
Assisting living authors in opening access to their in-copyright works: a report from Iceland

Ian Watson, Ph.D. starfar sem dósent hjá hönnunardeild norska tækni- og vísindaháskólans (NTNU) í Gjøvik í Noregi.



Greinin fjallar um verkefni sem unnið var á árunum 2013–2015, að aðstoða núlifandi íslenska höfunda að opna aðgang að bókum sem ekki fengust lengur á prenti, sem þeir vildu gera aðgengilegar almenningi. Þetta verkefni var smátt í sniðum en bregður ljósi á flækjustig þegar verk sem eru enn í höfundarétti eftir höfunda sem eru enn á lífi er dreift með Creative Commons leyfi. Að mestu var unnið með bækur sem Google hefur skannað inn og eru í safni HathiTrust. Í ljós kom að íslenskir höfundar að gömlum fræðilegum verkum eru jafnan áhugasamir um að dreifa þeim meðal almennings án greiðslu, með því að breyta réttindastöðu verkanna í HathiTrust. Höfundar verka sem ekki voru enn skönnuð inn en vildu dreifa þeim á sama hátt lentu stundum í vanda að koma þeim í dreifingu. Greininni lýkur með hugleiðingum um kosti og galla þess að losa um réttindi höfunda, eins af öðrum, borið saman við aðrar leiðir til að auka aðgengileika verka sem ekki fást lengur á prenti.

Abstract

This article reports on a project, spanning the years 2013 to 2015, that assisted living Icelandic authors in opening access to out-of-print books that they wished to make publicly available. While this effort was small in scale, it sheds light on the complexities of releasing still-in-copyright works by living authors under a Creative Commons license. The project worked primarily with books that had been digitized by Google and included in HathiTrust's collections. The project showed that Icelandic authors of older scholarly works were generally very interested in releasing them to the public at no charge by changing their rights status in HathiTrust. Meanwhile, authors who wished to release works that had not already been scanned were sometimes frustrated in their efforts to do so. The article concludes with some reflections on the benefits and drawbacks of author-by-author rights clearance, as compared to other ways of increasing the accessibility of out-of-print titles.

Introduction and background

Over the years 2013 to 2015, the writer (with help from other staff members of the Reykjavík Academy and

Dagsbrún Library) assisted a number of living Icelandic authors in making previously published books available at no charge through the Internet.

The original impetus for the project came from requests by living Icelandic authors to digitize their own previously published work. At the time the writer of this article spent one day a week working for the Dagsbrún Library in Reykjavík. The Dagsbrún Library (Bókasafn Dagsbrúnar in Icelandic; www.bokasafndagsbrunar.is) was founded in 1956, and originally served the members of one of Iceland's trade unions. Since 2003, it has been housed at the Reykjavík Academy (www.akademia.is).¹ It contains about 14,000 volumes.

Several members of the Academy had previously published books which they wished to make publicly available. Looking for advice, they approached the writer, who was already running an open-access scholarly journal. These books were scholarly, with a limited readership and negligible commercial viability. They existed in paper format only, had been pub-

1. The Reykjavík Academy is an association of independent Icelandic scholars who share office space. Its members' interests range across the social sciences and humanities. Some support themselves with grants and book contracts, several work as translators, others are finishing degrees at foreign universities, and a few support themselves with their own private funds. A few are employed at other institutions but have chosen to work within the collegial atmosphere of the Academy. A few are retirees who wish to remain active in scholarship. The Academy's funding comes both from the rent paid by individual scholars as well as a modest government subsidy.

lished by various Scandinavian universities or other non-profit organizations, and were poorly or not at all available through commercial sales channels. At the time, it was possible to mail single works to Google for scanning into the Google Books website (books.google.com), and this was the access channel the writer initially used. Once Google scanned the work, one had to select an option making the book fully accessible and allowing downloads in PDF form.

