

Opening Access to Works in the Public Domain at Yale University

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William Blake, 1757-1830, *British Jerusalem, Plate I, Frontispiece, 1804 to 1820*. Relief etching printed in aquatint with red and black ink, watercolor, and gold on moderately thick, smooth, cream-colored paper. Yale Center for British Art, Paul Mellon Collection.

Opening Access to Works in the Public Domain at Yale University

Presentation prepared by Melissa Gold Fournier

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for the Midwinter Virtual Meeting of the Image Resources Interest Group (IRIG)
of the Association of College and Research Libraries (ACRL)

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Thank you for this opportunity to speak with you about the Open Access Policy at Yale University.

As part of this presentation, I would like to cover

- How and why the Yale policy is different
- A brief history of how Yale arrived at today's policy, including
 - movements in the field
 - internal history
 - arguments made in favor of adoption at Yale

I will also explore some of the implications of the policy, including challenges we've faced in implementation, as well as provide a brief picture of the technical and policy implementation at the Yale Center for British Art in particular.

What is Yale University's Open Access Policy?

General Principle:

The preservation, transmission, and advancement of knowledge in the digital age are promoted by the creative use and reuse of digitized content for research, teaching, learning, and creative activities. The goal of digitization is to enhance access to the collections in Yale's museums, archives, and libraries for students, faculty, and the world.

To this end, Yale will make digital copies of unrestricted public domain collections available for use without limitations through the University's electronic interfaces.

For the full policy, see <http://odai.yale.edu/open-access-collections>

What is Yale University's Open Access Policy?

In short, Yale's University's Open Access Policy, announced in 2011, provides license- and royalty-free access to digital images of public domain materials in all Yale collections. Open Access materials may be used by anyone for any purpose.

A Brief Timeline

Editorials, Policies and Studies

1990's – College Art Association statement (fees having a profound effect on scholarship, arguments for fair use)

2004 – Mellon Foundation Study on Reproduction charging models & rights policy for digital images in American art museums

2005 – Ken Hamma in D-Lib, “Public Domain Art in an Age of Easier Mechanical Reproducibility

2009 – Max Planck Institute Report, “Best Practices for Access to Images: Recommendations for Scholarly Use and Publishing”

The Yale policy follows and grows out of the changing landscape as more and more cultural institutions crossed the digital divide in the 1990's. As institutions switched to digital workflows, models and motivations for creating and distributing images of cultural works changed. And, of course, there was the *Bridgeman v. Corel* decision in 1999.

The College Art Association statement in the 1990's noted that imaging fees had a profound effect on scholarship, and argued for fair use more broadly.

The Mellon Foundation study on reproduction charging models & rights policy for digital images in American art museums, published in 2004, while avoiding addressing issues of works in the public domain specifically, found by and large that imaging rights models were not profitable and perhaps antagonistic, and recommended that museums review their priorities in providing imaging services.

The Max Planck Institute's report “Best Practices for Access to Images: Recommendations for Scholarly Use and Publishing” published in 1999, was a set of even-handed recommendation directed at cultural heritage institutions and scholars alike. It drew attention to the distinction between physical property and intellectual property, and recommended open access for educational purposes, and that reproduction fees should be waived for scholarly use.

Ken Hamma's Article in D-Lib in 2005 that addressed the elephant in the room since *Bridgeman v. Corel* : with changing paradigms, and in the face of a unprofitable business model, why continue to assert rights in reproduction images of public domain works?

A Brief Timeline, continued...

Movements/Response in the Museum Community

2007 – Metropolitan Museum of Art / ARTstor Images for Academic Publishing

2007 – Victoria and Albert (educational/scholarly use)
British Museum

2011 – LACMA

2011 – Walters Art Museum, Baltimore

Following is a brief synopsis of responses in the museum community to the changing landscape over the last few years.

In 2007, the Metropolitan Museum of Art sought to provide images at no cost to scholars via ARTstor's existing infrastructure, resulting in the Image for Academic Publishing service.

