

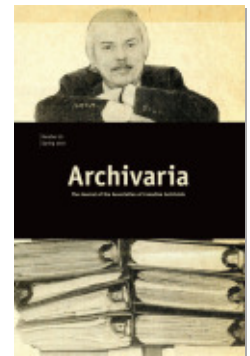


Ethics of Archival Practice: New Considerations in the Digital Age

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Ethics of Archival Practice

New Considerations in the Digital Age

ALYSSA HAMER

ABSTRACT Archivists' work has always involved an inherently ethical praxis, and now is on the brink of a tipping point: in the very near future, archives professionals will begin to accession greater numbers of digital records than paper ones. How will the complexities of the digital environment influence traditional approaches to selection, preservation, and access? In this paper, contemporary discourse related to the digital shift will be examined, both in terms of archival functions related to the management of digital records, as well as broader issues concerning government accountability, privacy rights, big data, and large-scale archiving. Beginning with an assessment of the current ethical codes set out by major archival associations and their capacity to address new considerations presented by the digital shift, this paper then examines several of the more insidious impacts brought about by the creation and management of digital and born-digital records. Through this analysis, it becomes clear that today's archival practitioners must call for greater professional guidance and openness in relation to these modern challenges, and must seek out opportunities to showcase their specialized knowledge in the interests of preserving the reliability, authenticity, and completeness of the historical record for future generations.

RÉSUMÉ Le travail des archivistes a toujours comporté une praxis éthique inhérente et se trouve maintenant à un point critique : dans un avenir très proche, les professionnels des archives vont commencer à recevoir un plus grand nombre de documents numériques que de documents sur papier. Comment les complexités de l'environnement numérique influenceront-elles les approches traditionnelles à la sélection, à la préservation et à l'accès? Dans ce texte, on examinera le discours contemporain par rapport à la transition numérique, tant en termes de fonctions archivistiques liées à la gestion des documents numériques, qu'en ce qui a trait aux questions plus vastes de l'imputabilité du gouvernement, des droits à la vie privée, des mégadonnées et de l'archivage à grande-échelle. En partant d'une évaluation des codes d'éthiques courants établis par les principales associations archivistiques et de leur capacité à faire face aux nouvelles considérations soulevées par la transition numérique, ce texte examine ensuite plusieurs autres effets insidieux qui découlent de la création et de la gestion des documents numériques et des documents créés numériquement. De par cette analyse, il devient évident que les praticiens en archivistique d'aujourd'hui doivent exiger davantage d'orientation professionnelle et d'ouverture face à ces défis modernes et doivent chercher de nouvelles occasions de mettre en évidence leur connaissances spécialisées dans le but de préserver la fiabilité, l'authenticité et l'intégralité du document d'archives historique pour les générations futures.

Introduction

The archival profession, after some debate, seems to have finally come to terms with the ethical nature of the work it engages in.¹ Among members of the international archival community, ethics has been a topic of discussion for more than half a century, until recently treated as “the most benign matter ... assumed to be important for symbolic reasons but not to possess any substantial practical value in the archivist’s daily work.”² Professional ethics codes were written up and then largely forgotten in favour of ad hoc institutional and individual approaches. Recently, however, the moral imperative for professional guidance on navigating ethical issues has come into focus once again: we have shifted from a world in which archival ethics has been centred on “the completeness and availability of the historical record” to one where archivists must now “be concerned with the accountability of public services or the happiness of users.”³

The work of selection, arrangement, description, and preservation that archivists are tasked with is largely “invisible” to most of the public: we are a profession that tends to society’s historical legacy yet conducts its tasks largely in the proverbial shadows. In many ways, such invisibility is necessary, for the historical record must aggregate naturally and should not be intentionally manipulated or modified for posterity’s sake. The inconspicuous nature of this work, however, leads to a high degree of professional self-regulation whereby the vast majority of decisions regarding archival materials are made exclusively within the siloed environment of individual archival institutions. This is challenging for professional archivists, who may face moral dilemmas in their day-to-day work and who regularly engage in decision-making yet “struggle on the best way to appraise particular situations ethically and to balance the various legal, regulatory, financial and ethical obligations.”⁴ The first place to look for ethical guidance in any discipline is those professional associations that govern and

1 Richard J. Cox, “Rethinking Archival Ethics,” *Journal of Information Ethics* 22, no. 2 (2013): 13.

2 Ibid., 14.

3 Michael Cook, “Professional Ethics and Practice in Archives and Records Management in a Human Rights Context,” *Journal of the Society of Archivists* 27, no. 1 (2006): 2.

4 Stuart Ferguson, Clare Thornley, and Forbes Gibb, “Beyond Codes of Ethics: How Library and Information Professionals Navigate Ethical Dilemmas in a Complex and Dynamic Information Environment,” *International Journal of Information Management* 36, no. 4 (2016): 551.