At around this point, HathiTrust's book collection was coming fully online. The writer, now aware of authors' interest in opening access to their work, noticed that a substantial number of relatively recent, in-copyright works by Icelandic authors had been scanned as part of the collaboration between Google and HathiTrust member libraries. Because these books were under copyright, their full text was not publicly accessible. Moreover, Google had stopped scanning in-copyright works like these without author permission, and was focusing on older, out-of-copyright titles.² But in-copyright works that had already been scanned before this policy change remained in the collection. Of particular interest were books published between about 1965 and 2005, recently enough so that the author might still be alive, but long enough ago so that they were probably out of print. Crucially, HathiTrust had set up a fairly straightforward workflow which allowed rightsholders to request that books like these be made publicly available under a Creative Commons license. Rightsholders needed only to submit a single form to HathiTrust.

From the writer's previous experience, it seemed that many of the authors of such works might wish to make them openly accessible. This was especially likely to be true of scholarly books which were not published with financial gain in mind. In Iceland, a small society of a little over 300,000 people, why not contact the authors of these books directly and ask them whether they would like to send HathiTrust the forms needed to open access?

A search for similar projects uncovered reports of efforts in the United States by George (2001) and Akmon (2010). These conveyed a sense of both optimism about the potential outcome of the project (as many authors were favorable

towards opening access to their works) and pessimism (since making contact was time-consuming and not always successful). After work was underway, the writer discovered articles by Stratton (2011) and Stobo (2013), reporting on projects in Great Britain, which came to generally similar conclusions. As the project concluded, the Authors' Alliance published *Understanding Rights Reversion* (Cabrera et al., 2015), a guide for authors interested in opening access to their previously published works.

A much larger literature existed on the related subject of access to orphan works. However, the books involved in this project were not orphan works. Rather, they were works where the identity and contact details of the rightsholder were known or easy to find out, and where the rightsholder might approve of open release of the work.

The project

The writer contacted HathiTrust and obtained a list of 621 books in Icelandic, published between 1965 and 2005, which had been scanned and were held in digital format in HathiTrust's collections. At the time, full-text view was not enabled for any of these books in HathiTrust, as they were subject to normal copyright restrictions.

Of these, the writer identified about 110 books which seemed to be favorable candidates for rightsholder contact. The ideal candidate book had been published with little expectation of profit; was no longer commercially available; and had a single author who was still living and likely to be the sole rightsholder to the book. The books identified met most, and sometimes all, of these criteria.

In addition, among the English-language books in HathiTrust's collection, the writer identified three books by Icelanders on Icelandic themes that also seemed to be good candidates for rightsholder contact.

The writer began to make contact with these books' rightsholders, starting with those that appeared most promising. In the time available, contact was ultimately made with 36 authors (or sets of authors in the case of multiple authorship) or their heirs. As several authors had more than one book on the list, the total number of titles involved was 43. These contacts had the following resolutions:

Resolution of contact	Number of rightsholders	Number of titles
Rightsholder opened access to title under a CC-BY license	25	28
Rightsholder expressed the intention to open access to title but did not ultimately follow through	4	5
Rightsholder expressed personal interest in opening access but publisher consent was needed or desired and could not be obtained	2	2
Rightsholder did not want to open access to the title	3	6
Rightsholder reacted to contact as to a crank call	2	2
Total	36	43

2. In a separate but related project, the Dagsbrún Library staff systematically linked HathiTrust's scans of older (mostly 19th-century) Icelandic works to the Icelandic national library catalogue. After doing this, Icelandic library patrons could quickly see that these works are available in digital format.

Contact with rightsholders was almost always by telephone, followed by an e-mail or sometimes a paper letter with a more detailed explanation. The e-mail or letter included the necessary permission form, pre-filled out by the writer, which the rightsholder could sign and return. Rightsholders were encouraged to send the signed permission form back to the writer rather than directly to HathiTrust, partly to avoid errors and partly to keep tabs on the project's results.

