

From: [Matthew Loving](#)
To: [Cathleen Martyniak](#); [Laurie Taylor](#); [Nancy Poehlmann](#); [Seth Jerchower](#); [Vernon Kisling](#);
CC:
Subject: RE: copyright for books
Date: Thursday, November 08, 2007 11:52:23 AM
Attachments:

Cathy-

Thanks, this seems to be very helpful and perhaps points the way to some more concrete steps that the Committee should start to implementing before our BB assessment has any real value in projecting the scope of the overall project.

I took away the following action ideas from Denise's suggestions:

-establish (create a list...nowish/near future) how many books may need permission work (1934 & after, orphan, etc.).

-establish real cost of scanning vs. purchasing replacement copies.

-consider costs of hiring a new student/staff/OPS position who would work only on BB (dedicated to BB) if it turns out that the work load justifies it (I think it's looking that way)as mentioned below this saves money in the long run.

-for copyright consideration, acknowledge we will treat non-renewed copyrights as being out of copyright as suggested below.

-for copyright consideration, acknowledge we will do a reasonable search for "orphan" books and then consider them out of copyright.

Did anyone understand what Denise meant about copyright permission and university publishers/commercial publishers. That is the only thing I found confusing.

-Matt

-----Original Message-----

From: Cathleen Martyniak
Sent: Thursday, November 08, 2007 9:45 AM
To: Laurie Taylor; Matthew Loving; Nancy Poehlmann; Seth Jerchower; Vernon Kisling
Subject: FW: copyright for books

FYI, from the author of the 2005 report on seeking copyright permission to digitize books...

-----Original Message-----

From: Denise Troll Covey [mailto:troll@andrew.cmu.edu]
Sent: Thursday, November 08, 2007 9:05 AM
To: Cathleen Martyniak
Subject: Re: copyright for books

Cathy,

I'm glad that the CLIR report was informative.

I offer the following advice for consideration. As I see it, your primary task at this point is to get some sense of the scope and projected cost of the permissions work, and to get some sense of your library administrators' and legal counsel's willingness to take risk.

If I were you, I would first determine how many books in the brittle books collection were published in or after 1923. This will tell you how many books MIGHT be copyright protected (the possible scope of your permissions project). Then I would identify how many of the books are

foreign publications and the countries in which they were published.

This will tell you how many different national copyright laws you might have to deal with. You will likely need legal counsel on the foreign publications and copyright laws. Does the University of Florida have a copyright attorney or access to one?

Looking at the books published in the U.S. 1923-1963, I'd consult the renewal records at

<http://collections.stanford.edu/copyrightrenewals/bin/page?forward=home>

to determine how many of these books are likely still copyright protected. Finding a renewal record confirms copyright protection -- you will need permission to digitize and provide open access to these books.

(You can of course digitize the books to make preservation copies without permission, but you cannot provide user access to the preservation copies.) However NOT finding a renewal record does not necessarily mean that the book is out of copyright. You will need to confer with your colleagues and legal counsel to decide how you will treat books for which there is no copyright renewal record. We decided to treat them as if they were out of copyright, i.e., to digitize and provide open access to them without seeking permission.

Certainly anything published in the U.S. after 1963 will be copyright protected and require permission.

As you know from reading the CLIR report, the older the book,

the more difficult it can be to locate the copyright owner but the more likely it is that you will get permission if you do locate the owner. The type of publisher is also a key factor. For example, university presses and commercial publishers are less likely to grant permission than scholarly associations or publishers of special editions. Look carefully at your brittle books published in the U.S. What are the dates of publication? What kinds of publishers published this material?

I assume that you cannot buy replacement copies of the brittle books at a reasonable price. If you can, that's likely preferable to scanning or seeking permission -- unless of course there is something particularly valuable or special about your copy.

Another topic to discuss with your library administrators and legal counsel is their view of how to handle orphan books, i.e., books for which you cannot identify or locate the copyright owner. You will likely encounter this phenomenon in your project. In our earlier work at Carnegie Mellon, our legal counsel said that if we did not have permission, we could not digitize and provide open access to copyright-protected work. More recently, following the Copyright Office's public roundtables and recommended legislation on orphan works, they have become more liberal. As long as we document our "reasonable effort" and "due diligence" to locate the copyright owner, they will now allow us to digitize and provide open access to copyright-

protected
material without permission from the owner.

A fellow at the National Library in Germany recently asked me to estimate the time per title to seek copyright permission. Here is what I told him:

"A very rough and *conservative* estimate of the average time invested in the Posner project (acquiring permission to digitize fine and rare books) was 2.5 hours per title. My concern is that this figure is misleading because of the special nature of the collection and because the time per title can vary greatly. Much depends on how much effort you are willing to invest before concluding that a particular publisher or copyright owner cannot be located and how much time you are willing to invest in following up with email or phone calls to try to get a response from a copyright owner or presumed copyright owner that you successfully located."

If you do decide to seek permission, I strongly recommend following up with email or phone calls rather than following up with a snail mail letter. The response rate is much better with email and telephone.

Once you have some sense of how many books will require copyright permission, you can make some projections about what it will cost to seek permission for all of those titles and the likelihood of actually getting permission. Then you can decide if you have the

resources to do
it. Obviously if you are willing to risk digitizing and
providing open
access to orphan works, your outcome will be more successful
or
productive than if you are not. You could scale the
permissions project
back by eliminating (not seeking permission for) books
published by
university presses or commercial publishers. In any case, if
you don't
have the resources to pursue permission for all of the books,
you can
make some informed choices based on what you know about the
potential
use of the material and the likelihood that you will get
permission.

My only other advice is that you provide dedicated staff to
do the
permissions work if you undertake the project. In our
experience, that
was the only cost-effective way to get the job done.
Intermittent labor
allowed too much time to lapse between initial contact and
follow-up,
and record keeping was less than ideal.

I've rambled. I hope this has been helpful. I wish you all
the best with
your project.

Denise

Cathleen Martyniak wrote:

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> Denise,
>
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> Good afternoon. My name is Cathy Martyniak and I am the
Preservation
> Librarian at the University of Florida. I recently read
your 2005

> DLF/CLIR report on obtaining copyright for books with GREAT interest.

> I am hoping you could help me out with a question that I have.

>

> Our brittle books program (identifying, reformatting and making

> available titles originally printed on poor quality paper that has

> become embrittled over time) has been on hiatus for years due to

> staffing issues. We just hired a new Dean who is eager to see this

> situation remedied. She has charged a task force to reimplement the

> program, but with a digital twist, rather than using microfilm, as we

> used to do. We would like to scan, post and provide open access to all

> the books in the program.

>

> We suspect/assume that the majority of the brittle books will be

> older, say printed before the 1950's. Most should be out of copyright

> but some still will be protected. A thought has been voiced within of

> TF (I am Chair, lucky me) that we should attempt to obtain permission

> for these titles (1923 on up). After reading your report, and learning

> about the problems you experienced getting copyright permission to

> digitize books at ALL, [even for books that were published more

> recently!], I am very hesitant to start the permission seeking process.

>

> To add a huge wrinkle, some of the titles that are still in copyright

> were published internationally.

>

> My question to you is, given what you learned in the 3

studies, and
> what you have learned in the intervening 2 years, what
advice would
> you give me?
>
>
> Thank you very much in advance,
>
> Cathy
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