this magazine, I was concerned that they didn't have consent from the people who appeared in the magazine. Third, I was troubled that there was no clear takedown policy or contact information if someone wanted to request that photos of them be removed. Fourth, I requested that they take down the collection until they had obtained consent from all the models and consulted with the communities that are impacted by this project.

Privacy and consent

I contacted a few people who appeared in OOB to ask how they felt about this content being available online. One person said she didn't consent to having her photos in the print magazine and definitely did not consent to having them online. In an email to me dated July 14, 2016, she wrote:

> I actually never consented to have my photoshoot published in *OOB* in print, in 2002. My ex and I were in a photoshoot specifically for a photographer's book on kink in 1993—before the first web browser was released!—and signed a model contract for limited use. So 9 years later, I felt fairly fucked over to discover this shoot in *OOB*—with our real names on the cover—after it had already been out for over a month.[2]

This person works in the tech industry and, as a queer woman, has to work harder than her straight, male peers to be taken seriously as an expert in her field. She's worried that if this is digitized with her name on the cover, it'll impact what is searchable under her name.

Another woman who appeared in *OOB* described her decision-making process and how she felt when she learned that *OOB* was being digitized and made available online:

> From the first discussion with the editors, I knew I had to weigh what appearing in the magazine might cost me in my work and community life. But at the time, I felt that the magazine had a small print run, and was sold in queer spaces to queer audiences.
>
> When I realized the distribution was broader, I requested that my name not be added to metadata, and tried to do my best to protect myself. The editors respected my request and even had the UK distributor edit their tags and metadata for me.
>
> When I heard all the issues of the magazine are being digitized, my heart sank. I meant this work to be for my community and now I am being objectified in a way that I have no control over. People can cut up my body and make it a collage. My professional and public life can be high jacked. These are uses I never intended and I still don't want.[3]

Writer and poet Amber Dawn described her process around deciding where it was safe and smart for her to make porn:

> In 2005, I co-edited a queer erotica anthology titled *With a Rough Tongue: Femmes Write Porn*. The collection marked many things for me, the most significant of which was my coming out as a queer, femme sex worker and survivor within published writing. I was motivated by the growing number of mentors and peers who had spoken up before me, and also by the much larger number of sex workers and survivors I knew who did not have the privilege or ability to speak up. The evolving sex-positive and social justice values of the mid-2000s did not protect me from fear and stigma I faced coming out. Backlash, I discovered, was very real consequence. I quickly learned importance of making strategic and self-caring choices about where to use my voice and body. Some early decisions I made for myself, which I continue to model to this day, were:
>
> 1. To only speak, publish or showcase body art in forums where I can directly speak to and negotiate with the editor or curator.
>
> 2. To only speak, publish or showcase body art in forums where I understand the intended audience to be communities that share similar sex-positive and social justice values.
>
> 3. To only speak, publish or showcase body art where I have the ability to directly connect with audiences and foster future respectful dialogue.[4]

Amber Dawn described how *OOB* being made available online changed the conditions under which she decided to model in *OOB* and is a form of institutional violence:

> *On Our Backs* was a forum that I chose, one that allowed me to adhere to all of the above three. I appeared in *OOB*'s 2005 year, soon after the release of *With a Rough Tongue*.
>
> Years later, the digitization of *On Our Backs* strips me of all three. What was once a dignified choice now feels like a violation of my

body, my voice and my right to choose. In no small way is the digitization a perpetuation of how sex workers, survivors and queer bodies have been historically and pervasively co-opted. How larger, often institutional, forces have made decisions without consulting us or considering our personal well-being.[5]

In our conversation, Glahn spoke about a need to balance the interests of people accessing this collection and the individual's right to privacy. The phrase "balance of interests" suggests that researchers and librarians who want access to this collection are standing on even ground with people who could face negative personal and professional consequences from this content being made available.

Community consultation

As this is porn from the lesbian community in the 1980s and '90s, it is important that these people are consulted about their wishes and desires. Like most communities, the lesbian and queer women's communities are not homogenous and will not share a single viewpoint. It's also important that consultation centre around the voices of the queer women whose asses are literally on the page.

