

The Changing Research and Collections Environment: The Information Commons Today

Hosted by the First Joint Conference of the
Visual Resources Association and the
Art Libraries Society of North America

Meeting Report

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WELCOME AND INTRODUCTIONS

Kathe Albrecht, Welcome from VRA

Albrecht welcomed the 250 participants to the 18th NINCH Copyright Town Meeting on behalf of the Visual Resources Association. She suggested that in this period of change information specialists are working with new media, traditional media, and often a combination of both. Because of this changing environment, she said, the history and status of the public domain becomes ever more important to visual resource professionals. She thanked NINCH for five years of these copyright town meetings and added a few words on what she called the fruitful collaboration between NINCH and VRA.

Roger Lawson, Welcome from ARLIS

Lawson, the ARLIS NINCH liaison, followed Albrecht's welcome with his own and with thanks to NINCH for providing a forum for informed public discussion. He declared that information professionals were facing "a vast frontier of unknown territory" and that NINCH was assisting both VRA and ARLIS members in charting this unknown territory.

David Green, The Meeting in Context

Green placed this Copyright Town Meeting in the context of the series as a whole. He added his welcome and his thanks for the close collaboration between VRA and ARLIS that made this meeting possible. He thanked the other members of the local planning committee: Kathe Albrecht, Roger Lawson, Barbara Rockenbach, and Maryly Snow,

He described NINCH as a diverse coalition of users, producers, and distributors of cultural materials that are part of the broad effort to build a networked cultural heritage. He expressed the need to create what he called a “dynamic digital exploratorium” involving libraries, archives, universities and museums where different kinds of users could do very different things with a wide range of high quality digital materials and be assured of their veracity and longevity. Copyright is the keystone to this construction and without an intellectual property regime, legal frameworks, and community buy-in that enables the community to do what its members need to do lawfully and economically, there is little prospect of that exploratorium becoming a reality.

The NINCH copyright program is rooted in the Conference on Fair Use (CONFU), 1994-98, which attempted to fashion practical fair use guidelines. The outcome of those meetings was disappointing in that the proposed guidelines that could have been platforms for what the community could do, ended up as low ceilings, and they were generally not accepted nor endorsed by the community. However, said Green, in the process of engaging with CONFU, many realized that there was widespread misunderstanding of fair use in particular and copyright in general. NINCH joined with many of its members to initiate a series of these copyright town meetings that sought to educate the community on copyright and to begin to strategize for legal solutions to the intellectual property quandaries that were facing the community as it entered the digital world.

In conclusion, Green discussed the National Academies report, *The Digital Dilemma : Intellectual Property in the Information Age*. The report suggested that the same technology making current information more available quickly and completely has the potential to demolish the careful balance of public good and private interests represented in Copyright Law and in the U.S. Constitution. He concluded with comments on the Copyright Term Extension Act, which had removed a large portion of the public domain and which would be the subject of a Supreme Court decision in October 2002

THE INFORMATION COMMONS TODAY

Michael S. Shapiro, Imagining the Public Domain

Michael Shapiro began by quoting former Register of Copyrights Ralph Oman, describing an earnest visitor to the Library of Congress looking for items in the public domain. “Where can I find the public domain?” the visitor asked. Register Oman responded: “I don’t know, but it must be very deep. Books, plays, music, and other works are always falling into it, but it never seems to fill up!”

In the 1976 Copyright Act, Shapiro noted, Congress could draw a map of the public domain with reasonable confidence. The public domain was a place where users could find creative works, or parts of creative works, which could be used without the need to seek permission from or compensate the author. The public domain also included ideas, facts, methods, titles, short phrases, and works of the federal government. Nonetheless, while Congress could describe the public domain, it could not explain it.

Until quite recently, the public domain was more a legal conclusion than a coherent theory. During the nineteenth century, judges often denied copyright protection to works that were deemed “undeserving protection.” For example, foreign works frequently fell into the public domain because the authors failed to comply with the formalities of U.S. law. In the last two decades, however, a new interest in developing a general theory of the public domain emerged as part of a larger reinvigoration of legal studies. Armed with new cultural theories, legal scholars have developed a rich, new understanding of such fundamental copyright principles as authorship and originality. The latest candidate for re-examination is the public domain.

