

DRAFT PARTNERSHIP AGREEMENT AVAILABLE FOR PUBLIC COMMENT

Posted for comment: January 10, 2013

Comments due: February 8, 2013

Send comments to: digitization@nara.gov or by fax to 301-837-0312

NARA is giving public notice that we propose to enter into a non-exclusive agreement with American University to digitize key documents from a one-percent sample of bankruptcy case files filed under the federal bankruptcy laws of 1898 and 1978 that are permanent, accessioned records in the physical and legal custody of NARA. Your comments are invited on the terms of the proposed agreement below. Comments must be received by February 8, 2013.

The highlights of this proposed agreement are:

1. NARA will receive digital copies and metadata of all holdings that are digitized as part of this agreement.
2. NARA will have unrestricted use of the digital copies and metadata.
3. Researchers will have free access to the digitized images and metadata in NARA's online catalog.
4. Individual project plans will be established that identify the specific records to be digitized and specify metadata and other details that will apply to those records.
5. NARA's agreement with American University is non-exclusive. NARA has already reached digitizing agreements with other entities and will continue to consider additional agreements.
6. American University will pay all costs for metadata creation and digitizing the records.

The National Archives and Records Administration (NARA) is pursuing partnerships with organizations from a variety of sectors (private, public, non-profit, educational, government) as part of our strategy to digitize and make more accessible the historic holdings from the National Archives of the United States. These partnerships will enable the public to have electronic access to textual and microfilm records sooner than NARA itself can provide. The terms of each agreement may vary. The original holdings will always remain in the public domain, and access to digitized records will always be freely available in NARA's research rooms. Copying will continue to be available in accordance with NARA's fee schedule.

DRAFT
DIGITIZATION AGREEMENT
Between
MARY E. HANSEN
and
AMERICAN UNIVERSITY
and
THE NATIONAL ARCHIVES AND RECORDS ADMINISTRATION

The non-exclusive Digitization Agreement (the “Agreement”) , is entered into as of Month xx, 2013 (the “Effective Date”), by and between Mary E. Hansen, a professor at American University; American University, located in Washington DC; and the National Archives and Records Administration, an independent agency in the executive branch of the United States Government with its headquarters in Washington, DC (“NARA”) (with each of Professor Hansen and NARA being referred to as a “party” or collectively as the “parties”).

NARA maintains and makes available to the public certain historical records and other documentary materials of the US Government in printed, microfilm, microfiche, and other formats (the “Archival Materials”) at its locations throughout the United States (the “NARA Locations”).

Professor Hansen and NARA agree to cooperate in the digitization of key documents of a one percent sample of bankruptcy case files filed under the federal bankruptcy laws of 1898 and 1978 that are permanent, accessioned records in the physical and legal custody of NARA, also referred to as the “Project.”

Professor Hansen is in the business of utilizing records of historical of value to the social science community for research. To increase the availability of such records she converts analog records into digital form.

NARA and Professor Hansen agree to cooperate in Professor Hansen’s digitization of selections of the Archival Materials on the terms and conditions set forth in this Agreement.

Definitions

Archival Materials: the permanently valuable holdings of the National Archives of the United States.

Digitized Images: Digital reproductions of selections of the Archival Materials with no associated metadata.

Digitized Materials: Digital reproductions of selections of the Archival Materials with associated metadata, including name indexes that are linked to, and permit searching of, the digital images, as will be specifically described in each Project Plan.

Metadata: Information about an analog or digital object, a component of an object, or a coherent collection of objects. Metadata includes descriptive metadata, technical metadata, and PREMIS-like metadata. Descriptive metadata provides information about the intellectual content of an object and may also contain data describing the physical attributes of the object and would include all information created by Professor Hansen in its indexes. Descriptive metadata supports specific user tasks, such as discovery and identification of content. Technical metadata is technical information about the digital files and multifile objects such as the processes used to reformat the records and pixel dimensions.

Original record: The version of a document, in any format, that is designated by NARA as the official copy for reference and preservation.

