

## Dan Cohen's Digital Humanities Blog » Blog Archive » A Closer Look At The National Archives-Footnote Agreement

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I've spent the past two weeks trying to get a better understanding of [the agreement](#)<sup>[1]</sup> signed by the National Archives and Footnote, about which I raised several concerns [in my last post](#)<sup>[2]</sup>. Before making further (possibly unfounded) criticisms I thought it would a good idea to talk to both NARA and Footnote. So I picked up the phone and found several people eager to clarify things. At NARA, Jim Hastings, director of access programs, was particularly helpful in explaining their perspective. (Alas, NARA's public affairs staff seemed to have only the sketchiest sense of key details.) Most helpful—and most eager to rebut my earlier post—were Justin Schroepfer and Peter Drinkwater, the marketing director and product lead at Footnote. Much to their credit, Justin and Peter patiently answered most of my questions about the agreement and the operation of the Footnote website.

Surprisingly, everyone I spoke to at both NARA and Footnote emphasized that despite the seemingly set-in-stone language of the legal agreement, there is a great deal of latitude in how it is executed, and they asked me to spread the word about how historians and the general public can weigh in. It has received virtually no publicity, but NARA is currently in a public comment phase for the Footnote (a/k/a iArchives) agreement. Scroll down to the bottom of the [“Comment on Draft Policy”](#)<sup>[3]</sup> page at NARA's website and you'll find a request for public comment (you should email your thoughts to [Vision@nara.gov](mailto:Vision@nara.gov)<sup>[4]</sup>). It's a little odd to have a request for comment after the ink is dry on an agreement or policy, and this URL probably should have been included in the press release of the Footnote agreement, but I do think after speaking with them that both NARA and Footnote are receptive to hearing responses to the agreement. Indeed, in response to this post and my prior post on the agreement, Footnote has set up a web page, [“Finding the Right Balance”](#)<sup>[5]</sup>, to receive

feedback from the general public on the issues I've raised. They also asked me to round up professional opinion on the deal.

I assume Footnote will explain their policies in greater depth on their blog, but we agreed that it would be helpful to record some important details of our conversations in this space. Here are the answers Justin and Peter gave to a few pointed questions.

When I first went to the Footnote site, I was unpleasantly surprised that it required registration even to look at “milestone” documents like Lincoln's draft of the Gettysburg Address. (Unfortunately, Footnote doesn't have a list of all of its free content yet, so it's hard to find such documents.) Justin and Peter responded that when they launched the site there was an error in the document viewer, so they had to add authentication to all document views. A fix was rolled out on January 23, and it's now possible to view these important documents without registering.

You do need to register, however, to print or download any document, whether it's considered “free” or “premium.” Why? Justin and Peter candidly noted that although they have done digitization projects before, the National Archives project, which contains millions of critical—and public domain—documents, is a first for them. They are understandably worried about the “leakage” of documents from their site, and want to take it one step at a time. So to start they will track all downloads to see how much escapes, especially in large batches. I noted that downloading and even reusing these documents (even en masse) very well might be legal, despite Footnote's terms of service, because the scans are “slavish” copies of the originals, which are not protected by copyright. Footnote lawyers are looking at copyright law and what other primary-source sites are doing, and they say that they view these initial months as a learning experience to see if the terms of service can or should change. Footnote's stance on copyright law and terms of usage will clearly be worth watching.

Speaking of terms of usage, I voiced a similar concern about Footnote's policies toward minors. As you'll recall, Footnote's terms of service say the site is intended for those 18 and older, thus seeming to turn away the many K-12 classes that could take advantage of it. Justin and Peter were most passionate on this point. They told me that Footnote would like to give free access to the site for the K-12 market, but pointed to the restrictiveness of U.S. child protection laws. Because the Footnote site allows users to upload documents as well as view them, they worry about what youngsters might find there in addition to the NARA docs. These laws also mandate the "over 18" clause because the site captures personal information. It seems to me that there's probably a technical solution that could be found here, similar to the one PBS.org uses to provide K-12 teaching materials without capturing information from the students.

Footnote seems willing to explore such a possibility, but again, Justin and Peter chalked up problems to the newness of the agreement and their inexperience running an interactive site with primary documents such as these. Footnote's lawyers consulted (and borrowed, in some cases) the boilerplate language from terms of service at other sites, like Ancestry.com. But again, the Footnote team emphasized that they are going to review the policies and look into flexibility under the laws. They expect to tweak their policies in the coming months.

So, now is your chance to weigh in on those potential changes. If you do send a comment to either Footnote or NARA, try to be specific in what you would like to see. For instance, at the Center for History and New Media we are exploring the possibility of mining historical texts, which will only be possible to do on these millions of NARA documents if the Archives receives not only the page images from Footnote but also the OCR'd text. (The handwritten documents cannot be automatically transcribed using optical character recognition, of course, but there are many typescript documents that have been converted to machine-readable text.) NARA has not asked to receive the text for each document back from Footnote—only the metadata and a combined index of all documents. There was some discussion that NARA is not equipped to

handle the flood of data that a full-text database would entail. Regardless, I believe it would be in the best interest of historical researchers to have NARA receive this database, even if they are unable to post it to the web right away.

This entry was posted on Monday, February 5th, 2007 at 2:09 pm and is filed under [Archives](#)<sup>[6]</sup>, [Copyright](#)<sup>[7]</sup>, [Digitization](#)<sup>[8]</sup>, [Open Access](#)<sup>[9]</sup>. You can follow any responses to this entry through the [RSS 2.0](#)<sup>[10]</sup> feed. You can [leave a response](#)<sup>[11]</sup>, or [trackback](#)<sup>[12]</sup> from your own site.

## References

1. [^ the agreement](#) (www.archives.gov)
2. [^ in my last post](#) (www.dancohen.org)
3. [^ Comment on Draft Policy](#) (www.archives.gov)
4. [^ Vision@nara.gov](#) (www.dancohen.org)
5. [^ Finding the Right Balance](#) (blog.footnote.com)
6. [^ View all posts in Archives](#) (www.dancohen.org)
7. [^ View all posts in Copyright](#) (www.dancohen.org)
8. [^ View all posts in Digitization](#) (www.dancohen.org)
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