
MEMORANDUM OF UNDERSTANDING

Between

The Smithsonian Institution, on behalf of
The Biodiversity Heritage Library

And

Biodiversity Committee, Chinese Academy of Sciences

Introduction

This Memorandum of Understanding provides the basis for the Biodiversity Heritage Library (BHL) and the Biodiversity Committee, Chinese Academy of Sciences (the Committee) to work together to develop and share critical digital biodiversity texts and services. In particular, BHL authorizes the Committee to utilize the BHL name, logo, and to store, mount, and serve digital texts served by the BHL, and related software to establish the Chinese regional BHL (BHL-China), headquartered at the Committee, thus making the literature of biodiversity available on the Internet with a Chinese language interface. In return, the Committee will allow the BHL to host, store and mount the digital biodiversity texts that either are in the public domain, that the Committee or CAS hold the rights to, or that the Committee has obtained the necessary permissions from the rights-holders to use, reproduce and disseminate.

The Parties

The Biodiversity Heritage Library (BHL) is an informal consortium of natural history, botanical, and research libraries dedicated to building a digital repository for the literature of biodiversity. The BHL is the Scanning and Digitization Component of the Encyclopedia of Life (EOL).

For matters of this MOU, BHL is represented by the BHL Program Director, Thomas Garnett.

The Biodiversity Committee, Chinese Academy of Sciences, is an academic organization coordinating many institutions in the Chinese Academy of Sciences. The aim of the Committee is to enhance research and practice on biodiversity conservation and sustainable use in China.

The mission of the Biodiversity Committee is to promote domestic biodiversity research and academic exchange; provide advice on the management of biological

resources and their environment; establish and maintain Chinese biodiversity information system; and disseminate knowledge of biodiversity to enhance public awareness of biodiversity conservation. The committee and its collaborators organize academic conferences, develop training courses, publish journals, monographs and books, and use related websites to distribute the information efficiently and effectively.

For matters relating to this MOU, the Committee is represented by Prof. Keping Ma, vice-director and Secretary-General of the Committee.

Objectives

1. To establish a framework for cooperation between the BHL and the Committee.
2. To develop a Chinese language version of BHL Portal in China. BHL-China will be authorized to use the BHL name, logo, and store, mount and serve digital biodiversity texts, copyright information, licensing metadata, related software ("BHL Content") and source code of BHL site to set up the website of BHL China. BHL-China also has option to build the site with other techniques and databases. This Chinese language BHL will provide a Chinese language interface for the BHL-China. BHL-China will also host the corpus of BHL Content hosted by the BHL consistent with the re-use limitations and conditions stipulated by the providers of those texts so as to provide a mirror site for the content and to ensure redundant storage for long-term preservation of the content.
3. To allow BHL access and use of, and the right to store, mount and serve, the Committee Content hosted by the Committee on its Portal, subject to the re-use limitations and conditions stipulated by the providers of that information
4. To allow BHL-China access and use of, and the right to store, mount and serve, the BHL Content hosted by the BHL on its Portal, subject to the re-use limitations and conditions stipulated by the providers of that information.

Conditions of Use

1. Both parties agree that they will clearly label the source of all content and require users to indicate those sources in any subsequent re-use. For BHL-supplied data, the Committee will indicate that the information came from the BHL and will include all further attribution, copyright, and licensing metadata. For the Committee-supplied data, BHL will require users to recognize two levels of attribution through use of the appropriate CC licenses:
 - a. Credit for the whole work of the Committee;
 - b. Credit to the publisher, author, editor, etc., where applicable.

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2. The Committee warrants and represents that the Committee Content they provide under this Agreement either is in the public domain, that they hold the rights, or that they have obtained the necessary permissions from the rights-holders to use, reproduce and disseminate the Committee Content for use in the BHL, and that the Committee will hold BHL and its member institutions harmless in the event of a claim arising from the submitted content.
 3. BHL will post on the BHL site a statement designating an agent for receiving notice of any BHL or Committee Content alleged to violate copyright or other rights. BHL will remove any of the BHL or Committee Content upon receiving such notice or upon otherwise discovering infringing content.
 4. The Committee shall remove from the mirror site any BHL Content from any BHL partner removed from the BHL site, based on the removal information provided by the BHL.
 5. BHL will not answer requests to provide all or major components of the Committee Content to other data providers. Rather, such requests for re-usage will be forwarded to the Committee. The Committee will not answer requests to provide all or major components of the BHL Content to other data providers. Rather, such requests for re-usage will be forwarded to the BHL.
 6. Neither BHL nor its users or partners may alter or replace Committee Content provided by the Committee, except that BHL may remove Committee Content if it receives notice of a copyright or other violation as set forth herein. The Committee may not alter or replace BHL Content, except that the Committee may remove BHL Content if it receives notice of a copyright or other violation as set forth herein. Instead, requests for corrections or additions will be forwarded to the Committee.
 7. BHL and the Committee agree to show each other's logo on the site's list of data partners.
 8. Smithsonian owns, controls, and has registered certain trademarks and service marks, including, but not limited to "Smithsonian," "Smithsonian Institution," and the Smithsonian sunburst logo (collectively "Names"). Except as expressly provided by the Smithsonian's prior, written consent, the Committee shall not use the Names or refer to Smithsonian or any of its museums, programs, organizations, or facilities in any manner or through any medium, whether written, oral, or visual for any purpose. Upon the expiration or termination of this MOU, the Committee shall immediately cease to use the Names, and shall not exploit in any manner its association with Smithsonian, unless otherwise agreed to in writing by Smithsonian at the time of such expiration or termination. The Committee shall incorporate the provisions of

