**Archives at NCBS**

**Takedown and Alterations policy**

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Hannah James Louwerse, Archives at NCBS

1. **Introduction**

Archives at NCBS is committed to making archival material available and the aim should be to keep material accessible as much as possible, but this cannot come at the expense of person’s rights. This takedown and alterations policy is based on the notice and takedown policies often used by archives, but it has been expanded to include requests for edits alongside requests for redactions and removals, and allows for internal requests for removal, redaction, and edits by the Archives staff. Once material has been catalogued and moved into the archive and/or put online this takedown and alterations policy allows people to hold archives accountable if archive material is found to violate someone’s rights. The policy creates a pathway for takedown requests and investigations into archival material.

This document outlines the process of handling a takedown and alteration request by breaking it down into different stages. There are three types of people who can make requests, one is people associated with material, another is Archives staff, and the third one is people who are not associated with material, we shall call these concerned citizens. For in all three requesters the first stage, request and receipt, is where a takedown request is sent via a form. The second stage, review and report, in involves the creation of a report, in which the Archives reviews the request and comes up with a selection of resolutions to the situation to put to the requester. The next stage for people associated with material, negotiate and amend, the requester and the Archives negotiate and amend the solutions until both are satisfied. In the final stage for all cases, agree and action, an agreement is made, the solution is executed, and the entire process is archived for future reference.

This document will discuss the different circumstances for takedowns and alterations, and the various approaches the Archives can use during negotiation. It is important to be reminded this is simply a guide to approaching notice and takedown requests. The use of notice and takedown has evolved over the years and will continue to evolve, so it is advised to always handle requests on case-by-case basis.

1. **Stage: Request and receipt**

When someone finds material on the Archives website which they feel violates their or someone else’s rights, or includes inaccurate information they wish to correct, they can fill in the takedown and amendments form or send a letter/email to the Archives. Similarly, if anyone within the Archives staff comes across material, they believe might be violating someone’s rights, believe it to be insensitive, or inaccurate they also fill in the takedown and alterations form. The reason for everyone taking this channel of takedown and alterations is to ensure consistent documenting and archiving of any changes to the archive, which is essential for future archivists and users of the Archives.

In the form or the letter or email, the requester must include their contact details, information about the material in question, and the reason of their request. The reason for their request may include but is not limited to copyright violation, defamation, obscenity, culturally sensitive content, and personal data. It also might be the case request concerned material put online in error or a change in the law, meaning the material should have never been accessible or can no longer be accessible under the law. And requests can also be made to alter information in the archive’s metadata.

Upon receiving a request, if the request is valid and an external request, the requester must be sent a receipt via email or letter. It should also include an explanation of the takedown and alterations review process and indicate how long the person will have to wait before they receive the review report (preferably no longer than three weeks.)

The material in question should be removed off the website until the matter is resolved and replaced with a statement explaining how the material is currently being reviewed after a takedown and alterations request.

1. **Stage: Review and report**

If it is a valid request, the material has been taken offline, and the necessary acknowledgements have been sent the second stage starts. During this stage the Archives fills in the takedown and alterations request report, a report where they review the conditions and create possible solutions of the takedown and alterations request.

In all cases, internal and external it is advised to have a group of people review the request instead a single person. This is common practice in various institutions, including The National Archives in the UK, who have an official Takedown panel.

The review and report process consist of two parts. The first part is about investigating the situation, considering what the request was about and what part of the archival material it is addressing. This is summaries in the takedown and alterations request report, The second part involves developing a selection of solutions to help rectify the situation, which will then be offered to requesters who are associated with material, for example donors, original owners, or the subject of the material. These are captured in the section under the review summary in the takedown and alterations request report. Solutions do not need to be created when the request is internal, or the requester is a person who has no direct relation to the material. Outsiders are allowed to flag possible rights violations but are not involved in resolving the issue. Solutions also do not need to be created in cases where material has been made accessible in error or there have been changes in the law, because in these cases the solution is obvious. However, in all the above cases the review summary of the takedown and alterations request report does need to be created in order to document the takedown and alteration.

* 1. **Reviewing the focus of request**

First you must determine what part of the archival entry has trigger this takedown and alterations request. This can vary between the metadata, to a section of the archival material, to the entire material. Understanding the parameters of the request will affect the solutions the Archives is able to offer and how it fits within the Archives’ pursuit to keeping as much of the archive available to people.