Also in 2007, the Victoria and Albert widened access to its images for educational and scholarly use – at 300 dpi up to A5 sized reproduction (approx US half-page.) The British Museum also widened access for scholarly use around this same time.

In early 2011, LACMA launched an online image library with unrestricted access to 2,000 public domain images (<http://www.lacma.org/sites/default/files/32411-LACMAImageLibrary.pdf>)

Also in 2011, the Walters Art Museum, Baltimore, launched a redesigned website providing more than 10,000 images under a Creative Commons Attribution-Non-Commercial-Share Alike license.

(The V&A, BM, and LACMA continue to assert copyright in their images through the terms and conditions on their websites.)

Yale University Open Access Policy, Continued....

Copyright: Yale University fully supports the protection of intellectual property and is committed to complying with and strictly adhering to all applicable copyright law.

Privacy: Yale University respects the right to privacy of individuals and groups and is committed to complying with and strictly adhering to all applicable legal requirements in protecting that privacy.

Donor Restriction: Yale University is committed to strictly adhering to provisions embodied in agreements with donors of collections.

Yale Marks/Name: The use of the Yale name or trademarks for any purpose – other than standard source citation (see Acknowledgement below) – requires the prior approval of the Office of the Vice President and Secretary, Contact information for this office may be found at:
<http://www.yale.edu/licensing/general.html>

Acknowledgement: Users are asked to attribute the work in the manner specified by the applicable museum, library, or archive guidelines, without suggestion of endorsement.

The full Yale policy contains important caveats about protecting works under copyright, rights of privacy and other restrictions, and use of the Yale trademark.

But looking at the policy carefully, it is different from the other important previous and contemporary movements toward open access outlined on the previous slide. The Yale policy is unique in that its scope is not restricted by collection nor by use.

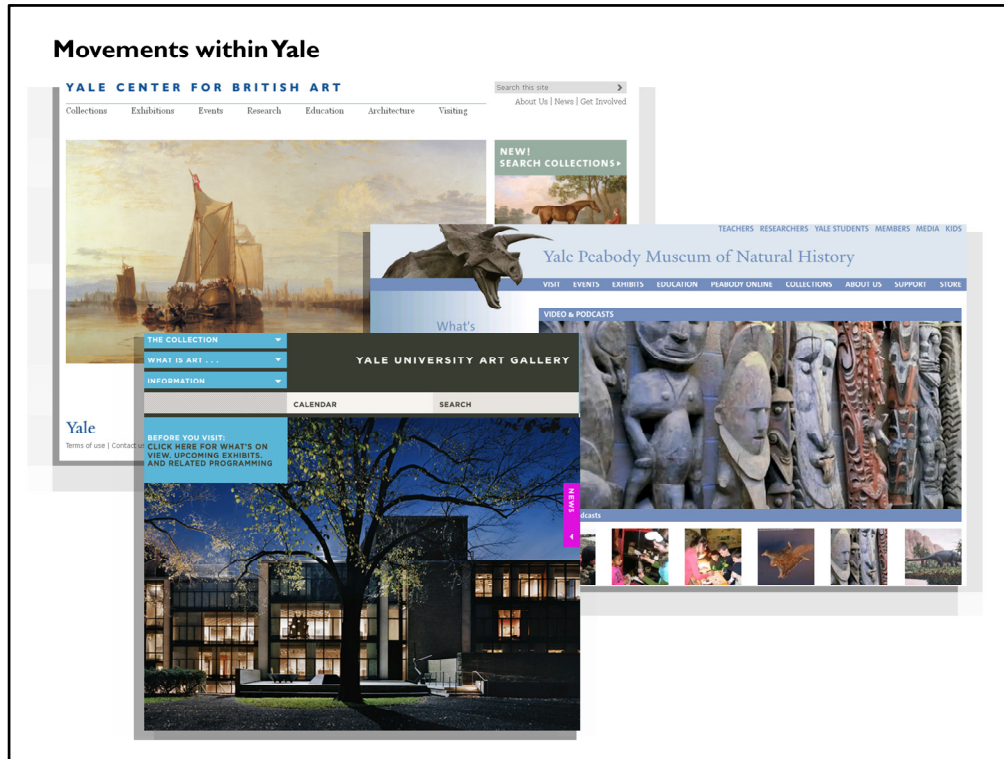
What makes Yale's policy different? (and why?)



