



May 21, 2014

Ms. Maria Pallante
Register of Copyrights
United States Copyright Office
101 Independence Avenue S.E.
Washington, D.C. 20559

RE: Additional Comments Submitted Pursuant to Request for Additional Comments Regarding Orphan Works and Mass Digitization (79 F.R. 7706, Docket No. 2012-12)

Dear Ms. Pallante:

The American Association of Law Libraries (AALL), the Association of Academic Health Sciences Libraries, the Medical Library Association (MLA) and the Special Libraries Association (SLA) appreciate the opportunity to provide additional comments concerning Orphan Works and Mass Digitization, particularly considering the discussion at the recent public roundtables held on March 10 and March 11, 2014 (“Public Roundtables”). Please consider these additional comments along with our response of February 1, 2013 (“Initial Response”) to the Copyright Office’s October 22, 2012 Notice of Inquiry concerning Orphan Works and Mass Digitization (77 F.R. 64555, Docket No. 2012-12).

I. LACK OF COPYRIGHT FORMALITIES

As we noted in our Initial Response, the elimination of formal registration along with the significant extension in the term for copyrights have exacerbated the orphan works problem. Discussion at the Public Roundtables also noted continuing challenges posed by the lack of formalities. The debate regarding formalities and efforts to improve copyright holder identification should continue. These efforts, however, should not hinder the implementation of other solutions that improve the use of orphan works.

II. MASS DIGITIZATION

Many Libraries Digitize Unique Collections. Law, medical and special libraries are engaged in large-scale digitization projects that focus on the unique collections those individual libraries hold. These collections contain a vast array of materials. Researchers seek access to these collections for in-depth study of these vitally important sources. Libraries undertake this digitization work to further their mission to preserve and organize knowledge and to provide access to knowledge. These efforts ultimately facilitate the creation of knowledge. Many comments during the Public Roundtables indicated a misperception of why libraries digitize. We focus our next set of comments on illustrating the benefits of digitization to users and society.

Earlier comments filed by libraries that have undertaken digitization projects noted their strong commitment to the furtherance of research and the development of knowledge through these projects. For example, the University of North Carolina, Chapel Hill Libraries emphasized that digitizing their special collections “promotes access to materials that cannot be found anywhere else.”¹ Duke University Libraries digitized special collections “to put knowledge in the service of society.”²

Law, medical and special libraries are in a similar position to increase collective knowledge, and many are pursuing projects to provide greater access to their collections. For example, the University of Maryland School of Law Thurgood Marshall Law Library has digitized the Historical Publications of the United States Commission on Civil Rights.³ Georgetown Law Library is digitizing 16th through 19th century legal dictionaries.⁴ The National Library of Medicine is working with several prestigious medical libraries to digitize historical medical resources.⁵

Faculty, students, members of the public and other researchers are accustomed to accessing resources through the Internet and expect that libraries, with their strong mission of facilitating research, will provide this same type of access to library collections. What 21st century researchers find when they seek access to these collections is that they are in a similar position to researchers seeking access to special collections a hundred years ago. They must travel to the institution that holds the collection and cope with reviewing extensive numbers of individual items during limited access time. These limitations inhibit and frustrate research and the development of knowledge.

Technology offers a way for libraries to provide a global community of researchers with access to these unique materials. Digitization allows researchers to view a facsimile of the original documents, not just transcripts or summaries that can be incomplete and lack context. Libraries can provide this facsimile access while preserving fragile original materials. Libraries, through technology, can also provide enhancements to improve viewing and reading documents, including aids for researchers who are print-disabled, as well as organizational tools such as indexing and searching.

Digitization Helps Connect Physically Separate but Related Resources. Through digitization, libraries can also potentially present materials in context by integrating and organizing scattered pieces. They can also place materials in a larger accessible context with related collections held at other libraries. As the Library of Congress noted in its comments: “When different institutions hold related collections, the online availability of collections has a synergistic effect for scholarly

¹ February 4, 2013, Comments of the University Of North Carolina, Chapel Hill Libraries in Response to the Copyright Notice of Inquiry (sp.) Concerning Orphan Works and Mass Digitization, at 1.

² January 2013, Comments from the Duke University Libraries in response to the Copyright Office’s Notice of Inquiry concerning orphan works and mass digitization.

³ <http://registry.fdlp.gov/listings/legal-regulatory/historical-publications-of-the-united-states-commission-on-civil-rights>.

⁴ <http://www.law.georgetown.edu/library/collections/legal-dictionaries/index.cfm>.

⁵ <http://www.medicalheritage.org>.

research, enabling researchers to get the complete picture regardless of where the physical collections may reside.”⁶

Three examples demonstrate this synergistic effect. The Georgetown Law Library and the University of Virginia Law Library are each beginning to digitize document collections they hold that are related to the Tokyo War Crimes Tribunal. These law libraries plan to create a portal to these collections and will collaborate with other institutions that also hold materials related to the Tribunal to include portal access to those collections as well. Only digitization could make portal access to these historical collections possible. The University of Oklahoma Law Library, the Native American Indian Law Library and Native American tribes have collaborated to provide access to Constitutions, Tribal Codes and other documents related to the self-government of federally recognized tribes.⁷ Digitization provides central access to these unique resources and the ability to compare sources. As indicated above, some of the world’s leading medical libraries have also collaborated to provide open access to historical resources in medicine.⁸ Digitized resources, covering six centuries, include medical rare books, pamphlets, journals and films. The digitization of these resources and access through one portal provide special opportunities for the development of understanding and knowledge in medicine.

