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Copyright Analyses

Introduction

United States Copyright law aims to protect the intellectual rights of authors and creators of original works. One of the first steps in selecting materials for digitization is to determine the copyright status and ownership of the materials and to secure any necessary permissions. Below are four collections to be considered for a digitization project. The implications of copyright for each of the collections will be analyzed, and recommendations will be made.

Collection 1

Personal letters written by Mr. Walter Packard to Mrs. Carrie Stevens dated during the year 1900. The personal letters described an outing that they had taken with a group of friends. Both parties are deceased.

If these letters were published in the year of creation, which is before 1923, they are in the public domain. If they were not published, they would be in the public domain 70 years after Walter Packard's death. If a death certificate for Walter Packard's cannot be obtained, the letters would be in the public domain 120 years from the date of creation, which would be the year 2020 (Hirtle, 2017, p. 1). An attempt should be made to track down the estate of Walter Packard to secure permissions or to ascertain the date of his death. It would also be possible to search the catalogs and records of the U.S. Copyright Office, or to have the U.S. Copyright Office conduct a search for these materials (U.S. Copyright Office, 2013, p. 1). Certification for the Copyright Office that there are no records about whether Mr. Packard is living or died less than 70 years ago would protect an institution digitizing these materials.

It could be argued that making and providing access to digital copies of the letters constitutes a fair use, as provided by Section 107 of U.S. Copyright Law (HATII & NINCH, 2003, p. 65). This would depend on the content of the letters, and whether they contain information that is useful for study and research. It would also need to be established that there would be no commercial gain. Digitizing these materials as a fair use would be a calculated risk.

Section 108(b) of the Copyright Law, which was designed to ensure scholarly use of unpublished materials allows "three copies or phonorecords of an unpublished work duplicated solely for purposes of preservation and security or for deposit for research use in another library or archives" (Hirtle, 2006, p. 1). These copies would only be available on the library or archives premises.

Another consideration is the privacy of the individuals concerned. Digitizing personal letters would require sensitivity and an understanding of privacy rights (HATII & NINCH, 2003, p. 78). Although Mr. Packard and Mrs. Stevens are deceased, the nature of their correspondence and relationship could potentially cause harm or discomfort, or attract unwanted attention to surviving relatives.

In this case, the scholarly value of these letters and their potential use would need to be weighed against the time, funds, and risk involved in digitizing them. I would recommend documenting attempts to discover the date of Walter Packard's death and to gain permission from his estate to demonstrate good faith (de Stephano, 2000, pp. 11-13). If these attempts are unsuccessful, I think that digitizing and distributing these materials for educational and research purposes would be a reasonable risk to take.

Collection 2

Two books:

Illinois. Crime Investigating Commission (1970). Report on the SDS riots: October 8-11, 1969.
Chicago, IL: The Commission [?].

Lewis, Sinclair (1929). *Cheap and contented labor: The picture of a southern mill town in 1929*.
New York, NY: United Textile Workers of America [and] Women's Trade Union
League.

The report by the Crime Investigating Commission of the State of Illinois is not necessarily in the public domain. "The U.S. Copyright Act clearly states that copyright protection in the United States is not available for any work of the federal government" (Copyrightlaws.com, 2017). Although this law applies to federal U.S. government works, it does not apply to state government works. Before digitizing this report, it would be advisable to check with an expert on the specific copyright permissions for works published by the State of Illinois. Another factor to consider is the publication by the State of Illinois of an electronic book version of this report, as indicated by WorldCat (OCLC, n.d.), and a digitization by Google Books (n.d.).

Upon closer inspection, it is apparent that the book on the SDS Riots has no copyright notice. A work published between 1923 and 1977 without a copyright notice is in the public domain (Hirtle, 2017, p. 1). In my opinion, if the existing digitization meets the needs of the institution, it would not be advisable to digitize the Illinois report. Since an electronic version of the Illinois report is available, digitization would not constitute a fair use.

The book *Cheap and contented labor: The picture of a southern mill town in 1929*, by Sinclair Lewis, was published in 1929. If the book was published without a copyright notice, it is in the public domain, due to failure to comply with required formalities. If it was published with notice but the copyright was not renewed, then the book is in the public domain due to copyright expiration. If the book was published with notice and the copyright was renewed, the book will

be in the public domain 95 years after the publication date, which would be the year 2024 (Hirtle, 2017, pp. 1-2). If an institution wished to digitize this book and make it accessible, the key would be to discover the history of the copyright notice and renewals. One could search the records and catalogs of the U.S. Copyright Office, or have the U.S. Copyright Office conduct a search for these materials (U.S. Copyright Office, 2013, p. 1).

A record on WorldCat (n.d.) includes a note about copyright, which appears to have not been renewed by the union that published it. Expiration of copyright would put the work in the public domain. The Stanford University Libraries & Academic Information Resources (n.d.) database can be searched for "the copyright renewal records received by the US Copyright Office between 1950 and 1992 for books published in the US between 1923 and 1963." This resource shows no evidence that the copyright was renewed.