Request for collection to be taken down

I was really disappointed but not surprised to hear that Reveal Digital would not take down this entire collection. Most of the *OOB* run was published before the internet existed. Consenting to a porn shoot that would be in a limited-run queer print magazine is a different thing to consenting to have your porn shoot be available online. "The Zine Librarians' Code of Ethics" states "whenever possible, it is important to give creators the right of refusal if they do not wish their work to be highly visible."[6] Though unconventional and not the view of copyright law, I view the models as co-creators in porn content as they are an important part of the work and not simply passive subjects.

Glahn explained there isn't a formal takedown policy. She explained that it was up to a model who wanted their images removed to figure out the identity of the rights holder, find their contact information, and contact them with the request. Only then would Reveal Digital consider a takedown request. Even for librarians, it's sometimes tricky to track down the copyright holder of a magazine that's not being published anymore. By being stewards of this digital content, I believe that Reveal Digital has an ethical obligation to make this process clearer.

Shortly after we talked, Glahn informed me that they had received a takedown request and would be redacting some content. She also said that they'll be posting

their takedown policy and process on their website but that there are technical challenges with their digital collections platform. I'm puzzled by this reason. I'm not sure why a simple HTML page with the takedown policy, procedures, and contact information could not be linked to this collection. Until they get this information up, people can email them with takedown requests. Reveal Digital will "assess each request on a case-by-case basis."

Glahn mentioned that Reveal Digital had consulted the community and made the decision to leave this collection online. I asked who the community was in this case and she answered that the community was the libraries who are funding this initiative. This is an overly narrow definition of community, which is essentially the "fiscal stakeholders."[7]

Reasons for Temporary Takedown: Some Issues

On August 24, 2016, Reveal Digital announced that they were temporarily removing access to the *OOB* content.[8] The three reasons they gave were: concerns about minors' access to pornography, general privacy concerns, and the need to consult with community.

Porn

Reveal Digital listed "minors accessing sexually explicit content" as the first reason for the temporary removal of this collection. This genuinely confuses me. I can understand that this might be a liability issue, but it's not difficult to find porn on the internet, especially porn that is more explicit and hardcore than the images in *OOB*. Reveal Digital describes *OOB* as filling "an important hole in the feminist digital canon and is an essential artifact of the 'feminist sex wars,'"[9] so for me, concern about access by minors is an unexpected reason.

Privacy

I was really happy to read how Reveal Digital articulates the importance of contributor privacy:

> On the more complex issue of contributor privacy, Reveal Digital has come to share the concerns expressed by a few contributors and others around the digitization of *OOB* and the potential impact it might have on contributor privacy. While we feel that *OOB* carries an important voice that should be

preserved and studied, we also feel that the privacy wishes of individual contributors should have an opportunity to be voiced and honoured.[10]

I believe the above statement shows that they really heard and understood the concerns that many of the contributors and I had regarding privacy and consent.

Community consultation

Placing access ahead of contributor privacy issues reflects Reveal Digital's priorities. I'm glad that Reveal Digital has broadened their idea of community consultation from financial stakeholders to include publishers, contributors, libraries, archives, researchers, and others; however, I'm still worried about whose voices will be centered in these discussions.

When discussing this with librarians, many of them mentioned that with consultation processes there's a need to balance interests. If we reject that libraries are neutral, we need to acknowledge that balanced consultations are not neutral, too. Contributors, especially models, could have their personal and professional lives damaged by this. Researchers seek to gain prestige, grants, tenure, and promotion from access to this collection and don't stand to lose much, if anything. Different communities have a different stake in these decisions. Also, these groups aren't homogeneous—it's likely that some contributors will want this content online, some will be OK with some parts, and others will not want any of this content to be published online. I hope that centering contributor voices is something that Reveal Digital will build into their consultation plan.

Copyright

The copyright issues in this case are not straightforward. How do you determine the copyright holder for various content? Why would you use a Creative Commons license for artistic content? What does the Greenberg v. National Geographic Society ruling mean in this case?

