Many libraries, particularly large academic libraries, have begun major digitization projects in order to make library material much more widely available. However, many works that might otherwise be candidates for digitization are protected by copyright. While this does not completely bar a work from being digitized, it becomes a much more complicated process if permission is required. This research studies how academic library digitization projects have addressed copyrighted materials. Librarians and publishers were interviewed to understand their perspective on copyright and to determine the best practices for locating and contacting copyright holders. Overall, there is no one best technique for finding copyright holders, but there are ways that librarians can expedite the process, such as by developing a good workflow at the outset and consulting with administration. Overall, institutions have been successful in incorporating copyright items into a digitization project, although a heavy time investment is involved.
DIGITIZATION AND COPYRIGHT: HOW ACADEMIC LIBRARIES HANDLE PERMISSION SEEKING FOR COPYRIGHTED MATERIAL

by
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Approved by

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Background and Problem Statement

Librarians have undertaken digitization efforts in order to preserve library material and make that material accessible to a wider audience. Often these digitized documents are available for anyone in the world to access, download, and use. However, copyright issues still impede many digitization projects, with the result that relevant material may not be scanned to avoid the potential of copyright infringement. I plan to look at how libraries have approached copyright in digitization projects, and determine whether copyrighted works were entirely avoided or whether libraries decided to include works under copyright in the collection. This research looks at how libraries have approached copyright in digitization projects, focusing on projects that have successfully integrated copyright material. Different projects have approached copyrighted materials, with many projects avoiding copyrighted material entirely and focusing on items in public domain. In cases where copyrighted works were included, I hope to discover how copyright permission was secured, what methods worked best, and what best practices emerged and could be recommended to future digitization projects.

“To promote the Progress of Science and useful Arts,” Article 1 of the United States Constitution allows Congress to grant “exclusive Rights” to creators to their creations for a limited duration. What began as a 14 year protection has since turned into protection that extends 70 years after the death of the author in most cases. “Author” in this instance does not refer simply to the author of a book, but anyone who has created content which falls under copyright, whether it is a book, painting, piece of music, or any
other copyrightable material. While copyright performs a very important function in encouraging authors to create new works, it can also limit the ability of libraries to fulfill their mission of making more recorded knowledge widely available. Complicating the often murky issues surrounding copyright are “orphan works,” material whose rights holder is not known or cannot be located, or the chain of copyright inheritance is difficult or nearly impossible to trace. Even in cases where a library might want to include an orphaned work in a digitization collection, it becomes impossible to seek permission from the copyright holder. In these instances librarians must make choices about the potential legal risk posed by proceeding with digitization and whether the potential benefits outweigh the potential harms.

Librarians are not without assistance in copyright matters. Section 107 of the 1976 US Copyright Act provides an exception to copyright protection in instances of “fair use.” The fair use clause outlines the conditions under which a use of a copyrighted work might be considered fair, which includes:

1. the purpose and character of the use, including whether such use is of a commercial nature or is for nonprofit educational purposes;
2. the nature of the copyrighted work;
3. the amount and substantiality of the portion used in relation to the copyrighted work as a whole; and
4. the effect of the use upon the potential market for or value of the copyrighted work.

(17 U.S.C. § 107)

Fair use, however, is only truly certain after it is considered in court and the risk of litigation may be enough to deter some librarians from even considering using
copyrighted works. Lawyer and lawyer Kevin Smith (2012) notes that librarians “frequently practice a form of self-censorship” when making decisions about which materials to include in digitization collections (p. 17). This is a problem which could be avoided with greater awareness of copyright issues, fair use, and how to obtain permission to include copyrighted materials in a collection.

The permission seeking process can be an incredibly difficult and time-intensive task. The rights holder must be determined, then located, and finally actually contacted for permission to include their work. The use a form letter can help the process by having a single document that can be mailed or e-mailed en masse, but that alleviates only one part of the difficult workflow. Few studies have addressed the question of locating and contacting rights holders, and this paper hopes to examine how libraries have successfully incorporated works under copyright into their digital collections.

It is unclear what the typical stance has become for libraries when handling materials still under copyright. There seems to be little consensus on an agreed workflow or best practices for seeking copyrighted material. Carnegie Mellon Library began a large-scale digitization project in 2001 which also included copyrighted materials in its collection. More recently Duke Divinity Library’s Religion in North Carolina project also sought to use copyrighted materials. However, the lack of available information on standard procedures made the permission seeking process more of a trial and error approach. Further research in the area could guide future librarians and make the process go more smoothly, and empower librarians to consider including copyrighted materials in digital collections.
Despite being such an important issue, there remains a lack of literature on the subject, although some research is beginning to emerge. The only detailed study I found was performed by Carole George, published in 2005, who studied the efforts undertaken by the Carnegie Mellon Digital Library Plan to move many of its collections online to determine the effectiveness of seeking permission for copyright. She documented and tracked their efforts in contacting copyright holders and securing permissions to digitize the work. She found that they were only able to receive responses for copyright permission 52% of the time, while 25% of copyright holders contacted never replied at all and there was an average delay of about 3 months. This suggests that there is room for improving upon the Carnegie Mellon project to gain a better response rate and perhaps make the process more efficient.

Since then few, if any, have performed similar studies to characterize the copyright permission seeking process. Alexandros Koulouris (2012) recently published an article intended to design a “policy route map” for digital collections in academic libraries. He surveyed many libraries to discover the best policies for digital collections. Although he does briefly discuss copyright, he does not make any recommendations for how librarians might secure copyright permission to digitize and display copyrighted works. And while Trudi Hahn (2006) also discusses the importance of policy in digital collections, her discussion of copyright is confined largely to works in the public domain and a brief mention of what is entailed when working with orphan works (p. 20-21). Kevin Smith (2012) advocates pursuing digitization of copyrighted materials and recommends a four-pronged approach to evaluating risk (p. 19-20). However, he does not specifically make recommendations for ways in which librarians can secure copyright
permission. While he does not conduct a study of his own, Smith cites the Association of Research Libraries’ 2010 study which found nervousness among librarians in undertaking digitization efforts (p. 17). There is a clear awareness of the issues surrounding copyright and digitization, but few librarians have seemed willing to tackle that issue directly.

