

Cites & Insights

Crawford at Large

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A Scholarly Access Perspective Getting That Article: Good News

This perspective started out as an open and somewhat puzzled question. To wit, is *open access effective* access—more specifically, will articles in institutional archives be readily available to people outside the golden circle of researchers within a specific field?

As I began editing this issue, I found a partial, positive answer. Let's start with the situation.

Say I'm an honors undergrad or graduate student at a medium-size college or university. I'm interested in a fairly exotic topic—let's say in anthropology. (I'm actually a music major, but there are certainly connections between cultural anthropology and music.) My college library subscribes to RLG's Anthropology *Plus* through a consortium, although the anthro print collection is constrained.

I click on the database and enter my topic. I find half a dozen articles in four different journals, and it looks as though I should read all six. My college has OpenURL activated, so I click on the "e-links" or "get it" or "availability" button next to each citation. Here's the situation:

- Journal A is an open access journal, and it's in the knowledge base for the OpenURL resolver. Wonderful! I click through to the full text and print the article.
- Journal B isn't open access, but it's part of a JSTOR collection that my college subscribes to, and the article's *just* old enough to be available. As far as I'm concerned, this is identical to Journal A (and the library has paid a semi-reasonable price for access in this case). I print this article as well.
- Journal C is on the shelves; it's published by a nonprofit and doesn't cost all that much. Going into the stacks is a hassle, but I can cope.
- But the three best articles are in Journal D, and that one costs more than my college could afford either in print or online.

Now let's consider the situation from the authors' perspective:

- Authors E and F published in Journal A, with their university coughing up the \$500 fee. They know that the article's available to anyone who needs or wants it.
- Authors G, H, and I published with Journal B; Authors J and K published in Journal C. They all assume that people will be able to get at the articles sooner or later.
- The best people in this particular area—Authors L, M, and N—published in Journal D, which they consider the most prestigious in their field. But they also deposited their articles in open archives: Authors L and M in a BOAI-compliant anthropology archive, Author N in his obscure college's own BOAI archive.

Here was my question: How can I gain access to the three best articles—and how likely is it that I'll be aware of the methods if I'm an undergraduate or anyone outside the field itself?

Will the OpenURL resolver point me to the articles by Authors L and M?

Will it point me to the obscure archive that holds the article by Author N?

The Need for *Effective* Access

Open access is one thing. *Effective* access is another.

If you believe scholarly articles exist solely to be shared among the inner circle, this is all laughable. Your colleagues surely know about your paper, and they know how to get to your archive (or to the shared archive). If not, heck, they can use the harvested indexes that cross archives.

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I was trying to avoid straw men here. I was raising an honest question for which I didn't have an answer. So far, nothing that I've read about the open access movement(s) has provided an answer.

Sure, some resolvers offer a title search against Google. That might yield the article, but in a few tests it was equally likely to yield discussions and commentary *about* the article from weblogs and other sources with higher pagerank. Even if you did get to the article, the mixture of stuff and junk on Google would make a good student nervous about the veracity of the printout. “Trust in Google” is a singularly bad slogan for an open access revolution.

A Partial Answer

As I write this, I began testing a new home-brew OpenURL resolver against Eureka databases (a process that always begins with Anthropology *Plus*, as it happens). The first article checked was indeed in “Journal D”—a journal that’s so expensive that most smaller institutions don’t offer access. This university wasn’t one of them: It had Journal D in one of its aggregators.

But a little lower on the screen, this institution’s resolver offered to do a search on my selection of OAI harvester. It offered two choices: OAIster and SCIRUS. One of them led me to the paper on an institutional archive.

So the answer is: Yes, it’s possible. SCIRUS is both more and less than an OAI harvester, but OAIster, from the University of Michigan, appears to be the real deal. As of October 1, 2003, its index included 1,723,003 articles from 203 institutions.

With this feature offered in resolvers—and with librarians and onscreen help so that students understand the function—open access archiving *does* provide effective access. The best indexing tools (a&i databases) can lead to free-for-use full text even when the institution can’t afford the commercial full-text service.

It’s a partial answer because, to date, I’ve only seen one resolver that offers this option. (As of today, it’s also only a journal title or author name search, not the more specific article-title search—but that can change.) I believe more resolvers will do so in the future. I’m delighted to change this perspective from an open question to a piece of good news.

Bibs & Blather

When I was at the North Carolina Library Association Biennial Conference in Winston-Salem, one or two people said they’d look forward to my writeup of the conference. They’ll have to wait a while longer. My intentions were good—as were my intentions to dig into that inch-thick folder of “stuff”—

articles for Good Stuff, Library Stuff, Products, Trends & Quick Takes, and miscellaneous essays.

But here it is more than a month after the October issue (yes, that long interval was planned), and between copyright, scholarly article access, related perspectives, and feedback, there’s already more here than I can cram into 20 pages. So the “stuffing” will have to wait for the issue that appears closer to Thanksgiving, along with some suitable nonsense to carry through the rest of the holiday season. Maybe even an ebook update, since it’s been a *long* time. (Questia’s still around. Who knew?)

I’ll probably do a combined Carolina commentary, since my last trip for the fall is the Charleston Conference. I’ll probably see a few of you there.

Scholarly Article Access

No theme dominates the last two or three months—or if there is one, I’ve missed it. Do read the separate Perspective that raises—and partially answers—an access question.

The Sabo Beat

Open Access now for August 25, 2003 devotes half its space to “Sabo bill sparks copyright controversy”—a reasonably good (if slanted) discussion of the early issues. Sabo admits that “we haven’t quite sorted out” what “substantially funded means—that is, the percentage of federal funding that would prevent copyright of research papers. The article says the bill is “supported by the Public Library of Science” but doesn’t say PLoS generated the idea for the bill, which seems likely. Sabo says, “Some of my staff brought the issue to my attention.”

Peter Suber notes that the act *could* require “actual Open Access,” either by requiring submission of articles to OA journals or requiring deposit in OA archives. Those aren’t the same thing, of course; one should guarantee effective access, while the other may or may not (see the essay).

Speaking of Peter Suber, the *SPARC Open Access Newsletter* for September 4, 2003 (issue 65) begins with a 10-page (as printed) essay on “The taxpayer argument for open access” and events related to Sabo. Suber offers the primary argument for open access related to publicly-funded research, then raises five objections and offers “at least five replies.” When a pronounced advocate for a position lists objections to that position, it’s always tempting to call them straw men, but I don’t think that’s true in this case. Here, *very* briefly, are the five objections (in

bold) and notes on his responses; I **strongly recommend** that you read the entire essay.

- **Taxpayers can walk into a library that has paid for access and read journal articles without paying to do so, or receive copies by ILL: We already have free access to most research.** As he notes, this is a red herring: It's "free" access to paid copies, and those paid copies are damaging libraries. Additionally, few public libraries subscribe to much in the way of research journals—and there's *some* evidence that *some* academic libraries are cutting back on public access privileges. (I haven't read the cited evidence for this claim because *Scientific American*, where it appeared, doesn't offer any form of open access. Don't you love the irony?)
- **Open access to federally funded research only affects part of scholarly literature, mostly in the natural sciences.** The answer is easy if you believe in non-monolithic solutions: "There's no harm in solving a large problem one step at a time."
- **Government grants pay for research and maybe articles. Journals add value through peer review, copy editing, etc.** True enough—but the *primary* value of a scholarly journal is in the research and writing. Suber adds several refinements and comments—among them, that (some) OA proponents agree with publishers that they do add value and, less persuasively, that open archives don't involve the same issues. "Open-access archives don't perform peer review, copy editing, manuscript preparation, marketing, or publishing"—but if what's in the archives hasn't been peer-reviewed or copy edited, it's hard to gauge the value.
- **The taxpayer argument only supports open access for taxpayers, not the whole world.** Suber's response is that this objection makes no sense if it is cheaper to provide open access to everyone than to restrict access. True enough—but Suber goes on to state "the simple fact that it *costs less* to provide unrestricted access to all internet users than to discriminate between authorized and unauthorized users and block access to the unauthorized." That may be true (I'm inclined to believe that it is), but I don't see proof or reference to proof. It's a bandwidth-vs.-overhead issue, and neither one is free. I would certainly agree "we should not spitefully deny others a costless benefit" unless it damages us in some other manner.
- **Ordinary taxpayers don't need to read peer-reviewed scientific literature and wouldn't understand it if they did.** "This may be

true...but it's beside the point." It's also an incredibly arrogant assumption. Elsevier's Derk Haank and Pieter Bolman make that claim right up front. The key responses—which Suber includes in his discussion—are twofold: (1) Some "lay people" can indeed understand and benefit from scholarly papers, and (2) It is not the case that all researchers are affiliated with wealthy institutions. He doesn't emphasize the second response.

Suber admits that the "taxpayer argument" can be misleading, and I continue to believe that the Sabo bill is probably the wrong way to solve the problem, but the discussion clarifies a number of issues. In discussing additional developments, he cites one interesting figure, although it might be questionable (given the source): NSF says that 59% of U.S. university research is funded by the federal government. An enormous amount of research takes place outside universities—but that's still an interesting figure.

For an in-depth discussion of issues related to the Sabo bill, I **recommend** Samuel E. Trosow's "Copyright protection for federally funded research: Necessary incentive or double subsidy." Trosow knows his stuff and provides a deep, detailed discussion. (publish.uwo.ca/~strosow/Sabo_Bill_Paper.pdf).

Here's the key issue, in a nutshell, and the strongest argument *for* the Sabo bill that I've seen. If Physicist A is a government employee, any papers written based on research done on the job are automatically in the public domain (although, in practice, the government's done a bad job of preventing assignment of nonexistent rights to publishers). If Physicist B, working for a university, is doing research that's funded by the federal government, papers written based on that research are *not* in the public domain. What's the difference?