* + 1. **Reviewing request concerning metadata**

Metadata or in other words the information surround the archival material helps give context to the material. Unlike archival material this information is created by the Archives and the Archives is fully responsible for its contents. The metadata is likely to have been produce by the archivists at the time of its cataloguing and is therefore subjective in nature. It is for these reasons takedown and alterations requests about metadata are easier to handle than requests about archival material because the Archives can very easily change the metadata as they are its creators. However, what does need to be considered is whether the metadata which is subject of the request, adds significant and essential context the archival material. If this is the case the removal of the metadata could alter the perception of the archival material.

* + 1. **Reviewing request concerning a section of the material**

As it has been said throughout this document the Archives wants to keep as much material available as possible, and therefore it is favourable to redact part of an archival material than remove the entire material. It is additionally important to determine whether the requester desires the section of the material to be only redacted online or throughout the whole Archive.

* + 1. **Reviewing request concerning the entirety of an archival material**

In some cases, redaction is not possible, and the requester wishes for the entire material to be removed. They might just want it to be removed from the digital archive and are do not mind people still having access to the material by physically coming into the Archives. However, it is possible the matter is extreme enough to constitute the reclosure of material within the entire archive.

* 1. **Reviewing specific requests**

The use of the takedown request has evolved a lot over the years, initially starting a route to regulate copyright violation online as part of the Digital Millennial Copyright Act (DMCA) of 1998. However, DMCA and takedown then started to be, arguably, incorrectly used to censor information through copyright complaints (Cobia, 2008). Takedown processes were then used to remove personal data online as the “Right to Be Forgotten” became increasingly used in legal cases to remove information from the internet (Dressler & Kristof, 2018). In addition to complaints about copyright, personal data, or defamation many archives are also increasingly having to handle issues around contextualising culturally sensitive material, which some people may object to having available on the internet. The reasons for takedown requests will keep changing over the years, but below are some of the current main motivations for requests.

* + 1. **Reviewing copyright requests**

Generally, these will only be external requests made by people who either hold or inherited the copyright, and will be about the archival material, a not specific part of the material or the metadata.

There will be cases where the Archives has not obtained a copyright license, due mistakes or, the material being an “orphan work”, material where the original creator is not contactable or not known. In these circumstances the takedown and alterations request creates a channel for the copyright holder to contact the Archives and negotiate on the copyright status of the material in question. The requester must first prove they are the rights holder by providing relevant evidence. Some institutions advise contacting the donor of the material to see if they have any information which will help clarify the situation. If it is confirmed the requester is the copyright holder, a copyright agreement can be drawn up, which all parties are comfortable with.

There is a chance someone assigned the Archives or granted the Archives a copyright license and has now changed their mind and wishes to retract or alter the agreement. If there is no text in the agreement suggesting the original copyright owner can alter the agreement and the license is granted in perpetuity, they cannot retract or the alter the agreement. It then falls on the Archives to make a moral decision on whether they wish to honour the requester’s wishes in order to avoid conflict and build trust or to stick the mission of preserving and allowing access to history.

It is important to also remember the Archives only hosts material and is therefore not responsible for copyright violations existing within the material. For example, the request is about the copyright of an image used inside an archived newspaper article, it is the newspaper’s publisher who are at fault not the archive (Dressler & Kristof, 2018).

As mentioned at the start of this section, copyright has been used an excuse to censor material. This should be kept in mind when reviewing takedown and alterations request about copyright, to determine the requester’s motives.

* + 1. **Reviewing requests around defamation or obscenity**

In cases of defamation or obscenity one must again remember the Archives is only the ‘host’ of archival material and cannot be responsible for defamatory or obscene language within archival material. However, cases of defamation and obscenity should be treaty with great sensitivity, as it is important people do not lose trust in the Archives. Therefore, takedown and alterations requests around defamation or obscenity should always be treated on a case-by-case, more so than others, since the matter is deeply subjective. If the Archives does not wish to remove material it can offer to add contextual information to the archival material, if necessary, to enhance the historical context of the material.