Because the research in this area is lacking, with only Carole George’s research addressing the topic specifically, there is plenty of opportunity for further exploration. It has been seven years since her article was published, and librarians may have discovered more successful techniques for acquiring copyright permissions or gained new insights on what policies work best. My purpose in undertaking this research is to investigate how librarians have addressed copyright issues in order to determine the extent to which they are willing to work with copyrighted materials and, when seeking permission from authors, what methods have been most successful in contacting and receiving a positive response. This research will hopefully inform future practice of librarians in digitization efforts and guide policy decisions in order to ensure that the greatest amount of relevant material is included in digital collections.

**Purpose and Research Questions**

This research investigates how librarians have managed the copyright permission seeking process and determine what methods are the most and least successful. To understand this, I proposed two broad research questions to address:

1. What techniques have librarians used to find copyright holders and contact them for permission to use copyrighted material?
2. How do publishers respond to copyright permission requests?
These questions address the chief issue I investigated: the specific methods used by librarians in order to acquire copyright permission and how publishers respond to these requests. To help guide these overarching research questions, I proposed three additional questions to help determine where the major challenges lie and ways that they can be overcome:

3. Which methods of seeking copyright permission have been most successful?
4. Which methods of seeking copyright permission have been least successful?
5. In what ways can the process be improved or streamlined in the future?

These questions should help to uncover the most effective ways libraries have engaged with copyrighted works and perhaps help guide future digitization projects by other libraries. Because of the lack of literature on the subject, I hope it may additionally spark further dialogue about digitizing copyrighted works and managing the risks involved in order to maximize the output of projects while respecting copyright law.

I also hope that this project will empower librarians to include copyrighted materials in digitization projects. Although it is an area that librarians often avoid, determining how librarians have succeeded in permission efforts and what techniques were effective, along with publisher opinions, will assist librarians in devoting some of their limited time and resources in digitization projects to permission seeking and seeking permission more efficiently. This will enable more comprehensive digitization projects and allow for more material to be open for use for researchers and scholars across the world.
Literature Review

For an overview of my literature search strategy, see Appendix A. There are very few empirical studies that tackle the procedure of obtaining copyright permissions for digitization. Some articles deal more broadly with studying specific digitization projects and their workflow and challenges, with copyright often being a component of the study. The bulk of the articles are policy-focused, discussing various policies that librarians ought to enact in digitization projects. While these can be beneficial because they discuss actual procedures librarians might implement, they also often lack real-world grounding to demonstrate actual digitization procedures. However, I elected to include some of these in the literature review section because these policy-focused articles form the bulk of the available literature.

Carole George performed the first major empirical study that I discovered, in 2005. Her study documented the copyright permission seeking procedure undertaken by the Copyright Permissions project as part of the Carnegie Mellon Digital Library Plan. In particular, the project “examine[d] the process of negotiating permission to digitize... using the least intrusive and least expensive methods” (George, 2005, p. 333) over the course of two years.

The librarians chose a statistically random selection of 273 different publications and tracked the procedure for locating the copyright holder and asking for permission to digitize the work, including a brief description of the letter they used and the response options that were offered. Ultimately contact information was not able to be found for about 5% of the items, whether due to inconclusive information or incorrect addresses. A yes/no response was only received for about 52% of the items, with only about 24% of the total receiving a “yes” response to permission to digitize. 28% denied permission,
and a few granted permission with certain restrictions or conditions (George, 2005, p. 336-337). George used the data to calculate the approximate response rate, including the categories of copyright holders who were most likely to respond and in the least amount of time (p. 337-338).

George concludes that despite the effort that went in to requesting permission for these 273 publications, response rate remained low and often took a long time to yield a response, and better results would require significant time investments from librarians (p. 339-340). George makes many recommendations based on the results of the study, such as focusing digitization efforts on out-of-print materials and non-commercial publishers which are more likely to respond to and grant digitization permission (p. 340). While George provides a wealth of useful information in her study, one area in which additional light could have been shed was the response rate among different types of permission requests. She mentions that copyright holders were contacted through mail, e-mail or fax, but does not characterize which of these methods, if any, was most successful. This information may have helped guide similar projects.

Another major empirical study on seeking copyright permission was performed by Maggie Dickson. In 2012, Dickson performed a case study of the efforts to digitize the Thomas Watson Papers at the University of North Carolina’s Southern Historical Collection. This project was intended to serve as a pilot for future digitization efforts by the Southern Historical Collection (Dickson, 2010, p. 627). While the librarians were able to receive copyright permission from Watson’s family, other materials were much more problematic. Many of them were unpublished correspondence and remained under copyright protection. The study tracks the entire procedure of determining the copyright
status of the materials, the costs involved when it could be determined, and the success rate.

Despite the effort undertaken by librarians and research assistants at the University of North Carolina, they were only able to receive explicit permission to digitize and display four letters outside of those written by Watson himself (Dickson, 2010, p. 631). Despite the challenges, the university’s legal counsel believed that the risk was minimal and there was a strong case for fair use. Thus, the collection was put online with a clear take-down policy despite not receiving explicit copyright permission. As of the article’s publishing date, there had been no challenges to material in the collection and no take-down requests (p. 636). This illustrates that there is an opportunity for some low-risk items to be placed online without permission being explicitly granted, but it does not eliminate the need to seek permission in many other cases.