Usage of Yale's digital representations of works in the public domain is NOT limited to scholarly purposes only. Any use of public domain material is permitted, including commercial use. If material is believed to be in the public domain, it may be used by anyone for any purpose.

Nor is the policy restricted only to works that were digitized by a particular grant, or restricted to a certain size of image or limit on print run. Yale's policy applies to all cultural heritage material in the public domain, not just to particular repositories or particular collections within repositories.

Unlike BM, V&A, Walters or LACMA, there is no longer a license requirement. The Yale Center for British Art, for example, now simply affirms the public domain status of images in which it once asserted copyright.

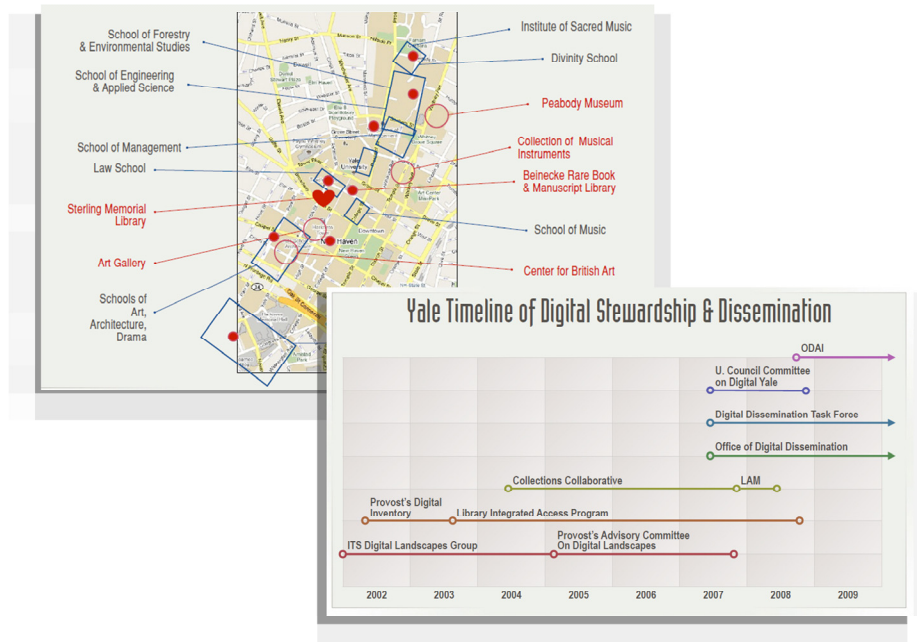


I'd like to explore some of the reasons (from my perspective as a museum employee at Yale) that the Yale Open Access policy developed in the way that it did.

For one, the art museums at Yale were eager to reduce barriers to their images long before the announcement of any formal policy. The Yale Center for British Art, like many other museums, had a sliding scale schedule of photography and reproduction fees for many years. Although the Center charged fees for material and service to recoup costs in some way, permission fees were almost universally waived as the vast majority of requests received were scholarly in nature. In the late 1990's the charges for material and service were cut to a bare minimum. As the Center moved toward presenting its collections online in 2011, we benefitted greatly from the changing attitudes toward open access in the field, as well as from our work with Ken Hamma, who has worked with the Center and across Yale.

Similarly, the Yale University Art Gallery maintained a sliding scale of material and permission fees, but began to provide images for education and scholarly use free of any charge across the board in 2008. In 2009, as both museums produced more digital imagery and began to work on collaborative projects to manage their digital assets, the Art Gallery approached the Center to discuss offering images for scholarly publication free of any charge at all – licensing, material or service – and how that might be accomplished.