At one point while reading the paper, I raised a natural question: Since university libraries suffer by having to pay again for the research done by university scholars (whether federally funded or not), why don't universities control those copyrights and prevent the gouging? If that seems like an absurd question, consider that most universities (as far as I know) *do* require that patents developed on work-related projects be assigned to the university. The answer is, unfortunately, simple: Universities see patents as profit centers and don't recognize how much money they may be losing through paying twice for copyright research. (And professors *do* make money writing textbooks, and would hate to lose that revenue stream.)

As with *SOAN*, there's a *lot* more to Trosow's paper. Well worth reading.

Open Access Continued

A cluster of items relating directly to Open Access, again in chronological order:

- Susan R. Owens contributed “Revolution or evolution” to *EMBO Reports* 4:8. It’s a reasonably well-balanced six-page look at Open Access—and it has yet another number for STM journals, but under another name: “Around 28,000 scientific periodicals exist at present.” Plucking a few interesting and peculiar quotes, we have Elsevier’s Derk Haank claiming that Elsevier offers open access, “but it’s paid for by the librarian.” That may be the most extreme misuse of the term “open access” I’ve ever seen! Haank claims, “In our experience with electronic publishing, the costs don’t go down, they go up.” Skeptical as I may be of extreme claims for digital-only savings, a *competent* transition should reduce costs at least slightly (assuming print costs are reduced or eliminated). But Michael Eisen from the PLoS crowd doesn’t thrill me either: “We are not just another *Nature*, *Science* or *Cell*. We are *morally superior* and what we are doing is better for the future of science.” [Emphasis added.] *Morally superior?* Right. As for the costs of OA journals, Eisen seems to claim that library subscriptions are currently paid for by “scientists’ grants when their institution takes its percentage to fund its library,” and you just need to “rechannel” this money. Fine—if institutions actually do channel 5% to 7% of research grants to library funds, but otherwise it’s another way to starve libraries. Owens points out that the OA model won’t do much for secondary journals, an issue I haven’t seen addressed by OA advocates. **Worth reading.**
- Peter Suber posted his article for the December 2002 World Summit on the Information Society, “Open access to science and scholarship” (www.earlham.edu/~peters/writing/wsis.htm). While there’s nothing really new here, it’s a fine brief summary that touches on some key issues—e.g., OA’s compatibility with copyright and print. **Worth a look** and useful to give people a *very* quick introduction to the concept.
- An August 19 piece at NewScientist.com, “Free online journal gives sneak preview,” is one of several arising from PLoS’ extensive PR campaign—in this case, releasing two papers from the initial *PLoS Biology* as “sneak previews.” The article quotes “competitors” as claiming that PLoS will have to charge for online subscriptions to maintain quality. The more interesting coverage will appear in the next six months (and after a year), as PLoS necessarily moves from its Hollywood stunts to putting out top-notch publications—but what journalist is qualified to judge those publications?
- Catherine Zandonella published “Economics of open access” in *The Scientist* for August 22, 2003 (www.biomedcentral.com/news/20030822/02/), including quotes from Eisen, Michael Held of The Rockefeller University Press, and others—including Peter Suber. Held doesn’t believe \$1,500 per article is enough to maintain a viable business model—but elsewhere in the article issues get confused, as certain “high-cost” elements (e.g., color pictures) really shouldn’t make much difference in online-only publishing. Joseph Esposito of SRI uses the I-word: “Consolidation is inevitable.” He says that consolidation could include commercial publishers taking over nonprofit and OA publishers—but that’s only possible if OAs and nonprofits are structured inappropriately. Unfortunately, Zandonella botches the paragraph based on Peter Suber’s remarks, paraphrasing that “even if open-access publishers were taken over by commercial enterprises, their previous output would remain in the public domain.” Suber would *never* have used “public domain” as a synonym for “open access,” and he immediately issued an SOAF posting clarifying that he doesn’t confuse the two. “I take pains to separate the two and to argue that open access is compatible with copyright.” He includes his entire response to Zandonella’s question, and you won’t be surprised that “public domain” does not appear anywhere in the comment. (His response also mentions LOCKSS favorably—but Zandonella didn’t mention it at all.)
- A Declan Butler piece in *Nature* 425:334 suggests that the *New England Journal of Medicine* is *really* not interested in open access—to the point of treating authorship with surprisingly flexible standards. The journal accepted a paper with many coauthors; one of those coauthors is a strong proponent of OA and a cofounder of PLoS. He insisted that the paper include the sentence “This article is published under the terms of the PLOS open access license.” When the galley proofs emerged, that sentence was missing. When this particular author said, “Then take my name—and those of three other coauthors—off the paper,” the editor withdrew acceptance. *Then*, the journal accepted a “new” paper that differed only in

omitting the four authors and acknowledging them as contributing to the experiments and sharing responsibility for the results. The OA-centric author calls it a “clear and documented case of editorial misconduct in the handling of an article.” The *NEJM* says that the OA advocate “knows well that the Journal cannot selectively ignore copyright laws so that individual authors can draw attention to a personal cause.” That statement is...well, walk behind a bull for a while and keep looking down, and you’ll see another example. To claim that opening access immediately on publication (*NEJM* isn’t a bad guy—they normally open free access after six months) somehow “ignores copyright laws” is absurd.

- In late September the Company of Biologists announced that it would move its journals to the Prosser hybrid: That is, authors can pay an up-front fee and have articles immediately accessible to all, or can publish free of charge and have articles openly accessible after six months. I would hope to see any number of journal publishers make such announcements, since the Prosser model is the most plausible way to move from traditional to OA publishing.
- *SOAN* 66 (October 2, 2003) features, among other things, a first-rate essay, “Not Napster for science.” I haven’t heard OA advocates use “Napster for science” as a quick description, but Peter Suber offers an eloquent discussion of why nobody should ever do so. Napster and its successors tend to contribute to copyright infringement, although that’s not the only use of P2P networks. Whatever my qualms about OA archives, copyright infringement is *not* an issue—and such archives don’t use P2P techniques. “When authors and copyright holders consent to open access, there is no infringement.” There *can be* no infringement: Consent eliminates that issue. There’s much more to the essay, **well worth reading and saving**.

Alternative Publishing and Advocacy

ARL Bimonthly Report 228 (June 2003) includes a fairly lengthy piece by Edwin Sequerra of NLM, “PubMed Central—three years old and growing stronger.” It’s an interesting piece, both for its thorough and readable description but also for its tone: “PubMed Central represents evolution not revolution. PMC is here to stay, but it does not spell disaster for academic societies or other publishers.” The article explains the eligibility standards for journals to participate in PMC, the commitment required

(and the publisher’s ability to restrict access for some period), the size of the archive (around 100,000 articles) and aspects of how it works, including the process of building and managing a digital journal archive. **Recommended.** Find it at www.arl.org/newsltr/228/pubmed.html.

ACRL has adopted “Principles and strategies for the reform of scholarly communication,” but since it’s an ALA web page I won’t attempt an address. The four-page statement defines scholarly communications, asserts that there’s a crisis, and offers extensive lists of supported “principles for reform” (a dozen in all) and “strategies” (18, ranging from development of competitive journals to maintenance of interoperability standards). This particular document doesn’t go nearly as far as the Sabo bill; instead, one strategy is “federal legislation that will require that federally funded research published in subscription-based journals be made openly accessible within a specific period of time (e.g. six months) after publication.” If I have a problem with the lists, it’s that there’s no indication of *preferred* strategies, but that may be appropriate for a terse statement.

I noted the founding of the Information Access Alliance in *Cites & Insights* 3:11. The website now includes an FAQ that’s worth looking at, even though (when I downloaded it) it seemed a little too specific to the Springer merger. The FAQ claims that research has shown that mergers within STM publishing have resulted in higher prices and that such mergers result in “lack of attention to editorial quality” and other problems. It explains why it isn’t enough to push for new models. I detect some wishful thinking in this question and first response:

Given that antitrust authorities approved the Reed Elsevier/Harcourt merger in 2001, what are the chances of stopping this merger?

We won’t know unless we try. If the user community expresses its dissatisfaction with the impact of the Reed Elsevier/Harcourt merger, then the chances are better. Note that the analysis of the Harcourt purchase was complicated by the emergence of digital journals and bundling—making it more difficult for the U.S. Department of Justice to forecast the future impact of the deal. This is less of a problem in 2003.

But there is *more* activity in OA journals and other online- journals now than there was in 2001; SPARC offers some alternatives that weren’t there two years ago. One *major* unintended consequence of the push for alternative publishing models is that it substantially weakens any attempt to prevent mergers on antitrust grounds. That was true in 2001; it’s probably truer today. The DoJ approved the Civen/Candover purchase that will result in a merger of

Kluwer and Springer—but the IAA says it “will continue to push for revised analysis of publisher mergers.” I’m not sure how you can push for alternative models, claim they will be effective, and simultaneously claim that they should be ignored for antitrust reasons—the world doesn’t work that way.

Speaking of SPARC, it announced another “breakaway” journal in early September: *Labor: Studies in Working Class History*, founded by the entire editorial board of *Labor History* from Taylor and Francis. Duke University Press will publish the new journal beginning February 2004. This one seems a little tricky, given the numbers involved: *Labor History* costs \$240 a year while the new journal will be \$200 print, \$180 online-only. The key element seems to be that Taylor and Francis wanted to increase the number of pages, presumably with intent to charge more for subscriptions.

The Association of Learned and Professional Society Publishers (ALPSP), a trade association for not-for-profit publishers, has announced an unusual aggregated journal offering in cooperation with Swets Blackwell and Extenze. The package initially includes 247 journals from 25 publishers, with three broad disciplinary subsets. Pricing is guaranteed for three years and allows the choice of print-plus-online or online-only, with consortial arrangements as well. It’s an interesting “little deal” to compete with the “big deals” from megapublishers.

