

From: "Nancy Allard" <nancy.allard@nara.gov>
Date: April 27, 2007 12:47:41 PM EDT
To: "Prue Adler" <prue@arl.org>, "NARA Vision" <vision@nara.gov>
Subject: Re: Comment on NARA/iArchives agreement

Dear Ms. Adler:

We appreciate the thoughtful comments provided by the Association for Research Libraries (ARL) on the NARA-iArchives/footnote.com 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.

This response focuses on the concerns raised in your comments. We do appreciate your recognition of positive elements of the agreement.

The second paragraph of your comments noted that a NARA request for review and comment prior to entering into such an agreement would better reflect OMB Guidance and provisions in federal law. We are planning to publish for public comment our draft **Plan for Digitizing Archival Materials, 2007-2016** very soon. That draft plan will detail the various strategies, including partnerships, that NARA intends to pursue to make our records more accessible. The plan will also contain the principles we follow in entering into digitizing partnership agreements. We hope that ARL and other stakeholders will review this plan and provide their comments.

In the fourth paragraph of your comments, ARL raised a number of concerns and questions. The following points address those issues.

- First, NARA staff costs for guidance and assistance are estimated at 15% of a staff archivist's time; the staff activities included in this estimate include guidance on subject matter (which we would provide to any researcher), determination of the necessary iArchive level of description for the images, and quality check. Not included in the estimate are staff costs associated with review of the Archival Research Catalog (ARC) metadata since these costs would be incurred if NARA digitized the records.

- Second, if NARA creates DVDs and CD-ROMs, as permitted by the agreement, these would be National Archives Trust Fund publications. The fees would be set in accordance with 44 U.S.C. 2307, which provides "The Archivist may sell publications and releases authorized by this section and paid for out of the income derived from trust funds at a price which will cover their cost, plus 10 percent, and moneys received from these sales shall be paid into, administered, and expended as part of the National Archives Trust Fund."

- Third, in NARA research rooms, the public access computers will have

free subscription service to the Footnote website, allowing full access to all of the Footnote content as an All-Access member.

· Finally, NARA did not conduct any marketplace studies in support of the 5-year full public access provision. NARA desires to provide full public access to the images as soon as possible, but recognizes the partner's need to protect their considerable investment in creating the digitized images and metadata. In this agreement, 5 years was deemed, through negotiation, as the appropriate time frame to protect both the public and partner's interests. As you may be aware, for a number of years NARA has had regulations that allow outside parties to microfilm archival records (see 36 CFR 1254, Subpart D), under which NARA gets a royalty-free worldwide license to microfilm publications produced under that subpart after 7 years. The 7-year period, which was based on a similar recognition of the time needed by the micropublisher to protect their investment, was subject to public comment when the rule was developed.

We appreciate the concern over the terms of service discussed in the fifth paragraph of the ARL comments. Footnote.com does provide that parents may allow their children over the age of 13 to use the site. We understand that the Footnote.com age limits are based on iArchives conformance to U.S. child protection laws. Because the Footnote site allows users to upload documents as well as view them, NARA documents are not the only available content. These laws also mandate the "over 18" clause because the site captures personal information. We note that NARA regulations limit the presence children under the age of 14 in our research rooms.

The sixth paragraph of your letter noted that Footnote.com cannot "own" copyright in public domain materials. iArchives has assured us that they claim no copyright in the images of any documents they digitize from the National Archives. They are revising the language in the "Terms of Service" to clarify this point.

We hope this information is helpful to you and the ARL membership.

Sincerely,

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