

# Cites & Insights

Crawford at Large

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## ©3 Perspective

### FMA: Watching the Way You Want

Congress passed the *Family Entertainment and Copyright Act* within the last few weeks. By now, it's probably been signed into law. My thoughts are intertwined with those I'm quoting, as usual.

#### The Family Entertainment and Copyright Act of 2005, S.167/HR357

I printed and saved this bill back in February—checking to see that the Senate and House bills were identical—because a *Cnn.com* article noted that the legislation was likely to move fast and because it appeared to include the least controversial aspects of the omnibus copyright bill from last Fall. By now, you've probably heard that the bill passed in mid-April. You may have heard that Public Knowledge and other pro-balance forces were *not* outraged by this bill.

Neither am I. I believe the provisions of this bill are all worthwhile (although one of them should not be necessary) and that its passage may relieve pressure to pass seriously defective copyright legislation. Maybe it's my optimistic nature, but I see this as a case where a tweaking of copyright balance may stall serious unbalance. Some other people who I consider thoughtful and reasonable disagree.

What's in the act? Four parts:

- The ART Act (the Office of Legislative Development—Federal Acronym Realization Title Specialists strikes again!), or Artists' Rights and Theft Prevention Act of 2005. This portion adds two new copyright-related *criminal* offenses with draconian penalties—but the of-

fenses are ones that I would argue are *always* deliberately infringing in nature and closely linked to *true* piracy (widespread commercial infringement). The first is unauthorized recording of motion pictures in a theater—using a camcorder to record a copy from the screen. *Possession* of a camcorder within a movie theater may be considered as evidence toward a conviction but isn't by itself a crime. The second new crime is infringement of a work *being prepared* for commercial distribution—which strikes at the heart of “insider piracy,” where a record or movie studio employee sneaks an advance copy to pirates. The crime must involve commercial advantage or private financial gain; reproduction or distribution alone is not enough to prove the crime. The second also comes with a procedure for preregistration of works about to be published (I'd argue that any registration of copyright works is a good thing).

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- The Family Movie Act of 2005—what, no acronym? I find this portion difficult because I don't believe it should be needed—but apparently it is. This act legalizes (in copyright and trademark terms) ClearPlay and similar models, where software or some other control device “mak[es] imperceptible, by or at the direction of a member of a private household...limited portions or audio or video content of a motion picture...from an authorized

copy of the motion picture...if no fixed copy of the altered version...is created..." [There's more, but that's the heart.] The act also requires "a clear and conspicuous notice at the beginning of each performance that the performance of the motion picture is altered from the performance intended by the director or copyright holder of the motion picture." In other words, if you buy, rent or borrow a DVD, you have the right to use a ClearPlay-enabled DVD player and instruct it to skip over "the nasty parts," as long as it puts up a "This film has been altered..." screen and doesn't make a permanent modified copy of the movie.

- The National Film Preservation Act of 2005, reauthorizing the Film Preservation Act and providing modest funding for the National Film Preservation Foundation.
- The Preservation of Orphan Works Act, which changes copyright code in some obscure manner to help preserve orphan works.

There's not much debate over the third and fourth parts. The first part offends extremists on the free culture side. Cory Doctorow's summary is typical of one side: "[O]n the one hand, it panders to the Hollywood filmocrats by promising mandatory beheading for people caught videotaping movies in theatres..." The rest of the posting concludes that Doctorow "would happily patronize a 'FilthyFlicks' service that promised to lop out all the non-cussin', non-naked parts of the movie, leaving me with nothing but pure degenerate rot." Which this act also legalizes.

If Doctorow and his EFF buddies could give me any legitimate reason for videotaping a movie in a theater, the discussion might be more interesting.

### *Wired News*

This April 19, 2005 story (by Katie Dean) announcing the passage quotes Bill Aho of ClearPlay: "We're thrilled that it passed. I think it's a great bill for families. I think it's great for parents and I think it's great for the technology sector." Aho says several companies have been waiting for the lawsuit (by movie studios, the Director's Guild of America, and 13 individual directors) to be settled before considering integrating ClearPlay technology. Kendrick Macdowell of the National Association of Theatre Owners responded to the ART Act: "This legislation will permit theatre operators to combat movie theft at its main source, by

intercepting and detaining thieves who brazenly attempt to copy movies from our screens."