Miscellany

It’s easy to vilify big bad commercial publishers on access issues, including the gouging of libraries and other subscribers; sometimes it’s even justified. But that doesn’t mean that the nonprofit sector, including university presses, scholarly organizations, and the like should be presumed to be “good guys” in this complex area.

Take, for example, Harvard University Press. According to a brief *Nature* piece (forwarded on SOAF), Brian Fisher has a book deal with Harvard for a monograph on ants—and the contract says he can’t post material online for at least four years after the book is printed. Fisher recently helped launch AntWeb and wants to put some of the data from the book on the website. HUP officials are opposed, “worried that it will dent the book’s future sales.”

Fisher disagrees, believing that the material will increase them. The article cites the National Academies Press, which posts all its books online and has increased print sales. Lynne Withey of the University of California Press is somewhere in the middle—even though UC Press is a partner in CDL’s eScholarship program (*Cites & Insights* 3:3).

Longer Articles

Pinfield, Stephen, and Hamish James, “The digital preservation of e-prints,” *D-Lib* 9:9 (September 2003). www.dlib.org.

Do we need to preserve e-prints at all? According to Pinfield and James, “many people from the e-prints community would say ‘no,’ or at least ‘preservation should not be a priority.’” This article comments on practical issues arising from the suggested answer—which, as you might expect, is Yes. Quoting from the conclusion:

Digital information is lost when it is left unattended while hardware, software and media continue to develop. Without intervention, an e-print may be subject to media degradation within a few years. Even if the e-print is securely backed-up, a few more years will see the e-print’s content become inaccessible as software and hardware change. Without a strong institutional commitment, institutional e-print repositories will be unable to preserve their holdings, and they may also struggle to convince faculty to deposit work.

In case you’re wondering “e-prints” could also be defined as online versions of research papers, either pre- or post-print—but also other materials “which may not be formally refereed but are nevertheless important research output.” Let’s ignore for the moment the issue of how non-journal-stamped output can be known to be important or reliable.

Pinfield and James don’t dismiss the importance of getting papers submitted to the digital repositories—but they argue coherently for the (equal?) importance of establishing long-term preservation methods from the beginning.

Parks, Robert P., “The Faustian grip of academic publishing,” *Journal of Economic Methodology* 9:3 (2002): 317-335.

I was able to download this article freely; whether you’ll be able to is another question. It’s a casually written, careful, and extremely depressing article—arguing at some length that the serials crisis will remain, because there simply will not be any substantial move from current journals to alternative models. Parks addresses each of the stakeholders in the current STM universe and concludes that none of them have both motive and means to change the current model. **Worth reading** and thinking about. I’d hate to think Parks is right in general—but it’s a solid argument. (Among other things, he makes the clear case that shifting from print to electronic does nothing more than postpone the crisis, if that—particularly given that we’re talking about increased *prices*, not necessarily increased costs.) (The follow-

ing article in the same issue, “Pricing the serials library: in defence of a market economy,” may also be interesting—but after reading it, I could not decide whether or how to annotate or recommend it. I *think* the author is arguing that the way to solve the serials crisis is to abandon individual university libraries—but that can’t be right, can it?)

Interesting and Peculiar Products

Pioneer DVR-A06

Why would I mention a DVD burner? Sure, the Sony DRU-500A that first bridged the format gap, burning both DVD-R/RW and DVD+R/RW discs, was noteworthy—but several other vendors have followed Sony’s lead. Pioneer is a pioneer in DVD burning; the DVR-A06 is its sixth generation recorder. It lists for \$329.

It’s also a multiformat recorder, handling plus and minus both. Why is that interesting? Because Pioneer has been the most steadfast supporter of DVD-R/RW.

Pioneer VP Andy Parsons says, “We are not converts to the +RW side, we are not joining the +RW Alliance, we are just doing what the market is demanding in order to help grow the business.” Pioneer set-top boxes will only work with DVD-R/RW (for now).

When you engineer a new model to provide support for a format that the primary DVD organization doesn’t accept, that may not make you a “convert,” but it comes close. What it really does is to marginalize HP, Philips, and Ricoh, none of which currently plans to add DVD-R/RW to their DVD+R/RW drives. Realistically, Pioneer and Sony (and others) now represent the mainstream: “You bought a blank DVD? We can burn it.”

The Whiteboard Gone Colorful

The bad news up front: The SMART Board for Plasma Displays costs \$3,300 to \$5,000—and it’s designed to be used with a 42” to 61” plasma display, which will set you back \$3,000 to \$9,000 or *way* up.

The good news: If you have the need and the cash, this is an interesting if slightly offbeat idea. For years, there have been special whiteboards that can spit out printouts of what’s on them. More recently, it’s been possible to adapt existing whiteboards to feed what’s being written to a PC. This device takes the idea several steps further. Maybe “whiteboard gone colorful” is wrong—in some ways, this unit goes back to the old TV show where kids were supposed to put a special sheet on top of the TV screen,

then draw things to move the plot forward. The biggest problems with that were that kids would forget the special sheet...and parents got concerned about kids being that close to the TV screen.

Your \$3,300 to \$5,000 buys a hard protective sheet that mounts on the plasma display and has four CMOS cameras, one in each corner. The overlay has anti-glare properties; it may improve the display image. You draw on the overlay—with special styli, although you can also use your finger. The cameras pick up the motion and show the results on the display (and the connected PC). The tray for four styli and the “eraser” knows which tool you’re using; that determines color. And if what you really need is a whiteboard-equivalent rather than to annotate an existing image, there’s a special whiteboard program that works like a newsprint pad: You can capture multiple pages of notes and print them out or distribute them electronically.

Cheap PDF?

Yeah, I know, you’re a 3%er, and PDF generation comes with the operating system. The rest of us might find Ben Z. Gottesman’s “PDFing cheap” in the August 5, 2003 *PC Magazine* worth reading. Not that Acrobat’s all that expensive—although the story says that Acrobat 6.0 Standard goes for \$299, I’ve seen it for under \$100 (as an upgrade). But if you don’t need all the features of Adobe Acrobat, this story notes a dozen cheaper ways to get PDF.

The two Editors’ Choices are relatively expensive. FinePrint pdfFactory PRO 1.57 costs \$100 and generally produces small PDF files; it’s not great for high-quality graphics and photos. Interesting, it generates tables of contents based on text formatting rather than style tags; to the extent that the methodology works, it doesn’t require Word. (Unlike some of the others and Acrobat itself, pdfFactory doesn’t add buttons to Office programs; Jaws does.)

Jaws PDF Creator 3.0 is a little cheaper (\$79) and produces uniformly high-quality PDF—but they’re usually larger than those generated by Acrobat 6.0. For me, that’s a concern: I want typographic accuracy, but I also want to keep these 20-page issues to 270K or so. In the case of a Word file that started out at 55KB, Acrobat produced a 48K PDF and FinePrint a 31K (I wonder about font accuracy at that size); Jaws bumped that up to 141K, but at least that’s better than 602Pro Print Pack 2002—which generated a 904K PDF!

Fourteen Megapixels?

I was impressed when digital cameras hit the six-megapixel mark that supposedly matches 35mm.

image density—and again when an eleven-megapixel pro unit came out. The September 2, 2003 *PC Magazine* includes a one-page review of Kodak's \$5,000 DCS Pro 14n, a digital SLR with 14-megapixel resolution. It's based on the Nikon N80 body. As with one or two previous high-end digi-cams, what makes the Kodak special is a "full-frame" image sensor. That is, the image sensor is as big as a 35mm. frame, so that interchangeable lenses will work the same as on a film camera.

Most high-end digital cameras have been great for telephoto users: The effective focal length of a lens is typically 1.5 times the actual focal length. That's not so great if you're doing landscape photography. The Kodak and similar cameras eliminate that problem. The full-frame sensor Canon EOS-1D costs more (\$8,000) and has slightly lower resolution (11 megapixels), but it is faster and has a more sophisticated auto-focus. In the end, if you're in this stratified environment, the choice may come to your lens preference: Canon uses Canon lenses, Kodak takes Nikon lenses.

Feedback: Your Insights

Harry M. Kriz (Virginia Polytechnic) on the DVD survey

Perhaps I'm missing something in skimming through your DVD survey results in your latest newsletter. If so, I apologize for my lack of energy in failing to read it more carefully.

You state that an optimist would note that more than 5,000 librarians received your survey and only 14 replied that they had problems with DVD's. But you got only 27 responses from more than 5,000 people who may or may not have actually received your survey. I disagree that you need to be a pessimist to stress that 14 out of 27 thought there was a problem. That is simply a statement of fact and there is no pessimism involved. The stress should be on the vanishingly small number of 27 total responses. Surely this is a remarkably small number for a topic in which you think those surveyed should have a profound interest.

The only useful statement of fact I can make from your results is that your survey failed to find any interest in the topic among those surveyed. This might indicate that there is no problem. It might indicate that the people surveyed had no knowledge of the topic. It might indicate that your questionnaire was much too complicated and your readers moved on to something more interesting.

Surveys that don't generate responses are not useful surveys. While you claim that your survey should have elicited many negative responses, you might better examine why your survey failed to elicit any responses. You have no reason to assume that any of the 5,000 listserv subscribers have any data at all, that they work at libraries that circulate DVD's, or that the subscribers in libraries that do circulate DVD's have any knowledge themselves of the circulation of DVD's .

I would summarize your results by saying that your survey failed to elicit a meaningful response, but that you did get a few anecdotes that can lead to speculation that might lead to a more meaningful study of the question if you could get anyone interested in the question you are researching. What you present in your article doesn't allow us to draw any inferences at all about the larger universe beyond your 27 respondents.

One question that I have is how are DVD's different from books when it comes to wear and tear by the users? Both artifacts have to be used properly if they are to endure through many circulations. In the case of books this means that people can't tear out the pages, underline things of significance to them, write nasty comments in the margins, or smear peanut butter over the critical passages. In the case of DVD's, we also hope that people won't smear them with peanut butter or scratch out significant parts of the disc.