Results

Rightsholders' response to contact was very positive, as the table shows. 31 of the 36 rightsholders contacted were favorable towards the idea of opening access to their works. Twenty-five of them actually did so. Of course, the writer made contact only with those rightsholders who he felt were likely candidates. An 86% favorable response and 69% success rate shows that a significant pool of authors and other rightsholders who took part in the project would like their works to be made available for free. Indeed, the writer believes that if he had had time to explain the options better to the five rightsholders who reacted unfavorably, that some of them might have changed their stance.

Once a book was opened in HathiTrust, a link to it was created in the Icelandic national library catalogue in order to make it more easily findable by Icelandic library patrons.

Practicalities and lessons learned

Follow-up was a key part of the work. In approximately half the cases the writer needed to contact the rightsholder again, after the forms had been sent, to provide continued encouragement. Some of the rightsholders were elderly or in failing health, many preferred to communicate by letter rather than by scanning and e-mailing, and most were unfamiliar with the different types of Creative Commons licenses supported by HathiTrust (they all took the writer's suggestion of the CC-BY license).

Some authors said immediately that they had been wanting to place their book on the web for free for a long time but did not know how. They thanked the writer for making contact. A couple authors asked whether an errata sheet could be added to the scan at HathiTrust, but accepted the writer's response that this was not currently possible, and that better availability for the original work, even if it contained errors, was a worthy goal.

A few authors asked if more of their books could be scanned and added to the HathiTrust collection. In one case the writer was able to arrange for five further titles by an author to be added to the book shipments sent to Google for scanning by a HathiTrust partner library. As well, the writer was able to arrange for books by three other authors, whose names were *not* on the original list of 621 titles, to be sent for scanning by the same library. Adding in these works raises the total number of titles in HathiTrust to which the project opened access from 28 to 36, and the total number of authors from 25 to 28. However, arranging for hitherto unscanned books to be added to HathiTrust's collections turned out to be time-consuming, paperwork-

intensive, slow, and full of uncertainties. (A HathiTrust partner library had to be found that was in a position to send the book to Google for scanning, someone at the library had to agree to send it, a Google account had to claim the title and manage it within Google Books, and as no feedback was ever received from any of these parties, the process had to be manually monitored so a permissions form could be sent to HathiTrust after several months when the book ultimately appeared in its database.) The writer found it ultimately more efficient to focus on opening access to already-scanned books.

In six cases contact was made not with the actual author but with the author's heirs. In four cases this was the author's widow, in one case it was the author's siblings, and in another case it was the author's children. Of the three rightsholders who said definitively that they did not wish to open access to their works, two were widows of the author. Finding heirs was not difficult. Iceland is a small society where author death dates are generally recorded in the national library catalog and there is a tradition of very detailed survivor listings in newspaper obituaries which are indexed online. In other countries, heir searching might be time-consuming and expensive. Stratton (2011, 33-36) and Stobo (2013, 21-22) report that the ARROW rightsholder information system (www.arrow-net.eu) has been useful in similar British projects; Iceland does not participate in ARROW.

It was disappointing not to be able to try opening access to edited collections. Here the number of authors was simply too large to risk putting time into the book, as a single author could effectively block open access to the entire title.

The writer did not keep an exact record of his time but estimates that the average amount of working time needed to open access to a single work was three to four hours. Overall, the process felt slow. The writer often wished that public consciousness about the possibility of opening access to earlier works could have been raised before contacting authors. For example, if the issue had been discussed in Icelandic radio or TV, authors might already have been aware that they had the power to open access to their works. The writer attempted to organize media coverage of the project but without success.

Rightsholder issues

The issue of publication rights was a source of uncertainty throughout the project and also had elements that sometimes bordered on the comic or the absurd. At the beginning of the project, the writer focused on contacting authors who appeared to be the sole rightsholder to their works. In some cases these books were self-published. In others they had been published long ago by university departments or research institutes, with copyright notices that implied that the institution did not reserve any rights to the work. As the project went on and the writer gained experience, he began to work on books where there was more likelihood that a publisher might have a continued interest in the title.