Collaboration

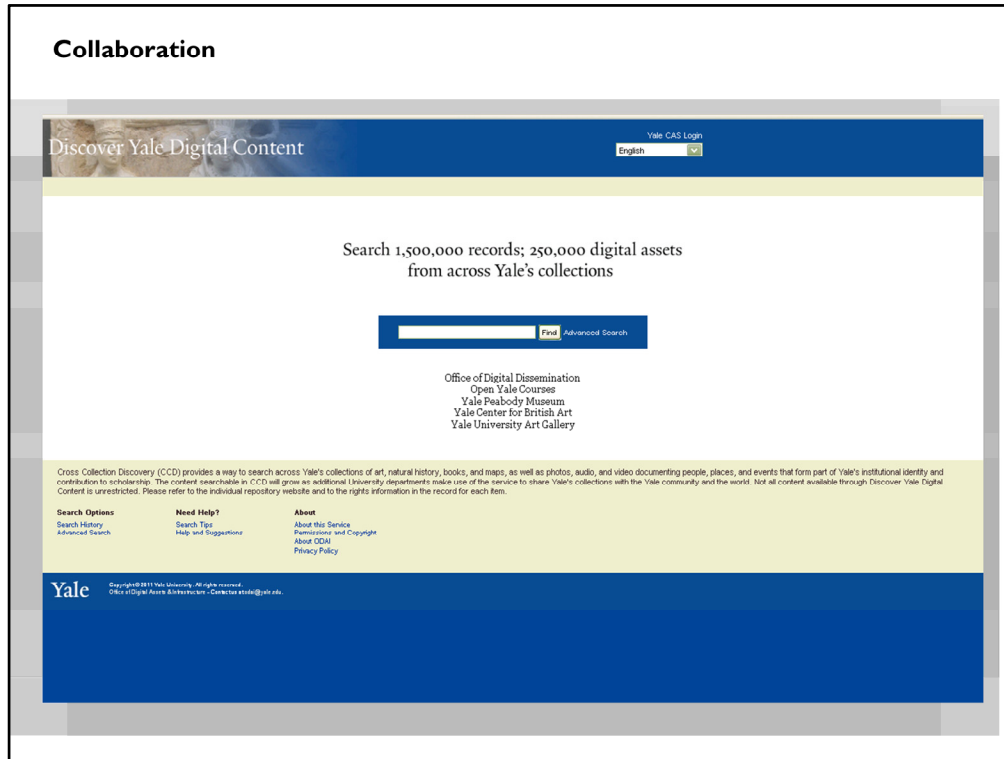


Other movements were also afoot in the university more broadly. As all corners of the Yale campus crossed the digital divide, it was imperative that we learn to share with each other in order to share with the world.

Having worked at the University since the late 1990's I can only describe the changes in the ways that the cultural heritage repositories work with one another, with an emphasis on the past five years, as a profound cultural shift. The museums and libraries at Yale now communicate and collaborate on projects in ways and with a regularity that was simply unimaginable to many of us several years ago.

Thinking back, many of you may remember reading a report issued by OCLC in late 2007 addressing library and museum collaboration entitled "Beyond the Silos of the LAMS." This event stands out in my mind because of its timing and its conclusions. In October 2007 sixteen representatives from libraries, archives, and museums across Yale were gathered for a day-long meeting at the Beinecke Rare Book and Manuscript Library, facilitated by Günter Waibel and Ricky Erway for RLG / OCLC, one of several meetings that were part of the LAMS report. The goal of the meeting was to identify collaborative and sustainable opportunities between our repositories.

In our meeting, one of the recommendations that the participants reached was the need for the creation of a "Yale Federation of Collections" to help support a more strategic and cooperative approach across collection repositories across Yale.



Yale's Office of Digital Assets and Infrastructure was created in 2008 following the recommendation of two high level university task forces, not long after the LAM discussion, and has helped facilitate many of the museum / library / department collaborations across campus.

ODAI projects include the Yale Digital Commons (or YDC), which is a campus-wide collaboration to develop shared infrastructure for Yale's expansive digital asset collections. The YDC encompasses, among other projects, Yale's Media Manager, which is a shared digital asset management system, and the Discover Yale Digital Content cross collection search service. A number of committees and working groups, drawing from across the University, also meet under ODAI's umbrella.