provide leadership to members. These are the foundational organizations that dictate professional priorities and outline key objectives for those in the discipline. However, archival scholar Richard J. Cox asserts that professional codes of ethics are, by and large, weak, leaving “the individual archivist ... [to sort] out for him- or herself their own personal sense of morality.”⁵ Thus, there is a need to strengthen them as the digital shift has magnified ethical issues, expanding not only the scope of what archivists do but also of who sees it. No longer are archival materials exclusively behind the walls of stark, imposing buildings; increasingly, these materials are being made available online through digital portals and repositories. Given the widely acknowledged “implicit power of recordkeeping and information systems” through which archives operate, the ethical dimensions of this work become amplified when records are made accessible in the online environment.⁶ Modern technologies mean that archival professionals “have less control over access than they did with physical collections ... [in that] once something is published on the web, it becomes universally accessible.”⁷ Matthew Kirschenbaum, Richard Ovenden, Gabriela Redwine, and Rachel Donahue, in their article “Digital Forensics and Born-Digital Content in Cultural Heritage Collections,” see this as the most recent instantiation of the ethical debate in the archival profession, stating that “the arrival of born-digital materials in archives highlights the need for archivists and other professionals who work with these items to have a more nuanced understanding of professional ethics.”⁸ Growing pressures to provide access mean that ethical decisions are being made on a more regular basis than ever before. Before discussing in detail some of these dilemmas, however, we must first examine the codes of ethics about which Richard J. Cox is so critical. Is this critique founded?

5 Cox, “Rethinking Archival Ethics,” 13.

6 Ibid.

7 Ferguson et al., “Beyond Codes of Ethics,” 551.

8 Matthew Kirschenbaum, Richard Ovenden, Gabriela Redwine, and Rachel Donahue, *Digital Forensics and Born-Digital Content in Cultural Heritage Collections* (Washington: CLIR Publications, 2010), 50.

Codes of Ethics: An Overview

For the archival community in Canada, three major associations are looked to for professional leadership: the International Council on Archives (ICA), the Society of American Archivists (SAA), and, most central of all, the Association of Canadian Archivists (ACA).

The ICA is an international organization that “acts as the global voice of archive institutions and professionals on the global stage.”⁹ Representing more than 1,500 member institutions and individuals, the ICA advocates on behalf of archives around the world to promote good governance, administrative transparency, and the preservation of humankind’s collective memory.¹⁰ The ICA’s current code of ethics is outdated, having been formally adopted in September 1996 with no evidence of recent revisions. Its age quickly becomes apparent once its principles are carefully examined: archivists should conduct the work of appraisal, selection, and description while “retaining the principles of provenance,” ensuring that the original relationship between documents is made evident.¹¹ Yet what does this mean in the digital environment, when the demand for item-level access far outweighs that of the fonds level? The document does address the challenging and sometimes opposing expectations set out by donors, institutions, and governments when it acknowledges that archivists are responsible for balancing “the legitimate, but sometimes conflicting, rights and interests of employers, owners, data subjects and users, past, present and future.”¹² This is a fine balance for archival professionals to manage, far more so in the digital age when access and usage rights are front and centre, and although acknowledging such negotiations is important, there is no further guidance on how to go about doing this *in practice*. Related to this are privacy considerations, which the ICA’s code of ethics does address. The document notes that “archivists should respect both access and privacy,” especially in the case of “those who had no voice in

9 International Council on Archives [hereafter ICA], *ICA: Strategic Direction 2008–2018* (July 2008), 1, accessed 27 January 2018, <https://www.ica.org/en/ica-strategic-direction-2008-2018>.

10 Ibid.

11 ICA, “Governance: Code of Ethics” (September 1996), accessed 27 January 2018, <https://www.ica.org/en/ica-code-ethics>.

12 Ibid.

the use or disposition of the materials.”¹³ What does this mean for archivists who want to respect these historically voiceless groups in their practice? Even a most basic level of guidance for professionals seeking to ensure that matters of privacy and access are tended to is not offered. The digital environment presents new opportunities for unanticipated information dissemination and breaches of security, and therefore efforts to protect records containing sensitive, private, or personal information become all the more essential.

Also surprising is the ICA's failure to address the digital shift in modern records' creation and preservation in its 2008–2018 strategic direction document. Meant to envision future activities and guide members through emerging professional practices, the document only addresses digital records in relation to their access and the potential for technology to promote greater dissemination of archival materials. Undoubtedly, the next strategic direction document produced by the ICA will necessarily have to address the complexities inherent in the arrangement, description, preservation of, and access to digital and born-digital records.

The SAA, based in the United States, serves the needs of more than 6,200 archival professionals, both in that country and abroad. The SAA's code of ethics was most recently revised in 2012, and although it does demonstrate a level of consideration in regard to digital records and their preservation, it still falls short of adequately addressing the complex nature of handling digital archival content and the resulting implications for ethical praxis. Based on an extensive list of core values, including accountability, advocacy, diversity, preservation, professionalism, and responsible custody, the SAA's code of ethics is meant to represent the “principles of the profession” and is intended to be an aspirational road sign in the archival pursuit of “[managing] trusted archival institutions.”¹⁴ The document acknowledges the need for archivists to take steps to protect digital records specifically, recognizes the importance of working alongside “communities of interest” to better inform “actions and decisions,” and advocates that archival professionals “promote the respectful use of culturally sensitive materials in their care” and “place access restrictions on collections to ensure

13 ICA, “Governance: Code of Ethics.”

14 Society of American Archivists [hereafter SAA], “About SAA – Who We Are: Code of Ethics for Archivists” (rev. January 2012), accessed 27 January 2018, <https://www2.archivists.org/statements/saa-core-values-statement-and-code-of-ethics>.