Determining the copyright holder

In this case, it's tricky to determine who owns copyright for this content. For photos, the photographer would have held copyright, not the models. The photographer would have then either handed over copyright to the magazine, signed over copyright for a specified time period, or agreed to have them published and

retained copyright. *OOB* doesn't exist anymore, so it takes some sleuthing to track down who now owns the rights for each bit of content in each issue. I visited the Rare Book and Manuscripts Collection at Cornell University to sift through Susie Bright's papers. Susie Bright is a sex-positive feminist who cofounded and edited *OOB* from 1984–1991. I found copies of agreements that confirmed that there were contributor agreements for one-time rights only, for first-time North American serial rights, or for a period of one year from a specific date. This demonstrates that the original contributors had made clear decisions on which rights they were willing to sign over. Signing over rights for a limited amount of time or for limited publication is very different from publishing content on the internet.

Creative Commons license is inappropriate

When Reveal Digital initially put up the *OOB* collection, they licensed it under a Creative Commons attribution (CC-BY) license. This is a permissive license that allows people to "copy and redistribute the material in any medium or format… remix, transform, and build upon the material for any purpose, even commercially"[11] as long as one gives credit to the rights holder, provides a link to the license, and identifies if any changes were made from the original. This license allows feminist porn to be remixed in ways that appropriate the content and demean women. It also allows for this content to be repackaged in any format and sold, as long as credit is given and a link to the license is provided.

Greenberg v. National Geographic Society

According to Reveal Digital, the Greenberg v. National Geographic Society ruling says gives them "the legal right to create a faithful digital reproduction of the publication, without the need to obtain permissions from individual contributors." I understand this to mean that if Reveal Digital digitizes the entire run of *OOB* without making any changes, it doesn't matter that contributor agreements have limitations. Even if this is legal, it is not ethical. I'm concerned that citing Greenberg v. National Geographic Society foreshadows that they are going to disregard contributor agreements and individual models' objections and put the whole collection online.

Librarians have traditionally only been concerned with copyright issues. I believe that for ethical digitization of culturally sensitive material, we have a duty to go beyond the legal framework of copyright and to consider consent, privacy, and each community's access protocols.

Best Practices for Ethical Digitization

There are four things that people who are digitizing culturally sensitive materials can do to try and make their projects more ethical and appropriate. First, a standard librarian technique is to do an environmental scan and learn from what other people have done. Several digitization projects that have handled culturally sensitive materials have put out reports detailing some of their ethical concerns and processes. Second, it is important to have clear contact information posted so that people know whom they can talk to if they have concerns or more information. Third, use technology built by projects that are thinking thoughtfully and deeply about values and ethics. Fourth, librarians need to develop skills in working with communities to determine what should be digitized and what kind of access is appropriate.

Learn from other digitization projects

This isn't the first digitization process that has needed community consultation. We can learn from New Zealand Electronic Text Centre's thoughtful paper outlining the consultation process and project outcomes of how they to digitized the historic text, *Moko; or Maori tattooing*. This is an important text written by Horatio Gordon Robley and published by Chapman and Hall in London in 1896. This book included illustrations and photos of *mokomakai*, or preserved human heads. This report describes their community consultation process that included academics, librarians and curators, and Māori communities. Instead of viewing the digital access as all or nothing, they saw a range of six different options and "decided to present the text with all associated images except those depicting *mokamokai* or human remains."[12] Respect and consent were the main reasons given for this decision:

> Although it was felt that there were good arguments for presenting "Moko; or Maori Tattooing" in its entirety, namely to retain the integrity of the book in the interests of scholarship, it was also felt that by making the *mokamokai* depictions available without express permission of the descendent whānau of those tupuna whose remains appeared in those images would be disrespectful.[13]

> In 2013, the British Library announced plans to put the entire run of *Spare Rib*, a second wave feminist magazine that was

published from 1972–1993, online.[14] The National Library in the UK shared their process and lessons learned from this project.[15] *Spare Rib* was published by a collective; therefore, it did not generally use individual contributor contracts. When they started in 2013, British Copyright Law would have required the British Library to track down each of the 4,558 contributors to obtain permission to digitize and publish their work online. The British Library hired a Licensing & Copyright Assurance Manager to track down as many of the 4,558 contributors as possible and get them to agree to have their work put online under a CC-BY license, which they believed would allow the work to be used as broadly as possible. In a comment posted on December 14, 2013 to *The Guardian*'s article titled "Spare Rib contributors sought so editions can be digitised and saved," Gillian Spraggs, a contributor to *Spare Rib*, voiced her concerns that a CC-BY license was inappropriate, as content from this feminist project could be twisted by "anyone with anti-feminist and/or anti-lesbian views will be able to take this historic material, all those articles, letters, cartoons, photographs, and twist and disfigure them in ways that suit their own hate-filled agenda."[16]