While this article is a great case study on fair use and “due diligence” in finding material, it also is not universally applicable to libraries. The Watson Papers were mostly a series of correspondences and thus there is much lower risk of copyright litigation because there would be relatively little commercial interest in the items that might create a market that could be harmed. It is possible that someone would want to publish and profit from correspondences, but because that is less common there is less of a chance of market harm and fair use is strengthened. While librarians may want to digitize correspondences and other low-risk material, they may also want to make books available electronically as well. Because books are generally commercially published, this makes fair use more difficult and permission more important. Nonetheless, Dickson’s case
study is a great look into the costs and difficulties associated with locating, contacting, and hearing back from copyright holders.

In 2010, Dharma Akmon performed a study of the efforts to locate and contact copyright holders for materials in the Jon Cohen AIDS Collection Digitization Project. The staff at the project kept ample documentation and tracked the time it took to hear back from copyright holders. Akmon found that 85% of staff time was spent on copyright related tasks and that, on average, it took around 70 minutes to gather the contact information and contact rights holders (Akmon, 2010, p. 15).

Akmon also tracked the average response time, which she calculated as about 41 days, although it was lower for individual copyright holders and higher for commercial copyright holders (p. 16). After about 120 days, the likelihood of response from all types of copyright holders greatly diminishes (p. 17). However, overall, the received response was positive from most rights holders contacted.

Librarian and copyright expert Peter Hirtle, along with Emily Hudson and Andrew Kenyon, wrote extensively on the role copyright plays in digitization his book *Copyright and Cultural Institutions: Guidelines for Digitization for U.S. Libraries, Archives, and Museums*. The bulk of the text is dedicated to informing librarians and other cultural institution professionals about what copyright is and navigating the intricacies of the law. Particularly relevant is the section in which Hirtle discusses licenses and how librarians can negotiate licenses with copyright holders to display digitized works. He offers some sample license letters which librarians can adapt to utilize in their digitization projects and even discusses their strengths and weaknesses for specific uses (Hirtle, 2009, p. 138-143). Additionally, Hirtle makes recommendations for
locating and contacting copyright holders to negotiate these licenses (p. 153-172). Hirtle also recommends procedures for risk management and how to determine when to proceed in uncertain copyright situations. Specifically he discusses the importance of librarians engaging in “litigation calculus” to determine what the potential risk is and whether to proceed despite it (p. 197-199).

While the book contains many helpful recommendations, it is lacking in specific evidence-based information to help guide the copyright permission seeking process. Hirtle does not discuss the success librarians have or have not had utilizing these techniques in seeking permission, or discussing the cost involved. There are two case studies detailed at the end of the book, but both relate to digitization of items under special circumstances (interviews and oral histories; dissertations, theses, and student papers) which are not broadly generalizable to large-scale book digitization projects.

Boock (2008) performed a case study of a digitization project at Oregon State University and compared it to other libraries belonging to the Association of Research Libraries. While his article is more broadly concerned with the organizational changes enacted at the library to ensure a smooth workflow for the digitization project, he does devote some attention to copyright issues in the project. Boock describes the workflow of the project, mentioning that the reference librarians sent out e-mails to rights holders in order to secure permission to digitize their works, and makes other recommendations based on ARL institutions (p. 448). While Boock does not characterize the success rate of permission requests, his article is noteworthy for explicitly discussing the workflow and roles of copyright permission seeking, which is an important area for librarians engaging in digitization projects to consider.
Koulouris and Kapidakis (2012) created a policy decision tree to help guide librarians in making decisions related to their digital content. They formed this by surveying 67 different digital collections from 34 different libraries and inquiring about their policies. Although copyright is not an exclusive focus of their article, they do discuss it briefly. In general their decision tree advocates erring on the side of caution and using licensing agreements to obtain and display copyrighted materials (p. 169-170). Fair use is rarely mentioned except as a condition under which other users can reproduce digitized content.

Many other articles are less focused on the specific issue of copyright within digitization projects and instead focus on the two issues separately, discussing digitization projects broadly or copyright in different contexts. In 2001, Byron Anderson wrote a policy-focused article in the wake of copyright changes such as the Digital Millennium Copyright Act. He recommends that librarians review their policies to ensure that they continue to comply with copyright law and to continue to be informed on, and fight for, fair use (Anderson, 2011, p. 114). Another policy-focused article was written by Bobby Glushko in 2011, focusing on the legal aspects of digitization. He describes copyright law as “something to work with, and not to struggle against” (Glushko, 2011, p. 30). Glushko advocates working with legal advisors to design a successful project, rather than futilely assuming that copyright is an insurmountable barrier. Once again, however, there are no specific details on how librarians should seek copyright permission or any information on the typical response rate a digitization project will receive.
Marydee Ojala (2012) discusses the murky copyright issues surrounding the matter of orphan works, suggesting that they be called “hostage works” instead because of their protected status (p. 16). Tomas Lipinski (2009) discusses the grey literature, “any documentary material that is not commercially published and is typically composed of technical reports, working papers, business documents, and conference proceedings,” and its relation to copyright, as well as potential laws that might address its copyright issues. Dames and Hurst-Whal (2007) wrote an article entitled “Digitizing 101” intended to serve as a brief introduction to digitization and its major challenges. Although they make recommendations for finding copyright holders, they do not discuss the role fair use might play in utilizing copyrighted materials for digitization. While these articles are helpful for understanding the landscape of copyright or digitization policies, they rarely get at the heart of the matter.

