The Impact of Current Copyright Law

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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 1st & 2nd 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

<table>
<thead>
<tr>
<th>Category</th>
<th>Copyright holders</th>
<th>Holders contacted</th>
<th>Holders responded</th>
</tr>
</thead>
<tbody>
<tr>
<td>Permission granted</td>
<td>34%</td>
<td>41%</td>
<td>57%</td>
</tr>
<tr>
<td>Permission denied</td>
<td>26%</td>
<td>31%</td>
<td>43%</td>
</tr>
<tr>
<td>No response</td>
<td>23%</td>
<td>28%</td>
<td></td>
</tr>
<tr>
<td>Not located</td>
<td>17%</td>
<td></td>
<td></td>
</tr>
</tbody>
</table>

Permission granted holders responded 43%
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% of copyright holders
- 22% of holders contacted
- 29% of holders responded

Permission denied
- 15% of copyright holders
- 17% of holders contacted
- 22% of holders responded

No response
- 32% of copyright holders
- 24% of holders contacted
- 29% of holders responded

Not located
- 100% of copyright holders
- 68% of holders contacted
- 75% of holders responded
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

- In Copyright
- Public Domain
- Indigenous Materials in India & China
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

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
University presses
Commercial publishers
Authors & estates
Special Publishers

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?
  - Yes
  - No

- Was the work created before 1 January 1969?
  - Yes
  - No

- Is the work a photograph created before 1 June 1957?
  - Yes
  - No

- Was the work published before 1 August 1989?
  - Yes
  - No

- Has the work ever been made available to the public?
  - Yes
  - No

- Was the work first made available to the public before 1 January 1969?
  - Yes
  - No

Example UK copyright law

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 on 31 December 2039
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.publicknowledge.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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