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The Dickens 2000 Project: An Odyssey in Copyright Compliance

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The Dickens 2000 Project:
An Odyssey in Copyright Compliance

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ABSTRACT. The Purdue University Libraries Technical Information Service (TIS), a non-profit cost-recovery information service for the business community, faced the challenge of delivering a set of defined documents to a specific clientele within a short time period. This article summarizes how the project was managed and how TIS staff assembled a copyright-cleared packet of documents from a long list of obscure publications, and delivered it to clients within a reasonable time frame. [Article copies available for a fee from The Haworth Document Delivery Service: 1-800-342-9678. E-mail address: <getinfo@haworthpressinc.com> Website: <http://www.HaworthPress.com> © 2001 by The Haworth Press, Inc. All rights reserved.]

KEYWORDS. Purdue University, document delivery

PURDUE’S TECHNICAL INFORMATION SERVICE
AND DOCUMENT DELIVERY

Purdue University’s Technical Information Service (TIS) is a fee-based information service that offers research services and document delivery to businesses on a cost-recovery basis. TIS began in 1987 and is jointly

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In November 1999, TIS staff faced the double challenge not only of tracking down items from a long list of obscure publications, but also of assembling a copyright-cleared standard packet of documents.

The Information Technology Association of America (ITAA) contacted TIS to provide a set of defined documents to some of its clients. These clients and their attorneys were collecting "prior art" information to challenge the right of a patent assignee to charge them licensing fees for using the technology described in the patent.

THE DICKENS PATENT

In September 1998, McDonnell Douglas (now Boeing) was granted U.S. patent 5,806,063: "Date formatting and sorting for dates spanning the turn of the century." The patent's inventor was Bruce Dickens, a McDonnell Douglas employee. The patent deals with a year 2000 computer windowing technique. Dickens eventually paid Boeing for the patent rights to be assigned back to him. He then sent letters to companies using this windowing technique, requiring that a licensing fee be paid to him for using the technique.

When ITAA member companies and their customers began receiving the Dickens letter, they turned to their professional association for help. To assist those of its members who planned to challenge the patent and Dickens' right to charge the licensing fees, ITAA started collecting citations that might indicate possible "prior art" documents. It posted the list on its website and also sent a copy to the United States Patent and Trademark Office (USPTO) which was beginning the rare process of reexamining the patent.

Interested parties began asking ITAA to supply copies of the documents cited on its website. At that point, ITAA contacted Purdue's Technical Information Service. Since ITAA had no established mechanism for providing document delivery services on such a large scale or within such a short time frame, they approached TIS for help. By naming TIS as the supplier for the documents package, ITAA helped their clients save time by contacting a single supplier to order all the documents instead of going to different places to collect each of the items listed.

TIS AS DOCUMENT PACKET SUPPLIER

This project represented the first time TIS faced the task of providing multiple copies of a set of documents to a defined group of customers
within a very limited time period. The clientele for this project were mainly law firms representing companies that wanted to challenge the patent.

Although the TIS staff is especially resourceful at identifying and locating hard-to-find documents, this project challenged their abilities not only to identify and acquire the items, but also to organize them, obtain copyright permissions for them, and to distribute them quickly. A few of the documents were in-print publications that could be easily ordered from the publisher or distributor. However, most references were for articles from journals or trade magazines, for conference papers, and for chapters or sections from out-of-print (and out-of-date) technical manuals. TIS staff would have to identify, locate, and duplicate them, as well as obtain copyright permission, before distribution.

MANAGING THE PROJECT

Staff planned the process in five major steps:

1. Identify each document
2. Locate and acquire a copy of each document
3. Get copyright permission from the proper authority to make cover-to-cover and/or multiple copies of each document
4. Pay copyright fees
5. Deliver requested documents to clients

Managing the project was complicated by several factors. The list of documents expanded to 149 items. TIS staff compiled an order list of all the documents, indicating availability and price. Not only did this list need constant updating as new titles were added and as copyright permissions were secured, but also staff had to keep track of which clients had ordered what titles, and send updated lists to customers so they could order any further documents they required. Some clients ordered nearly every document; others ordered selectively.

IDENTIFYING AND LOCATING DOCUMENTS

Identifying and providing copies of journal articles from the list was not difficult, since most of the journal titles were located in campus li-
braries. Paying copyright fees for them was straightforward because the journal titles were listed with the Copyright Clearance Center.

The real challenge lay in obtaining copies of the other titles on the list, many of which were to citations of pages from technical manuals. Many of the manuals were obsolete; few libraries had ever acquired them and even the companies or organizations that issued them did not keep older copies after issuing new editions or changing technologies. In a few cases, some libraries in the U.S. held copies, so TIS borrowed them. TIS staff also contacted the professors at Purdue’s Department of Computer Technology, who were glad to lend their personal copies of manuals.

**ELECTRONIC DOCUMENTS**

A few of the documents were available on the Internet, although they were sometimes difficult to extract. One such document was buried deep in a website and had no straightforward URL of its own. Once it was identified, TIS staff started to tell clients how to access it themselves, but busy paralegals said they did not have time to click through multiple screens to find it and download to a printer. TIS contacted the publisher for copyright permission to print multiple copies from the website. This particular publisher not only allowed TIS to make multiple copies at no cost, but also offered to re-post the document in a PDF file so it could be accessed more easily.