this Section into any potential Committee subcontracts, if any entered into in connection with this MOU.

9. BHL will provide the Committee with monthly statistics of usage of the Committee-provided content accessed through the EOL portal (such as unique users, visits, pages, hits, bandwidth), and the Committee will provide BHL with the same information on a monthly basis.

Amendments and Modifications

Either party may amend or modify this Memorandum of Understanding by notifying the other party in writing and with the prior written agreement of the other party.

Authorized Representatives for Technical Matters.

1. **BHL Representative.** For purposes of liaison, providing guidance and direction in daily operational matters, granting approvals or withholding same, and for general contract coordination as detailed herein, the BHL shall be represented by **Thomas Garnett, Program Director, Biodiversity Heritage Library.**
2. **The Committee Representative.** For the purposes of liaison and direction in daily operation matters, the Committee shall be represented by **Keping Ma, vice-director and Secretary-General of the Biodiversity Committee, Chinese Academy of Sciences.**
3. **Substitution of Representative.** Smithsonian and the Committee shall advise one another in writing of any substitution for said representatives.

Notices.

Any notices and consents required hereunder shall be in writing and deemed delivered upon actual receipt of such notice when hand-delivered or sent by certified mail, postage prepaid, return receipt requested, or overnight express courier to the address listed below. All written consents required hereunder shall be sent as provided above to the following addresses:

To SMITHSONIAN:
For Technical Matters:
Thomas Garnett
Biodiversity Heritage Library
Smithsonian Institution
PO Box 37012 MRC 106

For Contractual and Legal Matters:
Office of General Counsel
Smithsonian Institution
PO Box 23286

Washington, DC 20013-7012
+1.202.633.2238

Washington, D.C. 20026-3286
Attn: General Counsel
+1.202.633.5100

To Biodiversity Committee:
Keping Ma
Institute of Botany,
the Chinese Academy of Sciences,
20 Nanxincun, Xiangshan,
Beijing, China 100093
0086-10-62836223

Shao Qing
Institute of Botany,
the Chinese Academy of Sciences,
20 Nanxincun, Xiangshan,
Beijing, China 100093
0086-10-62836603

Not a Legal Partnership.

The parties do not intend to create a legal partnership, principal/agent, or joint venture relationship and nothing in this MOU shall be construed as creating such a relationship between the parties. Neither party may incur any obligation on behalf of the other.

Non-exclusive Agreement

This MOU is non-exclusive, and in no way restricts either BHL or the Committee from participating in similar activities or arrangements with other public or private initiatives, organizations, or individuals.

Duration

This agreement is valid until 1 March 2014, and may be renewed upon mutual written agreement of the parties. Should the agreement not be extended, BHL will remove the Committee's Content within one month after the end of the MOU, the Committee will remove the BHL Content within one month after the end of the MOU. Authorization for the Committee to use the BHL name and logo expires upon termination of the MOU at which time the Committee must cease use. Either Party may withdraw from the MOU by providing written notification to the other party 90 days in advance of withdrawal. Should the Committee withdraw from the MOU, BHL will remove the Committee's Content within one month. Should the BHL withdraw from the MOU, the Committee will remove the BHL Content within one month.

No Financial Commitment

This MOU and the obligations set forth herein shall be subject to available funding and nothing in this MOU creates any financial obligation on the part of either party.

Signatures

For the Biodiversity Committee, Chinese Academy of Sciences

Signature


Date:

Name: Keping Ma

Title: Vice-Director and Secretary-General of the Biodiversity Committee, CAS

For the Smithsonian Institution, on behalf of the Encyclopedia of Life

Signature



Date:

09/23/09

Name: Cristián Samper

Title: Director, National Museum of Natural History