Project Plan: a document completed and approved by Professor Hansen and NARA representatives that lists the Archival Materials that NARA and Professor Hansen have agreed to digitize and provides the details about standards, metadata, equipment, format, costs, personnel, and other required information for each selection of Archival Materials. NARA provides the template for proposed Project Plans.

1. Creation and Use of Digital Materials

1.1 NARA agrees to provide Professor Hansen or her representatives with controlled access to available subsets of Archival Materials to enable Professor Hansen to create digital images of them. The parties will cooperate to determine in advance of each Federal fiscal year, a plan for which Archival Materials will be scheduled for digitization in the coming year, and to develop a strategy for a continuous flow of Archival Materials for digitization. The annual plan must be mutually agreed to by both parties.

1.2 The nature, location, and details about the digitization process for each selection of Archival Materials will be listed in a Project Plan. All use of the Archival Materials must take place at the NARA location set forth in the applicable Project Plan. All details of the on-site scanning or other method of digitization, including but not limited to hours during which Professor Hansen may have access to the Archival Materials, will be agreed to between the parties in each Project Plan. To ensure public access to these records, NARA reserves the right to interrupt the project for short periods of time to make copies and otherwise provide reference service to the public.

1.3 Prof. Hansen will produce the Digital Materials with a minimum 300 ppi, 24-bit color, jpeg images of the records, at original document size, or at such other specifications as the parties may agree in writing in a Project Plan. NARA and Prof. Hansen will ensure that sufficient descriptive, technical, and functional

metadata is created to meet mutually agreed upon standards. This metadata will enable retrieval of the material at the level of archival control as determined by NARA (e.g., item or file unit level). The nature of this metadata will be agreed upon in the Project Plan.

1.4 Professor Hansen and her representatives will at all times comply with applicable NARA requirements for the handling of the Archival Materials, and NARA will provide training and oversight in the proper handling of the Archival materials. Any digitization equipment to be installed by Professor Hansen at a NARA facility, including equipment installed on a NARA computer or network, must be approved by NARA prior to its installation. All equipment must be in conformance with NARA regulations for use of scanners and other personal copying equipment at 36 C.F.R. 1254.80. NARA and Professor Hansen will designate points of contact for each location prior to the start of the project. The points of contact will provide guidance and assistance on all the requirements for the particular project.

1.5 Upon completion of the work specified in a Project Plan, or as otherwise agreed to by the Parties in writing, Professor Hansen will deliver one copy of the Digitized Materials to NARA, including all the technical and functional metadata, on a portable hard drive or similar device or as otherwise mutually agreed upon. NARA will immediately have full and unrestricted rights to use the Digitized Materials, including but not limited to making it available on the NARA website to the public. Delivery of these copies will be accomplished via a cover letter from Professor Hansen referencing this Agreement.

1.6 Professor Hansen will make corrections that are necessary to ensuring the accuracy of the Digitized Materials and the integrity of its archival structure within 30 days of identifying a problem or receiving a NARA request for correction, and then will deliver the revised data (images and/or metadata) to NARA when the correction is completed.

1.7 Should the Project cease NARA shall immediately: (a) receive a copy of Digitized Materials not previously provided to NARA (Professor Hansen or American University will make all reasonable efforts to deliver this copy to NARA); and (b) have full and unrestricted right to use the Digitized Materials consistent with Section 1.6.

2.

Cost

Each Party will bear its own costs any access or services provided under this Agreement.

3. Public Domain: Ownership

3.1 NARA represents and warrants that to the best of its knowledge: (i) the Archival Materials are open court records of the U.S. government, and as such there are no underlying copyright issues related to the dissemination and the use of the Archival Materials. NARA represents and warrants these Archival Materials are fully open records.