Orphan Works Uncertainty Prohibits Digitization Progress. Libraries recognize that digitization provides an extraordinary way to facilitate the creation of knowledge. The vast majority of libraries refrain from digitization, however, until they have scrupulously engaged in due diligence efforts to identify copyrighted materials and locate copyright holders. Omitting documents from access can distort the picture that the full collection in context presents. Libraries therefore strive to review and in good faith determine the status of materials in a collection and locate rights holders.

For example, the University of Minnesota Law Library carefully considered the copyright status of documents and attempted to locate and contact copyright holders before it included materials in its Clarence Darrow Digital Collection.⁹ This extensive collection contains a broad range of documents related to the jurist Clarence Darrow, including cases, trial transcripts and documents, articles, books, photos and correspondence. Library staff researched the death dates for personal letter writers, determined contacts and requested permission for use of these unpublished letters. For materials that were not in the public domain they contacted authors and publishers for permission, paying fees as requested. For some materials, they researched copyright status including whether the original holder had renewed the registration.

The article *Due Diligence, Futile Effort: Copyright and the Digitization of the Thomas E. Watson Papers*¹⁰ discusses a case study of the extensive efforts and expense a library can undertake to

⁶ February 4, 2013, Comments of the Library of Congress in Response to the Copyright Office Notice of Inquiry “Orphan Works and Mass Digitization.”

⁷ Native American Constitution and Law Digitization Project, <http://thorpe.ou.edu>.

⁸ Medical Heritage Library, <http://www.medicalheritage.org/about>.

⁹ The Clarence Darrow Digital Collection, <http://darrow.law.umn.edu/index.php>.

¹⁰ Maggie Dickson, *Due Diligence, Futile Effort: Copyright and the Digitization of the Thomas E. Watson Papers*. AMERICAN ARCHIVIST 73 (Fall/Winter 2010). See discussion in February 4, 2013, Comments of the University Of North Carolina, Chapel Hill Libraries in Response to the Copyright Notice of Inquiry Concerning Orphan Works and Mass Digitization, at 2.

determine copyright status and locate copyright holders for a special collection that included unpublished, noncommercial letters and papers.¹¹ This case study illustrates the extent of library due diligence efforts, as well the frustrations and ultimately unsuccessful results for many of the materials.

We believe that libraries would undertake additional digitization projects if there was greater clarity for those wishing to use works whose ownership is in question. We believe that libraries are pursuing a greater number of digitization projects of out-of-copyright works because of this lack of clarity.

III. CONCLUSION

Our comments illustrate the myriad reasons that libraries digitize and the benefits that digitization provides, including increasing collective knowledge, enhancing access by providing metadata and integrating disparate collections, and preserving rare materials. As illustrated by our examples, libraries spend a tremendous amount of time and expense to determine copyright status and identify rights holders.

Our associations remain concerned about the lack of clarity around orphan works. We urge the Copyright Office to continue to seek a solution that would result in additional uses of and improved access to orphan works while respecting the rights of copyright holders.

We thank the Copyright Office for holding the Public Roundtables regarding Orphan Works and Mass Digitization as well as offering an additional comment period.

¹¹ The study also discusses the good faith approach of offering a liberal take-down policy for posted materials. As of the date of the article (2010) there were no challenges or even contacts from copyright holders. Dickson, *id.* at 636.



The American Association of Law Libraries (AALL) was founded in 1906 to promote law libraries' value to the legal and public communities; foster the law librarianship profession; and provide leadership in the legal information field. With nearly 5,000 members, AALL represents law librarians and related professionals who are affiliated with law firms; law schools; corporate legal departments; courts; and local, state and federal government agencies. www.aall.org
Contact: Emily Feltren, (202) 942-4233



The Association of Academic Health Sciences Libraries (AAHSL) supports academic health sciences libraries and directors in advancing the patient care, research, education and community service missions of academic health centers through visionary executive leadership and expertise in health information, scholarly communication, and knowledge management. www.aahsl.org
Contact: A. James Bothmer, (206) 367-8704



The Medical Library Association (MLA) is a nonprofit, educational organization with more than 4,000 health sciences information professional and institutional members worldwide. Founded in 1898, MLA provides lifelong educational opportunities, supports a knowledgebase of health information research, and works with a global network of partners to promote the importance of quality information for improved health to the health care community and the public. www.mlanet.org
Contact: Mary Langman, (312) 419-9094, ext. 27



The Special Libraries Association (SLA) is a nonprofit global organization for innovative information professionals and their strategic partners. SLA serves about 9,000 members in 75 countries in the information profession, including corporate, academic, and government information specialists. SLA promotes and strengthens its members through learning, advocacy, and networking initiatives. www.sla.org
Contact: Douglas Newcomb, (703) 647-4923