Harry's right: 27 responses provides no more than anecdotal evidence on the state of the industry. I commented back that I had stressed, when putting out the call, that people could just answer the key question (is early DVD failure a serious problem?) and let it go at that—and that, while I did receive partial answers, I didn't get many. To me, that was a sign that DVDs weren't a big problem for huge numbers of Publib people, because those that had problems would have a chance to air those problems.

I also commented on his final paragraph—and, of course, he's right: If parents hand hardbound books to their kids to use as playthings, and if kids think they're fun to throw around, the books won't last very long either. But adult books don't make very interesting playthings; DVDs (and CDs) do.

Harry responded:

As for your survey, I could just as well argue that those for whom DVD's are *not* a problem would be as anxious to spread the good word. There's nothing like trying to convince others that you've found paradise with DVD's and you'd like those others to join you.

I could also argue that those who found that DVD's *are* a problem would not bother to reply because it simply isn't worth their time to point out the obvi-

ous and let others find out this obvious fact for themselves.

I can also argue from my own reaction that most surveys aren't worth responding to because they are so poorly designed that I won't waste my time writing to anyone who would distribute such a poorly designed survey. What could such a person learn from what I could tell them?

Hmm. It's too late to withdraw "The Crawford Files" for September 2003 (yes, I know I got it wrong twice on the first page of *Cites & Insights* 3:11!), and it's too late to unpublish 3:11 itself. Does the anecdotal evidence I gathered mean *anything*? I respect Harry Kriz's experience and clarity—and I would *certainly* argue against any statistical interpretation of that tiny sample. Maybe I'd better leave it at that.

By the way, Peter Graham pointed out the "September 2002" error the morning after the issue appeared. Thanks, as usual, for close reading.

Dan Lester on a variety of things

I'm not going to quote Dan's always-interesting feedback (he is, among other things, the Boise State connection for cites.boisestate.edu, since I *still* haven't been to Idaho), but a few highlights may be worth noting:

- Some time back, I noted Clifford Lynch's comment about not underestimating the bandwidth of a plane load of CDs. Lester notes a standing comment that goes back a couple of decades earlier: "Never underestimate the bandwidth of a station wagon full of floppies." He first heard it about 1982.
- He didn't find the thread in the songs I listed in one perspective. Neither has anybody else. Another failed challenge; I'm not surprised. Maybe some day I'll mention it, even though there's a fairly big hint within the essay itself.
- And Dan isn't the first to point out that ALA membership numbers apparently aren't assigned sequentially, so my number in the 27Ks doesn't mean much. Dan's been in the organization a lot longer than I have; his number's in the 30Ks.

Seth Finkelstein on Lists of Illegal Sites

Paraphrasing, it turns out that there's a direct affirmative defense to the charge of possessing child pornography, if you can demonstrate that you had it for purposes of creating or evaluating censorware—and if the Authorities believe you. You can find the code at www4.law.cornell.edu/uscode/18/2252A.html. A defendant must be able to demonstrate that they possess fewer than three images and promptly,

in good faith, and without letting anyone other than law enforcement officer see or copy the image "took reasonable steps to destroy each such image and reported the matter to a law enforcement agency and afforded that agency access to each such image."

The list wouldn't be actionable in any case—but there's no way to validate the contents of the list without viewing the sites. I am not suggesting that anyone do that; I suspect it would only make sense for an organization to do so *after* discussing the matter with law enforcement agencies. If you can't validate the contents of a blacklist, there's very little point in gaining access to the list—and if can't gain access to the list, you have no way of knowing whether blacklists are as narrowly-drawn as they should be for CIPA purposes.

Bill Drew on Cease and Desist Letters

In reference to my mini-perspectives on the Al Franken/Fox "News" brouhaha and absurd uses of trademark law:

Several years ago when we first had our website, I was sent an unpleasant email telling me I could not use the title "library lingo" for a document on the site. I do not remember what publisher the email was from but they had just published a book titled *Library Lingo* and they claimed I was violating their trademark or copyright (don't remember which). I brought this to the attention of one of the lists I participated in and was urged to stand up against them. I wrote the publisher back telling them that we had used that phrase for several years and so did many other libraries. I also said that I was not violating copyright or a trademark because you cannot copyright a phrase and I really didn't believe they had trademarked the phrase. The publisher quickly backed down when I also mentioned how much bad will it would create if they pursued this.

Don Hawkins on Indexing Grey Literature

Referring to mini-perspective 10, "COWLZ and the Dangerfield Effect" and my snarky comment about "pathetic attempts at ejournals that failed after two issues—and are included in abstracting services":

I guess I'm the guilty party on this one, with things like *Transforming Traditional Libraries*. It happens because, of course, when you find out about the e-journal, you don't know it won't survive past two issues. I also think that having the bibliographic record that papers were published is important.

Regarding newsletters, I do try to include major articles but not pure announcements and the like. Zines and other nontraditional forms are much harder because they're more ephemeral, at least by definition, and as you point out, they're not refereed. I guess it's just the nature of the beast?

My comment in response: I believe this may be a somewhat insoluble problem. I note that virtually everything I publish in non-refereed magazines is widely indexed (I don't have ready access to the library indexes, but *American Libraries* and *EContent* and *Online* are indexed in lots of places), whereas the more substantive (also non-refereed) pieces in *Cites & Insights* aren't indexed anywhere, as far as I know.

I don't know. What constitutes ephemeral? *Ex-Libris*? *Cites & Insights*? Does something become less ephemeral when it costs money? (Is *Library Futures Quarterly* indexed? I don't know.)

[And, after some private snarkiness about certain "refereed" ejournals...] Personally, I have no real complaint. *Cites & Insights* almost certainly reaches more actual readers than *Library Hi Tech News*. I believe it will have minor long-term significance as part of the informal history of librarianship, but I certainly don't write *For The Ages*.

Followup on DVD Issues

One librarian reports (on Publib) that the RTI Disc-Check 10 Inspection System and RTI Eco-Junior Disc Repair Machine really do work and are easy to use. The repair unit does repair most scratches and leave the disk looking new; the checker verifies damage in a few seconds. The librarian also notes that some "damaged" discs will still play properly.

I was asked for specific sources of replacement DVD cases without press-to-release hub locks. I did a little online searching and found that Gaylord has DVD cases with "easy release hubs," apparently working the way patrons expect ("just lift the edge of the disc") and costing \$65 for 100 (\$0.85 each in small lots), with room for cover art and inserts. Vernon has something similar. I *suspect* that Demco and Showcase both have similar cases, but it's hard to tell from the photos and descriptions. I believe that library DVD distributors *should* offer such cases—and will, if enough libraries ask for them.

Trends & Quick Takes

Interactive TV Yet Again?

You know you really want to click on Jennifer Aniston's dress during *Friends* to order a copy—don't you? Better yet, make choices at key plot points in *Firefly* so the ending's more to your taste. Hot stuff: Interactive TV will blow away couch-potato fare.

That's been the promise for quite a few years now, and the reality's been fairly constant as well. If you consider QVC and Home Shopping Network to be interactive TV, then it's a big success. Otherwise, not so much. *Friends* executives say they don't *want*

multiple endings or "people clicking all over our shirts or sofa." But, according to a July 25, 2003 *Wired News* story by Xenia Jardin, the entertainment industry still believes in interactive TV—only now it's called "enhanced TV." What does that mean?

For one, it means games—you know, TV series translated to video games. Maybe you can synchronize Xbox or Playstation "experiences" with what's happening on the show. My pathetic local public TV station has plans for an "interactive pledge drive" to make fundraising "less intrusive." But here's the truth about what will make industry people *care* about etv, as noted by the American Film Institute's Nick DeMartino: "When someone comes up with an interactive application that's small investment and high payoff, we'll see a major industry breakthrough." After all, that's why there's so much "reality" programming—it's *really cheap* to produce and people watch it.

DeMartino claims that "eventually" etv will be "on every channel everywhere all the time" but we won't call it interactive or enhanced. He doesn't suggest what features could actually drive all those syndicated reruns off the air. Here's the big example of successful "etv"—the live cell phone voting during *American Idol*. And somehow, "densely embedded product placements" (so TiVo folks can't skip the commercials), as on *The Restaurant*, qualifies as a form of enhanced TV. I suppose 60 minutes of advertising in each "entertainment" hour is an enhancement of sorts, for somebody.

But here's the truth, as stated by the producer of such television gems as *Blind Date* and *Fifth Wheel*: "Audiences are lazy and TV still caters to the lowest common denominator... ETV has to be so simple that they can do it half-baked and horizontal on the couch." Otherwise, they're likely to put on a DVD, switch over to the internet, or if they're *really* perverse, read a book or carry on a conversation. And we can't have that.

There's more to Caution than DMCA

Seth Finkelstein reports on a discussion at Harvard's Berkman Center as to whether DMCA bars reverse engineering of a particular program, in this case Gator. You don't need to know what Gator is to follow the rest of this. "With regard to legal threats, it must be a *very* different world over there at the Berkman Center. Double sigh. Harvard lawyers and similar don't have to worry about SLAPP-like lawsuits. It's a matter of perspective."

As Finkelstein points out, the Gator license prohibits reverse engineering as a matter of *license* language—as does most commercial software. "This

would be blindingly, blatantly obvious to you if you had ever had to seriously worry about being sued, and needed to consider what could be thrown at you.” Here’s what the license in Gator’s code says:

You may not modify, reverse-engineer, decompile, disassemble, or otherwise discover or disassemble Licensed Materials [or?] equivalent of Licensed Materials in any way. You do not have the right to create derivative works of Licensed Materials, and you agree not to attempt, or allow others to attempt, to reverse engineer Licensed Materials and/or modify Licensed Materials source code.