The writer generally asked authors whether they had signed a publishing contract and whether they still had a copy of it. Not a single author was able to supply a publishing contract and in most cases it appeared that there never was one (this is, or at least was, typical for Iceland). Under current law in Iceland (39. gr. Höfundalaga nr. 73/1972) publishing contracts grant a publisher an exclusive right to publish a work in the specified format unless otherwise agreed, and an author is forbidden to publish a work in that format or allow others to do so until the print run of that work is sold out.

The writer thus considered that if a work was sold out, and in the absence of information to the contrary, the author (or their heirs) was the sole rightsholder and that the author's authorization alone was sufficient to open access to the work. The writer consulted with an experienced local lawyer, whose advice was that any claim for damages by the publisher of an out-of-print book which was now being made available for free in digital format would be very weak. HathiTrust's policy appeared to be to open access to any work simply based on an author's assertion of rights, and HathiTrust also had a takedown policy which could presumably be used by anyone who felt that the author was not the sole rightsholder. Thus the writer judged that authors generally had a green light to make their own decisions about the fate of their own out-of-print works.

Nevertheless, an attempt was made to contact the publishers of out-of-print works out of courtesy. For example, some of the books involved were published (several decades ago) as part of university publications series which still existed. The writer contacted the current administrators of these series to let them know of his activity. The responses varied, but in general these exchanges are probably best characterized as having been an annoyance and a waste of time for all parties. The administrators (employees of a state university) generally expressed insecurity or uncertainty about making any formal statement of approval towards the author's interest in opening access. They often responded bureaucratically and wanted to refer the issue to a board of directors. The writer tried to explain that practically speaking there was no point in hindering the digital distribution, or even spending time on mulling over the legalities, of sold-out works that had been published long ago for a limited audience. None of these administrators pursued the issue further.

As the project went on and the writer gained confidence, he began to tackle scholarly works that had been sold in regular book stores and he started to look at works published by commercial, for-profit publishers. In such cases he took the approach of contacting publishers beforehand and asking them for their opinion. Responses from the nonprofit and scholarly book publishers consulted (such as the University

of Iceland Press, Hið íslenska bókmenntafélag, and the Árni Magnússon Institute) took some time to arrive but were generally positive. As long as a book was sold out or if revenue from it was no longer a concern, they had no problem with an author deciding to distribute a book digitally for free.

Towards the end of the project the author contacted Iceland's largest commercial publisher to inquire about its views on the project, and also to ask how to determine whether a book was sold out (there is no equivalent of the American "Books in Print" in Iceland) and find other information about a book's rights status. A response came back which sidestepped the question of contact channels and expressed disapproval of the project. The respondent said that he would discourage authors from participating and would encourage them instead to allow their books to be distributed electronically for a fee, either on the regular e-book market or possibly through an Icelandic version of the Norwegian "bokhylla" collective licensing project (see below). The writer repeated his request for information on how to request information on a book's sold-out status but received no reply. The project concluded before the writer was able to work with any authors of books issued by this publisher.

One grey area was the definition of "sold out." The writer was told of a local rule of thumb that a book could be considered sold out when only 50 copies remained. He never found any formal, written source for this. Today, when a single copy of an otherwise out-of-print book can be produced digitally in response to a sales order, the definition of "sold out" is even less clear. This uncertainty is also mentioned by Vuopala (2010, 18) and Cabrera et al. (2015, ch. 4).

Ultimately, opening access to a given title very frequently involves a small amount of calculated risk, as Stobo (2011: 18) also reports. The cost of erasing all doubt that an overlooked rightsholder might surface and object to the release of a given work quickly begins to outweigh the potential damages from such an error.