Finally, Kevin Smith (2012) advocates a detailed risk management plan for libraries engaging in large-scale digitization projects. “Librarians and archivists,” he writes, “frequently practice a form of self-censorship when making decisions about digitization of special collections and unique local holdings” (p. 17). To combat this he proposes a four-pronged strategy for assessing risk in determining when it is okay to proceed with digitization. This approach includes (1) recognition that some items are in public domain, (2) seeking permission from copyright holders of items still under copyright, (3) creating a take-down policy so that a work can be taken down if a copyright holder emerges and does not want his or her work publicly displayed, and (4) recognizing that fair use would support many academic digitization projects (Smith, 2012, p. 19-20). Smith also argues that some of these same strategies also apply to
orphan works. In Smith’s view, such cautionary steps can enhance the strength of digitization collections and prevent librarians and archivists from performing any self-censorship. Risk management is an important part of working with copyright in digital collections, and this paper can help to establish a risk-management policy that can inform some copyright decisions in digitization projects, including how to decide when it is necessary or prudent to seek permission.

**Research Design and Methods**

This is a qualitative research design. My primary method of data collection is interviews with librarians who have been involved in successful digitization projects that have incorporated copyrighted material. Three librarians were interviewed for this project. Librarians involved in successful digitization projects were contacted to explain the purpose of the research and solicit interest. “Successful” is a relative term, especially because it is unlikely to find a public statement about copyright success rates of many projects. I opted to investigate projects and institutions that I knew to have worked with material under copyright. The identified projects were the Duke University Advertising Collections, the North Carolina State University Digital Libraries, and the Carolina Digital Heritage Center.

These librarian interviews were supplemented with interviews with publishers to understand their stance on copyright and what they expect to see from a permission request. Publishers are important stakeholders in digitization efforts because the items that are digitized, and often made freely available, are the same items that they provide for a profit. Understanding the publishers’ side of the issue will help librarians more
effectively communicate with them and perhaps uncover a compromise that meets the interest of both sides. Because digitization projects often work with a variety of different materials, particularly unpublished or noncommercial works, it was difficult to select a representative sample. However, I opted to select three academic publishers because they provide the type of scholarly resources which might merit inclusion in a digital project. The publishers I selected were Duke University Press, University of North Carolina Press, and Oxford University Press.

This pool of librarians and publishers to interview was a convenience sample rather than a scientifically random sampling. Ultimately, geographic and time factors impacted the potential interviewees. Further research might investigate more broadly how different librarians have approached copyright for digitization work, and the policies that different publishers have toward digitization. However, I believe this sample does provide a good basis for research because all three libraries have undertaken major digitization projects and the three publishers publish on a wide scale.

Because of the nature of my research questions, I employed a semistructured interview format. Although I am trying to get the same kind of information from each respondent, the different digitization approaches taken by different groups and different metrics they might employ or have available will necessitate some flexibility in the interview process. Luo and Wildemuth recommend semistructured interviews for situations where the researcher wants to “elicit information on their research topics from each subject’s perspectives” (Luo and Wildemuth, 2009, p. 233). Publishers required a different set of questions in order to understand their perspective and their own concerns with digitization projects. While the questions had some minor variation from individual
to individual, the interviews all served to answer the research questions I initially laid out. From librarians I asked questions to understand how they sought copyright permissions, what methods were most effective, what methods were least effective, the resource investment, and strategies that could be emulated by future projects. From the publishers I sought to uncover how they respond to copyright permission requests and what specific concerns they have and ways librarians can communicate more effectively with them for a favorable response. Most of these interviews were face to face. However, scheduling issues necessitated that one interview be performed via phone and another via e-mail. While not ideal, I treated both of those as I would with the face to face interviews, asking follow-up questions based on answers to the initial questions. See Appendix B for a general interview framework.

I chose to use interviews rather than surveys because I believe this would allow for in-depth conversation. A survey would be advantageous for allowing a broader pool of librarians and publishers to respond at the cost of having a less detailed picture of the process. In deciding between the two, I decided it would be better to speak with a smaller number of librarians involved in successful projects to uncover the methods they employed. Additionally, interviewing publishers allowed me to develop a more complete understanding of their concerns with copyright. This may make the results of the research less generalizable, but I believe it offers a better picture of permission seeking to be obtained from cases where it was successful.

Results
I spoke with individuals at six institutions to determine how they approached copyright and what recommendations they would have for librarians in future digitization projects. Outlined below are summaries of my conversations with these individuals, with the overall implications discussed in the conclusion.

**Duke University: Advertising Collection**

Duke University has undertaken a set of digitization projects related to advertising throughout the twentieth century. Collections within this overall project include print ads from the 1910’s through the 1950’s, commercials from the 1950’s through the 1980’s, and billboards from the 1910’s through the 1990’s. These digitized materials are available publicly online on the collection’s website:

http://library.duke.edu/digitalcollections/advertising/

Although many of the incorporated materials are pre-1923 and thus in the public domain, many of them remain under copyright and so project staff contacted rights holders for permissions to make these publicly available. Permission requests were handled by a number of different people. Letters were developed by the project manager in cooperation with the legal counsel, while librarians, graduate students, undergraduate students, and even volunteers assisted with the mailing process for letters.

The primary method of contact for the copyright holders was mailed letters, although sometimes e-mails were sent as well. This allowed the librarians to have concrete evidence of the approval for use. The librarian I spoke to said that they were forced to be creative in the process of locating copyright holders. For some companies, contact information was readily apparent because the company might still exist and be easily locatable. Other companies may have disappeared or otherwise be difficult to
locate. They tried a number of different avenues to locate these businesses: patent and trademark databases, business databases, and flexible Google searching to track down leads. From there they would send an e-mail or call the entity by telephone to ascertain the best address to send the letter.

Overall they had a strong response rate from the copyright holders they were able to locate and contact, but the person with whom I spoke did not have solid numbers available offhand. She did believe that those that they contacted and never heard back from constituted a small percentage of the overall collection. Most were either ones they located and received a definite response, while others they simply could not locate the copyright holders. She was able to anecdotally say that most holders who responded were enthusiastic about having their material made available online and happy to provide the permission rights.