I’m sitting here with a new version of Norton SystemWorks ready to install. Unusually for current software, it comes with a manual, so I looked at the (very long) license agreement that I “agree” to before it gets installed. Clause B. of “You may not” reads:

Sublicense, rent or lease any portion of the Software; reverse engineer, decompile, disassemble, modify, translate, make any attempt to discover the source code of the Software, or create derivative works from the Software.

You can probably find similar paragraphs in all of the licenses you “read carefully” and agree to—although some, including some Microsoft licenses, note limitations because laws may explicitly permit some forms of reverse engineering.

Are such licenses enforceable? If UCITA was widely adopted, the answer would almost certainly be yes. As is, the real question for most of us—Finkelstein, me, anyone else operating independently—is “Do you feel lucky, punk?” Are we willing to foot the costs of defending against infractions of licenses, given the teams of lawyers that corporations could send after us? (I shouldn’t say “us”—the chances of my reverse engineering software are a little lower than the chances of my winning Super Lotto.) In the real world, unless you’re part of a corporation or privileged institution, you can only take so many chances.

Six Degrees of Separation

Somehow, “six degrees of separation” moved from a parlor game for movie buffs and IMDB enthusiasts to a bizarre general theory of social interaction—that a short chain of acquaintances (six links or less) can be found between almost any two people in the world. Columbia University did a global study involving more than 60,000 people. Each person tried to contact one of 18 targets in 13 countries. More than 24,000 email chains were begun; fewer than 2% reached their targets. On average, those chains that succeeded took only four steps; the rest died

somewhere in the middle. A followup experiment is at <http://smallworld.columbia.edu>.

A University of Alaska psychologist calls the “six degrees” theory “the academic equivalent of an urban myth” and that “Ninety-eight percent of people can’t reach anybody.”

I’ve read other comments on the study and would have to agree with those comments: An email study may not prove all that much. Consider how many people who use whitelist filters for email (only accepting email from people they know fairly well). How many *more* people would get an email like this, from someone they vaguely know, and not have any interest in continuing the chain? (I suspect I fall in the latter category; I don’t know, because none of the 24,000 chains involved me, apparently.)

The study certainly doesn’t disprove the six-degrees “theory.” It does weaken it. I can’t help but wonder who paid for the study—but never mind.

There was never a good reason to generalize from “Six degrees of Kevin Bacon.” Show biz is a small and highly connected community. Kevin Bacon was easy as a starting point: He’s worked so hard, so often, with so many people, that tracing a joint-appearance chain to almost any other movie actor *should* be possible. And, actually, it should work for almost any actor who’s done at least a dozen movies. If you figure 20 speaking parts in a movie, and only a few tens of thousands of actors, the arithmetic suggests that chains can be formed almost anywhere within that sphere.

Similarly, I suspect that you can find “six degrees of separation” or less between any two people within the library field, and certainly among those in the field who go to conferences. I’m slightly acquainted with two or three thousand people in the field. If you figure that each of those is acquainted with at least two or three hundred *other* people in the field, it doesn’t take long to subsume the 130,000 professionals or quarter million (or whatever) library-related employees. The reference librarian who just arrived at your branch library with two years’ experience? If they attend a state, regional, or national conference once a year, I’ll almost bet that they’re acquainted with someone who’s acquainted with someone else who’s acquainted with...me, on six hops or less. Or Michael Gorman, or Jenny Levine, or the current ALA president, or the head of acquisitions at a small college across the country, or whoever you’d like to name.

But could you find a chain connecting that reference librarian with a given nuclear physicist or, well, Kevin Bacon? Once you leave a field, you need to look for other communities—and lots of us don’t belong to that many communities. I’d be astonished

if “six degrees of separation” for the world as a whole, or even for the United States, worked out in practice. It’s a community thing.

Quicker Takes

- Greg Notess’ “On the net” in *Online* 27:5 (September/October 2003) is “The Google dance: a database update saga.” He describes the process by which Google is updated and how you can track it. It’s an interesting discussion, but I must be missing something. The Google dance implies that Google results should be about a month old in most cases. But I usually find results to be much fresher, at least for pages with reasonably high PageRank, and I’m aware that Google crawls this website much more often than it needs to (for example). I almost always find the current version of the home page cached within two days of an issue’s release; I don’t see how that fits the Google dance, as opposed to continuous updating of indexes and caches. But Notess knows a lot more about this stuff than I do. ‘Tis a quandary: Maybe my reading skills are to blame.
- Kim Guenther’s September/October 2003 *Online* column, “The top 10 things I hate about the Web plus other rants and ramblings,” is interesting—but she loses me on the very first item: “Out of date/out of touch.” She says that the modification date for a Web page is a quality indicator—and that pages that haven’t been updated in years “[serve] no purpose other than slowing down and irritating users who must slog through all this on our way to quality content.” She recommends removing pages quarterly if they’re not updated, and seems to view anything more than three months old as “out-of-date,” to be kept only for “historical reasons.” I have a *lot* of trouble with the idea that web pages cease to be relevant after 90 days, that anything more older is “historical” and serves “no ongoing purpose to users.” I’ll take a thoughtful year-old discussion over a month-old weblog typing-faster-than-you-can-think piece any day, and *in general* I don’t believe currency automatically implies quality.

Copyright Currents

I’m deliberately ignoring the whole SCO/Linux mess and, for the most part, court decisions involving DeCSS. Not that both aren’t important, but there’s

only so much energy, space and time. I’m staying away from the proposed database protection bill for the moment, with the shoddy excuse that as an RLG employee I have a conflict of interest in covering and discussing the issue.

Because it gets muddled in the latest RIAA absurdities, let me repeat up front: I regard peer-to-peer sharing of copyrighted music as unethical *regardless* of its legality. If you detest what RIAA’s doing, buy used CDs, look to the hundreds of independent labels, listen to radio, make new CD-Rs and MP3 playlists from your existing collection for your own use, whatever. Whether it’s theft or infringement, unauthorized copying is bad karma.

The great shift-key controversy? Maybe next issue. Maybe not.

Peer-to-Peer and the RIAA

Another Pew Internet Project memo emerged in late July 2003: “Music downloading, file-sharing and copyright.” You can find it at www.pewinternet.org. The most recent survey involved 2,515 adults, but only 1,555 Internet users—and the final response rate is 32.7 percent. The projected error rate is three percentage points at a 95% confidence level.

The conclusions are interesting, but should be read carefully. Two-thirds of those who download music files or share files online say they don’t care whether the files are copyrighted or not—which is sad. But that’s two-thirds of those who share or download files. Sixty-two percent of internet users surveyed don’t do either. (Only 21% share files.)

I’m saddened by the base figure: roughly 20% of internet users don’t much care about other people’s rights, at least when they’re not dealing with other people directly.

An interesting auxiliary finding: the older, wealthier, and better-educated you are, the less likely you are to download music. Only 12% of those 50 and over download, 26% of those with at least \$75,000 household income and 23% of those with a college degree. If I want to be really depressed, I can read that 82% of file-sharers aged 18 to 29 don’t care much about copyright.

Yet Another P2P Bill

They just keep on coming. This one’s called the Protecting Children from Peer-to-Peer Pornography Act of 2003, HR2885, introduced by Reps. Pitts, John, Sullivan, Pence, and DeMint. Here’s the one-sentence summary of the bill: “To prohibit the distribution of peer-to-peer file trading software in interstate commerce.” Note key words that don’t appear in that sentence: *Children* and *Pornography*.

There are the usual findings, for example:

(2) Peer-to-peer systems are emerging as a conduit for the distribution for the distribution of pornographic images and videos, including child pornography. Child pornography is easily found and downloaded using peer-to-peer systems.

(3) Child pornography has become increasingly available on peer-to-peer systems. In 2002, there was a fourfold increase in the number of reports of child pornography on peer-to-peer systems.

Here's the key prohibition:

It is unlawful for any person to distribute peer-to-peer file trading software, or to authorize or cause peer-to-peer trading software to be distributed by another person, in interstate commerce in a manner that violates the regulations prescribed under subsection (b)(2).

That subsection requires any person who distributes or authorizes such software to:

- Provide clear and prominent notice that use may expose the user to “pornography, illegal activities, and security and privacy threats”
- Check for a “do-not-install beacon” that parents can install, and refuse to install the software if it's there
- Obtain verification of majority or verifiable parental consent
- Ask whether each juvenile recipient is under age 13
- Comply with COPPA provisions on information collected from children
- Ensure that the software can be readily disabled or uninstalled
- Ensure that a computer can't become a super-node unless the user explicitly authorizes it.
- Establish a U.S. agent for non-U.S. distributors
- Maintain compliance records
- Keep those records confidential.

There is an out: The definition of peer-to-peer file trading software “excludes, to the extent otherwise included, software products legitimately marketed and distributed primarily for the operation of business and home networks, the networks of Internet access providers, or the Internet itself.”

The act also authorizes state attorneys general to bring civil suits based on violations, and calls on the FTC to conduct an annual study of P2P software “including the availability of child pornography and other pornographic images and videos...”

I haven't read much in the way of reactions yet—and this isn't really a copyright-related bill. What does it have to do with child pornography? Absolutely nothing except for the FTC survey—and child pornography is illegal already. It “protects” juveniles from pornography by making it far more difficult for them to obtain P2P software to use for

any purpose. It mostly places a bunch of new restraints on P2P software “distributors,” with the net effect of making it nearly impossible for sites to post P2P programs for people to download: The overhead and liability would be far too great.

In essence, the bill *would* shut down noncommercial P2P software. I have no idea whether the RIAA or MPAA had anything to do with the bill or whether it will go anywhere at all.

