



ASSOCIATION OF RESEARCH LIBRARIES

September 10, 2007

TO: National Archives and Records Administration
FROM: Prudence S. Adler, Associate Executive Director, ARL
RE: NARA Agreement with iArchives

This letter provides comments by the Association of Research Libraries (ARL) on the National Archives and Records Administration (NARA) agreement with iArchives. Under terms of the agreement, iArchives will digitize selected NARA records. While ARL appreciates that the agreement will result in more public domain federal resources becoming accessible, the manner in which NARA entered into the agreement and some provisions in the agreement raise a number of concerns.

ARL very much appreciates that NARA has requested public comment on the recent agreement. In the future, request for review and comment prior to entering into such an agreement would better reflect OMB Guidance and provisions in federal law. For example, the Paperwork Reduction Act (PRA) states, *"each agency shall—regularly solicit and consider public input on the agency's information dissemination activities,"* and subsequent Office of Management guidance, Circular A-130 notes, *"agencies shall: consider the effects of their actions on members of the public and ensure consultation with the public as appropriate."* This statutory language and subsequent OMB guidance directs agencies to consult with their user communities in advance of such agreements to understand the implications such agreements on user interests.

There are a number of positive elements in the agreement. First, iArchives will comply with NARA requirements for the handling of archival materials and will meet NARA standards regarding technical and functional metadata. Second, the agreement is non-exclusive which complies with the PRA provision that agencies shall not *"establish an exclusive, restrictive, or other distribution arrangement that interferes with timely and equitable availability of public information to the public."*

Despite these positive elements, there are several concerns, most of which reflect the lack of sufficient detail to fairly evaluate the NARA/iArchives agreement. First, what are the costs to NARA of this agreement such as the staff costs associated with *"guidance and assistance on all the requirements"* for each project? Secondly, what fees will NARA charge users for DVDs and CD-ROMs? As NARA is not engaging in the digitization thus is not accruing costs of creating the product or service, the cost of duplication of these resources, should be minimal. Circular A-130 states, *"user charges higher than the cost of dissemination may be a barrier to public access...the general standard for user charges for government information dissemination products should be to recover no more than the cost of dissemination."* It is hoped that NARA will consider this OMB guidance as it

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develops its fee structure. Third, what are the features that will be available via NARA locations? These are not included in the agreement. Finally, what marketplace studies did NARA conduct to determine that full public access after 5 years was appropriate? Such studies would help inform public debate and the understanding of the benefits of this agreement.

Although NARA appropriately has no control over commercial user agreements, the terms and conditions of such agreements should be considered when engaging in partnerships with the private sector. Terms and conditions determine the usefulness of the resource to the individual user or user communities. The Footnote.com terms of service limits use to individuals over 18 thus restricting those who may normally benefit from access to NARA resources. Finally, the Footnote.com agreement claims that "without limitation, the text...pictures...photos...are owned or licensed to Footnote.com," and "may not be used, copied, reproduced, distributed, transmitted, broadcast, displayed, sold, licensed... without prior written permission." Footnote.com cannot "own" copyright in public domain materials thus no permission is required. In the future, it will be important for NARA to examine any restrictions its partners place on use of materials and assure that those restrictions do not conflict with public laws of access to government information or public information policy established by Congress, OMB, or the agency.

Thank you for the opportunity to comment on this agreement.

Sincerely,

A handwritten signature in cursive script that reads "Prudence S. Adler".

Prudence S. Adler
Association of Research Libraries