In a seminal law review article, “Recognizing the Public Domain,” *Law & Contemporary Problems* (1981), Professor David Lange initiated the modern study of the public domain. He thought that remarkably little attention had been paid to it and that it was “something of a dark star in the realm of intellectual property.” Although Lange felt that copyright law was then in a “state of equilibrium,” he worried that the reckless expansion of publicity rights might upset the careful balance set forth in the 1976 Copyright Act, posing a threat to the public domain. “As access to the public domain is choked off or even closed altogether,” he wrote, “the public loses too; loses the rich heritage and its culture, and the rich presence of new works derived from culture, and the promise of new works.”

A decade later, Professor Jessica Litman, in an article simply entitled “The Public Domain,” observed that copyright law (far from being in a state of equilibrium) was in a state of conceptual disarray. Copyright’s fundamental principles – originality and authorship – had devolved into “dangerous conceits.” Moreover, such legal fictions had unfortunate real world consequences. Professor Litman argued that plaintiffs face the “impossible and unwelcome” task of proving the originality of all elements of their works, while defendants run the risk of incurring liability through otherwise unavoidable copying.

To “rescue us” from the inflated claims of originality and authorship, Litman argued for a revitalized notion of the public domain. “The public domain should be understood not as a realm of material that is undeserving of protection, but as a device that permits the rest of the system to work by leaving the raw material of authorship available for authors to use.” Thus the notion of a public domain is the conceptual missing piece in the copyright puzzle, which permits copyright law “to avoid a confrontation with the poverty of some of the assumptions on which it is based.”

Nonetheless, some scholars remain skeptical about the usefulness of a general theory of the public domain. Professor Edward Samuels, for example, questions whether such a theory would provide helpful guidance for courts or lawmakers. The Constitution teaches that copyright must be of limited duration. But how long is long enough? Samuels asks how a general theory of the public domain will advance this discussion. More significantly, Samuels asks: “What is gained by reifying the negative, and imagining a theory of the public domain?” If the purpose of a general theory of the public domain is to create a “rallying cry” and add a moral overtone to counter balance the morally charged principles evoked by those seeking copyright protections, a general theory may be of use.

Two decades after Lange formulated his ideas on the public domain, the territory has been dramatically reshaped. As a result of international trade agreements, copyright has been restored to certain foreign works that entered the public domain. The Copyright Term Extension Act of 1998 serves as a virtual dam blocking the flow of creative works into the public domain for a twenty-year period. In response to these challenges, some commentators have called for a new activism. Taking Samuels’ challenge seriously, Professor James Boyle argues that a revitalized notion of the public domain indeed may serve as a “rallying cry” for a grassroots intellectual property movement, much as the concept of the “environment” served as the early environmental movement. In a similar vein, Lawrence Lessig in *The Future of Ideas* calls for a robust “information commons,” a territory where resources are available without the need to obtain permissions and which would serve as a spur to innovation and creativity.

Jeffrey Cohen, Implementing Public Domain Collections Online

See [PowerPoint presentation](#) (Acrobat PDF)

Having helped develop a project that shares online teaching images of key architectural landmarks, Cohen imagined an information commons that includes both licensed image collections and free images for educational and non-profit use. The free images should include not only those works already in the public domain but also photographs taken by educators who are willing to share them for non-profit, educational uses. Some key images may be closely held and available, by their very nature, only in a part of the commons that is fenced and gated - accessible only through subscriptions that will enable rights-holders to recover their costs, and/or to enable the development of software for the high-end delivery of such materials. But Cohen argued that it is our responsibility to ensure that the

complementary free landscape of images becomes a reality by working to ensure the robustness of the public domain and by actively collaborating to build a shared resource rich in such content.

Looking forward to the “tipping point,” after which the educational community will have access to a critical mass of high quality digital images of predictable and dependable coverage necessary for teaching purposes, Cohen declared that the current hybrid period of co-existence between slides and digital images would last for the next five to ten years. The advantages of using digital images are many, including the ability to easily share them, to save lecture sequences, to make image sets available beyond the classroom, to be able to make ad hoc points in a lecture rather than stick to a predetermined sequence and not to have to re-file slides after a presentation. The tipping point will be defined by:

- richer access to images than is currently available in local slide collections
- a certain level of comfort and functionality provided for the user (e.g., virtual light tables), and
- a budgetary administrative push once the digital possibility is perceived as more cost effective.

