

Finding Institutional Courage: Copyright Issues in the Age of Mass Digitization

Ann S. Okerson
Yale University Library
130 Wall Street
Yale University
New Haven CT 06520-8240 USA

Abstract – This paper describes briefly the Middle East Digital Library digital projects being developed at Yale Library (in collaboration with other DL partners), focusing particularly on copyright challenges that are being encountered. Our thought processes and risk assessments, along with some current U.S. initiatives, which might ameliorate the problems, are described, along with some suggestions for future solutions.

INTRODUCTION

I come to this conference and this topic through work we have been doing at Yale University for the last two years on three related Middle East digital library projects that do not quite rise to the level of mass digitization, but perhaps have a claim on the sympathy and support of cultural and academic institutions around the world. Our projects also have the advantage of excellent partnerships and collaborations, one of the key being with the Bibliotheca Alexandrina, our host at this conference.

In applying to funding organizations to accomplish these projects, our initial proposition at the Yale Library was that the digital library revolution could be applied to building and extending the capacities of both Western and Middle Eastern libraries, making widely available important scholarly materials that would advance the cause of understanding and interpretation of Arabic cultures at a critical point in the world's history. Our first step was a grant-funded project (U.S. Department of Education, under its Title VI TICFIA – Technological Innovation and Cooperation for Foreign Information Access program¹) called OACIS (Online Access to Consolidated Information about Serials)², which took as its initial challenge to catalog and make accessible an online "union list" or metadata database of important scholarly journals and serials in and about the Middle East. There was no full-text digitization in this first project, but it enabled us to explore for a first time the range of issues and institutions that would be involved in any such cross-national, collaborative undertaking. OACIS has grown now to take in bibliographical records, on a continuing basis, from 20 partner libraries in the U.S., Middle East, and Europe. OACIS now

holds over 40,000 detailed records representing 18,000 distinctive titles.

Our second step is called AMEEL (A Middle East Electronic Library).³ Like OACIS, it is funded by the U.S. Department of Education - TICFIA, with support by Yale and a largely new set of partners. AMEEL really *is* our first step in building a focused library of Middle Eastern scholarly content, largely serials. It emphasizes selection of Middle East journal materials at least at some risk, and, through digitization, looks to make accessible some of the important contributions to scholarship of academics and others working in countries where, for various complex reasons (such as language, economics, etc.) local publication has not automatically led to easy worldwide availability.

We have also used our new-found experience and expertise to seek and receive funding from the U.S. National Endowment for the Humanities for a third, more urgent project, *Iraq ReCollection*,⁴ which aims to digitize full text of a set of important humanistic Iraqi scholarly periodicals in Arabic, about 100,000+ pages, at a particularly vulnerable and important moment in the history of that country's society and culture. Each of these three projects is proceeding almost simultaneously, although OACIS has just now moved from grant funding to a sustainable mode. As it is a metadata project, its continuance is mostly straightforward and it encounters no copyright complexities.

In turn, these collaborative, hi-tech projects have put us directly in touch with the innovators and leaders here at the BA, and that cooperation led in turn to the concept of a much larger dream, the *DigiArab* project. This vision includes the BA, the Stanford University Library, and the Yale Library as core, founding partners. *DigiArab* – whose definition and evolution is currently under development and in search of funders – is conceived as mass digitization for Arabic monographs, on a large scale (eventually some hundreds of thousands of volumes), taking the work the BA is doing in the Million Books Project to an even more expansive level. The BA hosted, in February of 2006, an invitational meeting about such a concept, and participants – a number of different players with appropriate expertise, from several Middle Eastern and Western countries –

explored numerous topics, including collections development, technical, and legal. A concept document has been drawn up, as we seek funding for the effort.

However, in any digitizing projects such as AMEEL, *Iraq ReCollection*, and potentially *DigiArab*, the natural enthusiasm of sponsors and participants is dampened by the chill rain of legal caution. The law of copyright touches in some way every document and every artifact that we might consider for inclusion in such a project. Even if many such objects are, on quick examination, determined to be unambiguously in the public domain and thus fair game for digitization, the fact of copyright's *possible* intervention cannot be avoided, and even the fact of looking at a nineteenth century artifact and asking oneself the question whether it is under copyright in some regime interjects a flicker of caution and concern.