Two interesting responses came from Art Brodsky of Public Knowledge and Fred von Lohmann of EFF. Brodsky's comment: "This is basically the low-hanging fruit from last year. These are the relatively non-controversial parts of the omnibus copyright legislation from last year." Von Lohmann: "Compared to proposals like the Induce Act, the provisions of this bill are much less dangerous to innovation and the public's rights." Not ringing endorsements, but also not denunciations.

### *Freedom to tinker*

Ed Felten is positively upbeat in "'Censorship' bill lifts ban on speech," posted April 21. He says FMA is "best understood as an *anti-censorship* proposal," responding again to *The Register's* mischaracterization of the bill. As Felten points out, there's nothing in FMA that says you can only skip the dirty bits. "The FMA says that you can skip any portions of the movie you like, as long as the portions you skip are 'limited'." He notes that you could watch a soccer-free version of *Bend It Like Beckham*, and that such a version is speech—speech that FMA allows to occur, by preventing the copyright owner from suing to block it. "And the FMA does this in an ideal way, ensuring that the copyright owner on the original work will be paid for the use of their work."

Let's review. The FMA prevents no speech. The FMA allows more speech. The FMA prevents private parties from suing to stop speech they don't like. The FMA is not censorship. The FMA prevents censorship.

### *DigitalKoans*

Charles W. Bailey, Jr., *has a weblog* (in addition to his essential *Scholarly Electronic Publishing Weblog*). One of the first two posts ([www.escholarlypub.com/digitalkoans/](http://www.escholarlypub.com/digitalkoans/)) is a brief comment on April 20, "Family Entertainment and Copyright Act." I love his example: "Just imagine what *Kill Bill* looks like on ClearPlay. Not even time to eat your popcorn." Then Charles notes, "If protecting the artistic integrity of movies doesn't matter to you, I suppose this law is harmless enough, but is it the infamous 'slippery slope'?" He goes on to suggest other situations.

I posted a lengthy comment noting that I don't see the problem with the law, for reasons noted earlier. Quoting myself: "It's an issue of a consumer being allowed to use a purchased (or rented or borrowed)

product in the manner the consumer sees fit. An author can't prevent you from skipping 'nasty' chapters in a book; RIAA can't prevent you from skipping 'nasty' songs on a CD—and neither of them can prevent you from having someone tell you which parts are nasty and should be avoided. Why should MPAA be able to tell you that you can't skip the nasty parts?... And, paranoid as I am, I don't see a slippery slope here. The slippery slope I see is the suggestion that the creator or copyright holder should be able to control how you use a legally-acquired copy."

Charles responded with a concern that such skipping might be done *without* the user's choice. It's a thoughtful response, **worth reading**.

### Deep links

"Family Entertainment and Copyright Act Passes" appeared April 22, 2005 on this EFF weblog ([www.eff.org/deeplinks/](http://www.eff.org/deeplinks/)). Fred von Lohman notes, "There has been some alarmist reporting about the bill. While it's decidedly a mixed bag, I think the bill should be marked as more victory than a defeat for the public interest side in the copyfight." Von Lohman regards the anti-camcording provision as largely redundant—and while the post labels the new pre-release penalties as "a step in the wrong direction," it goes on, "panic seems premature."

FMA, on the other hand, is marked "definitely a step in the right direction, as it empowers innovators to deliver technologies that let you control how the movies you own or rent are presented in your living room." The problem is that it's a relatively narrow fix. The big "silver lining" is that so much of what Big Media was after in 2003 and 2004 has gone by the wayside—that the bill covers so *little* ground.

