The Impact of Current Copyright Law

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Unconditional Copyright

• “Limited” term of monopoly to promote progress
  – Repeatedly extended 1790–1998 (from 28 to 95 years)

• 1870–1976/1992, copyright required renewal
  – 1960 – research showed 15% of copyrights renewed
  – 1976 – 75 years (28 + 47) or life of author + 50 years

• 1998 – 95 years or life of author + 70 years
  – Retroactive to 1978
  – 2003 Supreme Court upheld
Current State of Absurdity

• **92% of the books ever published are orphans**
  – Still in copyright, but out of print
  – Neither generating revenue nor easily accessible
  – Permission required to digitize & provide access

• **2004 Kahle v. Ashcroft challenge U.S. copyright**
  – No records of copyright ownership
  – Denies public access to orphaned works without providing any benefits
Feasibility Study 1999 – 2001

- Random sample of books in library catalog
- 96% in copyright
- Sent 1\textsuperscript{st} & 2\textsuperscript{nd} letters requesting non–exclusive permission to digitize & provide open access
  - Using intermittent labor, follow up letter often delayed
- 34% permission granted
  - Many publishers applied access restrictions
Feasibility Study Success Rates

- Permission granted: 34% Copyright holders, 26% Permission denied, 23% No response, 17% Not located
- Permission denied: 41% Holders contacted, 31% Permission denied, 28% No response, 28% Not located
- No response: 57% Holders responded, 34% Copyright holders, 23% Permission denied, 17% Not located
- Not located: 100% Holders responded, 83% Holders contacted, 72% Copyright holders, 50% Permission denied
Analysis by Publisher Type

Scholarly associations
University presses
Commercial publishers
Special publishers

Feasibility study
Success rate based on responses
Posner Study 2003

- Fine & rare books
- 27% in copyright
- Sent request letter + prompt follow up call or email
- Dedicated labor May–October 2003
- 36% permission granted
  - 48% of books
  - 2% of publishers applied access restrictions
Posner Study Success Rates

Permission granted
- 36% Copyright holders
- 15% Permission denied
- 32% No response
- 29% Not located

Permission denied
- 54% Holders contacted
- 17% Copyright holders
- 24% Holders responded

No response
- 71% Holders responded
- 22% Holders contacted
- 15% Copyright holders

Not located
- 75% Holders responded
- 24% Holders contacted
- 17% Copyright holders

Permission denied
- 68% Holders contacted
- 15% Copyright holders
- 17% Holders responded

No response
- 75% Holders responded
- 22% Holders contacted
- 32% Copyright holders

Not located
- 71% Holders responded
- 29% Holders contacted
- 36% Copyright holders
Analysis by Copyright Holder Type

Scholarly associations
University presses
Commercial publishers
Authors & estates
Special publishers

Posner study
Success rate based on responses
Transaction Costs

$78 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.

174 letters & 159 follow up calls or email
Million Book Project 2002 – 2007

• Collection of collections
  – Copyright focus: *Books for College Libraries*

• Send request letter + prompt follow up call or email

• Dedicated labor beginning Nov 2003
Changed Strategy 2003

- **Books for College Libraries**
  - 50,000 titles
    - Experiments reduced cost from $2.12 to $1.41 per title to create list
  - 5,600 publishers

- **Shifted from per title to per publisher approach**
Request Letter

• **Educate** about open access & user behavior

• **Ask** for non–exclusive permission to digitize & provide open access to
  – 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

• **Assure** – follow standards & laws; limit print & save

• **Give** – images, metadata, & OCR ➔ $$$
Preliminary Statistics

Permission granted

Permission denied

Still negotiating

371 publishers contacted

14% success rate

46,700+ titles

Need 18% success rate

with BCL publishers granting permission for 500 books each
Analysis by Copyright Holder Type

Scholarly associations
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Special Publishers

Letters sent
Response rate
Success rate

Million Book Project
Success rate based on responses
Preliminary Transaction Costs

$0.41 per book

$ 18,846 Labor
$  323 Follow up
$  194 Paper & postage

$ 19,363 TOTAL

Nov 2003 – Jun 2004

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

540 letters & 359 follow up calls or email

Scanning center in Hyderabad, India
Problems Seeking Permission

- Identifying & locating copyright holders
  - Information not maintained by U.S. Copyright Office

- Publishers
  - Afraid of open access & lost revenue
  - Don’t know what they published
  - Don’t know what rights they have
  - Don’t have the resources to figure it out
  - Involved in other projects – perhaps exclusively
  - Copyright reverts to author when book goes out of print
Learning Copyright Laws

DURATION OF COPYRIGHT - Literary, dramatic, musical and artistic works
[from "Copyright for Archivists" by Tim Padfield]

Is the author known?
No
Was the work created before 1 January 1969?
Yes
Is the work a literary, dramatic or musical work, a photograph or an engraving, created before 1 August 1989?
No
Was the work published before 1 August 1989?
Yes
Is the work a photograph taken before 1 June 1957?
No
Has the work ever been made available to the public?
No
Was the work first made available to the public before 1 January 1969?
Yes
Copyright expires 70 years after first publication
Copyright expires 70 years after the work was made available to the public
Copyright expires 70 years after creation or 70 years after the work was made available to the public if within 70 years of creation
Copyright expires 70 years after the death of the author
Copyright expires 50 years after first publication
Copyright expires 70 years after the death of the author
Copyright expires 70 years after first publication
Copyright expires on 31 December 2039

Example UK copyright law
Experiment: U.S. Office of Copyright

• Expedite identifying & locating copyright holder
  – Asked to identify & locate copyright holders of 7 titles
  – $150 fee – charged 3 days after request
  – Estimated 4 to 6 weeks
  – Nudged at 8 weeks
  – Took 15 weeks to respond
  – Confirmed one citation

Scanning center in Beijing, China
Experiment: Authors Registry

- Expedite locating copyright holder
  - Asked to locate 25 authors or estates
  - $2.50 fee per author/estate found
  - Same day response
  - Found 52%
  - 92% accuracy rate

- Authors likely to grant permission, but transaction cost per book is high

Scanning center in Hyderabad, India
Experiment: Renewal Databases

- **Catalog of Copyright Entries** (Digitized at Carnegie Mellon)
  - [http://onlinebooks.library.upenn.edu/cce/](http://onlinebooks.library.upenn.edu/cce/)

- **Library of Congress Copyright Catalog**
  - [http://www.copyright.gov/records/cohm.html](http://www.copyright.gov/records/cohm.html)
  - To find renewals 1973–1978 must consult another source for registration numbers

- **Lesk Copyright Renewal Records**
  - [http://www.scils.rutgers.edu/~lesk/copyrenew.html](http://www.scils.rutgers.edu/~lesk/copyrenew.html)
  - Functionality created & enhanced by Michael Lesk
Next Steps

• Partnerships pending
  – Vendor to provide print–on–demand service
  – U.S. Office of Copyright to study impact of CTEA

• Standards & best practices
  – NISO solicited proposal to develop copyright metadata
  – Lead best practice for acquiring copyright permission

• Research
  – Continue data gathering & analyses
  – Survey participating publishers’ views of open access
How You Can Help

• Encourage scholarly associations & university presses to participate in Million Book Project

• Support Public Domain Enhancement Act
  – http://www.publiknowledge.org/content/legislation/pending-legislation-pdea

• Support Kahle v. Ashcroft copyright challenge
  – Submit examples of how barriers to using out of print books burden your work http://notabug.com/kahle/
Thank you!

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