[their] privacy and confidentiality” as necessary.¹⁵ The SAA’s code of ethics also notes that one of the greatest challenges for professionals in the field is the need to “strive to balance the sometimes-competing interests of all stakeholders,” which presumably refers to the donors, creators, records’ subjects, and other parties involved in the genesis of each record; however, the document does not elaborate further on this point.¹⁶

The SAA provides supplementary material to professionals to inform and bolster the code of ethics document, namely, a series of case studies that address, to varying degrees of success, “professional judgment in carrying out basic archival tasks, protecting records’ authenticity, access to and use of records, professional relationships with donors or users, privacy issues, ensuring security against theft, and questions of trust in archivists’ conduct.”¹⁷ This is a necessary and commendable approach to highlighting the ethical components of archival work, and yet remains inadequate in its scope and breadth as only five case studies are currently posted, the majority of which relate to analog materials. Discussions on culturally sensitive materials, freedom of information requests, and intellectual or cultural property are all valid and should be addressed. The added dimensions of digital preservation and online access build further layers of complexity into these ethical discussions, yet the SAA’s code does not address these issues directly, nor does it identify “how to weigh [such] concerns when they are in conflict.”¹⁸

The ACA is a national non-profit body representing more than 600 archival professionals across Canada, and its mandate is to “provide leadership to and facilitate communication among persons engaged in the discipline and practice of archives;” “promote professional development and recognize education programs pertaining to archives;” “contribute to the development of standards of archival practice and professional conduct;” “advocate for archival concerns with law-makers and other decision-making bodies;” and “promote public knowledge and appreciation of archival work and the functions of archivists in

15 Ibid.

16 Ibid.

17 Ibid.

18 Antoinette E. Baker, “Ethical Considerations in Web 2.0 Archives.” *SLIS Student Research Journal* 1, no. 1 (2011): 2.

preserving evidence, cultural heritage, and identity.”¹⁹ The ACA recently revised its code of ethics, convening an Ethics Committee to review existing codes of ethics from other prominent archival organizations, and soliciting input from members across the country. The final version was released in October 2017. The revised code demonstrates a nuanced analysis of contemporary archival practice and conduct, outlined via nine key principles: context; preservation; access; value; sovereignty; knowledge; risk management; societal benefit; and personal integrity.

This document recognizes that the archival environment is not static and that decision-making is inherently layered with complexity. The revised code acknowledges that the principles it has outlined are “aspirational in intent ... [seeking] to represent an ideal to work toward.”²⁰ To further this point, the document also states that the revised code of ethics aims to support archival professionals in navigating and evaluating “where decisions relating to the management of records and archives are not clear cut.”²¹ This is an important statement, both symbolically and practically: it is no longer possible, especially in the digital era, to assert that archival processes must remain independent of a records’ context, and thus every decision is weighed with a value judgment, an assessment of how best to apply professional principles to foster ethical praxis.

Throughout the document, the impacts that the digital shift now places on archival practice are ever present. Acknowledgement of the fine balance between sustaining records’ value while being aware of the “resources needed to maintain and provide access to [these] records” is a consideration that is top of mind for many archival institutions facing chronic underfunding and increasing numbers of cost-heavy digital materials. In the same vein, the ACA’s code later states that archivists have a “fundamental duty” to ensure that records are “capable of being preserved through time in a usable and understandable manner.”²² This assertion compels archival professionals, who are increasingly faced with accessions of digital records, to ensure they are meeting the long-term digital

19 Association of Canadian Archivists [hereafter ACA], “About ACA,” accessed 27 January 2018, https://archivists.ca/sites/default/files/pdfs/about_aca/1%20-%20ic_cnca_form_4031-aca.pdf.

20 ACA, “ACA Code of Ethics and Professional Conduct,” (2017), 1, accessed 27 January 2018. https://archivists.ca/sites/default/files/website_files/policy/aca_code_of_ethics_final_october_2017.pdf.

21 Ibid.

22 Ibid., 2.

preservation standards for their holdings. The code also calls attention to the role of the archival community in advocating greater ethical practices around the “creation, transmission, use, maintenance, preservation, and accessibility of records” as these relate to existing laws and policies that may affect the records themselves.²³ This acts almost as a call to action, urging professionals to speak out in the face of ethically ambiguous behaviours. Archivists have, historically, proven to be less than outspoken in such circumstances, a topic that will be addressed further below. For this reason, it is encouraging that the ACA has indicated that archival professionals are in fact obliged to raise ethical considerations when concerns may arise.

The code also places the archivist as an agent in the life cycle of the record, recognizing that the archivist is responsible for documenting decisions related to the “selection, acquisition, description, deaccessioning, destruction, and provision of access to records.”²⁴ This duty to document signifies a perspectival shift in the perceived role of the archival professional – archivists are now compelled to take greater individual responsibility for their decision-making at each step, further reinforcing the context-driven nature of each action as it relates to the record. In the era of digital records, the documentation of decision-making processes becomes essential as choices regarding the allocation of resources and standards of preservation complicate archival practice more than ever. Nowhere does the digital shift seem to impact ethical considerations around archival holdings more than in relation to access, and the draft code highlights this tension between access and privacy. On the one hand, archivists are responsible for making records “available to the widest possible audience in a manner consistent with their content, source, and the statutory obligations” governing the work.²⁵ On the other hand, archival professionals must respect the rights of the records’ subjects and creators, and must be responsible for, and sensitive to, “the evolving contexts of individuals ... organizations [and] communities.”²⁶ How to reconcile these requirements in the digital era, when demands for greater access are only increasing? There are no clear answers, yet it is significant that the ACA’s draft code of ethics acknowledges this very real challenge.