My purpose in the remainder of this paper is to frame the copyright issues as fairly as I can and describe ways to think about them, in order to make it easier for this and other ambitious projects to go forward. Is there a tipping point that can bias us in favor of project momentum and not in favor of inaction? I think and I hope we can say there is. Here I would like to describe the copyright-related steps we take with respect to digitizing copyrighted materials, from the moment of starting our work to making it available to readers.

PRIOR CONSIDERATIONS

The copyright question arises immediately and inevitably almost before one intends to (1) digitize documents for scholarly and educational use and (2) make them available via the Web. Copyright is a concern *before* any such project begins, both for digitizing (when it involves copying of entire works, at least those currently under copyright protection) and for access (in copyright law this is the publication or distribution of materials), on perhaps an unprecedented scale. Librarians and academics certainly wish to respect and obey copyright law, but they also want to make scholarly information available as widely as possible. We know that copyright owners may seek to exercise restrictions and fees on their works, even for research and teaching use (the law gives them this right), and the penalties for non-compliance can be significant. Libraries are concerned about investing huge amounts of time, expertise, development, and other hard work to develop materials that might end up not, after all, being shareable. In addition, legal action could be pursued, and substantial fees and fines could be levied for reproducing works for which libraries do not have the copyrights. In the US, our law protects copyrighted works for 70 years plus the lifetime of the author(s), so it is a very long time before works fall into the public domain, i.e., are not protected by copyright law. The number of years in most countries varies from 50 upward. But you know all this.

What worries me most about the conception of our digital library projects is the way in which our

anticipation of copyright restriction and the accompanying legal, ethical, and etiquette issues can cause us to work in ways that are less effective than we might hope they would be in both the short and long run. The specter of copyright missteps can dog our projects before they even begin and can cause granting agencies to keep seeking assurance from libraries that all bases will be covered and all objections dealt with. No agency wants to be responsible for funding what its staff or attorneys might consider a legally shaky project. In more than one instance, we were asked to give assurances to a granting agency that the project would not run afoul of any copyright law. How could we guarantee this, I wonder?

Our anxieties have not been dispelled by experience. If anything, we have discovered in our Middle East digitizing attempts legal borders that are not nearly so smooth for us as those separating Anglo countries. For example, we have learned that there are more pitfalls for a multi-country project like ours than for one that stays within the charmed circle of Western nations. Some of the challenges are:

(1) As we know from the U.S., national copyright laws fall short in many ways of what digital library projects need. Sometimes the copyright laws of nations merely lag the facts on the ground, as most countries have simply not yet addressed numerous critical issues of a digital age. The purpose of copyright is to foster the dissemination and creation of all kinds of creative works. Digital technologies expand, by at least an order of magnitude, the possibilities for dissemination of works, and thus invite us to reconsider all the underlying assumptions in traditional copyright law. Given the weight of prior practice and the diverse interests of numerous players, it is difficult to speed up the process.

(2) Most of the 22+ Middle Eastern countries whose materials we are considering for digitization have different copyright laws, with different periods of protection, that need to be carefully studied. Some do not have such a robust law but may be developing one (Afghanistan, Iraq, for example); for others, the laws are based in long-standing historical culture and practice that we do not well understand. How can we tell what is under copyright protection and what is not? This is not straightforward.

(3) Even in the print environment, long before one gets to the complexities of digital media, there are laws and practices that challenge any notion of a public domain and wide access to scholarly materials. We were told, for example, of an Egyptian practice of registering copyright in the name of a child, even for a scholarly work, so that the "life plus" copyright period will be all the longer: copyright handed down the generations is copyright potentially without end.

(4) "Orphan works" – where the copyright owner is unknown or unreachable or deceased and so

cannot be asked about digitizing his or her work – are an issue under wide discussion, and Middle Eastern publications are not strangers to the challenges posed when the whereabouts and even the identity of the current holders of a copyright on a publication recent enough to be presumptively protected are not always known. Thus, if we know or believe we *must* have the rights holder's permission for our scholarly digitizing project, then we are bound to be disappointed before we even begin.

(5) And of course there are the tragic cases of normal practices disrupted by war and violence. The most acute from the point of view of our DL work is the case of Iraq, where it is an open question just exactly which laws apply on which days. The Coalition Provisional Authority (aka the Bremer regime) enacted a sketchy statute of 25 years' protection, as a start,⁵ but its relation to the current Iraqi sovereign government, to earlier laws, and to any intentions of current authorities to connect what they do to earlier laws are all obviously volatile and unreliable. At the same time, the *urgency* of digitization of Iraqi cultural and scholarly materials is second to none in the world at this moment. At Yale, we are committed to digitizing and making available a number of publications from this country. How can we possibly proceed?