One of those groups is the ODAI Advisory Committee, which brings together a unique convergence of perspectives around digital content policy. The members of this committee, among them the directors of the Yale museums and libraries, recognized the role open access to images of cultural heritage material could and should play in the mission of the University.

In this environment, the Open Access policy began to incubate and develop from individual departmental initiative to a university-wide decision. The issue of open access was discussed extensively in the Advisory Committee with the provost, secretary (licensing), VP and general counsel, the directors, CIO, and the director of YUP. All perspectives were aired and consensus arrived at through several discussions and mediations, and once agreed upon, recommended to the officers of the University.

The Adoption of the Policy

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Digital Images of Yale's Vast Cultural Collections Now Available for Free

May 10, 2011



George Stubbs, *Zebra*, 1763, oil on canvas, Yale Center for British Art, Paul Mellon Collection. From the collections of Yale University.

Scholars, artists and other individuals around the world will enjoy free access to online images of millions of objects housed in Yale's museums, archives, and libraries thanks to a new "Open Access" policy that the University announced today. Yale is the first Ivy League university to make its collections accessible in this fashion, and already more than 250,000 images are available through a newly developed [collective catalog](#).

The goal of the new policy is to make high quality digital images of Yale's vast cultural heritage collections in the public domain openly and freely available.

As works in these collections become digitized, the museums and libraries will make those images that are in the public domain freely accessible. In a departure from established convention, no license will be required for the transmission of the images and no limitations will be imposed on their use. The result is that scholars, artists, students, and citizens the world over will be able to use these collections for study, research, and creative inspiration.

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A sampling of digitized images from Yale's collections

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Jock Reynolds, Director of the Yale University Art Gallery; Amy Meyers, Director of the Yale Center for British Art; Derek Briggs, Director of the Peabody Museum at Yale; Frank Turner, late director of the Yale University Library, and Meg Bellinger, Director of ODAI, issued a joint memo in support of an Open Access policy in the fall of 2010, which led to the University-wide endorsement of an Open Access policy for digital representation of works in Yale collections in the public domain in 2011.

The Director's memo outlined four drivers for the adoption of a University wide open access policy...

Policy Drivers

University Mission

Leadership for Cultural Heritage Institutions

Financial Considerations

Legal / Unenforceable Restrictions

The first driver was the mission of the University itself: “Yale’s mission is to advance, disseminate, and preserve knowledge. We strive to educate leaders in the service of society.”

The Directors noted that limiting access to the University’s “collections in the digital world would serve only to circumscribe the quality of research, education, and creative endeavors that are the core of the University’s mission.”

Our Director has also stressed the importance of ensuring access to public domain works in support of creativity, noting that the process of new works building on and transforming past works is a not insignificant model of cultural evolution.

The second driver was thought leadership.

The Directors recognized that the academic and cultural heritage communities were ready to embrace new policies, and that Yale had an opportunity to be a leader in this effort.

The third driver was financial consideration.

The Directors acknowledged that the cost of managing intellectual property, maintaining payment structures, and enforcing contractual restrictions almost always outweighs actual revenue.