²³ Ibid., 4.

²⁴ Ibid., 3.

²⁵ Ibid., 2.

²⁶ Ibid.

Despite some indication that the archival community has begun to recognize the impact of the digital era on ethical praxis, the unique considerations and nuanced debates relating to digital and born-digital records housed in archival institutions continue to be less than adequately addressed, leaving archival professionals to make difficult decisions on their own. Although Richard Cox would perhaps be encouraged by increasing dialogue around professional practice in the digital era, his assertion remains valid: archival professionals continue to be faced with important ethical decisions for which they must rely largely upon their own individual morality. Professional organizations continue to face ongoing constraints related to funding, as well as challenges in maintaining even a small degree of oversight across archival institutions; however, they remain the lone unifiers that draw together dispersed professionals. For this reason alone, the duty to set out and uphold sound ethical frameworks that are responsive to the challenges faced by today's professionals is clear.

We now turn to the question of the emerging ethical issues that archivists are facing in relation to processing, preserving, and providing access to digital records.

Ethics in Today's Archival Practice

This section will provide an overview of several ethical considerations that archivists today face when dealing with digital recordkeeping. It is by no means a complete assessment, but it is intended to provide a degree of context through which meaningful discourse may emerge on ethics in 21st-century archival practice. Record creation, selection, and preservation, government accountability, privacy, big data, large-scale archiving, and access rights will all be addressed.

Record Creation, Selection, and Preservation

Modern approaches to the challenge of digital preservation in the face of unprecedented record production and varying quality have begun to shift the focus on records to their point of creation: not only can this guide the selection and preservation process at the time of inception, but so too can it ensure adherence to preferred archival formats. Assessing records for their value at the time of, or even prior to, creation is a powerful method for tackling the enormous numbers of records archival professionals now encounter. Ensuring that the format, content,

and context of digital records are all of the highest archival quality increasingly requires an investment in developing relationships with individual donors and creators, in order for them to be informed of the standards and requirements for preserving their digital content.²⁷ However, for some archival practitioners, this presents an ethical dilemma “where it is possible for them to influence the creation of the archives, undermining the traditional view of appraisal and the archivist’s role that positions them at the end of the life of the records.”²⁸

Today, archivists must also necessarily consider the content quality and format of digital records being accessioned, which has the potential to “lead to contentious decisions not to preserve digital assets that do not meet quality standards.”²⁹ Compromising on the quality of image or text collections may increase workflow productivity, yet ultimately a “lack of attention to internal content quality may result in digital preservation repositories that protect bit streams whose intellectual content is of little long-term value.”³⁰ In their article “Stakeholders in the Selection of Digital Material for Preservation: Relationships, Responsibilities, and Influence,” Clare Ravenwood, Adrienne Muir, and Graham Matthews discuss the way in which format type often determines the likelihood of some material being selected for long-term preservation, as obscure formats may require more processing and resources prior to undergoing preservation actions.³¹ The authors note that format type may also be an indicator of the quality of a record’s contextual information and therefore overall historical value, and by extension “not collecting contextual information could affect the ability to find or use the material and also the ability to determine authenticity.”³² This relates to a foundational archival principle, as confidence in a record’s authenticity is essential for instances “where it is used as evidence, but particularly so for digital where it may be changed easily.”³³

27 Clare Ravenwood, Adrienne Muir, and Graham Matthews, “Stakeholders in the Selection of Digital Material for Preservation: Relationships, Responsibilities, and Influence,” *Collection Management* 40, no. 2 (2015): 83–110.

28 *Ibid.*, 103.

29 Paul Conway, “Preservation in the Age of Google: Digitization, Digital Preservation, and Dilemmas,” *Library Quarterly* 80, no. 1 (2010): 72.

30 *Ibid.*

31 Ravenwood et al., “Stakeholders in the Selection of Digital Material,” 102.

32 *Ibid.*

33 *Ibid.*

Archivists have always had to prioritize projects and make value judgments on records entering their institutions; however, the sheer number of records in the digital age, combined with the high cost of digital preservation, means that these difficult decisions are being made with far greater frequency. Sherri Berger of the California Digital Library sums up the modern-day challenge of managing digital records when she acknowledges two important truths: that “information artefacts will always move toward deterioration, and the process will be accelerated with use”; and that “there are not adequate resources – or storage space – to take the fullest preservation measures for and save every item.”³⁴ These distinct but related truths represent ethical implications for preservation activities as they relate to the process of selection. Through this discussion, Berger identifies three major ethical questions that face information professionals undertaking digital preservation efforts: “(1) Which resources will be saved (ethics of selection)? (2) What aspects of them will be retained (ethics of migration, reformatting, and essentially “treatment”)? and (3) Who will save them (ethics of responsibility)?”³⁵ In the face of the digital shift, tactics that may have worked for analog materials are now proving to be inadequate in addressing the preservation of digital and born-digital content. These are ethical decisions for which there are currently no clear professional guidelines, meaning that “cultural heritage organizations have some tough decisions to make about their preservation priorities and how to allocate limited resources in new directions.”³⁶

Berger’s concerns can be illustrated through the substantial challenge presented to today’s archival professionals in both the preservation of obsolete record formats and the elimination of personal or sensitive information that may remain, often undetected, in digital records. The process of disk imaging, borrowed from digital forensics, enables obsolete media to be copied bit for bit and transferred to more sustainable storage mediums.³⁷ This process is increasingly common in archival repositories, where computer-based records and the programs that run them are oftentimes on the verge of obsolescence at the time

34 Sherri Berger, “The Evolving Ethics of Preservation: Redefining Practices and Responsibilities in the 21st Century,” *Serials Librarian* 57, no. 1–2 (2009): 60.