GETTING STARTED

Our practical approach to AMEEL and our other planned projects has been to be cautious and pragmatic. We have preferred to select for inclusion materials that originate from universities and cultural institutions rather than from commercial publishers, on the presumption that such institutions are more enduring and will also more readily grant digitizing permissions for their works to a set of scholarly projects such as ours, or at the least they will be easier to locate and work with. Our focus is on academic materials in the humanities and social sciences, where the substantial collections of the Yale Library (or if not, then of other partner institutions) often house a copy of the physical materials and thus remove at least the difficulty of finding physical copies for scanning. (We have been fairly successful and quite aggressive in supplementing gaps in Yale's print holdings through vendors and partners.) Yet, even our assumptions about the ease of working with non-commercial entities have been challenged. Our permissions requests sometimes result in a straightforward yes; but at other times lengthy delays ensue, possibly followed by requests for payment for use of their work.

The work of seeking owners and obtaining permissions, even for our initial list of fewer than 20 journal titles has been hard and at times frustrating. One difficulty is that there is no consensus on the academic side about the benefit/value of making key scholarly works widely available online. At this stage, we have

worked successfully with university publishers in Damascus, Aleppo, and Beirut, and I want to praise the imagination and cooperation we have found there. In the particular institutions we contacted, permissions were readily given for digitizing and online access. Protracted conversations continue with institutions in Egypt and as far west as Tunis. This is *terra incognita* for us and for those whom we contact; many of those institutions and individuals begin from a position of caution or concern. Some of them fear the loss (either revenue or intellectual integrity or both) of a valuable asset to a digitizing and online publication process that none of us fully understands and to a future that no one can claim to describe with confidence. They may seek up front financial compensation, of a kind that we cannot provide in a modest grant-funded, not-for-profit enterprise. Most of the scholarly journals we have selected for digitization operate on a shoestring, and additional income from digitizers – rather than giveaway of their content – could assure them of some sustainability. Not only are we not funded to make such payments; we are also concerned about setting a precedent for digitizing of specialized academic works that neither we nor others could possibly sustain. The projects would, from the outset, become even more costly than they currently are, and perhaps unaffordable.

By the way, I am very pleased to report that we have the support of the Arab League Department of Information and Communication for our digitizing work, and I want to express my gratitude to colleagues there for their understanding and commitment. As we continue our copyright conversations, we are sure that it is that kind of international cooperation that will give many institutions the confidence to join in our enterprise.

COMING TO THE RESCUE?

As we contemplate next steps, particularly thinking how we can make AMEEL and *Iraq ReCollection* truly become part of a digital library for the Middle East, we carefully track important changes in the international conversation on copyright issues. Is there hope for a world in which online scholarly information could be more readily reproduced and made available, without the numerous, costly hassles of the copyright hunt? I will mention three recent, possibly promising developments from the English-speaking world.

1. **Google.** First, nothing has so unsettled this landscape, without *really* changing anything yet, as the Google mass digitization projects being carried out in consultation with large American and British libraries, and lately one library in Spain.⁶ This is the so-called "Google Library Project," which aims to have millions of books digitized in a few short years, with contents fully indexed and searchable via Google's search engines. (I am not the only one to regret that the project cannot yet be more genuinely international and multicultural. Non-English materials are being

digitized, but the largest mass of material is in English or at least in Roman alphabets.)

On a literal reading of the copyright law of the United States, the Library Google project is problematic, right from the start, in its copying of whole works. Google is taking the position, however, that the digitization is designed to generate indices rather than to display full text, and on that ground their attorneys mount a legal defense. Readers, in theory, would be able to view full text of public domain materials but only "snippets" of in-copyrighted works. The argument is made that reading and scholarship will be significantly enhanced, as will use of libraries and also sales of books. Some copyright holders agree, others say it is too early to know, and still others rail against what they see as unsanctioned appropriation of the works they own. Significant and costly litigation of various kinds (for example, by the Association of American Publishers against Google) is afoot, and it is important to emphasize that nothing has come close to legal resolution yet.⁷ At the moment, it seems as if both parties are busy requesting subpoenas from anyone who could possibly be connected to digital library projects, so as to shore up the cases that are being developed for the courtroom.