Hearings and Related Notes

An early September hearing on “increasing criminal exploitation of file-sharing to distribute child-porn images” included Orrin Hatch “wondering” whether lawmakers should put P2P networks out of business and Dianne Feinstein suggesting that there should be a way to prohibit terms such as “Pokemon” or “Harry Potter” in names of files containing pornographic images, possibly based on copyright law. Other than the traditional rule that you can't copyright titles, this would represent a huge increase in direct government involvement in copyright enforcement. A New York DA asked Congress to “make peer-to-peer networks and their operators responsible for child porn on their networks,” which is also highly improbable given the way most post-Napster P2P systems work. The EFF's Wendy Seltzer suggested that the Senate was using child porn as a pretext to target P2P—“We don't have hearings calling the photo industry to task when their film is used to create child porn.” Alan Morris of Sharman Networks (KaZaA's operator) maintained that the software *could not* monitor trading activities.

At a later hearing, Senator Levin (D-MI) asked Morris why he couldn't just shut down users who violate the license agreement not to share copyright files. He repeated that it's technically impossible, just as it's impossible to filter content to ban copyright works—and, of course, the RIAA demands that P2P networks do exactly that, without any suggestion of how such filtering could be achieved. Senator Coleman (R-MN) did question RIAA's hundreds of suits, but also seemed to think P2P operators could somehow prevent copyright infringement if they tried *really, really hard*.

Ed Felten posted “Story Time” on September 24, in which he substituted John Fictitious for Jack Valenti, cancer for copyright infringement, Hospital for Motion Picture, and a couple of other similar substitutions—arriving at a press release that was clearly ludicrous. That is, John Fictitious claimed that hospitals were ready to “deploy a cure,” but doctors and drug companies were unwilling to work out a mutually agreeable cure.” Obvious nonsense:

cancer is a scientific problem and can't be cured by government decree or negotiation.

To Felten—and, I believe, to most knowledgeable observers—the same is true for copyright infringement (as long as devices capable of copying exist): It's a problem with no known technical "cure." But people don't view Jack Valenti's speeches as nonsense, or at least our elected representatives don't seem to.

For that matter, about half of those commenting on Felten's post didn't see the analogy. One person seemed to believe that Felten was advocating copyright infringement (which he has never done, as far as I know); several basically said that outlawing infringement would work (although it's already illegal); one or two got it. Felten did a followup two days later, trying to clarify the intent of the analogy:

What I *was* trying to do was to draw an analogy between anti-infringement *technologies* and anti-cancer *technologies*, and to point out that people think about these two technology problems very differently, and without good reason. Here are four examples of the difference:

- (1) Many people in the policy debate just *assume* that there must be a technology available that can prevent infringement. Nobody makes such an assumption about cancer.
- (2) Doctors who say "I don't know how to cure cancer" are not accused of being pro-cancer. But software companies that say "I don't know how to stop infringement" are accused of being pro-infringement.
- (3) When a company claims to have a foolproof anti-infringement technology, their claim is often taken seriously, even if no evidence is presented to support it. But nobody would believe a claim that a drug can cure cancer, based only on unsupported assertions by a drug company vice president. Actual scientific evidence is required.
- (4) Congress or the FDA wouldn't dream of mandating the use of a particular cancer treatment (thereby banning other treatments) without independent testing of the proposed treatment and a lengthy and open discussion of how and whether it worked. Yet when it comes to infringement, mandating secret or poorly tested technologies is taken seriously as a policy option.

Seth Finkelstein offered one of several good comments, noting that nobody ever argues "What you call 'cancer,' we call fair use in copying cells."

P2P Isn't Just About Infringement and Porn
Daniel Cornwall (Alaska State Library) sent a note that makes sense here:

The P2P = Child Porn angle is depressing but expected. I wonder if anyone has noted that P2P tech-

nology could be utilized by dissidents in repressive countries like China and Burma. Those governments are probably gloating over efforts to shut down P2P. Especially when you consider China's complicity in *actual* piracy. [Emphasis added]

[followup]: I just don't want to see P2P technology either banned or regulated out of existence because I think there are many non-infringing uses, even of audio speeches—speeches of banned dissident leaders, audio/video reports from demonstrations around the world, audio works produced under CopyLeft/Creative commons, etc.

Derek Slater offers a related comment in a September 2 posting on "A copyfighter's musing":

Whenever legislation targeting P2P is proposed, someone always asks, "Can you target P2P without lumping in search engines, file transfer software, and basically everything else on the Internet?"

I've never been able to come up with a definition that can do that. P2P file-sharing software is defined by a) indexing of files, which are b) located on hard drives and c) copied on request to another person's computer.

The RIAA Detention Facility

Denounce Newswire posted a charming little spoof on July 25 (www.denounce.com/riaa.html). The "news" story, datelined Mojave, CA, describes the "huge compound" established by the RIAA to hold "three million file sharing suspects and their supporters." The item labels RIAA's current campaign, "Subpoena-the-Family," and only slightly overstates Cary Sherman's apparent attitude: "We don't care if the person is eight, eighteen, or eighty or unaware of the law. If we catch 'em sharing files, we're sending them to jail." And on it goes. Yes, it's extreme; of course it's nonsense—and with the RIAA, it takes something this extreme to be *clearly* a spoof.

All Those Subpoenas

MIT and Boston College won—for a little while. The RIAA has to file its subpoenas for information on their students in Massachusetts. That slows the process; it doesn't stop it.

Senator Norm Coleman (R-Minn.) asked the RIAA for more information about the 900+ subpoenas issued through the end of July. According to Katie Dean's story at *Wired News*, Coleman thought the \$150,000-per-song penalty might be a bit high: "In this country, we don't chop off fingers for people who steal something." Coleman admits to using Napster in the past.

Responding to Coleman's inquiry, the RIAA softened its stance slightly—a clever move which makes it appear less villainous and may make file sharers

even more nervous: It said it would go after “substantial” file sharers and “is in no way targeting ‘de minimis’ users.” Naturally, the RIAA won’t—and shouldn’t—specify what it means by “substantial.” I’m trying to feel sympathetic for a “32-year-old San Francisco graphic designer and file trader” who said the statement won’t curb her file-trading habits. “She expressed anger at the way the RIAA was threatening users and violating their privacy in these lawsuits,” according to the *Wired News* story on August 20. Her comment: “They are relative, subjective terms. That is something that could change daily, and they could pull something out of thin air. That is ridiculous wording. It just makes me angry.”

There’s an easy solution: *Stop infringing on copyright*. If I copied this person’s graphic designs and didn’t pay, she’d probably be angry as well.

I can’t go as far as Marci Hamilton in FindLaw’s *Writ*: “Why suing college students for illegal music downloading is the right thing to do.” It’s a classic black-and-white approach: Either you’re for strong copyright or you’re against copyright altogether. The article tells us that Loretta Lynn would never have made it out of Butcher Holler, Kentucky if it weren’t for “copyright’s ability to build fences around intangible goods like lyrics and melodies”—which assumes that Lynn was unable to give concerts or otherwise raise money.

One key to the success of songwriters such as Lynn is that compulsory licensing does *not* “build fences”—it assures that singers can use songs while also assuring that writers get paid for them. While far from perfect, the situation with songwriting is less unbalanced than it is with the RIAA and MPAA. Hamilton seems to see no middle ground whatsoever; her only alternative to the extreme copyright of today is “a culture without copyright.”

Hamilton buys RIAA’s story that the “hemorrhaging” of 8% of sales (in a year when the economy dipped as well) left them with “no choice but to go after users.” I know of few other industries where a modest drop in sales gives companies incentive to start suing customers by the thousands. I find it sad that a professor of public law can’t find some middle ground between RIAA’s extreme tactics (not limited to these subpoenas) and complete loss of copyright.

How does RIAA conclude that infringement is taking place? An AP item on August 28 notes papers filed by the RIAA in a case where a Brooklyn woman is fighting efforts to identify her, and claiming that the songs on her PC were ripped from CDs she owned. The RIAA claims that it uses “digital fingerprints” that can identify MP3 files that had appeared on P2P networks previously. “By comparing the fingerprints of music files on a person’s com-

puter against its library, the RIAA *believes* it can determine *in some cases* whether someone recorded a song from a legally purchased CD or downloaded it from someone else over the Internet.” The papers go on to assert that the MP3 files did not come from the user’s own CDs.

This is another case where my BS meter goes directly to red. It strikes me that it’s certainly possible that the same program (e.g., MusicMatch, one of the best and most widely-used rippers and music management systems) set to the same settings (e.g., 128K MP3) will yield precisely identical MP3 files on two different computers on two different dates in two different locations, if the same commercial CD is the input for each conversion. It’s not only possible—I believe it’s probable, assuming MusicMatch is working properly. There are only a handful of MP3 codecs in use on personal computers these days, and I’d guess most P2P files use 128K or lower; how, then, can you conclude that an MP3 file was *not* ripped from the person’s own CDs? (I regard 128K MP3 as degrading sound quality too much for my own aging ears. Everything in my collection is either 196K or 328K, and I’m using the higher rate these days. Since I never intend to offer anything on my PC for sharing, or to download other commercial music files from P2P sources, this isn’t a problem.)

Electronic Frontier Foundation’s Curious Campaign

EFF started a campaign with the slogan “File-sharing: It’s music to our ears.” The web page with the slogan starts out as follows (or did as of September 19, 2003):

File-sharing has enabled music fans from around the world to build the largest library of recorded music in history. While this should be cause for celebration, large record labels have spent the last three years attacking peer-to-peer (P2P) technology and the people who use it. But neither user-empowering technologies nor consumers’ desire for easy access to digital music are evil.

A box near there says “Join EFF Today! So the music can play on!”

There’s a problem here—in effect, EFF seems to be equating Freedom with Anarchy. If that “largest library of recorded music” consists primarily of files “shared” by strangers without permission of copyright holders or any compensation for artists or the rest of the people in the value chain, then I question the “cause for celebration.” User-empowering technologies are not evil: Check. Consumers’ desire for easy access to digital music is not evil: Check. But it isn’t about easy so much as it’s about *free*. And there’s the rub.

