

Putting historical collections online

Copyright considerations for the digital world

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Making historical items from a library's collection available online is not only a good idea, but an exciting one. The advantages are obvious: original documents are preserved intact, they can be ordered and searched in ways not before possible, a service of value to researchers and the public is created, innovative displays can be created, and the library's prestige is enhanced.

The issues

Whilst the purely technical issues in such an undertaking change with the technology, there may also be some copyright and related issues involved. *The Copyright Act 1968 (Cwth)* gives certain exclusive rights to copyright owners, with the relevant ones in this case being the rights to publish, to make adaptations, to reproduce the work, to broadcast the work, to transmit it to subscribers to a diffusion service, and the right to perform the work in public. Putting items on the world wide web will involve all of those rights, and, with new legislation pending, perhaps others in the future.

Depending on the age of the documents, copyright may or may not have expired. Whilst the term of copyright protection of published material under Australian law is fifty years from the end of the year in which the author died, this is neither the case with countries in the European Union, where the term of protection is now seventy-five years, nor in the United States, where the term is currently seventy years and under pressure to increase yet again, as lobbying from the Motion Picture Association continues. It may be possible then, for a document legally uploaded in Australia to infringe when appearing on screens elsewhere in the world. This is an issue which has not been resolved, but already there are law firms which are not averse to issuing subpoenas and threats across national borders.

Of course, if the material has not yet been published, as may be the case with letters, photographs and diaries, for example, the clock on the term of protection has not yet started running. Sorting out the copyright on photographs is particularly complex, with photographs taken before May 1969 being protected for fifty years from the

year in which the photograph was taken and those taken from May 1969 onwards being protected for fifty years from the date of first publication. The *Copyright Act* should be consulted in all cases to establish whether the material has entered the public domain.

Copyright may not be the only issue. Especially in the case of unpublished material, privacy may be a concern, and, in the case of organisations, reputation may be another.

Ownership

If, having ascertained that the age or unpublished nature of the material means that there is a copyright consideration, then determining ownership and locating that copyright owner will be the next interesting phase of the project.

The copyright in unpublished materials forms part of the estate of the original owner, so this means a search for heirs.

Not all ownership is straightforward. Ownership may be layered, for example if a project on newspaper advertising styles over a century was being contemplated: is the copyright owned by the artist, the journal, the advertising agency, the advertiser or a combination of several of these? And if it is the advertiser, what has happened to the company? Does it still exist, has it gone bankrupt, been amalgamated, taken over, or just disappeared? Who took over its assets, of which copyright ownership will be a part?

Finding the owners

What are the resources that you might use? In the case of published material, such as the advertisement project referred to above, the journal publishers are probably a good place to start. Their records may assist in locating the advertisers. Of course, if the advertisers are still operating, then a direct approach is possible. If the company has disappeared then the Australian Securities and Investments Commission's National Names Index website is a good place to start a search, and to go further back, prior to ASIC's establishment, it will be necessary to consult State Archives in the relevant state for details.

A search along these avenues may not bring timely results, and it may be necessary to go further afield, and con-

sult other authorities; newspaper archives, historical societies, business organisations, chambers of commerce, and some of the major web search engines. A surprising amount of information on companies is available via the web.

Unpublished material, in which copyright may subsist in perpetuity, presents perhaps even greater challenges. A search for heirs begins at the probate office, which in most states charges a search fee. Other sources of information will be electoral rolls, old telephone and street directories, historical societies, and local government councils, and other resources known to good reference librarians.

The cost factor

Locating materials, deciding on their arrangement, and then tracking the necessary permissions to publish them all takes time, and of course, money. The more staff resources that can be devoted to a project, the sooner it will be up and running. Given that most libraries will not be able to do this on more than a part-time basis, a period of at least six months should be allowed to get all the necessary permissions in place. Budgeting should include allowances for staff time, travel, and probate office fees, as well as postage and other communication costs.

Permissions

When a copyright owner is located, the permission or licence should be obtained in writing (e-mail is acceptable) and should include a warranty that the person giving the permission is competent to do so. Ensure that the copyright owner understands clearly why the permission is required.

Why bother?

The temptation to believe that old and obscure material will be of no interest to the copyright owners, and that permissions are unnecessary, should be avoided. Not only is web publishing an event of much greater exposure than print publishing, and thus more likely to be detected, but the goodwill and interest engendered by diligent enquiry amongst businesses, heirs, publishers and other copyright holders can only serve to enhance your library's reputation and emphasise the respect which the library community holds for copyright law. ■