* + 1. **Reviewing personal data requests**

Although the “Right to Be Forgotten” has been used in various court cases, it becomes a bit more complicated when it is placed in the context of archives. Archives are responsible for keeping history and allowing people to access history. The removing or censoring of elements of history is not considered ethical practice. The reviewing of requests about personal data therefore become a balancing act between the Archives’ responsibility to history and a person’s right to be forgotten.

There are however a couple of ways people have thought of how to handle personal data in archives. Firstly, you should consider if access to the information in question would threaten the person’s safety, for example social security numbers, home addresses etc. If so, the information should be removed. A second question to ask is whether the information can be found anywhere else online. If the information is available somewhere else the removal of the information within the Archives does not help the person in their right to be forgotten (Dressler & Kristof, 2018). If the information in question does not threaten the person’s safety but is only found in the archive the approach depends on the specifics of the request, including who is making the request, since just like in cases of cultural sensitivity and defamation the solutions offered should also take in consideration the trust people need to have in the Archive.

* + 1. **Reviewing requests around culturally sensitive information**

Unlike request about copyright or defamation, anyone can make takedown and alterations request about culturally sensitive information. The debate on whether to remove culturally sensitive material or contextualise it is question pondered by many archives and museums, so again these requests need be approach on a case-by-case as attitudes evolve. Currently, is it becoming increasingly common practice to contextualise culturally sensitive material, with many institutions in Australia and Canada making an effort to help contextualise archival material about indigenous and aboriginal people.

* + 1. **Request about law changes**

Changes in the law can affect whether material can be made accessible to the public. This means access to material can become illegal overnight. Considering the amount of material the archive has to handle, they might not be able to remove all the material affected or the law is slightly ambiguous and so it is not immediately apparent when material violates the law. A takedown and alterations request by both people outside and inside the Archives help the Archives in understanding the parameters of the law. If it is clear access to the material in question is illegal, a report should still be written, but solutions do not need to be offered to requester and neither does an agreement need to be signed.

* + 1. **Request about errors**

If it transpires the request is about material that should not have been made available in the first place, just like cases of changes in the law a report should be written to document the mistake. However, as said previously, there is no need for solutions, negotiation or an agreement as the material is simply taken offline, returning to its agreed state.

* 1. **Creating solutions**

The aim of this part of stage is to create a selection of solutions, around two to three, for the requester to pick from. Solutions can only be offered to people whose rights have been violated. In the takedown and alterations request report the solutions section is under the review summary. Having multiple solutions makes for a more transparent process. It will be easier to create solutions in some situations than others, for example in cases of copyright where it is easy to get correct paperwork in place to retain online access. In other cases, more creativity may be required due to the unique quirks of the case. Things to consider while creating solutions includes but is not limited to, the amount being redacted, edited, or removed, the location of the redaction, edit, or removal (online or analogue) and adding contextual information. Another possible solution is to remove the material from Google searches therefore limiting one of the pathways people can reach the information. How the material can be removed, redacted, edited will change over time and so the solutions the Archives is able to offer will change too.

1. **Stage: Negotiation and amendments**

In all cases the first two stages are completed when a report has been written, however if the report does not include offering the requester a choice of solutions the process immediately progresses to the final. This stage is only for the processes which require the requester to agree to a proposed solution. In these cases, the report is sent to the requester for them either to agree to one of the solutions outlined in the report or for them to reply with possible amendments to the options.

If the requester wishes to make amendments these need to be recorded in the takedown and alterations request report in the amendments table and sent back to the Archive. It is then the Archive’s turn to either accept the amendments or propose further amendments to be again sent to the requester. This will go back and forth until a resolution has been reach with each proposed amendment being recorded in the table in the report. Once both parties agree on a solution the process moves on to stage four.

1. **Final Stage: Agree and action**

The final stage is about signing off the proposed solution to the request and implementing the required actions. In cases, where a solution had to be agreed upon by the Archives and the requester, the agreement must be signed by both parties. In cases where there was no negotiation, it is only the Archives who needs to sign off the solution. The signing is done in the bottom section of the takedown and alterations request report finalising the decision and then what is left to do is executing the solution. Any removal of information should be recorded on the website and the catalogue. Then the request form and signed report should all be archived. All of this is to help present and future staff and visitors of the archive understand the status the material and why it is in this state.