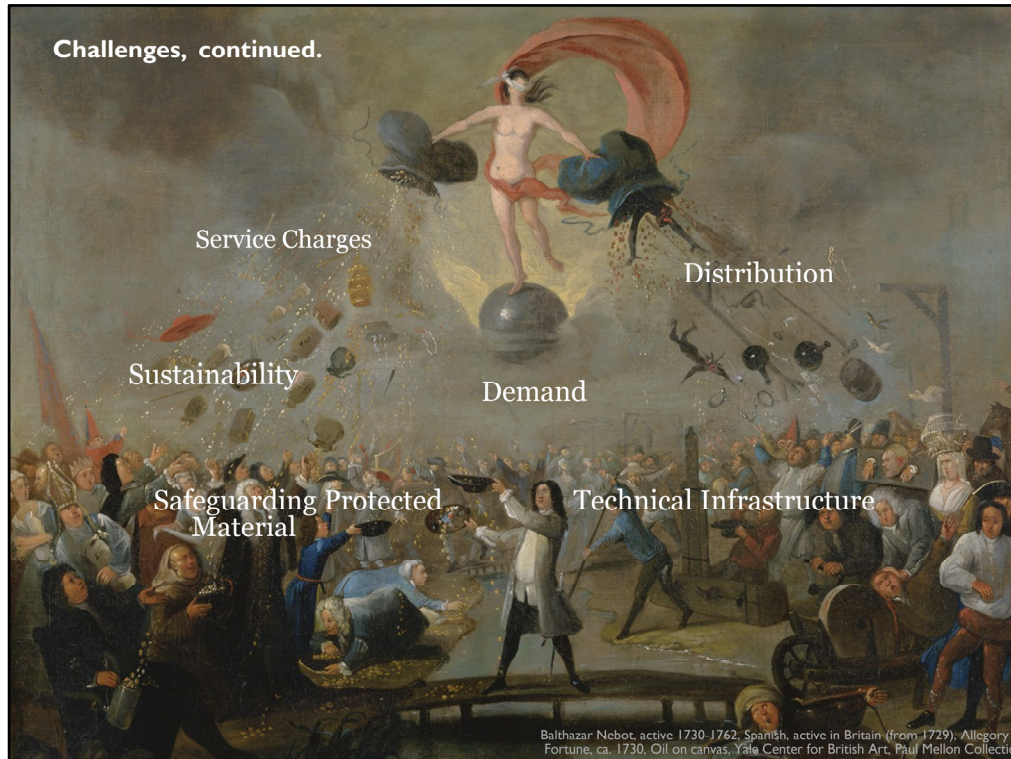
And finally, legal considerations.

The Directors acknowledged that digitizing public domain content may not in and of itself add enough unique creative value to warrant an attempt to copyright, that enforcing copyright is costly, and that attempts to restrict access to public domain cultural heritage material through licensing provisions may be neither legally enforceable nor ethically prudent.



At the outset, certain issues and challenges were recognized. An Open Access Working Group was formed to identify, address and work through issues related to interpretation and implementation of the policy.

Most if not all issues boil down to this - for all our efforts in collaboration, Yale's campus and collections are vast and diverse. Differences in practice are as inevitable as differences in resources and in collection materials themselves. But while we many not all be singing the same notes, we need to follow the same score, and we need to harmonize.



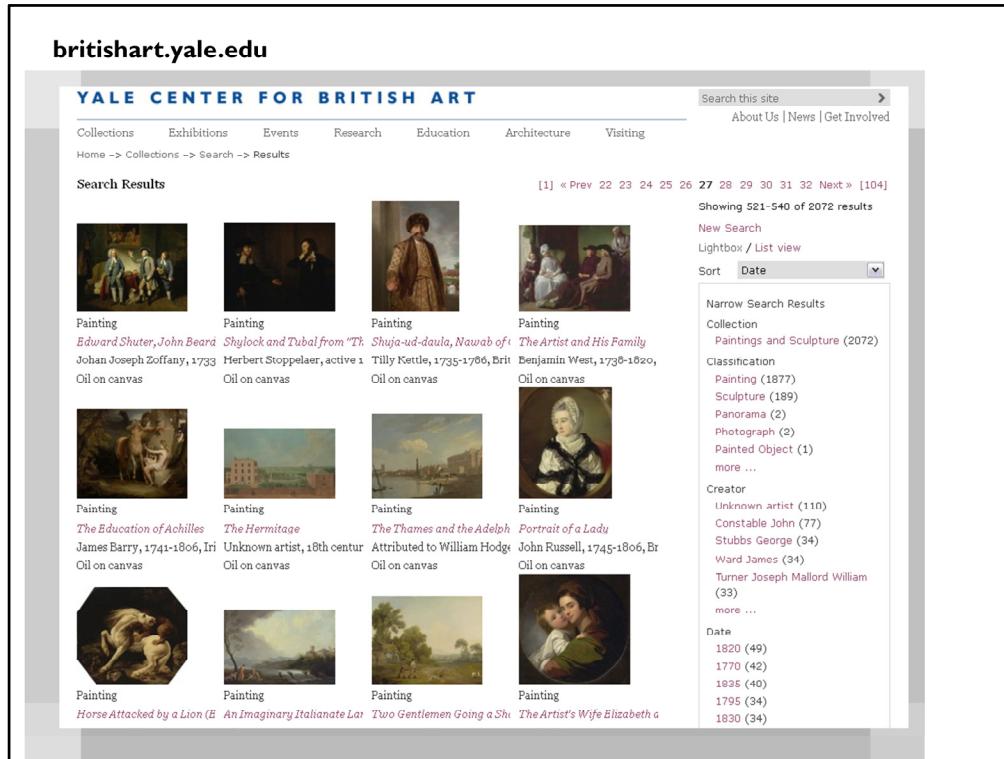
One area where departmental practices may differ across the university relates to service charges. There are costs associated with fulfilling requests for new/original digitization. Yale's policy allows these fees – fees for MATERIAL or SERVICE, not fees for INTELLECTUAL PROPERTY RIGHTS - to be assessed according to the practice of the collecting unit.