3.2 The parties acknowledge that nothing in this Agreement is intended to alter or impair such status, or any rights of control, custody, ownership or use that NARA or the US Government may have in such Archival Materials. NARA shall not transfer control, custody or ownership over any Archival Materials to Professor Hansen or any third party. NARA will promptly notify Professor Hansen of any claim made by a third party that any of the Archival Materials are covered by copyright or any other intellectual property right. Compliance with copyright laws and observance of the reproduction rights of any third party will be the sole responsibility of Professor Hansen. Professor Hansen will use its best efforts to identify and exclude from its website any images subject to such restrictions.

4. Publicity

Neither party will issue any public announcement regarding the existence or content of this Agreement or any project plan without the other party's prior written approval. Parties agree that this Agreement will be announced for public comment prior to signing.

5. Limitation of Liability

In no event shall either party be liable to the other for any incidental, consequential, special, exemplary or other indirect damages, or for lost profits, lost revenues, or loss of business arising out of the subject matter of this Agreement, regardless of the cause of action, even if the party has been advised of the likelihood of damages.

6. Marks and Other Designations

NARA agrees that Professor Hansen may make reference to NARA and use any NARA trade names, trademarks, service marks, seal, logos or other designations in connection with its activities contemplated under this Agreement, provided that Professor Hansen obtain NARA's prior written approval for each usage. Such approval will not be unreasonably delayed or withheld. Absent express written authorization, the use of the NARA trade names, trademarks, service marks, seal, logos or other designations shall not imply or state that NARA or any part thereof, or any NARA official or employee, endorses the policies, activities, products, services or opinions of Professor Hansen or any third party.

7. Notices and contacts

Notices provided under this Agreement will be effective if delivered to the then current principal business address of the other party. The current principal contacts are:

Rebecca Warlow, NARA Liaison for Digitization Partnerships
Office of Innovation,
Phone: 301-837-1734
Email: Rebecca.warlow@nara.gov

Mary Rephlo, Digitization Coordinator for Research Services
Research Services
Phone: 202-357-5259
Email mary.rephlo@nara.gov

Mary Eschelbach Hansen
Associate Professor, Director of Undergraduate Studies
Department of Economics
American University, Kreeger 127
4400 Mass. Ave. NW
Washington DC 20016-8029
Phone: 202-885-3793,
E-mail: mhansen@american.edu

Notices may be given by mail (effective three business days after mailing) or by express courier (effective on actual delivery).

8. Term: Termination: Survival
This Agreement is effective when signed by all parties, and will remain in effect for a period of three years, unless terminated sooner by either party by providing ninety (90) days prior written notice. If a ninety day termination notice is given by NARA for other than cause, the termination will not be effective as to any Project Plan in process until the project described therein is completed unless completion is prevented by any requirements of law or any rule or regulation of any governmental authority. The provisions of Sections 1.6, 1.8, 2, 3, 4, and 5 shall survive termination of this Agreement for any reason. This Agreement may be extended upon the written agreement of all parties.
9. Choice of Law
This Agreement shall be governed by and in accordance with the laws of the United States. In the event federal law does not address an issue, the applicable law shall be the laws of the District of Columbia law without application of conflict of laws provisions.
10. Relationship of the Parties
This Agreement does not constitute, and is not intended to give rise to, a partnership or joint venture between the parties. Each party will operate under the terms of this Agreement as an independent entity and not as an agent for, or an employee of, the other.
11. Assignment

Neither NARA nor Professor Hansen nor American University may assign any of its rights or obligations under this Agreement without the prior written consent of the other party.

12. Entire Agreement: Modification

This Agreement is the entire agreement of the parties regarding the subject matter set forth herein, provided that nothing in this Agreement will limit any other rights of Professor Hansen to access the Archival Materials. The parties agree that any modifications to this Agreement will be made only in writing duly executed by their duly authorized representatives, effective when signed by all parties.

NATIONAL ARCHIVES AND
RECORDS ADMINISTRATION

PROFESSOR MARY E. HANSEN

By: _____

By: _____

Name: DAVID S. FERRIERO
Title: Archivist of the United States
University

Name: MARY ESCHELBACH HANSEN
Title: Associate Professor, American

Date:

Date:

AMERICAN UNIVERSITY

By: _____

Name:

Title:

Date: