Seeking Copyright Permission for Open Access

Denise Troll Covey
Associate Dean, Carnegie Mellon University Libraries
Coalition for Networked Information (CNI)
Portland, Oregon – December 2003
Purpose of Copyright

“To promote the progress of science & useful arts by securing for limited times to authors & inventors the exclusive rights to their respective writings & discoveries…”

– U.S. Constitution 1790
Duration of Copyright

- 1790 – 28 years
- 1870 – 42 years (28 + 14)
- 1909 – 56 years (28 + 28)
- 1976 – 75 years (28 + 47) or author + 50 years
- **1998 – 95 years or author + 70 years**
Copyright Absurdities

• When renewal was required, < 15% renewed

• 95% books ever published are still in copyright

• 92% books are in copyright, but out of print
  – Not generating revenue
  – Not easily accessible
Meanwhile . . .

• Learning suffers – students use inappropriate resources found with Google

• Research suffers – inequitable access, contention, turn-around time, & cost of document delivery

• Heritage suffers – slowly decays or is abandoned

• Digital library suffers – copyright permission
# Cost of Copyright Permission

<table>
<thead>
<tr>
<th></th>
<th>1,000 Articles</th>
<th>7,307 Ads</th>
<th>30 Images</th>
</tr>
</thead>
<tbody>
<tr>
<td><strong>Transaction</strong></td>
<td>$24,500 (49%)</td>
<td>$10,450</td>
<td>??</td>
</tr>
<tr>
<td><strong>Permission</strong></td>
<td>$26,000 (51%)</td>
<td>??</td>
<td>$2,142</td>
</tr>
<tr>
<td><strong>TOTAL</strong></td>
<td>$50,500</td>
<td>$20,900</td>
<td>$4,284</td>
</tr>
<tr>
<td><strong>Avg per item</strong></td>
<td>$50</td>
<td>$3</td>
<td>$143</td>
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</table>

- Articles – Photocopy for reserves – Wayne State 2000
Cost of Copyright Permission

- Permission to digitize even commercially fallow books is likely to cost hundreds of times more than actually digitizing the books — Cliff Lynch

<table>
<thead>
<tr>
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<th>Books</th>
<th>Cost</th>
</tr>
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<tbody>
<tr>
<td>netLibrary</td>
<td>40,000</td>
<td>$85,000,000</td>
</tr>
<tr>
<td>Questia</td>
<td>40,000</td>
<td>$127,000,000</td>
</tr>
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</table>
Copyright Research

Seeking a non-exclusive license to digitize & offer free-to-read on the Web, now and as it evolves over time, in PDF or any other comparable format deemed appropriate by Carnegie Mellon, whether that format now exists or is developed in the future the following books . . .
Open Access Feasibility Study
1999 – 2001
Statistically Valid Random Sample

• Couldn’t locate 12% of the publishers

• If located publisher, 49% didn’t respond
  – Even to second letter of inquiry

• If got response, 43% gave permission

• If got permission, often restrictions applied

• 22% overall success rate
## Success of Copyright Permission

<table>
<thead>
<tr>
<th></th>
<th>Books</th>
<th>Articles</th>
</tr>
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<tbody>
<tr>
<td>Total items</td>
<td>337</td>
<td>96</td>
</tr>
<tr>
<td>1. Copyright protected</td>
<td>94%</td>
<td>70%</td>
</tr>
<tr>
<td>2. Publishers contacted</td>
<td>88%</td>
<td>70%</td>
</tr>
<tr>
<td>3. Publishers responded</td>
<td>51%</td>
<td>45%</td>
</tr>
<tr>
<td>4. Permission granted</td>
<td>43%</td>
<td>90%</td>
</tr>
<tr>
<td><strong>Overall success rate</strong></td>
<td><strong>22%</strong></td>
<td><strong>28%</strong></td>
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Wayne State 2000
## Analysis by Publisher Type

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<th>Publisher Type</th>
<th>Success Rate</th>
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<tr>
<td>Scholarly associations</td>
<td>45%</td>
</tr>
<tr>
<td>University presses</td>
<td>37%</td>
</tr>
<tr>
<td>Museums &amp; galleries</td>
<td>31%</td>
</tr>
<tr>
<td>Commercial publishers</td>
<td>12%</td>
</tr>
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</table>

- **Overall success rate:** 22%
- **Graph Description:**
  - No-Response Rate
  - Success Rate
  - Library Content

The graph illustrates the success rates and no-response rates across different publisher types, with a notable increase in library content success rates compared to other categories.
Fine & Rare Books Study
Posner Memorial Collection
2003
Labor for Copyright Permission

30%  Consult copyright renewal records, identify & locate copyright holder

30%  Update database & prepare statistics

25%  Prepare letters & file correspondence

15%  Follow-up calls or email
Analysis by Copyright Holder

• Couldn’t locate 31% of the copyright holders

• If located copyright holder, 35% didn’t respond

• If got response, 73% gave permission

• If got permission, 24% applied restrictions

• 33% overall success rate
Analysis by Title / Volume

• 71% permission granted
  – 7% restricted Carnegie Mellon only (11 publishers)
  – 4% restricted limited time (1 publisher)

• 10% permission denied
  – Assumed if 3 contacts got no response

• Others not yet located or responded
Other Analyses

- 76% success rate U.S. titles
- 45% success rate foreign titles

Other requests from copyright holders
  - Current copyright notice
  - Copies of digitized books
  - Link to Posner site or Posner site link to their site
  - One estate wants new author introduction added
  - Permission fee
Success of Copyright Permission

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Posner: 167 letters & 159 follow-up calls or email
Associated Archival Materials

• Estate granted copyright permission for correspondence written by Henry Posner Sr.

• Legal counsel argued fair use for correspondence from book dealers & ephemeral material associated with the book collection

• Pursuing permission for newsletters
Transaction Costs

$54 per book/volume

$ 10,808  FTE labor
$  379   Phone calls
$  100   Paper & postage

$ 11,287  TOTAL

May 2003 – October 2003

Does not include legal fees, administrator time, or cost of Internet connectivity or database creation.
Top 5 Problems Seeking Permission

• Identifying & locating copyright holders
• Getting timely responses
• Publishers who can’t find contracts
  – Don’t know their rights
  – Don’t know what they published
• Learning U.S. & foreign copyright laws
Top 5 Publisher Concerns

• Fear of open access
  – Commercial distribution by someone else
  – Book will lose value

• Revenue

• Their contracts don’t include electronic rights

• Their own plans to digitize their books
Million Book Project

2002 – 2007
Educate Publishers

• Users want to find information online, but use it in print

• Online access increases use, even use of older materials

• Open access does not decrease & can increase sales

• Currently no revenue from out-of-print books
Request & Incentive

• Ask for non-exclusive permission to digitize & provide open access
  – Like netLibrary: Print & Save one page at a time

• Give preservation-quality images, associated metadata, & OCR
  – $$ Use in added-value, fee-based services
  – $$ Print on demand for out-of-print books
  – $$ Buy button for in-print books
Initial Collection of Collections

In Copyright
100,000
Books for College Libraries & other selected bibliographies

Indigenous Indian & Chinese materials
200,000
Multi-lingual & multi-script language processing

Public Domain
700,000

November 2001 planning meeting funded by NSF
Initial Copyright Approach

• Focus on out-of-print, in-copyright titles
  – *Books for College Libraries* has 50,000 titles
  – Start with scholarly associations & university presses

• Transaction cost per title is prohibitive
  – Identifying & inserting titles in letters
  – Negotiating permission per title
  – Creating database to track titles
Epiphany & New Approach

- Focus on **publishers** of quality books
  - *Books for College Libraries* has 5600 publishers

- Ask for permission to digitize
  - All out-of-print, in-copyright titles
    - All titles published prior to a date of their choosing
    - All titles published # or more years ago
    - List of titles they provide

