

TO: Pro Bono Partner
FROM: The Digital Registry
DATE: August 04, 2011
RE: Pro Bono Support for The Digital Registry

The Digital Registry (the “Registry”) seeks pro bono commitments from major firms to vet and defend the copyright status determinations of major cultural institutions such as libraries and universities.

Background and Philosophy of the Registry

The objective of the Registry Project is to create a comprehensive registry to undergird digital exploitation of intellectual property — for personal, educational, or commercial use. This vision encompasses all copyrighted works, all orphan works, and all works in the public domain. Scholars and businesses alike are reaching the consensus that administration of digital rights must begin with a registry. However, difficult issues pervade a registry system built upon copyrighted works: determinations of ownership, locating absentee owners, and apportioning ownership percentages, just to highlight a few.

By contrast, the Registry seeks to kick start the registry-building process by starting with those works that belong to no one and therefore belong to everyone: the public domain. All Americans are free to use these works in an unlimited fashion. However, litigation threats and copyright uncertainty often prevent providers and users from dispensing with this content as they see fit. With the help of great libraries and the support of great law firms, we propose to begin by building a legally defended registry for the public domain.

The Registry partners law firms with cultural institutions whose curated collections contain public domain works. Participating firms will help vet each institution’s copyright status determinations. The vetted determination along with a link to the cultural institution’s collection will then be programmed into the Registry. The partnering law firm will help eliminate the threat of unnecessary litigation by pledging pro bono legal counsel to their partnering library/institution and a willingness to help defend the vetted registry entries against unfounded legal threats.

This registry will be a simple and unassailable starting point for all larger registries. Creating such a tenable foundation will increase the public’s access to our shared cultural commons and ensure that providers and users alike will enjoy unlimited access to the public domain. From this secure underpinning, the registry will expand to include those works whose copyright status can be determined and flag those

whose status is uncertain. Ultimately, this system will yield greater certainty in the administration and use of all digital content, whether copyrighted or public domain.

Legal Structure of the Registry

The Registry is a project currently hosted by the Berkman Center at Harvard University, though it is likely to incorporate as an independent non-profit in the near future. The Registry will enter into agreements with certain registrars, including libraries, museums and universities (the “Registrars”). Under each agreement, the Registrar will provide the Registry with a continuously updated list of items that the Registrar has determined to be in the public domain, and the Registry will provide legal support to the Registrar in the event a third party claims otherwise. The Registry will have the option of pursuing full litigation in each case at its sole discretion. The Registry will only enter into registrar agreements with entities whom the Registry deems to follow acceptable copyright review practices. Legal support for the project will be provided by the participating law firms.

Potential Clients and Legal Services Requested

The potential clients for a participating law firm include the Registry and the Registrars. However, a law firm may decline to represent a certain entity if there is a conflict of interest or a conflict with the *pro bono* policies of the law firm. The extent of a law firm’s commitment is very flexible: a participating law firm has full control over the amount of work it takes on. The basic legal service the Registry seeks from a law firm involves defending copyright infringement lawsuits for the vetted works.