The permission seeking process took between six months and a year, constituting a significant portion of the project. Response time from individuals could vary wildly. Some responded within a matter of days, while others could take months to respond. One of the major challenges was in getting the administration to understand the time it would take the project to be completed, because the copyright seeking portion was such a time-intensive undertaking.

For items for which no copyright holder could be located, they went ahead with digitizing and placing it online under the assumption of fair use and allowed for takedown requests. An individual or institution believing they held copyright over an item could submit a request that the item in question be removed from the collection. This seemed to be a good balance between making the information available and also
giving copyright holders that emerge the ability to have some control over their material. They have received only two takedown requests for the collection.

The librarian to whom I spoke had a couple of recommendations for librarians beginning digitization projects. She stressed the importance of understanding that it can take a long time, and ensuring that the administration understands this as well and is supportive. There was some initial disappointment from the administration in the early phases of the advertising collection project, but they came to understand and support the work of the library.

The second major recommendation is expending some effort in organization at the beginning of the project. She recommended that librarians take time to look at the items that will be digitized, identify any copyright questions, and design a workflow that can move as smoothly as possible. This initial effort will help the project go more smoothly in the long run and help to identify potential problems early, as well as how to handle them. This can also help with the first recommendation of gathering administrative support in that it can show the administrators what the overall plan and projected timelines are.

**North Carolina State University Digital Collections**

North Carolina State University has an extensive digital collections program ([http://www.lib.ncsu.edu/digitalcollections](http://www.lib.ncsu.edu/digitalcollections)). They have made a wealth of material available digitally, including items still under copyright. I spoke with two of the librarians involved in the digital projects, and they had a lot to say on the topic.

NC State’s digital collections have covered a variety of projects with different scopes, and each project included its own set of copyright concerns. However, in
general, they advocate for fair use and focus on risk assessment to help guide what items are digitized. Much of what they digitize are items related to the university itself, and so copyright is easy to obtain or the items are low-risk.

Depending on the project, permission requests were handled by different people. For grant-funded projects, it was often the grant-funded project manager who handled the permission request process. Other projects may have had the lead project librarian or a graduate student tackle copyright requests. The process did not vary much from person to person, however. The overall workflow was to determine any contact information available, whether that was mail or e-mail, and use that information to reach out to the copyright holder. Using mail or e-mail still ensured that a copy of the agreement was available to be preserved.

Response rates to these permission requests, however, were very mixed. Typically the response rate was low, although it depended on the project. One, which involved seeking permission for letters received from corporations, had better success rate than ones involving individuals. There seemed to be no major difference in the response rate for letters sent by e-mail versus regular mail.

When there is no response, the librarians typically perform a risk assessment and evaluate whether the use of the material is likely to be considered fair. Because so much of what they are digitizing is low risk, that generally makes them good candidates for digitization despite the lack of response from the copyright holder. They have a takedown policy which allows copyright holders to contact them and request the material be removed. So far, they had only received one takedown request, which was not for copyright reasons but a request over privacy concerns.
The NC State librarians had a few recommendations for librarians in digitization projects. The first was to ensure that the administration is on board with the project, and to learn what risks they are willing to take. At NC State, they have a supportive administration and scholarly communications officer who have embraced the digitization projects and fair use of copyrighted material. This allows them to digitize items that they had not received explicit permission for so long as it is evaluated as low risk.

The second major recommendation is to evaluate just how much risk is acceptable. When working with copyrighted materials, there will be some risk. Librarians must decide, in discussion with their administration and legal counsel, the risks they are willing to take. They added that there is no evidence that copyright holders are waiting to “pounce” on their material the moment it goes online, and that in fact copyright holders are often supportive of digitization efforts.

University of North Carolina Digital Heritage Center

The North Carolina Digital Heritage Center (http://digitalnc.org/) is a part of the University of North Carolina’s North Carolina History which focuses on digitizing items related to the state’s history, with an emphasis on items such as newspapers, yearbooks, and city directories. They work with community partners, primarily cultural heritage centers around the state, to identify items to digitize and make available online.

The Digital Heritage Center’s projects take a unique approach to copyright. Many of their items are already in the public domain due to being published before 1923, or published afterwards and not having their copyright renewed. For items that are under copyright, the Digital Heritage Center generally does not make the requests themselves. Their community partners instead handle the bulk of the permissions process.
Generally, they rely on sound risk assessment to make decisions when copyright is unclear. Although it varies from item to item, they will proceed with digitization if they believe there is no significant risk in digitizing it. Because most of what they digitize are older, noncommercial items, they are generally low risk. Newspapers can be more problematic, but they will evaluate the items and make a final decision. The Digital Heritage Center librarians commented on the support provided by UNC’s scholarly communications officer and administration. They were supportive of the digitization projects and approved of proceeding to digitize items even when copyright was not explicitly granted, so long as the risk assessment was low.

In terms of recommendations, the individuals I spoke to at the Digital Heritage Center emphasized the importance of fair use. It is something that librarians can rely on in digitization projects and is a strong argument for digitizing older works that are no longer in print and being sold commercially. Having a takedown policy further decreases the risk as it provides a mutually agreeable solution between the Center and any copyright holders who do emerge. The Digital Heritage Center has not yet received any takedown requests for copyright reasons. They received one from an individual who wanted an item taken down for privacy reasons, and on another occasion they were contacted by a copyright holder who was happy to see their work available, but simply wanted credit.

They also stressed the importance of understanding copyright law. Librarians do not need to be experts on every facet of copyright, but understanding the basics will help librarians in making smart decisions. Risk assessment is an important part of a digitization project, and knowing copyright law will help librarians make informed
decisions about how to proceed when a copyright holder cannot be found or does not respond. Along with that, they emphasized knowing the policies of the institution beforehand and what risk the administration is willing to take.