35 *Ibid.*, 64.

36 Conway, “Preservation in the Age of Google,” 75.

37 Ben Goldman and Timothy D. Pyatt, “Security Without Obscurity: Managing Personally Identifiable Information in Born-Digital Archives,” *Library & Archival Security* 26, no. 1–2 (2013): 43.

of accession. Disk imaging, therefore, can be a powerful tool in retaining records by migrating them to a more sustainable storage environment. This process can be seen to fall short, however, in its inability to present records in their original digital environments, and as a result some archivists have successfully maintained “antique” software applications or are “emulating ... operating systems to render files as they originally appeared at the time of their creation.”³⁸ In an archival sense, emulation would appear to provide the most unencumbered access to digital records in their original state; and yet this resource-intensive process, which not only requires the hardware but also the long-term care of antique machines, means that only the most well-funded institutions are able to invest in digital emulation environments. Thus, for the vast majority of archival institutions, the capture and migration of obsolete digital records remains the only option.

Once a record is captured, there remain ambiguities around the types of personal information that donors, and even perhaps archivist themselves, may be unaware are still accessible. Files and folders on a hard drive are the most obvious carriers of personal information; however, “such media might also contain hidden deleted files that persist and are recoverable, unbeknownst to their creators.”³⁹ These “hidden files,” which can be discovered using forensic methodologies, may appear in the form of login or user account information, web-browsing caches, online activity, and even previously deleted files. Access could potentially reveal “credit card information, tax records, medical records, and social security numbers or sensitive information that creators may wish to have restricted.”⁴⁰ In one example from Emory University in Atlanta, the acquisition of author Salman Rushdie’s papers revealed that despite comprehensive efforts to clear personal information related to Rushdie’s friends and family, staff were simply unable to devote the time or resources necessary to remove this information adequately enough to facilitate the level of access they had hoped.⁴¹ Although this is only one example, it nevertheless effectively highlights the ongoing challenge archivists face in balancing values of access and privacy while functioning in a scarcely resourced environment.

38 Ibid.

39 Ibid., 44.

40 Ibid.

41 Ibid.

Government Accountability

Professional advocacy among archival professionals continues to be limited, even in the face of growing ethical dilemmas as a result of the digital shift. In their article “A Different Kind of Archival Security,” Richard J. Cox, Abigail Middleton, and Rachel Grove Rohrbaugh argue that archivists, despite their strong reaction to “perceived threats to professional interests,” have been historically weak in regard to defending core professional values.⁴² They highlight the missing White House emails as one such example: despite the disappearance of millions of emails produced by the George W. Bush administration, records expressly protected under federal regulation, there was near total silence on the part of the archival community in response. The Bush administration was “certainly not the first ... to have difficulty in preserving its own email,” the authors point out, and in fact “every presidential administration that has used electronic mail ... has lost, attempted to destroy, or somehow manipulated the resultant records.”⁴³ Archivists and their professional associations can provide a unique perspective on these scandals since they “have been grappling with the ethical challenges of electronic records, not to mention the records themselves, for decades.”⁴⁴ And yet, the authors assert, “the archival profession appears [largely] content to wait for its expertise to be recognized and its opinions solicited by society at large.”⁴⁵ This is an untenable situation, for in order for archivists to effectively advocate for the historical records they are charged with protecting, “they must be willing, if necessary, to raise their voices within ongoing social, cultural, and political discussions.”⁴⁶ The authors are clear that such breaches by successive governments represent a degree of hostility toward the ideals of freedom of information and governmental transparency, and that archivists have a professional duty to remind the public that democratic values are undermined every time such incidents occur. It can be argued that this is as much a professional duty as a moral one – a responsibility to call out ethically ambiguous behaviour by our highest governing bodies in order to preserve the

42 Richard J. Cox, Abigail Middleton, Rachel Grove Rohrbaugh, and Daniel Scholzen, “A Different Kind of Archival Security: Three Cases,” *Library & Archival Security* 22, no. 1 (2009): 46.

43 *Ibid.*, 49.

44 *Ibid.*, 50.

45 *Ibid.*

46 *Ibid.*, 53.

integrity of the historical record. Yet challenges remain, “posed by the weak authority or will of archivists to withstand political, business, economic, and other agendas requiring the destruction (or non-creation) of records.”⁴⁷

The ACA recently took a step in the right direction in this regard, indicating the Canadian archival community’s willingness to speak out on issues pertinent to the documentary heritage of the country. In response to a 25 May 2017 Canadian Broadcasting Corporation (CBC) investigation into the existence of “secret archives” held by the federal government, the ACA added its voice to that of the Canadian Historical Association by imploring the government to include “information management provisions for the declassification of protected and classified records,” thereby ensuring “that history can be documented on the basis of the written evidence.”⁴⁸ In addition to advocating improved records management practices at the highest levels of government administration, the ACA also took the opportunity to direct the conversation to some of the most pressing issues facing the Canadian archival community today. Injecting nuance into the “secret archives” discussion, the ACA posits that this reality is as likely to be a result of “the generally poor quality of the support given to the records management function in many government organizations” as it is to be some sort of cover-up.⁴⁹ Limited resources, low prioritization of records management and archival functions, and a lack of advocacy at the most senior levels have translated into inefficiency, and even utter paralysis, across departments at every level of government.