Before this tipping point, Cohen declared that we should have two goals : 1) to take advantage of and to develop the potential of digital technologies in order to build accessible open collection of images, and 2) to work towards shared cataloging of resources. Through a combination of copy cataloging and local cataloging, we should be able to decrease redundancy and share resources. This shared environment would bring together data and images from multiple institutions and permit free access for educational non-profit uses. It would focus on teaching while respecting rights, would be flexibly accessible, and would ultimately save time and money.

What might a shared digital teaching resource offer? It should clearly expand access to materials beyond what is currently available on slides and it should avoid duplication of effort. It should be defined around teaching requirements rather than around collection availability. Images should also be untethered from particular narrative structures, so they can be easily re-used by educators. It should be free for educational, non-profit use and it should respect and protect the intellectual property rights of contributors.

Cohen's area of specialization is the built environment and, showing how images are used differently in this area, he continued by illustrating the viability of such an undertaking. Buildings require multiple views from different vantage points. Educators use what they call “pointed images” to make specific points in teaching: many architectural historians have thousands of pointed images they have photographed themselves and which they are often very willing to share with others. Collectively, this is a massive body of material that could be aggregated for a broader benefit (see Cohen’s resource list for some examples of these collections). These pointed images and image collections are often idiosyncratic - not the kind of material a vendor is likely to provide. One model project for this type of resource sharing is the Image Exchange project of the Society of Architectural Historians.

Broadly speaking, Cohen commented, “There’s a whole lot of scanning going on.” Low image quality and a lack of real standards may characterize much of this activity, but he suggested we not discourage or stop this activity. He proposed we should be flexible with quality and standards, with an eye towards immediate utility and ultimately replacing the good with the better. The urgency, he said, is to provide free access to images now; higher functionality and quality can come later.

Cohen also talked about the split between the local and national allegiance of VR professionals and Art Librarians. Most serve at both a national and a local level and their work for each is valuable. The time and resources contributed to the national image projects will ultimately benefit the local clientele. Cohen also imagines fruitful collaboration with subscription databases such as AMICO and ArtSTOR, where content could be offered and exchanged for its integration into their libraries. To build an image bank to meet the majority of scholarly needs we need to draw on public collections, archival collections, and those willing to contribute copyrighted content. While some parts of the realm of teaching images may have to be fenced to respect the prerogatives of rights-holders, a complementary landscape must be built to accommodate the needs of educators. Ultimately, we must also enable sharing across the fence with the high-end licensed-image products in order to address the access desires of scholars and teachers and the wider range of economic resources at institutions of varied stripe.

Robert Baron, Respondent

Baron's response to the first two speakers focused on the metaphors used to describe the public domain and copyright. He spoke about the negative implications of the commonly used term, "to fall into the public domain." To him, this phrasing suggests that works in the public domain communicate a compromised moral status. Other terms used to describe the public domain, such as "no man's land," "dark-star" and "black hole" certify that this negative interpretation of the public domain is tantamount to a loss of control and opportunity – not as a valuable public resource.

Baron suggested this language and sentiment is symptomatic of what he calls "copyright colonialism." He suggested that a better way to imagine the public domain is to give it a territorial existence, just as we do with copyright. The public domain should have a corresponding bundle of rights, ensuring that it be treated like a crucial cultural resource that needs to be protected. In addition, our educational and cultural organizations need to become advocates for the public domain, feeding it, and helping to guarantee that it remains a protected area that we and the rest of society have a moral and legal right to use.

Since the conference, Baron has elaborated these ideas in a paper entitled, "Reconstructing the Public Domain."

Comments, Questions and Discussion

The first section of the meeting was followed by 15 minutes of questions moderated by Kathe Albrecht.

A question was asked about why the Center for the Public Domain no longer exists. Baron responded by saying he had no hard facts, but that he believes with the collapse of the dot.com economy, the center lost its funding.

A comment was made about the fact that teachers often use textbooks in the arts based on the images rather than on the text because students want the same images in their textbook as they see in class. The commentator suggested that if the text does not matter then a body of images on the web could allow faculty to create their own textbooks based on images of their choosing. Cohen thought the loss of textbooks and the opening up of digital image collections for teaching would not necessarily be a bad thing. He believes textbooks have constrained teaching to key monuments while teachers have desired more flexibility. Digital images may provide this flexibility.

A discussion started about the role of digital projects in the tenure process. An audience member observed that Cohen referred to many digital projects as "free" and yet much faculty and staff time was volunteered to create these collections. Are faculty digital projects taken into account in the tenure process? Cohen responded that creating a digital resource is generally not considered a scholarly activity to be included in a tenure package.