Finally, they recommended looking to the professional community for guidance as well. Organizations such as the Society of American Archivists and the American Library Association, as well as the professional literature, can help provide some direction in how to proceed. In the same vein, they also recommended keeping documentation of the project and then sharing it so that future digitization projects can benefit from the knowledge gained during the project.

**UNC Press**

I spoke with a staff member at UNC Press to learn about their approach to copyright, how they handle permission requests, and recommendations they might have for libraries that wish to use their material. Their main goal in responding to copyright permission requests is to ensure that all uses are within the parameters of the law and that the press and its authors are compensated fairly.

In recent years, the policy of the press has changed in the wake of the rise of ebooks as a publishing platform. UNC Press, like many other presses, has been able to resurrect previously out of print books as ebooks, sometimes with additional content such as hyperlinks and audio/video integration not possible with traditional print material. Because of this change, there is no longer the distinction between a “print” book and an “out of print” book, because many books have already been rereleased as ebooks with many more to come in the future.
UNC Press routes most permission requests for classroom use through the Copyright Clearance Center. This arrangement saves the Press time and resources for handling some items and gives an instant response for the requestor. However, requests for reprints are handled directly by the Press. They field these requests and then make a decision regarding the request, whether there will be a fee, and any restrictions on use such as password protection.

Many factors inform how they respond to copyright requests. Each request is handled on a case-by-case basis that looks at many different factors: Who is making the request? Are they a profit or nonprofit group? How much of a work do they intend to use? How widely will this work be distributed to others? Information like this allows the press to better gauge the nature of the use and respond accordingly.

In order to adequately address these questions, UNC Press has provided a detailed form for permission requests on their website. The form asks questions about the nature of the request and how the work will be used, which they enter into their permission and invoicing system. This allows them to properly evaluate the permission request, be able to ask follow-up questions, and ideally respond within a short time frame.

Because of the information they require in order to make a decision, UNC Press recommends using that web form in order to seek permissions. This ensures that they have all of the information they need in order to respond. Although they do occasionally receive requests via phone or mail, they encourage the use of the web form so that they do have all of the information they require. This is also the best way to ensure the quickest turnaround time for a response. They try to respond promptly, at least with a
confirmation of receipt within a business day or two, and then respond with a final decision as soon as they can after that.

In terms of recommendations, the UNC Press representative encouraged librarians who are seeking copyright permissions to provide any relevant details about the project that might help inform their decision. Because they are made on a case by case basis, anything relevant information can help them determine whether use is granted and under what restrictions or what fees might apply.

Additionally, they provide a wealth of information on their website that can answer questions and might help guide librarians who might want to seek permission for UNC Press material. There is documentation of their various policies available on the website for anyone to peruse. They also provide a “Contact” page with many different categories to which questions can be directed.

**Duke University Press**

I spoke with an individual at Duke University Press who works with copyright permissions. Although to their knowledge the Press has not received any permission requests from libraries, they did have some insight to offer on their approach to copyright. They described their permission policy as “fluid.” It can vary for their titles based on their negotiations with authors and who or how their titles might be used. However, they do have a normal workflow for how permission requests are handled.

A significant change in recent years has been the rise of ebooks. Duke University Press has been able to make previously out of print books available as ebooks, along with current and forthcoming titles. Ebooks are available on several platforms as well as through the e-Duke Books Scholarly Collection that is marketed to libraries. As with
UNC Press, this has made many titles that were previously out of print available for use. This availability would likely make the Press less inclined to see the need to consider permission requests for library digitization projects, since it is a product they are selling.

If a library is considering including a Duke University Press title as part of a digitization collection, they recommend first checking to see if it is already available in an eformat. If the title has not been made as an ebook, there could be many possible reasons, such as copyright restrictions (such as the original publisher limiting Duke University Press’ rights for the material), or the inability to locate the original copyright holder in order to update contracts. In such an event, Duke University Press itself may lack the ability to further authorize reuse of material. However, the Press provides an e-mail link in the Rights section of their website (http://www.dukeupress.edu/Rights) through which they can be contacted electronically with information about the project and the title. Providing information about the digitization project can help them make a final decision regarding the use.

**Oxford University Press**

Oxford University Press follows very similar standards to those of Duke University Press and UNC Press. The “Permissions” section of their website (http://www.oup.com/us/corporate/permissions/?view=usa) contains extensive documentation of their rights policies, arranged by type of material. Their webpage provides a great deal of information about how to request usage rights, and who to contact when seeking permission.

Many of their permission clearances are handled through the Copyright Clearance Center, which will nearly always provide an instant response for anyone who is looking
to use Oxford University Press material. As with the other presses, the CCC ultimately saves time and resources for staff at Oxford and is also able to give the requestors a response immediately rather than making them wait.

When rights go through the Press itself, they try to respond quickly. They ask that requestors wait up to 3-4 weeks for a final decision. This allows the Press time to consider the material and the nature of the request so that they can make an informed response. Ultimately each decision is based on the nature of the request and the different factors of the case. They look at the nature of the project and the use to help inform their decision. Once again, it becomes important for librarians to provide all of the relevant details about the digitization project and the specific work’s relevance to the project.

In terms of recommendations, the individual I spoke with at Oxford University Press suggested working through the Copyright Clearance Center first. Most of their permissions are handled through the CCC and it allows for the instant response most of the time. Otherwise, he recommended that librarians contact the permissions department. On their website they have a permission request form, very similar to the one provided by UNC Press, in which the requestor can detail the project and the items for which they are seeking permission. Using this form ensures that the Press has all of the information they need in order to make a final decision.

Discussion

Although the individuals I spoke to worked in very different digitization projects, there were a number of common themes that emerged. Below I outline some of the best practices encouraged by librarians for digitization projects, followed by some suggestions for working with publishers to receive copyright permission.
- Perform some research at the outset

Taking some time in the early phases can help in the long term. It helps to be familiar with the set of works that are intended to be digitized, their copyright status, and challenges that are likely to emerge. Developing a workflow at the outset can provide a smooth pathway to follow during the copyright seeking process, which can be followed by anyone involved in the permission seeking process. Additionally, the Digital Heritage Center librarians emphasized having a basic understanding of copyright law so that the librarians could make informed decisions.