- Prompt follow-up phone call or email
Current Status

• Publisher database created & data migrated

• Limited labor June 2002 – August 2003
  – Couldn’t locate 30 publishers
  – 207 letters & 57 follow-up calls or email
  – 5% permission granted – 4,400 titles
  – 8% permission denied

• Full-time staff November 2003
**Estimated Transaction Costs**

$1.48 per book

$ 6,400 Labor

$ 10 Follow-up

$ 93 Paper & postage

$ 6,503 TOTAL

June 2002 – August 2003

Does not include legal fees, administrator time, or cost of Internet Connectivity or database creation.
Results of New Approach

• Acquire more books for $$ spent
  – 70% – 99% more titles from publishers of books cited in *Books for College Libraries*

• Reduce cost of database creation & maintenance
“More Bang for the Buck”
### Projections

<table>
<thead>
<tr>
<th>Success rate (# BCL publishers)</th>
<th># of books per publisher</th>
<th>Million Book Collection</th>
</tr>
</thead>
<tbody>
<tr>
<td>4% (224)</td>
<td>1500</td>
<td>336,000</td>
</tr>
<tr>
<td>6% (336)</td>
<td>1500</td>
<td>504,000</td>
</tr>
<tr>
<td>22% (1,232)</td>
<td>1500</td>
<td>1,848,000</td>
</tr>
</tbody>
</table>

We could need to negotiate for more labor
Snags with University Presses

• Copyright often reverts to author when books are declared out of print

• More recent books will never be declared out of print because of print-on-demand contracts

• Third-party copyright ownership

• Will consider specific titles that WE select
Per Author Approach?

• More expensive than per publisher approach

• Unlikely to be cheaper than per title approach
  – Check author birth & death dates
  – Locate contact information for authors or estates of deceased authors
  – Estates don’t have permission departments
Copyright Workflow in India

- **Processing procedures**
  - For weeded or seldom-used collections shipped to India without prior copyright review

- **Cataloging procedures**
  - Copyright permission granted prior to shipment
  - No prior copyright review
If no prior review: Sort Books

1. Not published in U.S.
2. Published by U.S. Government Publication Office (GPO) or Superintendent of Documents
3. Published pre-1923 in U.S.
4. Published 1923-1964 in U.S.
5. Published post-1964 in U.S.
6. Other

Send to Cataloging
Set other piles aside
Cataloging Basics

• For U.S. publications 1923-1964, if necessary check copyright renewal records database
  – If copyright renewed, put with post-1964 books
  – If not renewed, proceed with cataloging

• Search WorldCat using OCLC Connexion
  – If MARC record is available, download it
  – If no MARC record is available, create Dublin Core record using template
### Cataloging Details

<table>
<thead>
<tr>
<th>U.S. Books</th>
<th>Add to MARC or DC record</th>
</tr>
</thead>
<tbody>
<tr>
<td>Govt docs &amp; pre-1923</td>
<td>• Public Domain</td>
</tr>
<tr>
<td></td>
<td>• DOI URL</td>
</tr>
<tr>
<td>1923-1964 not renewed</td>
<td>• Not copyright renewed</td>
</tr>
<tr>
<td></td>
<td>• DOI URL</td>
</tr>
<tr>
<td>Permission granted</td>
<td>• Copyright protected permission granted</td>
</tr>
<tr>
<td></td>
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</table>
Copyright Assessments – 2006

- Number of copyrighted books in the collection
- Success rate of permission requests
- Analysis of costs
- Analysis by publisher type
- Survey of participating copyright holders
  - Satisfaction with quality of copies & project
  - What they did or plan to do with the copies
  - Impact on revenue & view of open access
Public Domain Enhancement Act

• Copyright holders
  – Pay small fee ($1.00) 50 years after publication & every 10 years thereafter to retain copyright
  – Provide contact information

• U.S. Copyright Office
  – Handles financial transactions
  – Creates publicly accessible database

Introduced June 25, 2003 by Representative Lofgren
Thank you!