The page goes on to discuss the need for a system that compensates artists and copyright holders—but the explanation of EFF’s proposal (a modified compulsory license) is buried in a link, while the page itself celebrates the 60 million people in the United States who, EFF asserts, use file sharing (more accurately, I suspect, 60 million people who have downloaded P2P software). That may be “more than the number of people who voted for our current President,” but that factoid is wholly irrelevant. “If we all band together and stand up for our rights, we can change the law.”

The right to override copyright holders’ preferences at will *does not exist* in any legal or moral scheme that comes to mind. That’s true even if you don’t like the copyright holder, even if the copyright holder is doing terrible things, even if you believe you have a better way.

If the license scheme is EFF’s real motive here, then that’s what should be on the front page, not a statement that appears to regard massive copyright infringement as something to celebrate.

Ernest Miller posted a thoughtful four-page comment on EFF’s policy proposal at LawMeme; you should be able to find it from research.yale.edu/lawmeme/, noting that it was posted September 12. He finds it odd that EFF is proposing a “solution” to file sharing for music, but not for movies or software, and wonders why that is. He notes that the proposed voluntary collective license, covering music only, would mean “everyone should be a copyright lawyer” in order to operate legally. (He may be paraphrasing a Scott Matthews article in *Salon* on these points.) He notes that the plan—a *voluntary* \$5/month payment—would still result in suits, since many people would just keep downloading for free and others would drop out of the paid pool. There’s the backup position, a government *tax* to support copyright holders, but the governmental compulsory-license system is nasty enough that EFF doesn’t directly propose it. Finally, he (or Matthews) concludes that EFF’s “concern for filesharers is not based on principle but on price points.” That is: Either it’s OK for the RIAA to sue if people don’t pay the voluntary license—in which case it’s all about price points—or it’s not, in which case there’s no compelling reason for people to pay. At least not for those people who know filesharing is infringement but don’t care. If you see no ethical problem in taking another’s work without compensation because it’s “sharing” rather than taking, why would you pay \$5 a month to provide compensation?

If the \$5 a month is voluntary, then participation by artists and labels must also be voluntary. I

find it hard to accept that the rights of music-lovers somehow outweigh the rights of music creators.

According to Derek Slater, in a September 19 posting on A Copyfighter’s Musings, EFF is not simply asking Congress to hold hearings on their proposal—they want the government to intervene. Apparently, EFF cofounder John Perry Barlow is less than thrilled with the idea of a copyright modification that would constitute regulation of artists: “Are you seriously considering the [government] regulation of artists? That is so Orwellian. I’m astonished this is even on the screen.”

Slater notes that the new EFF campaign is a shift in their approach. Previously, Slater says, EFF argued that copyright-holder groups should sue infringers, not technology creators, and that they *encouraged* lawsuits as an alternative to suing P2P companies. “They kept themselves as far as possible away from explicitly or implicitly supporting infringing file-sharing.” He goes on:

Regardless of what the EFF’s actual stance was then, a reasonable observer could conclude that the EFF’s bluff got called, and now they’re crying foul. From this perspective, beneath the EFF’s supposedly principled response to the suits against technology creators was really just a desire to protect infringing file-sharing.

I must say that it’s nearly impossible to read the “It’s music to our ears” page and *not* conclude that EFF celebrates infringing file sharing. As soon as I saw this campaign, my attitude toward EFF statements in general changed sharply: They’ve lost much of their credibility.

As I’ve said before, there are times when the copyright situation—particularly as regards movies and music—makes me want to say “A curse on all your houses!” and ignore the whole thing. Or maybe I should just cite Hiawatha Bray’s comments in the Boston *Globe* (quoted in the September 10, 2003 posting sequence on FurdLog, msl1.mit.edu/furdlog/, worth reading in its own right):

The palpable dishonesty of all parties in the file-swapping wars is more entertaining than any disk ever cut by Madonna. The music companies overcharge their customers and underpay the artists. The file swappers denounce the worthless drivel being put out by the recording firms, even as they steal as much of it as their hard drives can hold. And last but not least, we have guys like Michael Weiss of Morpheus, who swear they have no idea of what their products are used for, and not the least interest in finding out.

Another post in the FurdLog marathon notes a *Wired* article on BigChampagne, a company that monitors P2P activity, and the ways that its reports

are used *by music publishers* to track where “hot” (frequently-downloaded) songs should be pushed for radio play. The companies don’t want to admit that they work with BigChampagne—partly because any such admission means that they regard the tracking as legitimate. The tracking is, of course, a use of P2P and the P2P networks. Any legitimate, non-infringing, use of P2P weakens the absolutist RIAA stance against P2P technology. Hypocrisy layered upon hypocrisy!

Miscellany

- While UCITA still isn’t dead, the decline continues. The National Conference of Commissioners on Uniform State Laws has decided not spend any more resources promoting state adoptions of UCITA—and it’s discharged the Standby Drafting Committee for UCITA. The president of the conference still claims that UCITA was “the right thing at the right time.” Americans for Fair Electronic Commerce Transactions (AFFECT) issued a statement applauding the decision and noting how flawed UCITA actually was. At this point, two states have adopted UCITA, four have adopted laws to protect its citizens *against* UCITA, and more than 20 states have considered UCITA and chosen not to act on it. The ALA Washington Office noted the situation—and also noted that UCITA remains a proposed uniform act, not yet downgraded to “model law.” ALA is a founding member of AFFECT.
- Why does DMCA scare people? Edward Felten—a professor, with a secure job and good reputation—recalls the situation when he and his colleagues planned to publish their paper on music watermarking. When the RIAA threatened DMCA action if the paper was published, Felten sued for a ruling on the legality of publication—after which the RIAA not only backed down but asserted that there had never been a threat, mooted the suit. Peter Davies, in a recent analysis of the case, says Felten and colleagues should just have gone ahead with publishing the paper, daring the industry to sue them. Here’s what Felten says to that:

I am happy to admit that if we had gone ahead and published the paper without any lawsuit, the odds were only 50/50 that we would have been sued, and we probably would have won the lawsuit.

Probably, I would have kept my house.

Probably, I would have kept my job.

When it’s not *your* house on the line, when it’s not *your* job, then *probably* may be enough... For me and my colleagues, *probably* wasn’t enough. Even a 99% change of getting to keep our houses and savings wasn’t enough. I am still outraged when people like Davies suggest that it’s not a problem if researches have to put so much at risk just to write or speak on certain topics of public interest.

- I don’t deal much with Digital Rights Management *by that name*, but it’s at the heart of many future threats discussed here—the Broadcast Flag, for example. Carrie Russell of ALA contributes “Fair use under fire” in the August *Library Journal*, a **recommended** discussion of how DRM endangers fair use and why librarians need to be concerned.
- Aline Soules has more to say on copyright at eBookWeb: “The ethics of copyright,” posted July 25, 2003. As always, it’s well thought out and offers a lot of guidance in a brief space. She argues for reasonable consideration of how fair use *should* work in different circumstances and, eventually, arrives at an ethical balance that’s essentially the old standby: “Don’t do to others’ work what you wouldn’t want done to your own.” **Recommended.**
- You gotta love press coverage. A “consumer alert” in the August 2003 *PC World* discusses “technology answers” for both sides of the copyright question. It mentions the RIAA suits against four university students and the settlements for \$12,000 to \$17,000, with this kicker: “The RIAA warns that it may not settle on such *lenient* terms in the future.” Since most indications are that the RIAA took all the savings each student had, I guess they’ll have to institute debtor’s prisons. (More recently, RIAA grabbed a “mere” \$2,000 from a 12-year-old—or, rather, the 12-year-old’s grandparents. On the other hand, the 12-year-old had more than 1,000 songs available for uploading: Innocence is a relative thing.)
- Here’s a Republican who believes DMCA has gone too far. Senator Sam Brownback (R-KA) introduced the Consumers, Schools, and Libraries Digital Rights Management Awareness Act of 2003, which would require digital media owners to file “John Doe lawsuits” to obtain identifying information on an Internet user, not just ask for a subpoena—and would also call for labeling on any digital media protected by digital rights management, so consumers will know what they’re buying. The first provision weakens one of the many ugly provisions in DMCA, so you may not be surprised to hear

RIAA's statement about the bill: "The DMCA was a carefully crafted compromise. Multibillion-dollar ISPs like Verizon fought for and won liability immunity for the *rampant piracy* on their networks. In exchange, they were obligated to help copyright holders identify individual pirates." Whenever someone calls DMCA a compromise, you can reasonably gauge their stance on balanced copyright.

