

Principles and Guidelines for Entering into an Agreement with Commercial Vendors in the Digitization of CRL Holdings

Final Version – November 30, 2005

As a repository of research materials with scholarly value, the Center for Research Libraries may receive or solicit proposals from commercial firms seeking rights to digitize these materials for sale or subscription. As a general principle, repositories that hold public-domain and/or non-proprietary materials of scholarly value should strive to make those works freely available on the open Internet. However, the Center must also strike a balance between its interest in maximizing access to and use of its research resources; its equally legitimate interest in encouraging investments in the digitization, dissemination, and long-term curation of its holdings; and its need for continuing financial viability.

CRL's participation in such partnerships must therefore reflect the following principles:

- the Center is committed to making its holdings readily accessible to the scholarly community at large;
- the Center strongly supports the use of its materials under the fair use provisions of Copyright Law;
- the Center has a fiduciary responsibility to provide its members with tangible benefits while keeping membership fees as low as possible;
- any project to digitize the Center's holdings should be structured to enhance the value of membership.
- compensation generated through third-party projects should benefit all members as equitably as possible;

- the Center is committed to preserving and archiving digital surrogates created from its collections;
- the Center supports the application and adoption of national standards and best practices to digitization projects; and
- the Center endorses the open sharing of the terms of agreements and contracts negotiated between libraries and other parties.

The following guidelines are intended to ensure a balance between these basic interests when entering into agreements with commercial vendors to digitize CRL holdings:

1. The terms of any partnership between the Center and an external publisher will be defined in a contract through which the Center licenses to the publisher certain rights regarding the books or other materials that it owns in return for specific consideration, and through which each party sets expectations for itself and the other.
2. Prospective partners will present the Center with a statement of the tasks and services that the Center is expected to provide for each project.
3. The Center will develop cost estimates to ensure that its expenses are appropriately balanced by the project's expected benefits to the Center and its membership.
4. The Center will require the commercial partner to describe its business model for the project. Commercial partners may engage in this work for profit, but CRL should insist that their profit margins remain reasonable to keep subscriber costs low, even if royalty income is thereby reduced.
5. Cash revenue, through any combination of royalties and lump-sum payments, should be the Center's first preference as it negotiates compensation schedules.
6. The Center should seek the broadest possible access to the digital surrogates created in any project. The Center should insist upon receiving escrow copies of all digital

files and associated metadata for preservation purposes, and further seek the right to serve those files from its own server or a member's server to all (and only) members of the Center. All contracts should specify that, after a mutually agreed and specified period, the Center or its designated agent will be free to mount and disseminate to members all digital files created from its holdings.

7. The Center should participate in setting the terms for the license which the publisher will establish for subscribers to the digital collection. These licenses will conform to the best practices outlined by the Association of Research Libraries, ICOLC, and similar organizations. The terms of these licenses must allow for fair use.
8. The contract should specify the general technical standards that the digitization project should follow, to ensure the use of widely held standards and to optimize the longevity of the digital files. If a third-party vendor is to be employed for digitization or any other element of the project, the Center should review the corresponding subcontracts to ensure conformance to appropriate standards and adequate quality control. Standards and best practices should encompass digital capture, metadata, storage and delivery formats, and long-term file maintenance within a trusted digital repository.
9. The contract should require the vendor to assume all costs for any preservation work that is required to prepare materials for digitization. The vendor should return all materials to the Center undamaged, and cover full repair costs for any unauthorized damage. Any alteration of the original material will be performed only with permission of Center staff. The contract should also specify requirements for handling and transporting original materials.
10. The contract should assign to the publisher responsibility for compliance with all copyright and legal requirements applicable to the creation and distribution of the digital collection and for obtaining all consents, permissions, licenses, and other instruments as may be necessary for such compliance. The publisher should also agree to indemnify the Center and hold it harmless from any costs, including attorney's fees, resulting from any claim of a violation of any rights of a third party arising out of the reproduction, publication, and sale of the digital collection.

11. The terms of any contract negotiated will be made openly available to the Center's members and others that request this information.