

From: "Nancy Allard" <nancy.allard@nara.gov>
Date: October 18, 2007 3:31:10 PM EDT
To: "Prue Adler" <prue@arl.org>
Cc: "NARA Vision" <vision@nara.gov>
Subject: Re: ARL Letter on Proposed Digitization Agreement

Thank you very much for providing your comments on the draft NARA-Genealogical Society of Utah (GSU) digitizing agreement. NARA senior officials have carefully reviewed your comments and those provided by other commenters. I have been asked to provide the following response to your comments.

We appreciate your identification of positive aspects of the proposed agreement. We hope that the following information on your questions and concerns is helpful.

Section 1.1

You asked whether the project plan will be publicly available, and if so, when. The project plan is subject to redaction of business confidential information, but is otherwise releasable after it is approved. Approved agreements and project plan information will be listed in our forthcoming Plan for Digitizing Archival Materials for Public Access, 2007-2016.

You also noted that it will be key to both identify those resources to be digitized and conduct an RFI as other organizations may also seek to digitize NARA resources. We are working on a "registry" of series of records that are priority candidates for digitization through partnerships that could be posted on www.archives.gov to give both potential partners and the public information on the size of the series and any handling considerations (e.g., oversize, image quality concerns).

Finally, you stated that it will be extremely important for NARA to define the term "non-exclusive" used in the Proposed Digitization Agreement. NARA is using the term "non-exclusive" in the sense that NARA will enter into agreements with multiple partners, should the opportunity arise. For preservation reasons, we do not intend to allow the same collections to be scanned multiple times. We do not believe that this provides an unfair advantage to one partner or discriminates against other potential partners because NARA has in its holdings more than 10 billion pages and millions of nontextual records. There are numerous high-interest series (collections) that could be digitized.

Section 1.2

You noted that the agreement provides limited information on the

digitization specifications. The agreement states that "GSU will produce the Digitized Images at 300 ppi grayscale for microfilm and microfiche and at 400 ppi grayscale for paper, or at such other specifications as the parties may agree in a Project Plan." Other specifications would be established to meet special needs for specific records (e.g., oversize records or nontextual items). NARA is using reference or access quality standards, not preservation quality standards. We wish to emphasize that we have selected a quality level that will serve research needs. NARA is not destroying the original records after scanning. The preservation component of our partnerships is that digitized copies allow us to eliminate handling of the originals in the research rooms and in making reproductions.

Section 1.4

You requested clarification of a statement on third party licensing and NARA rights. If there is a third-party agreement, section 1.5 sets out limits on NARA's use during the cost recovery period. The draft agreement is clear that the cost-recovery period (where the third party may charge for access to the selected images) cannot exceed five years, and that ultimately NARA will have full and unrestricted rights to the digitized material.

Moreover, even if a cost recovery partnership is approved by NARA, we want to emphasize that the indexes to the images will be available free of charge from any Internet-enabled computer. This will permit researchers to determine if the image(s) they want are available without needing to come to a NARA research room or purchase a subscription. We note that during the cost recovery period, there will be free access through all NARA research rooms. NARA would not have been able to devote the resources to digitizing the images within the next 5 years, so we see this proposed agreement with GSU/FamilySearch as a benefit to the public

You also asked about marketplace studies. NARA did not conduct any marketplace studies in support of the 5-year use limitation provision. The 5-year use limitation was negotiated between NARA and GSU as the maximum period of time that GSU would require to recover their costs in the project. NARA's microfilm regulations (36 CFR part 1254, subpart D, provides a microfilm publisher up to 7 years for cost recovery.

Section 1.5

You commented that the cost of duplication of these resources should be minimal. NARA charges, in accordance with 44 U.S.C. 2116(c) and 36 CFR Part 1258, for reproductions of records from our holdings. The fee covers our cost of making the reproduction itself, not the original digitization. After records have been digitized, as a records

preservation measure, we will make the requested reproductions from the digital copy, not the original document.

Section 1.6

You asked whether the Digitized Images will be searchable only via GSU's metadata. The images will also be searchable through the NARA Archival Research Catalog (ARC) with both the GSU-supplied metadata and any additional contextual metadata that NARA develops.

Section 3.3

You raised concerns with confusing and seemingly contradictory language concerning copyright in this section. In response to comments we received on the copyright provision of the draft agreement, including yours, GSU and NARA are modifying the agreement to state clearly that nothing in this agreement is intended to alter or impair such status, or any rights of control, custody, ownership or use that NARA or the U.S. Government may have in the archival materials. The final draft of the agreement further states that NARA shall not transfer control, custody, or ownership over any archival materials to GSU or any third party, and that there shall be no restrictions on use of the Digital Images by any members of the public.

Again, we hope this information is helpful to you. We would also like to invite you to review our draft Plan for Digitizing Archival Materials for Public Access, 2007-2016, which is currently available for public comment. It is available at <http://www.archives.gov/comment/digitizing-plan.html>.

Sincerely,

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