Having already all but eliminated reproduction fees prior to the announcement of the policy, the YCBA and the Yale University Art Gallery moved toward the elimination of as many other costs and administrative barriers as possible toward the use of their public domain images, including, in most cases, fees for new photography. Open access is part of our mission, and as such, we support it. We don't expect it to pay for itself financially. We hope and so far have found that it pays for itself in good will, in raising the use and the profile of our holdings.

However, not all repositories at Yale have equal or adequate resources to support immediate digitization of materials that fall under the policy. Some will simply have to charge for service and material in order to deliver. And even those that have adequate or even plentiful resources have vast collections under their care that are subject to priorities and constraints.

This relates also to distribution. Ideally, Yale museums, libraries, and archives will facilitate downloads of digital images of public domain works (at acceptably high resolution) directly from their respective web sites. However, the policy does not preclude the use of other distribution channels and business models that may better serve specific groups. Many repositories have agreements in place with vendors and licensing agencies. While these are not forbidden, these relationships must be reexamined for consistency.

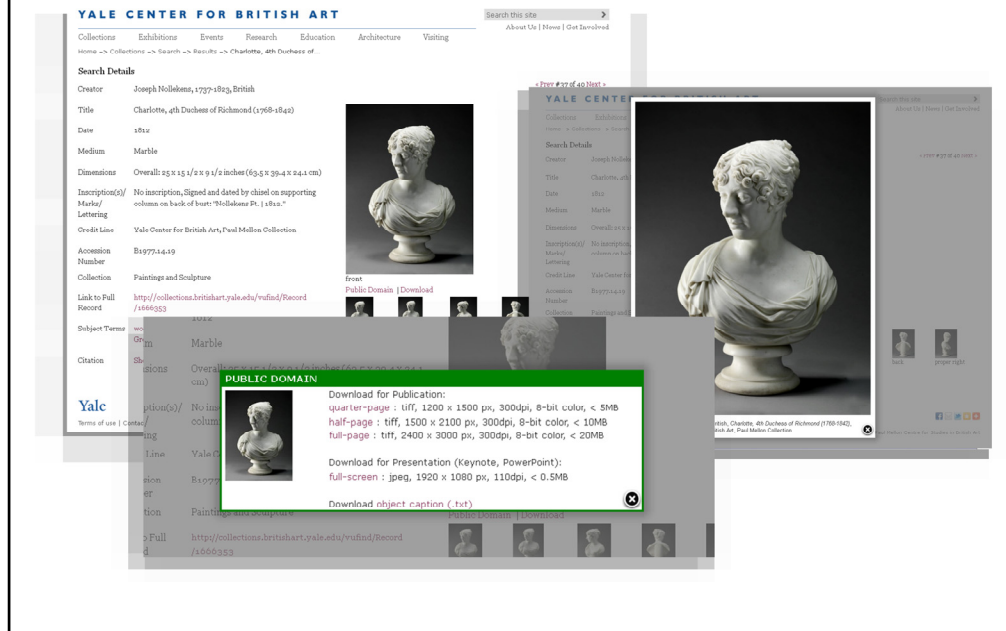
And while it may be possible to provide access to material and place the full burden of rights determination on the user, for those repositories that wish to provide digital surrogates of open access in the highest resolution possible, the importance of guidance in appropriately designating protected vs. public domain material, and to understand protections and risks in those areas that are not clearly defined, cannot be overstated.