In the United States, high-profile cases can go on for years, through several levels of courts, finally ending in the Supreme Court. Meanwhile, the lower courts, hearing similar cases or plaintiffs, can disagree with one another. And it should be observed that many areas of copyright law (even portions of the fair use clause in the 1976 Copyright Act, which is the law that, with amendments, governs the U.S. today) have never really been fully tested through U.S. (or other) courts. For this reason, anxiety and ambiguity continue well beyond the time one might imagine them to have been resolved.

Some of the Google Library partners are carefully permitting only digitization of public domain works. This posture avoids the possibility of costly litigation against the participating institutions. However, the University of Michigan is allowing Google to digitize all of its stacks collections, and at least one other major American research library is in active dialogue with its university president and lawyers about pushing further and harder to make materials from the Google project more widely available. As we continue our digitizing work, we are keeping a close watch on the Google litigation developments.

2. **Orphan Works.** Of equal importance but less immediate visibility and publicity is the work of two U.S. cross-interest groups, one of which is addressing the so-called "Orphan Works" problem.⁸ The purpose of this particular Study Group is cited as "To amend title 17, United States Code, to provide for limitation of remedies in cases in which the copyright owner cannot be located, and for other purposes." For example, success would reduce or eliminate the severe penalties that could be incurred by library projects when we want

to use works that are definitely under copyright but whose authors cannot be identified or located.

After a great deal of work and testimony from literally hundreds of interested groups and individuals, the U.S. Copyright Office submitted its Report on Orphan Works to the Senate Judiciary Committee on January 31, 2006. All of the documents related to this effort are available on the Web. The Report makes recommendations for changes to the Copyright Act to facilitate the "productive and beneficial use of orphan works." The recommendations are fairly close (though probably more restrictive) to what an energetic and united American library community had advocated: they propose limiting remedies for infringement for a user who performs a "good faith, reasonably diligent search" to locate the owner of a work, but does not succeed. Passage of such legislation, which is currently on rocky ground and will not happen in this session of Congress, due, in part, to objections of certain copyright-owner groups, would remove for libraries much of the risk or fear of litigation against digital library projects.

According to an analysis by the American Library Association,⁹ if such an Orphan Works bill were to be passed: for noncommercial uses, there would be no damages if the user ceases the infringement expeditiously after the owner re-emerges. For commercial uses, and for noncommercial uses that continue, the users would have to pay "reasonable compensation." Injunctive relief is also available, unless the user has commenced making a derivative work that contains the copyright owner's own expression. In essence, if such a user has made a substantial investment in reliance on the orphan status, the user can continue the use but must pay reasonable compensation. The American library community is determined to find ways to keep these recommendations in the forefront of Congress and others. Meanwhile, the study process has captured the imagination of user advocates in other countries and is becoming viewed as a highly desirable model in Europe and possibly elsewhere in the world.

3. **Exemptions for Libraries.** Section 108 of the U.S. Copyright act offers exemptions to not-for-profit libraries so that they may provide their normal services, including circulation, preservation and, interlibrary lending. It is felt uniformly by the library, museum, and educational communities that these exceptions lag behind what is necessary and desirable in a digital age, for example in what kinds of services may be provided, by which kinds of institutions, how digital preservation can be assured, and so on. The Section 108 Study Group was charged and authorized by the U.S. Copyright Office in 2005.¹⁰ This study group, like the one described above, was constituted after a period of gathering comment from a wide variety of stakeholders, in an attempt to understand the dimensions and significance of the problem. The library community united behind several key national associations to request various changes in Section 108, including

expansion of its provisions from only libraries to museums and other cultural institutions; along with the a consideration of the necessary changes that the digital age brings to information content and function. There was also a plea to the study group to facilitate and assure digital preservation, as well as to enable cultural institutions to capture and preserve Web sites. Findings of this group will be presented to the Librarian of Congress in early 2007.

4. Many **Other Players**. Many other initiatives could be listed here, but this is of necessity a short survey. Worthy of watching are several international organizations such as IFLA¹¹ and eIFL,¹² which are monitoring various international meetings and treaties (such as WIPO), arguing passionately that intellectual property law should not become unbalanced in favor of rights owners, and that a just and literate society will take into account the critical role of information access for developing nations. The World Summit on the Information Society,¹³ sponsored by the UN, aims to air and advance a number of initiatives of interest and relevance, including copyright.