Another audience member followed up on the question about digital image collections and textbooks, but suggesting that digital image collections are similar to the University Prints collections used in the past. Like digital images, the prints were not part of a larger scholarly work and could be used in many different contexts. Cohen suggested that digital images are much better than the university prints because it is much easier to share images and contribute to larger collections in the digital realm.

An audience member suggested that one way to ensure that works pass into the public domain is to persuade donors to dedicate their images and documents to the public domain when they give to a university. Baron responded by saying that this is a good gesture, but one that may not hold up in court if the heirs decide they still have rights to the materials. A better arrangement might be a licensed agreement that is admissible in a court of law.

Finally, an audience member expressed concern about her son 'stealing' images from the web and the future implications of children who take these stolen images for granted. Shapiro began his answer by explaining that the same copyright and intellectual property laws that have always applied to creative works still apply to protected works disseminated on the web. This means we have the same rights and responsibilities that we have always had under copyright laws. Within this general framework, images transmitted over the Internet present especially difficult problems (such as the copying of "thumb nail images" and the use of search engines to gather images into databases). Artists require protection, but certain uses of images may be fair uses.

LICENSING CULTURAL RESOURCES

Mary Case, Trends in Licensing Models

See [PowerPoint presentation](#) (PowerPoint download)

Mary Case began her talk by displaying a license agreement that opened an [October 2001 article by Jeff Howe in Wired](#) magazine. The license agreement outlines the acceptable uses of the article ending with "your license to read the article expires 30 days after acceptance of the Reader License Agreement, as indicated by tearing the perforated seal, after which the printed ink may fade in such a way that the words may cease to be legible." Case pointed out, this license may be humorous but it does illustrate the tendency of content owner to want to control as many uses and users as possible and the impermanence of the licensing model.

Why licenses? Case discussed the reason licensing became more prevalent in the 1990s. As publishers began producing electronic products, they felt that the 1976 Copyright Act was not sufficient to protect their interests. Publishers believed that the ease of copying electronic information threatened their economic viability. CONFU's failure to produce guidelines for the fair use of digital works also contributed to the publishers' perceived need for licensing models. To the publishers, licenses are preferable to copyright law because they can include specific use terms that remove the ambiguity for both parties of assessing the four fair use factors. Suing for breach of an unambiguous contract term is also likely to be more successful than suing for copyright infringement. Publishers felt that the uncertain copyright environment of the 1990s coupled with the lack of technological protection measures, made it necessary to protect their electronic products with licenses. They were also following the business model of software companies that used licenses to protect their interests and to manage a complex array of rights.

Licenses have evolved with the rapid increase of electronic products and the resultant market pushback. Early licenses were very restrictive but have become much more reasonable in the last few years as librarians have learned to negotiate; as libraries have banded together in consortia to create greater bargaining power; and as librarians and publishers have come together to develop model licenses. Many libraries now have a dedicated staff member or department devoted to license issues. Whether working with colleagues within the institution or with publishers, negotiating licenses is as much an educational process as it is a legal transaction.

Licenses introduce new issues for libraries. One is that the user population has to be more clearly defined than it was in the past. Libraries need to make sure that all appropriate users are covered by the license. Occasionally, exceptions must be argued for. Early licenses did not include those members of the public allowed access to academic libraries. Now, libraries have been able to make a case for these "walk-in" users as part of the authorized user population. Another issue is authorized *uses* of electronic products. Licenses often attempt to quantify fair use, for example, and librarians need to ensure they do not give up rights guaranteed by copyright law. Another new front is liability. Librarians should be very careful not to accept liability for the unauthorized acts of their users nor to accept responsibility for monitoring their users' online activities.

Another important issue for the library community is the time sensitive nature of licensed content. Every time a license is up for renewal a library may have to renegotiate and there is a chance that content will be lost. Since in most cases no local copy is owned, there is no guarantee of long-term access to materials. This raises questions about maintenance of content, technological migration, and finally archiving issues. If content providers cannot

ensure that they will be dealing with the above issues and libraries do not own a local copy, there is no way of knowing what content will be available for the long term.

Progress is being made. Fair use is now often included in licenses, along with broader use rights. Licensees, i.e., libraries, can now also use licenses to set performance expectations for the licensors.