The ACA goes on to suggest that, in addition to the continued investigation into the government’s “secret archives,” the CBC should consider assessing the government’s ability to “manage the records they need to meet their [current and future] business accountability requirements.”⁵⁰ The letter questions the government’s capacity to oversee the increasing numbers of incoming digital records “that may never become historical records tomorrow if they are not properly created and managed ... over the long term.”⁵¹ The dual pressures of rapid tech-

47 Ibid.

48 ACA, Letter to the Canadian Broadcasting Corporation, 5 June 2017. <https://archivists.ca/content/aca-and-aaq-joint-response-cbcs-may-25th-news-posting>.

49 Ibid.

50 Ibid.

51 Ibid.

nological change and inadequate resources combine to pose a “substantial challenge” to Canadians’ ability to access their documentary heritage, both today and in the future.⁵²

Elsewhere, governmental regulations in regard to archival records and data protection have also complicated professional practice and have added to the ethical complexity of archival work. In January 2012, the European Commission put forth a proposal on the General Data Protection Regulation, intended to address “the current fragmentation of personal data protection in the Union” and to enable European citizens and businesses to fully access, and benefit from, the digital economy.⁵³ These regulations are geared toward ensuring private citizens’ rights in the web-based era, yet when the draft regulations were released in 2015, outcry from various groups concerned with protecting the historical record were expressed worldwide.⁵⁴

In a letter to the European Commission’s Article 29 Working Party, InterPARES Director Luciana Duranti indicated that provisions relating to a data subject’s right to object to processing, the potential for destruction of personal data, and highly ambiguous terminology meant that the regulation had “the potential to seriously restrict the ability of the archival profession to fulfill its functions.”⁵⁵ The regulation also included provisions that, owing to broad language, could “unintentionally [threaten] Holocaust research” as archivists and archival institutions may continue to be held liable should records’ subjects object to the processing of records pertaining to them.⁵⁶

In October 2015, Robert Williams, head of the International Holocaust Remembrance Alliance’s Archival Access Committee, indicated that the IHRA

52 Ibid.

53 EUR-Lex: Access to European Union Law, “Proposal for a Regulation of the European Parliament and of the Council on the Protection of Individuals with Regard to the Processing of Personal Data and on the Free Movement of Such Data (General Data Protection Regulation),” /*COM (2012) 11 final, 2012/0011 (COD)*/, accessed 27 January 2018, <http://eur-lex.europa.eu/legal-content/EN/ALL/?uri=celex:52012PC0011>.

54 International Holocaust Remembrance Alliance (IHRA), “Briefing Paper on the Proposed General Data Protection Regulation,” 11 June 2015, https://www.holocaustremembrance.com/sites/default/files/mywp_archives_briefing_paper_0.pdf; InterPARES Trust, letter from Project Director Luciana Duranti to European Commission Article 29 Working Party, “RE: Draft General Data Protection Regulation,” 15 January 2015.

55 InterPARES Trust, letter from Project Director.

56 Ibid.

had already begun to receive reports that researchers had been denied access to records based on the regulation, despite its not yet having been adopted at that time.⁵⁷ Additional concerns relate to the role of several European Union (EU) states as signatories to the Declaration of the Stockholm International Forum on the Holocaust, an agreement requiring members to “take all necessary steps to facilitate the opening of archives in order to ensure that all documents bearing on the Holocaust are available to researchers.”⁵⁸ Now that the EU has passed the regulation, the conflicting responsibilities of signatories may continue to have an impact on how resources are accessed and research carried out. European archivists are left to navigate the competing and conflicting legal directives set out by the EU’s regulations and their own national and institutional policies.

Privacy, Big Data, and Large-Scale Archiving

Discourse on big data has arguably reached its peak in the public arena: web users are increasingly aware that information is being gathered via governmental and private analytics tools, but they may not understand the full implications of this in an ever more connected web environment.⁵⁹ Scholar Antoinette Baker equates these users to “blind donors” who are cognizant of the temporary access to personal information that web tools may have but who may be entirely unaware that their postings and user data “will be preserved, collected, and studied, perhaps even past their death.”⁶⁰ This data is culturally and historically significant, representing a snapshot of 21st-century life, and therefore merits long-term preservation. Baker has, however, indicated the dichotomy between archivists’ responsibility to protect and preserve the online historical record and the digital shift increasing demand for access to private and potentially sensitive records.⁶¹ In the case of large corporate donations of private records, such as the Twitter archive at the Library of Congress, Baker warns that such corporate donors “may have little incentive to create protections for third-party privacy,

57 Sam Sokol, “Could New European Digital Privacy Laws Hurt Holocaust Research?” *Jerusalem Post*, 27 October 2015, accessed 27 January 2018, <http://www.jpost.com/Diaspora/Could-new-European-digital-privacy-laws-hurt-Holocaust-research-430201>.