Another option would be to digitize the book for the purposes of preservation, scholarship, or research. Under Section 108b, the materials could be available on the library or archives premises. Under Section 108, which applies to published materials in the last 20 years of their copyright term, the materials could be reproduced, displayed and distributed.

If it could be firmly established that the Sinclair Lewis book is in the public domain, then it could be digitized and distributed. However, if there is any uncertainty it would be best to wait until 2024, particularly since Sinclair Lewis is a well-known author.

Collection 3

Photographs of J.J. Owen (1827-1884?) that contain no dates and no information on who took the photographs.

Personal photographs from the 1800s that contain no dates and no information about the photographer would not necessarily fall into the public domain. Although photographs became

eligible for copyright protection in 1865, this collection may have been created before or after that year. An institution wishing to digitize these photographs would need to examine copyright protections of both the subject of the photographs (J.J. Owens) and the creator of the photographs (unknown). Copyright status could be explored by searching the records and catalogs of the U.S. Copyright Office, or to have the U.S. Copyright Office conduct a search for these materials (U.S. Copyright Office, 2013. p. 1). If the photographs were published, which would probably have been before 1923, they are in the public domain. If the photographs were not published, they would be in the public domain 70 years after the death of the author. Since the author is unknown and the death date of the author is unknown, the photographs would enter the public domain 120 years from the date of creation (Hirtle, 2017, pp. 1-2). However, the uncertainty of the date of creation would complicate the search process, and results may be inconclusive.

Establishing the death date of J.J. Owen may be the easiest route. If the death date of J.J. Owen could be definitively established as 1884, then the photographs could not have been created later than 1884 (unless J.J. was dead in the photographs). In that case, they would have come into the public domain in the year 2004. The photographs would be safe to digitize.

If the death date of J.J. Owen could not be established, digitizing the photographs would be a calculated risk. The assumption would be that J.J. Owen did not live beyond 1897 (in other words, he died before he was 70 years old). If he died before 1898, the photographs would be in the public domain by the year 2017.

Another option would be to make these photographs available for educational and research purposes only. This would constitute a 'fair use,' as provided by Section 107 of U.S. Copyright Law (HATII & NINCH, 2003, p. 65). Again, the scholarly value of these materials

and their potential use would need to be weighed against the time, funds, and risks involved in digitizing them.

My recommendation would be that these materials are reasonably safe to digitize and distribute. To demonstrate good faith, an institution should document attempts to discover publication details, or the death date of J.J. Owens (de Stephano, 2000, pp. 11-13). If unsuccessful, it would be reasonable to assume that the creation date of the photographs was before 1897, which would put them in the public domain as unpublished works. The age of the materials makes them interesting for educational purposes or scholarly research.

Collection 4

A series of oral histories, featuring community residents, created in 1975.

"The law regarding the larger category of sound recordings applies to oral histories" (McGord, 2016). U.S. Copyright law states that unpublished sound recordings created after 15 February 1972 enter the public domain 70 years after the death of the last surviving creator (Hirtle, 2017, pp. 5-6). Even if all the creators died in 1975 immediately after the recording, these materials would not enter the public domain until 2045. If these oral histories are unpublished, they are not in the public domain.

Sound recordings published in the U.S. with notice between 15 February 1972 to 1978 enter the public domain 95 years after publication, which in this case would be 2070. If these oral histories were published with notice, they are not yet in the public domain.

Sound recordings published in the U.S. between 15 February 1972 to 1978 without notice are in the public domain. If these oral histories were published without notice, they are in the public domain. To safely digitize these sound recordings and make them accessible, one would

need to confirm that they were published without notice between 1972 and 1978, which might be achieved by searching the records and catalogs of the U.S. Copyright Office.

Another possible route would be to seek permission directly from the community residents who created the oral histories, including the subject/s and interviewer/s (McCord, 2016). Each creator would need to sign a release granting permission to digitize and distribute these materials for educational and research use.

Before making these recordings available for access, it would be advisable to examine the nature of the content to evaluate any privacy issues. Project managers should determine whether the material is sensitive, or if exposure of these recordings could be harmful to any of the creators. A privacy policy should be developed to establish purpose and access rights of personal materials. (HATII & NINCH, 2003, pp. 78-79).

My recommendation would be to create a digitized version of these oral histories to preserve cultural heritage. Section 108(b) of the Copyright Law, which was designed to ensure scholarly use of unpublished materials allows "three copies or phonorecords of an unpublished work duplicated solely for purposes of preservation and security or for deposit for research use in another library or archives" (Hirtle, 2006, p. 1). If permissions from all creators could be obtained, access to digitized versions should be limited to scholars and researchers if the material is sensitive.

Conclusion

The examples above demonstrate how copyright status affects the selection of materials for digital conversion. To avoid litigation and penalties, it is necessary to establish that works are in the public domain or to secure permissions from copyright owners. Digitizing materials without copyright permissions as 'fair use' may be a calculated risk worth taking. In any case,

managers of digitization projects must abide by copyright laws that were established to balance the intellectual right of creators and the rights of society (HATII & NINCH, 2003, p. 61).

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