**SEEKING COPYRIGHT PERMISSION FROM PUBLISHERS**

When obtaining copyright permission from publishers, the responses that TIS received were a mixture of positive and negative answers and everything in between. Some publishers went out of their way to give the permission. Others ignored repeated requests. Some of them responded immediately, while others responded only after several queries. Some publishers requested a nominal copyright fee for each item supplied; others asked for a modest one-time fee to cover all the copies made from their title. A few quoted a high fee. One publisher wanted TIS to sign a contract to provide only a certain number of copies for a limited time with an up-front payment of copyright fees. In summary, it seemed that when staff were able to get a response from a publisher,
nearly all of them had a slightly different twist on their requirements for granting copyright permission to supply their material.

In instances where documents could be downloaded from the web, TIS staff contacted the site publishers or authors to get permission to reproduce those publications. Most of the publishers and authors were willing to work with TIS and gave permission to make multiple copies for free. Some of them requested a one-time fee.

Staff requested written permission from each publisher or copyright-holding author for making multiple copies of their works.

THE COPYRIGHT CHALLENGE

Almost every document for which TIS staff sought copyright permission directly from the rights holder had its own unique story. The most difficult part of obtaining copyright permission was usually locating the right person at a publisher’s office who understood the copyright and royalties issues. Once contact with the right person had been established, TIS staff submitted a written request detailing the article or book section that was to be copied. Most publishers then quoted a per copy royalty fee, although one cited a charge of $500 for the rights to make up to 25 copies of its work. Since TIS could not predict future sales, the offer was declined and that particular work was designated as "not available." When agreement about copyright was reached, TIS received written permission detailing the terms.

COMMENTARY

TIS staff made every effort to secure copyright permission in advance for those items that could not be purchased directly from publishers or distributors or which could not be reported through the Copyright Clearance Center. Whenever that permission was not forthcoming (e.g., no response from the publisher, or a fee that was considered too high for TIS customers to pay, or TIS was unable to identify the rights holder), TIS listed those titles as unavailable and did not supply them to clients.

In those cases where the only option was to contact the publisher for permission to reproduce one of their publications (or a part of one of their publications) multiple times, it seemed that every publisher or organization followed a different procedure. TIS experienced a huge range of differences in response time, format for making a formal re-
quest, fees, and special notes or legends to affix to the duplicated material.

While it is certainly each publisher’s prerogative to establish its own procedures and fees, an industry norm for handling these requests would surely have expedited handling for both parties. TIS staff imagined how these publishers might have reacted to dealing simultaneously with several dozen anxious law firms, instead of with only one document delivery provider! The TIS staff’s perception was that, even with publishers large enough to have separately staffed permissions departments, it was often neither easy nor fast to obtain permission to duplicate their material. TIS was ready, willing, and able to pay reasonable fees for permission to use the material in compliance with the copyright law, yet some publishers chose not to return numerous phone calls and email messages.

The results of providing the first 47 documents on ITAA’s list are as follows:

<table>
<thead>
<tr>
<th>Copyright Outcome of First 47 ITAA Document Requests</th>
<th></th>
</tr>
</thead>
<tbody>
<tr>
<td>Listed with the Copyright Clearance Center</td>
<td>15</td>
</tr>
<tr>
<td>Fees paid directly to publisher</td>
<td>6</td>
</tr>
<tr>
<td>Publisher granted permission without fees</td>
<td>4</td>
</tr>
<tr>
<td>Items available full text online with royalty fees inclusive</td>
<td>3</td>
</tr>
<tr>
<td>Items purchased directly from publisher/distributor</td>
<td>3</td>
</tr>
<tr>
<td>Items unavailable (bad cites; unable to locate; reproduction permission denied)</td>
<td>16</td>
</tr>
</tbody>
</table>

TIS’ ability to respond quickly, even given the challenges of poor citations, obscure material, and varying publishers’ requirements, made Phase I of this project a big success. Given the limited period of time to provide these documents, TIS was able to provide copyright-cleared copies of most of the needed documents within the clients’ timeframe. Even though TIS identified sources for them, only a few documents from the list could not be provided because of publishers’ high fees, non-response, or refusal to grant permission.

**LESSONS LEARNED**

Time proved the biggest challenge in this project. Identifying and acquiring documents, locating the rights holders and requesting copyright permissions, and paying copyright fees directly to the rights holders
were very time consuming. When TIS accepted ITAA’s challenge to provide the documents, there were only 47 titles on the list. It eventually expanded to 149 titles. At the time of this printing the patent case is still pending. Since clients continue to contact TIS for the documents at a rate of several per month, TIS faces the additional challenge of maintaining copies of the entire collection.

TIS customized the document package for each customer, who chose items from a list that constantly expanded as permissions were secured. It was difficult to keep track of which clients had ordered what documents, and to notify clients of new entries. In retrospect, it might have been more efficient to have offered a standard document package of all the moderately priced items, and only let clients pick and choose from the more expensive titles. Establishing an electronic mailing list for updating all interested clients of new titles at the same time would have been a big time saver, and might have resulted in more orders. Posting and updating the document list on the TIS website would also have been more efficient than constantly revising a list to fax to customers.

In addition, more staff might have been involved in the labor-intensive document identification and acquisition stages. It would have been helpful to have established guidelines for document identification and acquisition, such as a certain number of minutes spent or phone calls made on each title before declaring it unobtainable.

Despite the rush of handling such a massive set of documents in such a short timeframe, TIS staff was pleased to have had this challenge. The project resulted in many new clients learning about Purdue’s Technical Information Service and continuing to use its services for other needs.

REFERENCE