58 Ibid.

59 Baker, “Ethical Considerations in Web 2.0 Archives,” 4.

60 Ibid., 7.

61 Ibid., 3.

and when they do ... they are doing so to protect their corporate interests rather than blind donor interests.”⁶²

The Twitter archive offers an excellent case study through which to examine archival ethics. With more than 330 million active users, Twitter “represents a robust social network ... displaying complex arrangements of strong and weak social ties, rising and falling influence of particular nodes, and the trending patterns of particular topics over time.”⁶³ In April 2010, the Library of Congress and Twitter “announced an agreement providing the Library a digital archive of all public tweets ... from March 2006,” with the company agreeing “to provide the Library all future public tweets on an ongoing basis.”⁶⁴ Preserving the Twitter archive is an important endeavour in documenting the history of emerging online communities and forms of communication, but such a large-scale project presents particular implications for privacy and access. For example, “since content posted to Twitter often includes pornographic, controversial, copyright-protected, confidential, and perhaps even illegal content, the Library might feel compelled to filter or remove certain tweets from the Archive,” despite this being at odds with the broader professional principles around intellectual freedom.⁶⁵ Additionally, the degree of private data that tweets contain, in the form of contact information or personally identifiable details, has the potential to pose “privacy threats to users unaware of the fully public nature of their activity or its possible harvesting by researchers.”⁶⁶ Upon announcing the partnership, many Twitter users and privacy advocates expressed surprise and frustration regarding the “newfound permanence of tweets” as users will be unable to opt out of the repository and will be unable to delete individual tweets.⁶⁷ All of this is to say nothing of the physical work of digital preservation itself and the intensive hardware, personnel, and security standards that will need to be implemented and sustained long-term, the details of which remain unclear.

62 Ibid., 7.

63 Michael Zimmer, “The Twitter Archive at the Library of Congress: Challenges for Information Practice and Information Policy,” *First Monday* 20, no. 7 (6 July 2015), accessed 27 January 2018, <http://firstmonday.org/article/view/5619/4653>.

64 Ibid.

65 Ibid.

66 Ibid.

67 Ibid.

The Internet age has ushered in an era of unprecedented demand for easy, instant access to information – nowhere is this more clear than in the almost total dominance of Google: in Europe alone, its market share is greater than 90 percent.⁶⁸ The public has become accustomed to the path of least resistance in regard to information seeking, with the need for faster and more intuitive search capabilities spurring on the development of increasingly more complex algorithms and data-monitoring tools. In this way, Google has come to represent an information storehouse free of human mediation, leaving information professionals oftentimes “in the way.”⁶⁹

As Paul Conway, an associate professor at the University of Michigan’s School of Information, states, “Google is a metaphor for a particular form of digital information ... that is simultaneously fixed and fluid yet decontextualized for use and reuse in ways that may in no way represent the original intent of the creator.”⁷⁰ This represents a marked shift in traditional information seeking and sharing, and signifies the potential for non-digital content to become increasingly less valued in the public imaginary. Conway states that we are at a point where “large-scale information providers are competitors with the cultural heritage community in defining what preservation means in the future,” and that those working in the cultural heritage sector must guard against the tendency to favour “digitization for preservation” over “digital preservation” when it leads to the undermining of the long-term access to, and stability of, digital records.⁷¹

The public has come to associate “preservation” with the mere storage of information in digital format and is not well versed in complex conversations around digital preservation to do with resources and expertise.⁷² Expectations around access to, and availability of, archival materials have been significantly influenced by this trend, as have traditional archival practices regarding access more generally. Scholar Jane Zhang notes the emerging conflict between archival context and the representation of digital content in archival systems, unsettling the professional balance “that archivists rely on to perform their

68 Dirk Lewandowski, “Living in a World of Biased Search Engines,” *Online Information Review* 39, no. 3 (2015): 278–80.

69 Conway, “Preservation in the Age of Google,” 63.

70 Ibid.

71 Ibid., 64

72 Berger, “The Evolving Ethics of Preservation,” 63.

dual obligations of preserving and protecting the authenticity and integrity of their holdings and promoting the use of records as a fundamental purpose of the keeping of archives.”⁷³ This conflict plays out in the form of access to online archival materials at the item level, with the finding aid increasingly relegated to being “an external link to provide users with additional background information if needed, [but] which could easily be bypassed, ignored, or simply unnoticed.”⁷⁴ Zhang believes this presents an ethical dilemma because it alters representations of the fundamental relationship between records (“the archival bond”) and obscures the archival context of the records at the fonds level.⁷⁵ In response to changing expectations and realities, therefore, Zhang suggests a rethinking of archival practice as a whole:

To obtain the status of relevancy in the digital world, archivists cannot afford “all context and no content” or “more context and less content” approach. The issue may become so crucial with an ethical dimension that requires careful deliberation to maintain the balance – going to the extreme of either direction would be doing harm to the profession. There would be no archival profession without an appropriate control of archival context, and there would be no future of archival profession if no effective effort could be made to optimize access to digital content in digital archival collections. It is the ethical responsibilities [sic] of archivists to provide users with easy access to information from their holdings and at the same time maintain the public trust for the authenticity of information they provide for users.⁷⁶

Access Rights

A final ethical consideration for archival professionals, particularly those with digital collections containing content from historically maligned groups, relates to access protocols and the rights of these groups to consultation on the records pertaining to them. Scholar Kate Hennessy asks, in relation to the increased

73 Jane Zhang, “Archival Context, Digital Content, and the Ethics of Digital Archival Representation,” *Knowledge Organization* 39, no. 5 (2012): 335.