In the writer's opinion, rightsholder issues in this project were more of an intellectual exercise than a practical issue. None of the books released with the project's assistance had any substantial commercial future, and most never had. In the pre-digital days, printing these mostly scholarly books on paper was the only way to distribute them to readers. They were books which were *written to be read*, not books which were written to be sold.³ Thus the attempt to identify and respect publication rights sometimes felt like a charade with a flavor of the absurd, similar to what is reported by Vuopala (2010, 21). Of course, if the project's focus had

3. For a concise introduction to this distinction, see Van Houweling (2015). The distinction can perhaps be traced to Raymond's (1999) distinction between software written for use or for sale.

been on books with continuing commercial value the situation would have been different.

Author frustrations

One of the lessons learned during the project was that living authors who wish to place their published works in an open-access digital repository are often frustrated in their efforts to find an enduring digital home for their works. It was authors like these, in fact, who were the original impetus for the project.

In the writer's experience, such authors are generally only too happy to donate a copy of their book and if needed, to pay postage and scanning costs so that their book can live on. Unfortunately, this willingness did not normally suffice. Google Books only fulfilled direct scanning requests from individuals for a short time and even while it did so, the workflow was far from ideal. Google will still scan in-copyright books submitted by HathiTrust partner libraries if the rightsholder opens access in Google Books, but the collaboration involved is quite difficult to engineer. While the Internet Archive offers scanning at a reasonable cost, its program is suitable really only for libraries and institutions rather than individual scholars, particularly because of metadata requirements which individual scholars usually do not understand.

The writer's experience is that there is sometimes no practical way for authors to get their works distributed for free. After filling out the forms to open access to a book which was already in the HathiTrust collection, one well-respected Icelandic scholar wrote (e-mail to the writer, 28 January 2015, writer's translation):

“This looks good to me. I just wish more of my books were in there, especially *A*. And *B*, which is a sort of sequel to *C*. I paid completely by myself for that book to be published, partly with money from a grant from the University of Iceland research fund, so there are no other rightsholders. I can send a copy of the book anywhere in the country or in the world.”

Authors like this have something to contribute and are even willing to pay the costs of contribution. They hope for a very small amount of collaboration from institutions (such as covering the almost negligible cost of housing a digital file). They imagine that institutions have an incentive to do this, given their public mission. But getting a work scanned often turns out to be unfeasible for reasons that are mostly bureaucratic.

The writer sees a need for institutions to open channels for digital contributions from individuals (and to manage

scanning and metadata creation) in the same way as they have traditionally welcomed contributions of physical books from authors (and have been generally willing to mark and catalog them).

Rights clearance one by one or as a class?

Our project involved rights clearance by individual authors acting one at a time. A contrasting approach involves opening access (under specific conditions) to entire classes of publications without the explicit involvement of the authors themselves. This approach is known as *extended collective licensing* (hereafter ECL). In the realm of print publication, ECL is most typically encountered as a proposed solution to the problem of orphan works (whose rightsholders cannot be identified). However, proposals for orphan works sometimes suggest treating works by living authors in the same way as those which are truly “orphaned.”

For example, an ECL approach was taken for both deceased and living rightsholders by the Norwegian National Library in its bokhylla.no project. The idea was to scan masses of books, including in-copyright works which may or may not have had identifiable rightsholders; to allow free access to the public; and then to make payments per view to a rightsholders organization which was seen as standing in for book authors themselves (Nasjonalbiblioteket, 2012). This is also similar to the approach envisioned by Google in its failed 2008–2009 settlement with the Authors' Guild and the Association of American Publishers, although in Google's case it intended to charge for subscriptions to the content involved.⁴ In Norway, the payments would amount to a subsidy to rightsholder associations from the (relatively wealthy) state.

An ECL approach that would include living authors has been under discussion in Iceland too. It was first proposed in a report by a working group that was largely composed of representatives of Icelandic publishers and rightsholders associations (Njörður Sigurjónsson et al., 2014). Note that the members of the working group primarily represented institutions who would stand to benefit financially from the approach, and that the group did not include representation from the library or user community.