What does the future bring? Case spoke about the implications of UCITA. This is a state-based effort that would make the terms of click-through licenses enforceable. What this means for libraries is that content providers could circumvent negotiations by offering only click-through licenses for their electronic products. Some content providers may find this option attractive because it is cost-effective and simple compared to the long negotiation process that exists now. Libraries could lose fair use rights if this becomes a reality.

Further implications of UCITA and the new licensed environment are that much content may never pass into the public domain. Libraries will not own local copies and won't have the right to ownership with licensed products. Therefore publicly available copies just won't exist. Furthermore, since copyright terms are so long, it may not be economically feasible for content-owners to maintain works as economic value declines. She suggests this indicates a broken digital promise that needs to be righted—that is, the promise embedded in copyright law that rights will be granted to authors for a short time with the assurance that one day those works will pass into the public domain (from *The Digital Dilemma*, 2000).

Robert Clarida, Fair Use

Although Robert Clarida's clients are mostly corporate copyright owners, he declared a strong belief in fair use and finds it wrong that the Collected Poems of Emily Dickinson, which was not published until 1924, will not be in the public domain until 2019.

Clarida framed his presentation by observing the difference between those who stand to make a profit from expressive/authored works and those who want to use them for creative purposes but do not have the means or desire to pay for the materials. Copyright law seeks to resolve or mediate this clash. Both the private commercial interests and free access interests are good for the public. The constitution tells us that that private interest should serve the public, in other words copyright law should force the ideal between public and private interests.

The fair use doctrine places a limit on exclusive rights during the copyright term. The fair use doctrine consists of four factors that codify common law doctrine. These factors are:

1. the purpose and character of the use, including whether such use is of a commercial nature or is for nonprofit educational purposes;
2. the nature of the copyrighted work;
3. the amount and substantiality of the portion used in relation to the copyrighted work as a whole; and
4. the effect of the use upon the potential market for or value of the copyrighted work.

These four factors are extremely fact specific, which means that each case stands on its own. No general definition of fair use can be applied to all cases. To date, there has been no fair use case directly dealing with research libraries, so we are left to reason by analogy. The fact that fair use law has not been frozen works to our advantage because it has allowed the notion of fair use to change over time. It has remained flexible even with all the technological changes and new media.

The court takes into account factors beyond the four fair use considerations. If the materials in question would benefit the public, the court may lean towards a more open interpretation of fair use. However, just because a work is being used by a non-profit or educational entity, it is not automatically considered a fair use. Clarida cited Byrne

v. British Broadcasting Corporation, a recent complex case that resulted in a ruling against the BBC claiming that their use of copyrighted material did not fall into the category of fair use, even though the BBC is a non-profit.

In the Kelly v. Arriba Soft (formerly know as Ditto.com) case of 1999 a photographer, Leslie Kelly, sued Arriba Soft because its visual search engine returned thumbnail images of his works. Kelly makes a profit on his photographic images of California Gold Rush country through printed publications that are sold on several web sites. He therefore felt Arriba Soft was cutting into his profits by providing the images free through their search engine. The court ruled in favor of Arriba Soft: re-using thumbnail images was considered fair use (as the quality was below acceptable commercial use). Although encouraging, the Kelly v. Arriba ruling does not state that all uses of thumbnails on the web are fair use. All cases need to be decided on a case-by-case basis, with all the facts taken into consideration.

Clarida also cited the American Geophysical Union v. Texaco case, in which American Geophysical alleged that Texaco scientists made infringing copies of articles from its publications. The Texaco employees made copies of circulated articles they wished to retain. Texaco claimed this was fair use, even though a license for the journals in question was offered by the Copyright Clearance Center and Texaco could have purchased the license to distribute the copies. Clarida suggested that we investigate and seek licenses whenever possible for the reasons Case stated in her talk. Licenses protect both parties and make litigation in these cases much more clear-cut.

Clarida ended with a political exhortation to support the Technology Education and Copyright Harmonization (TEACH) Act that ensures fair use in digital distance education.

Tony Gill, Licensing RLG Cultural Materials

Gill opened by outlining the difference between what cultural materials are, and what “RLG Cultural Materials” is. The former are primary, unique works that document culture and are found in museums, libraries, archives and historical societies. They are the products of human ingenuity and are increasingly used for research and learning. The increased demand for these types of materials sparked RLG to embark upon the [Cultural Materials Initiative](#), to support enhanced access to material culture. The [Cultural Materials Alliance](#) (CMA) is the group of 47 RLG member institutions committed to building a collective digital resource as part of the initiative: [RLG Cultural Materials](#) is an integrated web-based multimedia collection of works from Alliance member collections that document culture and civilization. The goal of this multimedia collection is similar to that of the “digital exploratorium” that David Green mentioned in his introduction. RLG Cultural Materials has a rich toolset for discovery, examination, comparison and use. It is currently available by subscription for education and research.