74 *Ibid.*, 336.

75 *Ibid.*

76 *Ibid.*, 338.

visibility and availability of collections in the online environment, “who has the right to determine how digital cultural heritage should be restricted or circulated?”⁷⁷ Digital heritage materials have the potential to increase communication and inter-cultural understanding between groups; however, these materials “can also be uploaded to the Internet for instantaneous distribution, circulation and unrestricted access, making otherwise privately managed tangible and intangible culture public.”⁷⁸ Balancing the needs of all parties, particularly those who have faced repeated marginalization at the hands of colonial or patriarchal social frameworks, should be an absolute priority for today’s archival professionals. In the case of Indigenous communities, for instance, “if digitization of ethnographic documentation precedes a community’s opportunity to assess the collections and possibly apply restrictions, then sensitive cultural information might be distributed without their consent,” leading not only to a loss of trust, but also a diminished professional integrity.⁷⁹ Archivists must stand in defence of those materials that represent historically maligned and socially marginalized groups in their holdings, doing so through an ongoing iterative approach to communication, consultation, and collaboration. Only in this way will the digital environment reflect the true needs and desires of records’ subjects.

Conclusion

Where do these discussions leave us? At a time when it is clear that professional archival associations have struggled to reflect the impacts of the digital shift in their codes of ethics, and with individual archivists left to tackle the myriad challenges of handling digital and born-digital content, a new approach is needed now more than ever.

First things first: professional associations must continue to revisit and revise their codes of ethics in order to support the work of today’s archivists in comprehensively addressing the ethical issues that have arisen in relation to digital and born-digital recordkeeping. In its endeavour to draft a new code, the ACA demonstrates a willingness to address contemporary challenges faced by archival

77 Kate Hennessy, “Virtual Repatriation and Digital Cultural Heritage: The Ethics of Managing Online Collections,” *Anthropology News* 50, no. 4 (2009): 5.

78 Ibid.

79 Ibid., 6.

professionals in the digital era. Taking this one step further, by providing more nuanced analyses of ethical challenges as they relate to digital records through the use of case studies, or via facilitation of an open forum for dialogue, will inspire professionals to engage with difficult decisions from a place of empowerment. Related to this, calls for greater individual accountability in decision-making will encourage archivists to reflect upon, and take greater responsibility for, the impact their actions may have on the historical record. Continuing such calls for archival professionals to document their activities acknowledges the agency inherent in the work, and will only serve to build upon the framework of ethical practices that archivists will increasingly refer to as new ethical considerations reveal themselves in our digital future.

Secondly, speaking out on significant breaches of trust in regard to the historical record will serve to raise archivists' professional profile and create greater public awareness around archival work. Richard Cox has discussed the responsibility of professional associations to "issue informed statements expressing an opinion or assessment of a situation involving the mismanagement, destruction, or obstruction of archival materials," as well as the possibility of developing a process for investigating ethics violations.⁸⁰ The ACA's code of ethics alludes to the necessity for archivists to strike a balance "between the needs of an open and democratic society" and the needs of "communities represented in records or archival holdings" in order to ensure the "ethical management" of archival materials.⁸¹ Although this statement is intended to refer to culturally sensitive materials specifically, its relevance can undoubtedly be expanded to the ethical management of archival holdings more generally. It is therefore critical that archival professionals begin to take a stand, both regionally and nationally, in the face of ethically ambiguous behaviours as they relate to the historical record.

In regard to preservation, it will become increasingly necessary to invest in relationships with donors and creators, as well as records' subjects, in order to communicate the importance of standards for both format and contextual data. As well, engaging with "local informants and enthusiasts [may] increase the availability of material to choose from as they alert [archival professionals] to local material that may be collectable or at risk."⁸² Communication across institutions

80 Cox, "Rethinking Archival Ethics."

81 ACA, "ACA Code of Ethics and Professional Conduct," (2017), 2.

82 Ravenwood et al., "Stakeholders in the Selection of Digital Material," 101.

will also support decision-making and ensure that ethical considerations can be crowdsourced to find the most suitable solutions.

Clear guidance in the form of progressive associations and institutional leadership is a hallmark of strong professional practice, and archivists must strive for the highest ethical conduct, rooted in formalized standards and moral frameworks. This is the next phase in the life cycle of archival practice and is perhaps one of the most challenging the profession has yet faced, as archivists are forced to look inward at a time when their actions and decisions are on display more than ever. Ethical considerations in archives, Richard Cox states, “have become a much more significant topic than anyone could have ever predicted,” and should we fail to take a stand and actively participate in the formation of a strong ethical framework, archives, and by extension society’s cultural legacy, will surely be the poorer for it.⁸³

83 Cox, “Rethinking Archival Ethics.”

BIOGRAPHY Alyssa Hamer is the Manager of Research & Development with the First Nations Technology Council. She is a recent graduate of the dual MAS and MLIS program at the University of British Columbia. In her time at UBC, Alyssa completed the First Nations Curriculum Concentration and was fortunate to gain valuable experience in several Indigenous and cultural organizations. She is passionate about information governance and access protocols around cultural knowledge, and is a keen follower of the open movement as it relates to education and scholarship. Alyssa is honoured to live and work as a settler on the traditional and unceded territories of the Musqueam, Squamish, and Tsleil-Waututh peoples.