During this process, UK copyright laws changed and the Certain Permitted Uses of Orphan Works Legislation that became law in 2015 allowed the British Library to "digitise and make available online in-copyright works upon completion of diligent search."[17] According to the project website, approximately one thousand contributors, or 20 percent of the content, has been redacted.[18]

Written in 2015, "The Zine Librarians Code of Ethics" is one of the best discussions of the ethical issues of libraries providing access to non-traditional materials, including zines. There are two ideas that are relevant to my concerns are about consent and balancing interests between access to the collection and respect for individuals. First, zines are often highly personal, and some authors might find the wider exposure exciting but others might find it unwelcome:

> For example, a zinester who wrote about questioning their sexuality as a young person in a zine distributed to their friends may object to having that material available to patrons in a library, or a particular zinester, as a countercultural creator, may object to having their zine in a government or academic institution.[19]

Second, "The Zine Librarians Code of Ethics" does a great job of articulating the tension that sometimes exists between making content available and the safety and privacy of the content creators:

> Librarians and archivists should consider that making zines discoverable on the Web or in local catalogs and databases could have impacts on creators—anything from mild embarrassment to the divulging of dangerous personal information." Zine librarians/archivists should strive to make zines as discoverable as possible, while also respecting the safety and privacy of their creators.[20]

These are important considerations when working with collections beyond just zines.

Post Clear Contact Information

It can be confusing and intimidating to figure out who to contact at a university, museum, or cultural institution. It is important to make it easy to find out who to contact if one has concerns or additional information about digital collections. It's also useful to state that your institution is open to receiving more information about specific content and open to requests for content to be removed. It is also important to have clear policies that are posted publically so that people know about criteria, timelines, and processes for inquiries and complaints.

The New Zealand Electronic Text Collection describes how they will keep the communication lines open with communities:

> We will provide avenues by which people can place general feedback (via links to the message boards) or contact us directly. If whānau[21] want to discuss with us suppressing images of their tupuna[22] then we are prepared to do so (with the inclusion of a statement as a placeholder within the text stating why the image is no longer displayed). Alternatively, if they had information that they would like placed with their tupuna's name, then we are open to adding it.[23]

The *Spare Rib* collection site clearly states that they would like to hear from contributors. They also clearly state various options for takedown: "*Spare Rib* contributor or a third party objects to the inclusion of their work now or at any point in the future, or wishes to make their content live but with restrictions, we

can anonymise, make alterations or remove the material."[24] For each item in this collection, the usage terms are clear.

Use appropriate technology

The Murkutu project has been leading the way in building an open source platform to allow appropriate access to culturally sensitive materials, specifically indigenous stories, knowledge, and cultural materials. The Murkutu platform is built and configurable to reflect how specific communities access and share knowledge. Both items and people have permissions associated with them, which can facilitate granular and appropriate access. The software also supports traditional knowledge labels, which were developed "to support Native, First Nations, Aboriginal, and Indigenous communities in the management of their intellectual property and cultural heritage specifically within the digital environment."[25]

DocNow is a software project that started after the Ferguson riots. They are building appropriate software tools for the ethical collection of social media content. They are building into their free open-source tools the key concept of consent. DocNow project also seeks to build a critical community of practice:

> While we're not yet sure what this community will end up looking like or how formal or informal it will be, we want to build on this momentum and continue to encourage conversations around what it means to build archives of social media data for the long term, not replicating oppressive models of digital data collection and dissemination, and respecting content owners privacy and humanity, while at the same time upholding our responsibility to be vigilant in countering the erasure of people of color from the historical record.[26]

I admire how they are explicit and clear in identifying their values—like Black Lives Matter—and how those values influence the software tools that they are developing. Ed Summers states that "I think what we are hoping to do is build a tool that doesn't just do things because it's possible, but has some values built into it."[27]

Work with communities to determine what is appropriate

Libraries and other cultural institutions need to build relationships and work with communities more, and community consultation should include discussions

about appropriate use of the content. In both the case of *OOB* and *Spare Rib,* the digitizing agency pushed a more permissive license than some contributors were comfortable with. Perhaps if the consultation process included a conversation on copyright and the different types of Creative Commons' licenses, there might have been more willingness to consider a CC-BY license and informed consent to pick the best license for individuals and the community, not the institution and funding agencies. Academic libraries can learn from public libraries' community development initiatives.[28] As librarians, it's uncomfortable but necessary for us to give up some of our power and work with community members on equal ground.