Participation in the Alliance is free for RLG members. Alliance participants sign the Alliance license agreement, contribute digital content, and may be asked to serve on advisory committees. The development timeline for the licensing framework began in 1999, and through the work of many lawyers, the Alliance agreement was formulated by April 2000. At the center of the agreement is the notion of fair use. Alliance participants do not receive any royalties or license fees in return for the educational use of their contributed content. The agreement also incorporates a statement of intent and embodies the “spirit” of the collaborative initiative. Additionally, the agreement includes placeholder clauses for sublicensing and pay per view, with a revenue sharing model to be agreed upon in the future. Of great importance is the fact that the agreement ensures that content will remain stable throughout the academic year with an opportunity for Alliance participants to withdraw content on September 1st, although there is a “rapid removal” clause in the event of rights issues.

Academic subscriptions are available to academic/research institutions based on the existing RLG service agreement. This agreement essentially protects U.S. Fair Use provisions. The Academic License for RLG Cultural Materials amends and/or clarifies clauses in the standard RLG service agreement and also offers some additional definitions and clauses. One of the special definitions is the term “work:” a digital surrogate and related description of a cultural artifact from an Alliance member collection. Special terms disallow any work from being used on a web site that is accessible to non-permitted users, and on cessation of subscription, the subscriber must use their best efforts to remove local copies of works. This helps to protect Alliance member materials.

The license does allow for a wide user base, permitting use by currently-enrolled students (including distance learners), staff, faculty, researchers, affiliated researchers, and anyone accessing the service from on-site. Permitted uses within access-restricted educational sites include downloading, printing, modifying, and storing of single copies for information, instruction, research, or scholarship. Each work used should include a credit line to identify the work, and a copyright notice. The following will not be permitted under the academic agreement: use on commercial or business-related websites; use in a website accessible to non-permitted users; storage or use after the expiration of a subscription; and special uses outside the permitted uses already stated without prior approval from the work's contributor.

Gill ended with an outline of some possible future extensions to the service and its licensing framework, to be discussed by the Policy Advisory Group. Under consideration are an 'individual service' freely available on the open web, pay-per-view and click-through licensing, a referral mechanism for non-standard uses, and a revenue sharing model for alliance members.

Open Forum

To a question on the place of unaffiliated independent scholars in a licensed universe, where most licenses are negotiated with a university or cultural institution, Gill replied that RLG is planning a free public version of the Cultural Materials database available on the web and is trying to build an infrastructure that is sustainable, rather than grant funded, and which would then be able to more easily support individual use. Case replied by that publishers might introduce a pay-per-use model for individuals. Jennifer Trant added that AMICO would now be available for individual use.

To a question of whether institutions, by signing a license, sign away fair use rights, Case stated that, if fair use rights are not already addressed in the license, one can add language to ensure that they are protected. Such language can be found in the Liblicense Standard Licensing Agreement: "Nothing in this Agreement is intended to limit in any way whatsoever Licensee's or any Authorized User's rights under the Fair Use provisions of United States or international law to use the Licensed Materials." She warned us to never sign a license that restricts the fair use rights of users.

Jennifer Trant suggested an interesting model for the public domain by drawing an analogy between our intellectual property environment and the nature conservancy. Like the nature conservancy, we could consider intellectual property in terms of mutual values to producer and user and create a public intellectual property conservancy. A legal framework would need to be created, but it would allow intellectual property owners to donate back to the conservancy for mutual benefit.

Finally, the open forum ended with a discussion of risk management. Clarida stated earlier that there has been no intellectual property case involving a research library as of yet. An audience member asked if it was in our best interest to try to push the limits so we will end up in court. Baron stated that our general counsels and administrators advise those of us at universities, to not take any risks in this area. Clarida framed his answer in terms of cost benefit analysis. He stated that the benefit to a non-profit organization might not outweigh the cost of such a case. This type of risk may be better handled in a for-profit organization with more money. He did say that in the case of intellectual property rights, it is difficult to quantify the costs and benefits.