- Just to note the extremes on both sides, here's a September 23 piece in *The Age* by Graeme Philipson, "Copyright distorts the market." The logic of this piece could be summarized as follows: "Since it's very easy to speed, speed limits should be abolished." Philipson "demonstrates" that the claim that copyright protects the rights and income streams of artists is "utterly false" as follows: "Shakespeare, Beethoven, and da Vinci never had the protection of copyright." Well, that sure convinces *me* that copyright doesn't protect artists! Philipson earns "a good living writing, and I have *never once* received any payment beyond a ... word rate for a commissioned article." Since this journalist has never earned any royalties, why should anyone else? Right? And, worse, royalties "are very unevenly distributed. A very few get obscenely rich, a few more make a bit, and the vast majority get nothing at all." Hmm. I've made more than three figures and, I believe, less than six figures in my lifetime from royalties: Does that constitute "a bit" or "nothing at all"? I *know* that thousands of fiction, nonfiction, and songwriters make decent livings from royalties, but Philipson does not admit to a middle category. "Just imagine, if you will, a world without copyright and intellectual property laws... People would still write... People would still paint. People would still write and perform music. We would still enjoy their output—though at lower cost. Payment for performance would become more important. Content would not change, just the business models based on them." Performance payments for book writers: Sounds good to me! Performance payments compensating music writers whose works are performed by others: How exactly does that work? Philipson says "There are no advantages in the current regime of copyright." Philipson is wrong.
- In early September, Jenny Levine asked if anyone really doubted that publishers would love to lock libraries out of circulating digital files (in a Shifted Librarian posting). I left a comment to the post (as did others) asking for spe-

cific examples of "library files now being circulated that might one day be in jeopardy." On September 11, Levine responded with a first-rate two-page essay, "Digital files in libraries." I **strongly recommend** that you go to www.theshiftedlibrarian.com and find the archives for September 11. She agrees that there are no such examples—but she believes there *should* be circulatable pure-digital files. She offers a range of examples and notes some of the difficulties caused by DRM. "So I don't have an answer to JD's and Walt's questions, because in my mind we're not at that stage yet, and I worry that we'll never have the chance to step up onto it." In fact, libraries *do* circulate digital music and video files, but only when they're on commercially produced physical carriers, i.e. DVDs and CDs. The carrier makes First Sale meaningful. The problem is with digital files that *aren't* circulated as part of a commercially produced physical carrier, and Levine's essay offers a thoughtful, careful discussion of why this may be an increasing barrier to expanded library operations.

- There's an interesting article at *Online Journalism Review*, posted October 1, 2003 and excerpted (with permission) from *Digital Dilemmas: Ethical Issues for Online Media Professionals*. The article: "Copyright issues present ongoing dilemma: To link or not to link?" I'm not sure whether the author is Robert I. Berkman or Christopher A. Shumway, but the discussion is fascinating and **recommended**. Some of the history is that the Los Angeles *Times* won a copyright suit against the Free Republic website (home of some of the most deeply right-wing "journalism" around, as you'll know if "Freepers" rings a bell) because forum users regularly posted the full text of news articles from news Web sites (and added their own comments, sometimes going beyond claims of "liberal bias"). OK, posting complete articles is an infringement. What about linking? More specifically, what about *deep* linking—pointing directly to an article on a site rather than to the home page? That's a complex ethical question, at least to some people, although Tim Berners-Lee doesn't believe it should be. The piece is interesting and challenging; I suspect the book would also be full of difficult ethical issues.

Longer Articles and Reports

I've noted "The progress of science and useful arts: Why copyright today threatens intellectual freedom" previously (*Cites & Insights* 3:1,3:2). This Free Expression Policy Project document has been revised and updated. The current version is available at www.fepproject.org/policyreports/copyright2dexsum.html. **Recommended** without further comment.

Minow, Mary, "How I learned to love fair use...", Stanford Copyright & Fair Use Site. (fairuse.stanford.edu/commentary_and_analysis). Downloaded July 23, 2003.

Just what you'd expect from Minow: Sensible answers to difficult questions, written crisply and well, and with the combined background of her library and law degrees. The short version is in the lead paragraph, which begins:

When I give seminars to librarians on copyright, the most popular question is: "What happens if we get sued? How much money are we talking about?" Answer? In ever popular lawyer-speak, "It depends."

She goes on to show how "a good understanding and application of Fair Use can reduce your liability down to \$0" if you're a library, archive, or nonprofit educational institution. That can only happen if you believed and had reasonable grounds for believing that your use was fair use—and she goes on to explicate that grayest of copyright gray areas. **Strongly recommended:** go download it, print it off, read and save it.

Francis, Shalisha, "*Eldred v. Ashcroft*: How artists and creators finally got their due," *Duke Law and Technology Review* 2003, and Grimmelmann, James, "'How artists and creators finally got their due' gets its due," LawMeme, July 22, 2003.

Shalisha Francis' student note on *Eldred v. Ashcroft* breaks new ground. It's the first paper I've seen that suggests that copyright in the U.S. has been unbalanced *against* copyright holders. For that matter, it's not every day that a law student decides that that brief little clause in the Constitution requires explanation:

The intellectual property clause was added to the Constitution because of the recognition of the importance of balancing both an author's interest in protecting their creative works with the public interest in maintaining a method by which those same works could enter the public domain.

She characterizes the groups supporting *Eldred* as "numerous academics, educators, historians, and owners of Internet sites whose livelihood depended

on exploiting public domain works." It would be interesting to identify those people—that is, academics, educators, historians (presumably non-academic historians, else why the repetition?), and Internet site owners *whose livelihood depend on exploiting public domain works*. I'd love to see a list of, say, ten people to whom that definition actually applies and who were involved in the *Eldred* case.

Who was opposed? Songwriters "like Bob Dylan and Quincy Jones," the heirs of songwriters like Irving Berlin and George Gershwin, and movie studios like Disney. Disney, of course, based many of its most successful motion pictures and theme park attractions on material in the public domain; Bob Dylan borrows heavily from public domain folk music (and, apparently, from not-so-public-domain writing)—but now that they've done their borrowing, the practice should stop.

Think I'm overstating Francis' assertion? Just three sentences after mentioning those creative artists, she says: "It was also an accurate ruling because, under either a natural rights or property theory, *copyright deserves infinite protection*." [Emphasis added.] So much for the Constitution and balance.

She also suggests that CTEA somehow added fair use—and that fair use "accomplishes many of the same objectives that would be realized by allowing the work to fall into the public domain." Such as being able to build derivative works on the plots, characters, or styles in the work without explicit permission? Such as being able to bring a long-out-of-print book or motion picture back into print when you can't find the copyright owners? Such as *any* of the reasons for building the public domain?

There's no discussion of that. Instead we get logic such as this: "The fact that artists and songwriters live significantly longer than they did when Congress last substantially altered the copyright term was important to the congressional decision to adopt the extension." That's bizarre on two counts:

- The last extension was in 1976—and life expectancy hasn't changed all that much since then.
- "Life plus fifty years" yields a *longer* copyright if people live longer; thus, longer life spans provide built-in term extension.

Of course Francis tells us that adding 20 more years to *existing* copyrights held by heirs of dead artists will somehow give those dead artists incentive to create more works—she doesn't use those words, but that's how it works out.

Shalisha Francis thinks public domain is bunk. "Not only does the public domain category not promote progress, it is also a contributor to a significant decline in the arts." You know she'll quote Jack

Valenti and his *proven false* statement that “no one” will invest in enhancing a movie that’s in the public domain. She uses the phrase “devastation of the public domain,” in describing how *It’s a Wonderful Life* was “rescued” by some tricky legal work. She even seems to say that putting works into the public domain makes them *more* expensive and less available, “because it has been demonstrated that the publishers are more reluctant to publish works that are in the public domain.” That’s why Eldred was in court, of course: Because he wanted to publish works that should be (but aren’t) in the public domain.

“The public domain actually discourages progress in the arts.” So much for the Constitution. So much for derivative works or a future Johann Sebastian Bach (or Bob Dylan or Walt Disney).

Some lawyers will get a kick out of this: “As demonstrated in *Campbell v. Acuff-Rose Music, Inc.*, fair use protects the rights of authors and allows transformative works to be created free of litigation.” Litigation such as, for example, *Campbell vs. Acuff-Rose Music, Inc.*? If that case wasn’t litigation, I don’t know what is. (As Grimmelmann’s “Uncle Charlie” notes “The fair use lawsuits show us that with fair use, there are no lawsuits.”)

This is an astonishing piece of work—one of the silliest pieces I’ve seen outside Big Media’s spokespeople. Grimmelmann found it so “profoundly wrongheaded” (his words) that the LawMeme piece is largely cast in the form of a session with Uncle Charlie explaining the article to Cousin Susie and her brother Pete. You see, when Grimmelmann hit the “infinite protection” claim, he “had a little...accident.”

I like Uncle Charlie’s case on the author-lifespan argument:

See, it used to be that authors only lived until thirty, forty, years after their death, max. But these days, with cryogenics and the Atkins diet, some people are living their lives plus fifty, even sixty years.

Grimmelmann also catches the claim that extended copyright terms “foster [creative artists’] desire to undertake diligent creative endeavors in an effort to ensure the security of the future.” I never made the connection between security and copyright—but then I’m not a law student.

As Uncle Charlie points out, the “nobody wants to publish public domain material” may help to explain why you can’t buy a modern edition of Shakespeare’s works or *Alice in Wonderland*: Now that they’re in the public domain, nobody will touch them. Right?

The Francis article ends by claiming that removing the CTEA extension would “be to relegate the

laws of intellectual property to towering monuments of mediocrity.” There’s some mediocrity at work here—and I have no doubt that Francis has a bright career in IP law, always on the side of Big Media.

Gartner G2 and the Berkman Center, *Copyright and digital media in a post-Napster world*, 45 p. (PDF), downloaded in August 2003.

I’ll try to ignore the unfortunate introduction with its claims that we’re in a “transitional period” before all media becomes digital the difficulty of reading 45 pages of ugly sans serif in a format that wastes almost half the paper (a 4" text column, indented 1.5" in a page that already has 1.5" margins on both sides). It’s not easy.

Aesthetics and digital inevitability aside, this paper is mostly a review of recent and current copyright-related laws and cases, here and abroad. There’s also a section on “transitional” business models that has a few odd points. (It seems to suggest that Jack Valenti is not a credible source; it suggests that ReplayTV and TiVo could “kill off the concept of ‘prime time’ TV viewing”; and it has this conclusion as to why ebooks haven’t succeeded: “Meanwhile, consumers have not embraced e-books, most likely because a PC is not as portable and rugged as a paper book.” Right.)

I learned a couple of things. I didn’t realize our friend Tauzin has drafted a bill “to ensure that the FCC does indeed make the [broadcast] flag mandatory” or that Sen. Hollings doesn’t plan to reintroduce CBDTPA.

You may find this a useful overview. You may not. It shouldn’t be hard to find.

The Details

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