Having an advisory board that includes community members should be a minimum requirement for digitization projects. Both the *Spare Rib* and DocNow have robust Advisory Boards.

Conclusion

OOB is an interesting and useful case study to examine, as it involves unpacking a core assumption about free access to information always being a positive thing. I am very conflicted about the work that Reveal Digital is doing. I admire that they've figured out a unique business model and a way to work with libraries to digitize and make independent media accessible on the web. However, Reveal Digital put *OOB* online without the contributors' and models' consent, did not consult with the broader feminist and queer porn community, and have signaled that they will be putting this collection back online, despite several models' objections. This is problematic. Figuring out an ethical way to respectfully digitize culturally sensitive collections, like *OOB*, will strengthen our relationships with community, our collection development policies, and our digitization practices.

Notes

1.   Anne Sutherland, "Action Plan on Rights Set up," *The Gazette; Montreal, Que.* (July 27, 2006), Final edition, sec. News.
2.   Anonymous model #1, "Quotes for Your Talks," July 7, 2016.
3.   Amber Dawn, "(No Subject)," July 15, 2016.
4.   Ibid.
5.   Anonymous model #2, "Request for Quote about OOB," July 7, 2016.
6.   "Zine Librarians Code of Ethics," zinelibraries.info, November 2015, http://zinelibraries.info/code-of-ethics/.
7.   Thank you to Christina Harlow who coined this phrase in a Facebook comment.
8.   Reveal Digital, Statement about *On Our Backs*, (August 24, 2016): 6, http://revealdigital.com/wp-content/uploads/2017/04/Statement-regarding-On-Our-Backs-20160824-Rev-1.0.pdf.
9.   Ibid.

10. Ibid.
11. "Creative Commons—Attribution 2.0 Generic—CC BY 2.0," accessed February 5, 2017, https://creativecommons.org/licenses/by/2.0/.
12. New Zealand Electronic Text Collection, Te Pūhikotuhi o Aotearoa, "'Moko; or Maori Tattooing' Project: A Report on Consultation," accessed June 28, 2016, http://nzetc.victoria.ac.nz/tm/scholarly/tei-MokoDiscussionPaper.html.
13. Ibid.
14. I learned about this project from Michelle Moravec's unpublished manuscript titled, "Some Feminist Research Practices for 'Digital Archives.'"
15. Anna Vernon, "Digitising Spare Rib Magazine: The inside Story," Living Knowledge Blog," accessed December 15, 2017, http://britishlibrary.typepad.co.uk/living-knowledge/2015/05/digitising-spare-rib-magazine-the-inside-story.html.
16. Caroline Davies, "Spare Rib Contributors Sought so Editions Can Be Digitised and Saved," *The Guardian* (December 13, 2013), sec. Media, https://www.theguardian.com/media/2013/dec/13/spare-rib-magazine-digitised-british-library#comment-29845589.
17. Vernon, "Digitising Spare Rib Magazine."
18. British Library, "About the Spare Rib Digitisation Project," *The British Library*, accessed December 15, 2016, https://www.bl.uk/spare-rib/about-the-project.
19. "Zine Librarians Code of Ethics," 6.
20. "Zine Librarians Code of Ethics."
21. This word means "family" in English.
22. This word means "ancestor" in English.
23. New Zealand Electronic Text Collection, Te Pūhikotuhi o Aotearoa, "'Moko; or Maori Tattooing' Project: A Report on Consultation."
24. British Library, "About the Spare Rib Digitisation Project."
25. "Local Contexts," *Local Contexts*, accessed February 16, 2017, http://www.localcontexts.org/.
26. Bergis Jules, "DocNow as Community," Documenting DocNow, July 11, 2016, https://news.docnow.io/docnow-as-community-2aa13fca860f#.jvdz9pmln.
27. Ibid.
28. The Community-Led Libraries Toolkit, http://www.librariesincommunities.ca/resources/Community-Led_Libraries_Toolkit.pdf, is a useful resource.

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