The British Academy recently released an extensive report¹⁴ expressing concern of that august body of academics and researchers for the restriction on scholarship and research imposed in the U.K. by the sometimes unwise application of its copyright act. Their report merits detailed study, but I found two observations/recommendations particularly valuable.

(1) They argue that copyright law should make clear that use of copyright materials for scholarly and research purposes – easily enough defined, one would think – should always be regarded as "fair use" and thus permitted without payment of fees or restriction by copyright holders.

(2) They also argue for a strict prohibition on the use of anti-copying technologies and Digital Rights Management systems to circumvent legally assured copyright exemptions.

SO, WHAT ABOUT OUR DIGITIZING PROJECTS??

How then should we think about proceeding in such an apparently tangled landscape? Let me start again, by rehearsing not the facts of law and its loopholes, but by taking us down the decision tree that a project's managers need to follow when reviewing any given work for inclusion in an effort to digitize and disseminate cultural materials. In doing so, I hope to show the key points of uncertainty and then point a way to deal with them. There are three main issues.

First, for any work we anticipate adding to a digital collection, there is the question of what claims copyright law may exercise over that work. Is this work subject to the protections of copyright or is it in the public domain? If it is, under what jurisdictions is it covered? For ordinary U.S. use, we assume we know the answer

to that question, but there remain countries with very different copyright regimes and countries that do not participate in international copyright treaties. There are cases of works that are protected by copyright in one place and not in others. How long is such work subject to copyright protection? If we know a work is coming into the public domain in one or five years, we may choose to act differently than if we know it is to be protected for another several decades. We are currently exploring at Yale the status of a collection of Islamic fundamentalist tapes, both commercial and non-commercial, originating in Afghanistan, a country that is developing copyright law, has not fully completed this work, and is not signator to any international copyright treaties. What is our situation with respect to digital preservation of these hundreds of tapes? How about access?

Some of the answers to such questions are purely factual and legal, but it cannot be denied that there will also be subjective considerations. And even if we can *technically* claim a work is in the public domain, it may be that we will wish to reach out to interested parties (former rights owners) and engage them in the process of digitization, for collegiality's sake, for good will's sake, or to maintain a larger relationship that will have other components.

The **second** main issue is the identification of the owner. Who controls any copyright-based rights in the work? Can we establish communication with that owner? This is most relevant in the case of the above discussed "orphan works," where a work is demonstrably within the period of copyright coverage but where the identity of the owner of any rights is unknown. An author who has died or disappeared may not have left clearly defined heirs – some people still die intestate, while others leave behind controversies that may lie sleeping until someone like us comes along to ask a provocative question about ownership of rights in a creative work. Currently, we have materials (pertaining to the history of Cuba) at Yale from a documentary filmmaker who gave us outright ownership of those materials but stipulated that we needed permission to copy or display them. He has now died, we are digitizing the collection, we own rights to some of it but not to *his* work -- and we do not know where to turn for that permission. Assuming that we believe we need that permission, what do we do?

Even if we believe we know who owns rights to a given work, locating that individual may be difficult or impossible. No law I know makes it clear what the state of copyright is for a work whose rights-holder has flatly disappeared and left no stable estate. But if there are culturally valuable materials, it is clearly in no one's interest to suppress access to them simply because of the legal vacuum into which they have fallen. An extreme case of an analogous sort in the news lately is the so-called Sevso Treasure, a trove of fabulous worked silver utensils from the later Roman Empire briefly on display in London.¹⁵ Known for over 25 years, these items

come with very suspicious "provenance" and are surrounded by a dispute over ownership that may not be resolved for decades, if ever. In the meantime, they have been effectively hidden away and inaccessible to scholars and students. All agree that this concealment is undesirable, but under the regime of property law that we inherit, there seems no alternative.

How hard do we have to work to find copyright owners? We are documenting our efforts very carefully. Of course, one way of finding owners is to digitize and make accessible their works, which – according to some projects – brings missing rights holders out of the woodwork. Some are delighted to see their works online; others object; and still others consume a great deal of project time for one reason or another.