- Be aware of the time investment

Contacting and hearing from copyright holders can take a long time. Some respond quickly, but some take longer. The NC State librarians mentioned one person taking over six months to respond to a digitization request. Locating copyright holders can also take time, as there can be many avenues to explore. NC State set an informal stop line of around four hours maximum to try to locate a contact. Being aware of time challenges can not only help guide the workflow, but can ensure that administration knows what how much time these projects may take.

- Determine how much risk your institution is willing to take

Decisions about how to proceed with digitization, particularly for works where copyright holders cannot be found, should be made in discussion with the administration and any available scholarly communications officer or legal counsel. UNC, Duke, and NC State all have scholarly communications officers that have championed fair use and are willing to take some risk. However, every institution will be different so discussing with the administration is important and can help set
the standards on the project. It should be decided at the outset whether items will only be digitized when explicit permission is received, or whether risk assessment will be performed on orphaned works to determine whether or not to digitize them.

- Focus on low-risk items

Even when relying on fair use, some items are more likely to be favorable to fair use than others. A widely distributed commercial item is not a great candidate for digitization. Items that were not widely distributed or were not sold commercially are much more likely to have their use consented by the copyright holder or to be a low-risk for digitizing without copyright permission. These types of items should be focused on in digitization.

- Look for community partnerships

The North Carolina Digital Heritage Center has been very successful in working with different institutions in the state to bring material online. By working with them, they are able to share some of the burden in the digitization process. For libraries that do not have ample time and resources, community partnerships can be a good way to bring things online that are of benefit to the local community. Other institutions may also have different leads on how to locate a copyright holder, and may have better luck contacting and receiving a response from them.

- No one “best way”

At the outset, one of my research questions was to determine the most and least successful methods of contacting copyright holders. However, there does not seem to be any method of locating or contacting copyright holders that is especially more effective than any others. Sometimes it will take some creative searching to locate
copyright holders. Librarians at Duke explored a number of options in locating copyright holders for the advertising collection, from Google to patent databases. None of the librarians with whom I spoke believed that e-mail or regular mail was particularly more successful than the others. Often it would simply come down to what contact method they could find.

- Keep documentation

When performing the copyright holder searching, it helps to keep ample documentation of efforts. This can provide evidence of due diligence in the incredibly unlikely event that litigation arises. It can also help with the workflow in knowing who has been contacted, whether a response has been received, and the current status of the item. Keeping a copy of the returned permission letter or e-mail also provides evidence that use was in fact consented.

- Provide a takedown policy

Once the items are digitized and made available online, having a takedown policy will help in the event the copyright holder does emerge. Allowing the copyright holder to request that their item be taken down is generally an amicable solution if they do not want their item posted online. It provides an extra layer of security to prevent any litigation over copyright.

Incorporating copyrighted materials into a digitization can be a time-consuming process, but it can be successfully managed and ultimately strengthen collections by providing access to both scholars and the general public to additional material to highlight or contextualize the project. However, the decision about whether or not to
include copyrighted materials should be decided at the outset and be factored into the overall budget and work plan.

Although there may be no one “best” way to find and contact rights holders, the process can be somewhat streamlined. A form letter can be drafted for requesting permission that can be sent out to most rights holders, explaining the project and then including the specific title for which permission is being requested. This can make mass mailings more manageable.

Similarly, a smart workflow can be developed for locating the rights holder. At NC State, they had set a maximum time of four hours for searching for a single rights holder. A search for rights holders could extend infinitely, but at some point a line must be drawn determining that a rights holder cannot be located. Performing due diligence in searching for rights holders can help protect libraries, and providing a takedown policy in the event a rights holder does eventually emerge is an additional safeguard. But as long as low-risk items are being digitized, there is little evidence to suggest that libraries are in much danger of litigation from including orphaned works in a digitization collection.

If items published by publishing houses are included in the digitization project, there are a few best practices that can be followed to help ensure the quickest response.

- Check their website

  Generally, publishers will make information about their permission and reuse policies available on their website. They will also provide information about the best way to get in touch with them. Taking the time to learn each publishers’ copyright policies can help ensure that you effectively communicate with them.

- Use their preferred contact method
Often, publishers will have a preferred contact method on their website, whether it is an e-mail, a web form, or they work primarily through the Copyright Clearance Center. Using their preferred contact will ensure that you have contacted them the best way and will be likely to hear a response.

- Provide all relevant information

Providing relevant information can help them make a final decision about the use of an item. Do not overwhelm them with every minute detail about the project, but inform them what you are doing, why this is important, and how their material will add to the overall value of the collection. This information can help guide any final decision made about the use and any fees that might be leveraged for the use.

Every publisher has their own preferred methods of contact and their own policy in regards to permissions. For mass digitization projects, it may not be feasible to check each website and potentially fill out individual request forms or e-mails for each publisher’s title(s) rather than using a standard form letter. Furthermore, because so many publishers are currently making their materials available electronically, there is less distinction between in-print and out of print books. All titles are available or may become available in the future. It seems unlikely that publishers would grant use, or if use is granted, restrictions on access may be involved or they may charge licensing fees.

Many publishers, such as Oxford University Press, also primarily rely on the Copyright Clearance Center for clearing uses. While the CCC does allow for an instant response, this must be managed on a title by title basis and will entail fees. There is little room for librarians to explain the nature of the project and why a particular title will strengthen the collection and engage in dialogue with the rights holders to negotiate use.
Because of these factors, commercially published works that are not orphan works should not comprise a large part of potential candidates to be included in a digitization project. If there is a title that would particularly strengthen the collection, then the publisher should be contacted through their preferred method. Including all relevant information about the project and the title’s role within the larger collection will help the publishers make a decision, although the use may entail a cost.