When the input of libraries, readers (i.e. users), and individual authors is considered, a more nuanced picture of the pros and cons of ECL emerges. A fact-finding report on the rights clearance of orphan works for the European Commission by Anna Vuopala (2010), which surveyed libraries and other cultural institutions involved in digitization efforts, is useful in understanding the concerns of institutions which do not stand to benefit financially from ECL.

4. The text of the settlement and related documents can be found at <https://www.authorsguild.org/industry-advocacy/authors-guild-v-google-settlement-resources-page>.

The writer's experience confirms that an ECL-style solution would be a much more speedy way of making a large number of Icelandic works digitally accessible than book-by-book copyright clearance. The time and cost involved in contacting individual authors makes it a slow and frustrating way of bringing works into open access. As Vuopala observes: "The cost of clearing rights may amount to several times the cost of digitising the material" (2010, 44). There seems to be general agreement that the "costly and cumbersome" individual clearance of out-of-print, copyrighted works is far from ideal (Vuopala 2010, 5-6) - though perhaps this is more true for older works whose rightsholders are difficult to locate than for the recent works that were the subject of this project.

At the same time, the writer believes that direct involvement by authors in the rights clearance process is preferable on ethical grounds and that ECL-based solutions raise a number of concerns. The first concern relates to the idea that rightsholder associations would receive a micro-payment each time a work in an ECL-based repository is viewed, in a way similar to how libraries in many countries pay authors a small fee each time one of their books is borrowed. When one sees this idea proposed, it is natural to wonder whether rightsholder associations are acting strictly in the interests of their authors or rather in the financial interests of themselves as associations. Vuopala observes that remuneration of this type is desired by rightsholders organizations but often not by authors themselves (2010, 14-15, 20). This was the writer's experience as well: authors, when contacted individually, were happy to license their scholarly work for reuse without a fee, and those works indeed had never been created with the expectation of profit.

The institutional staff surveyed by Vuopala saw micro-payments as unreasonable "when the money collected would not in fact benefit [authors] personally, but only the collecting society" (2010, 15). A larger issue here is the question of the legitimacy of rightsholder organizations to benefit financially from content creation on behalf of the content creators themselves. While it might be convenient to see rightsholder organizations as true representatives of content creators, the writer suspects that such a view is contestable (Band and Butler, 2013).

The Norwegian project that some Icelanders see as a model gave the impression of allowing open access to large numbers of works, but in fact took a very conservative strategy in its decisions about how that access would actually be implemented. Thus the Norwegian project, at least to begin with, allowed access to scanned books only from Norwegian IP addresses, and did not permit the downloading or printing of in-copyright works (Vuopala, 2010, 37; Groven 2012). The writer's experience is that many Icelandic authors of in-copyright, out-of-print scholarly works would gladly permit downloading, printing, and access from IP addresses worldwide. Furthermore the Norwegian system did not, at least at the beginning, have a robust text search facility and did not assign permanent URLs to scanned pages.

As well, the writer wonders whether the costs of an ECL-style solution might, over time, approach the costs of one-by-one rights clearance. The Norwegian system envisions transfers to rightsholder associations that appear to average €13 per viewed book per year (Vuopala, 2010, 37). Over the long term, this cost could well exceed the costs of book-by-book rights clearance. Even though one-by-one rights clearance may feel slow, the marginal costs of keeping a work available once access to it has been opened are negligible.

Finally, the writer sees a danger that ECL-style solutions might be tailored towards the desires of authors and publishers whose books were *written to be sold*. Yet it is in the public interest to consider the desires of authors who *wrote to be read* scholarly authors for whom publication on paper was a necessary evil in order to distribute their words. The project described in this article shows that in Iceland, and probably elsewhere too, many such authors would like to see free and open access to their works access which is free, as well, from entanglement in a system which transfers public funds to rightsholder organizations.

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