The *third* issue that must be faced, once an owner is identified, is coming to terms. There may be many issues here, including compensation, concern for digitization and the use of the digital product, and sometimes simple unwillingness to discuss or deal with an inquiry for cultural, political, or ideological reasons. If a rights owner really is willing to set a price and make a deal, then at least we know where we are. But if the owner is reluctant to deal, we are left in a more ambiguous situation. If they require and name a price and we cannot pay it, then what?

In considering each of the above issues, as they apply to our digitizing projects, we see the possibility of coming to a dead end. We may not be sure whether some works is/are covered by copyright; we may not be able to identify with assurance a rights owner, or we may not be able to come to a stable understanding with a rights owner. If two or more of these conditions apply, the situation is worse: if we are not sure that the individual we have been speaking with holds the rights, but she or he offers complicated to prohibitive terms of use, what then? I will suggest some options and possible ways forward, while cautioning that our own practice in AMEEL and our other projects is to make sure that we are documenting carefully along the way all the good faith efforts we make to understand and respect rights of owners.

MOVING FORWARD

We who manage digitizing projects have several options, ranging from undesirable to optimal:

(1) The least desirable is to decide always in favor of caution and walk away from any item that cannot be securely located in the copyright regime and rights affirmatively secured or guaranteed. Too many institutions and projects, cautioned by legal counsel, are effectively in this position.

(2) Do we, on the other hand, digitize the items but refrain from disseminating them? Do we digitize

and offer limited access? Choices here include posting and publicizing the existence of the artifact, seeking publicly to secure permission to post more generally, but meanwhile encouraging individuals with scholarly or other privileged interest to contact us to see what further individual access is possible. The "Google choice" is to post snippets but not the whole work.

(3) Or, finally, do we digitize and disseminate and deal with the consequences, if any, at a later date? If we had the advantage of claiming a protected educational or cultural purpose, under the banner of a prestigious institution, we would enjoy a significant presumption of integrity and good will to come to our defense in any discussions that followed. Not long ago the U.S. Library of Congress posted a website of materials from Mali with this caution:

Copyright and Restrictions

The Library of Congress provides access to these materials for educational and research purposes and makes no warranty with regard to their use for other purposes. Responsibility for making an independent legal assessment of an item and securing any necessary permissions ultimately rests with persons desiring to use the item. The written permission of the copyright owners and/or holders of other rights (such as publicity and/or privacy rights) is required for distribution, reproduction, or other use of protected items beyond that allowed by fair use or other statutory exemption. For further information on permissions rights, please see our Legal Notices at

<<http://www.loc.gov/homepage/legal.html>>. ¹⁶

LC, as an agency of the U.S. Government, has the advantage of at least some form of "sovereign immunity" from lawsuits for financial damages, which may have emboldened them in that case.

A BENIGN FORM OF SOVEREIGN IMMUNITY?

What I want to suggest is that the creation of uncertainty has multiple, not single, causes; and that we have a broad cultural interest in finding ways to address that uncertainty without retreating into caution and inaction. Exploring the ways in which an appropriate national or international player (the Bibliotheca Alexandrina certainly comes to mind and there could be others), one that benefits to some extent from implicit or explicit "sovereign immunity," could function as the guarantor and active agent of the dissemination of digital materials in a way that would have the effect of shielding cooperating individuals and institutions from exaggerated fear of financial consequences and from taking well-considered steps to make material available for scholarly and educational use.

The present state of sovereign immunity theory in the United States as applied to copyright is ambiguous and contested,¹⁷ and the U.S. Copyright Office has supported legislation that would increase rather than decrease the risk to good faith actors. But the U.S. is not the only legislator in the world and the U.S. is not the only jurisdiction.

I am *not* encouraging the creation of an agency that is authorized or empowered to engage in violation of copyright, but only arguing that there can and should be a legal protection for good faith actions by cultural and educational institutions (or at least by one lead institution in a multinational partnership) that would take away the extreme fear of consequences that now cripples many honorable intentions and constructive projects. Such a protection would tip the balance in favor of the public good, of dissemination, and of communication, and create a new landscape within which to have some of the conversations that have been so frustrating in the last two decades. Intellectual property of high commercial value is one thing, and we need not terrify Mickey Mouse into thinking that he will be wrenched, all unwilling, into the public domain. But scholarly and educational access to culturally important work is of great importance and value to all of us and we have a common responsibility to find ways to protect those who engage in the critical work of advancing that cause.