Limitations and Suggestions for Further Research

There are weaknesses to my study. Because I have opted to use a few in-depth interviews rather than a broad survey to many institutions, the study results are entirely generalizable. In selecting the method for this research, I weighed the choices and determined that in-depth information from a few successful projects would be more valuable than a survey of many projects. This means that the techniques will not be universally applicable, but will need to be tailored to the needs and abilities of individual projects. However, the information extracted from interviews will give librarians a sense of how a few successful projects tackled the copyright permissions process and what techniques were successful.

The study was also limited by the sample size, which was largely restricted to institutions in the North Carolina Research Triangle area, with the exception of Oxford University Press. The three libraries in particular are in close contact and often provide support and collaboration for projects. This collaboration and communication may have impacted the development of their digitization projects and their approaches to copyright. However, they are nonetheless different institutions with different librarians and
administrations, so I believe they are unique enough to be a strong sample to have researched.

Further research should look at how different libraries in geographically separate areas have approached copyright for digitization projects. This data can support or provide new insights not gained through the interviews I conducted. Both in-depth interviews and broader surveys could be effective means to determine how other libraries have handled copyrighted material.

Additionally, quantitative research might provide more hard evidence about the response rate from contacted individuals, the amount of works with located copyright holders versus orphan works, and the time investment on both an individual item scale and at the overall project level. The librarians I spoke to were able to talk about this anecdotally, but did not have the hard numbers offhand to go in-depth, and this knowledge might better allow librarians to gauge how to approach digitization projects.

**Conclusion**

Working with copyright can be a frightening endeavor. The risk of litigation may scare off librarians from working with digitization projects, or only digitizing items that are in the public domain. However, there have been projects that have been very successful in working with copyrighted material. There is a definite time investment in locating and contacting copyright holders, but including items still under copyright can increase the value of a digitized collection.

Steps can be taken to help in the copyright permission seeking process. Spending some time at the outset developing a plan and talking with the administration can help
guide the process. Identifying and focusing on low-risk items make for good candidates for digitization. Being flexible and creative when searching for copyright holders can help find them, but having a plan for handling items for which the copyright holder cannot be found or does not respond will also smooth the workflow.

Ultimately, however, there is no one “best way” to find and contact a copyright holder. It can depend on any number of factors, but there are some that will simply not be found. However, risk assessment can help guide the process and determine whether an item should be digitized and placed online. Fair use is not a shield guarding all uses of copyrighted works. But if an item was not widely commercially published, the nonprofit and educational use of the work will strengthen the fair use argument. These decisions should be made with the administration and legal counsel to ensure that they are on board with the process.

Finally, having a takedown policy will help avoid litigation as well, providing an avenue for a copyright holder to request a work be removed from the collection without going to court. Digitization is not a dangerous endeavor, so long as it is approached intelligently. This means striking a balance between risk and the amount of time and money able to be invested in projects. There is no evidence that copyright holders are waiting to pounce on projects, and so long as due diligence and sound risk assessment have been followed, the risk of litigation is low. Identifying and making a good-faith effort to locate the copyright holders of low-risk items is the key to successful digitization projects that incorporate copyrighted material. The HathiTrust and the University of Michigan Copyright Offices are working to identify rights holders for orphan works (as well as for other in-copyright works) and are discussing possible solutions to the orphan
works issues. In the coming years, a solution to the orphan works question may present itself either through a recommended best practice or legislation.

For each digitization project, there will be differences, and so it becomes important for libraries to share their experiences with digitization and discuss how they struck this balance of time versus risk, and ways that the entire workflow can be improved. This can help future digitization projects run more smoothly and empower other libraries to include copyrighted works in digitization projects.
Bibliography


Appendices

Appendix A Literature Review Search Strategies

I searched for literature available in print at the UNC libraries and through the two main library literature databases: Library and Information Science Abstracts and Library Literature and Information Science. I performed searches using the terms “copyright” and “digitiz*” in order to catch various forms of the word “digitize.” These two search terms returned a large number of results.

My first task was to collect a number of articles that appeared relevant based on their titles and abstracts. From that initial list, I extracted somewhere around 25 articles that seemed relevant and dealt with obtaining copyright permissions for digitization. I then read these articles more closely, and was forced to discard many of them because they touched on the subject too little or were irrelevant. I searched the most relevant articles in Google Scholar to see who had cited them since, and if any of those citing articles were relevant to my research. Despite this, few articles turned up that were directly relevant to my research questions. While many articles mention copyright as an obstacle for digitization, few address ways of obtaining permissions.
Appendix B Interview Framework

For Librarians:

1) Tell me about the specific digitization project(s) you’ve worked on
2) What was the approach to copyright for this project?
3) Who handled permission requests? Full-time librarians, project assistants, student staff, or other?
4) Describe the techniques that were most successful in seeking copyright permission
5) Were any techniques especially unsuccessful?
6) How long did the permissions process take?
7) How long did it usually take to receive a response?
8) Did you keep statistics on the responses? If so, what did they look like?
9) What recommendations would you make for librarians working with copyrighted materials in future digitization projects?

For Publishers:

1) How do you usually respond to requests to digitize and publicly display a work?
   a. What restrictions do you place on items you allow to be digitized? (i.e., only for use by library affiliates; can only be viewed within the library, etc.)
2) What factors generally inform this response?
3) Do you have an official written policy for handling permission requests?
4) Are exceptions made under certain circumstances, or do you have a blanket policy?
5) How have ebook initiatives impacted your copyright/permissions policy?
6) How do you prefer to be contacted with permission requests?

7) What recommendations would you make for librarians who wish to digitize materials you have published in future digitization projects?
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