Wrapping up, I would like to briefly illustrate what the Open Access policy has meant in practice at the Yale Center for British Art.

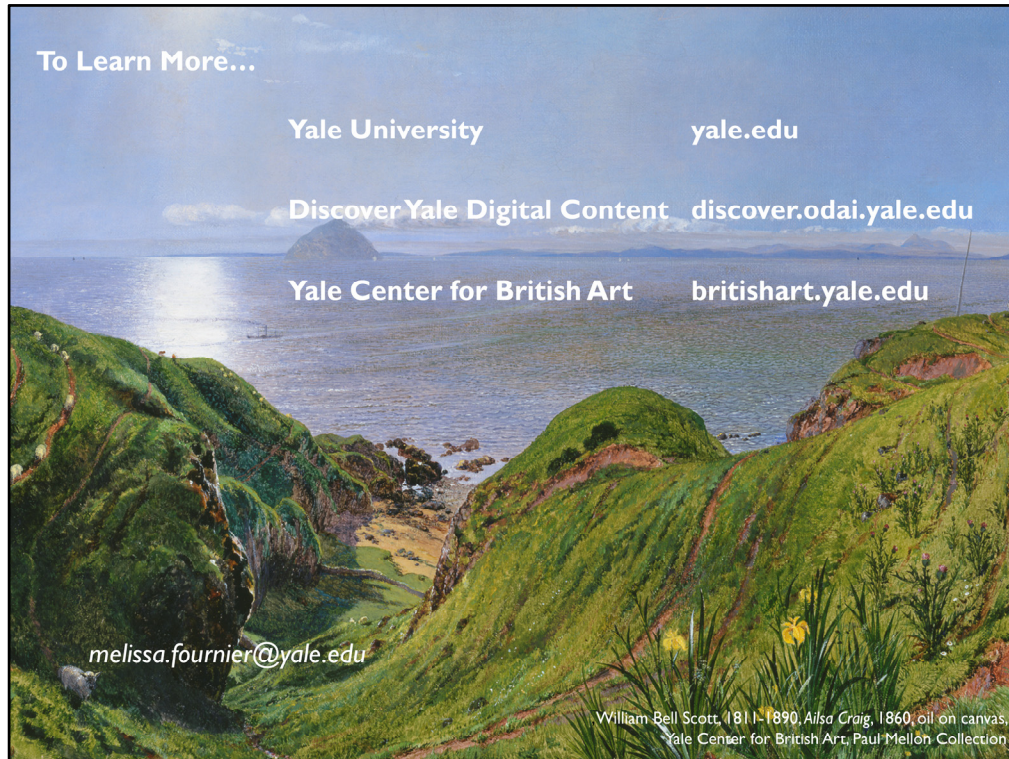
The launch of our searchable online collection in 2011, which could be viewed as somewhat late in the game, was, in fact, a really good thing. We were building our architecture and interfaces as Open Access gained traction in the Yale community and the cultural heritage community, and we were able to take full advantage of this.

Image Availability for Public Domain Works



The Center had the ability to make policy and technical decisions that allowed us to present unmitigated, transparent access to high resolution images of our works in the public domain from the initial launch of our site.

For a work in the public domain, images are made available for display and download on the web in a variety of sizes and formats, from a 128 pixel square thumbnail up to a 20MB TIFF file suitable for full-page print reproduction, while of works with restrictions remain protected.



I hope that this presentation has provided some useful insights on our work at Yale. Please feel free to visit us online or contact us to learn more.

Thank you so much for this opportunity to speak to you.

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