What players might be involved in an enterprise of this nature? Would there be an appropriate international body that could undertake to work with a digitizing institution to indemnify the institution against legal misfortune? For purposes of our immediate Middle East digitizing projects, AMEEL and the like, I would suggest very timidly that support from the Arab League and from enlightened governments in the region would be immensely valuable. Perhaps the Bibliotheca Alexandrina could be an active agent, with appropriate support from governments and international agencies. UNESCO and the International Federation of Library Associations also come to mind as potential partners. What I am suggesting is the creation of a well-defended and -supported project in an area of self-evidently high cultural value and importance, buttressed by interested sovereign parties, which would set an example for other projects globally, and thus show the way in other contexts towards a solution to the problem of excess caution.

There is one thing we can and should do, whatever other great steps can be taken. We can *prove* our case for the value of widest possible, unfettered access to copyrighted materials in support of scholarship and research. We need to be brave and effective in building projects that demonstrate the truth of that value and enable us to tell the story all the more effectively. Such firmness of purpose and even courage can be found in high places as well as low. The instance of the Library of Congress' West African project a few years ago, mentioned above, is a model of what libraries could and should be proactively doing.

Alexander the Great made his name by many great achievements, not least the founding of this marvelous city. Let us call to mind as well his decisive untangling of the Gordian Knot, the one that had puzzled all comers until he arrived. I fear, however, that slashing a great sword through the tangles of copyright that entammel us is not what we should expect. Instead, it is patience, persistence, and courage that will get us to the space in which we want to live and work. Courage is the hard part.

¹ For information about the projects funded under this program, see:

<<http://www.crl.edu/areastudies/ticfia/index.html>>. For information from the U.S. Department of Education about this program, see their site at:

<<http://www.ed.gov/programs/iegpsticfia/index.html>>.

² The Yale Library's OACIS project is fully described at: <<http://www.library.yale.edu/OACIS>>

³ Detailed information about this project is provided at: <<http://www.library.yale.edu/AMEEL>>.

⁴ The release announcing this project is located at: <http://www.library.yale.edu/international/documents/neh_pr_iraq.pdf>.

⁵ This is according to an FAQ at the University of Pennsylvania Library site, at: <<http://onlinebooks.library.upenn.edu/okbooks.html>>.

⁶ Detailed information about the Google Library Project is found at:

<<http://books.google.com/googleprint/library.html>>.

⁷ See, "Publishers Sue Google Over Plans to Digitize Books," at:

<<http://www.publishers.org/press/releases.cfm?PressReleaseArticleID=292>>.

⁸ See the full text of the proposed Orphan Works bill at: <<http://thomas.loc.gov/cgi-bin/query/z?c109:H.R.5439>>. Google searches will show numerous sources, including text of all the testimonies presented on this topic.

⁹ See the ALA site on this topic, for extensive information:

<<http://www.ala.org/ala/washoff/WOissues/copyrightb/orphanworks/orphanworks.htm>>.

¹⁰ Information about the Section 108 Study Group can be found at: <<http://www.loc.gov/section108/>>.

¹¹ IFLA's very active committee in these matters is called "Copyright and Legal Matters Committee," or CLM. Many of its activities and releases are documented at:

<<http://www.ifla.org/III/clm/copyr.htm>>.

¹² eIFL is the "Electronic Information for Libraries" project, based in Rome, Italy. It is an independent foundation that strives to lead, negotiate, support and advocate for the wide availability of electronic resources by library users in transition and developing countries. eIFL maintains, among its various programs, a strong copyright advocacy initiative, often working hand in hand with IFLA. For detailed information about this activity, see:

<http://www.eifl.net/services/services_ip.html>.

¹³ For information about the aims and goals of this process, see: <<http://www.itu.int/wsis/basic/about.html>>

¹⁴ See the news item called, "Copyright hindering scholarship in the humanities and social sciences," found at:

<<http://www.britac.ac.uk/news/release.asp?NewsID=219>>.

¹⁵ See P. Landesman, "The Curse of the Sevso Silver," *Atlantic Monthly* (November 2001):

<<http://www.theatlantic.com/doc/200111/landesman>>.

¹⁶ The Library of Congress uses this statement or a variant of it on its various online exhibits and offerings.

See:

<<http://international.loc.gov/intldl/malihtml/res.html>>.

¹⁷ See the statement of the Registrar of Copyright, Marybeth Peters, before a Congressional committee in 2003:

<<http://www.copyright.gov/docs/regstat061703.html>>.