### Infthought

Finally—for now—Seth Finkelstein wrote about the bill on April 22, 2005 at *Infthought* ([sethf.com/infthought/](http://sethf.com/infthought/)). He focuses entirely on FMA and says it's "generating a mini-feeding-frenzy over a combination of the perennial definition-of-censorship debate, combined with the understandable desperation of copyfighters to grasp at something, anything, to have a victory." After quoting the relevant portion, he says, "In simple terms, this is aimed at the market for religious prudes who want expurgated movies"—then goes on to consider the "fairly obscure tension" in copyright law that made FMA necessary.

He concludes, "This isn't much of a 'free speech victory.' It isn't really a 'free speech defeat' either. It's

more of a clever solution to a political copyright problem, that doesn't help anyone besides those directly involved in movie bowdlerization." He says it's not a threat but also not a big win, and calls it "a tiny sop to fanatical narrow-minded control-freaks, no more."

I agree that it's not a big win—the big win, if there is one, is in *not* getting the really bad provisions that were up for adoption in 2004—but I disagree with his characterization. The law does not direct itself to one particular market, and I don't believe it's reasonable to assert that it does. I'm no "narrow-minded control freak," but I might choose to use something like ClearPlay for certain movies that I might otherwise find worthwhile, but where I'm too squeamish for the explicit blood and gore. Call me a wimp—but don't call me a control freak.

## Moral Rights

The claimed rights of directors to control the manner in which you watch their work is akin to the moral rights concept that's common to European copyright law but much less significant in the U.S.

Bill Thompson wrote "The copyright 'copyfight' is on" at *BBC News* on February 18, 2005 ([news-vote.bbc.co.uk/](http://news-vote.bbc.co.uk/)). He gets the basis for contention over balance right: "the basic argument is between those who see creative works as just another type of property...and those who see copyright as a deal struck with creative people by the state, one which is intended to benefit both sides." He notes the extent to which the first view has gained precedence, citing the example of a lawyer at a hearing offering a simple term for changes to copyright law that would allow blind people to break copy protection in order to use text-to-voice software on ebooks: "expropriation."

The interesting element is a little later: Thompson discusses *moral rights*: "the rights I have as a creator to control how my work is used and exploited. Moral rights are not about money but about integrity, and they pose great problems for those who want to liberalise copyright because they open questions of judgment, taste and even politics." Thompson feels that Creative Commons licensing prevents exercise of moral rights. He believes changes are likely to disregard the interests of writers, artists, and composers.

Seth Finkelstein discussed Thompson's piece in a February 28, 2005 post at *Infthought*, calling moral rights "certain fairly obscure provisions of copyright law"—generally true in the U.S., less so in Europe. He

wondered whether people were confusing “moral rights” and “morality of property rights.” Thompson responded that his problem was with blanket or compulsory licensing of content, not fair dealing.

Larry Lessig also discussed the Thompson essay on *lessig blog* on February 26. He believes “there’s just a simple misunderstanding here that we (CC) needs to do a better job addressing.” He notes that CC just offers license choices. It doesn’t say what you should use. Lessig also notes that moral rights can’t be subdivided as easily as copyright—and that a CC mechanism wouldn’t work well for moral rights. CC doesn’t affect moral rights: In jurisdictions where those rights are respected, a CC license won’t abandon them.

Comments on Lessig’s post are all over the map, starting with Tom Albrecht’s *equation* of economic and moral issues, since he believes *private property* is a moral right. Rob Rickner takes a strong stance that “Authors and other creators DESERVE and have EARNED a right to control their works because of the hard work they put into them (Locke) and because the works are an expression of themselves and their personhood (Kant and Hegel).” But Rickner’s also a CC supporter. Josh Stratton says flatly, “I don’t think that authors deserve anything.” He doesn’t give a damn about creators, he just wants their creations. He’s not a big CC supporter—“I’d prefer to relax the laws instead.” I’m not sure Stratton is a full “you wrote it, it’s *mine*” anti-copyright advocate, but he’s close. I disagree with Stratton even more than I disagree with RIAA (if that’s possible).

What about moral rights? I have mixed feelings, but generally take the “single work or not published vs. reproduced/published work” cut. I believe an artist should have some moral rights over the disposition of a unique work of art. I believe a writer (or whoever) should have complete and total rights over any wholly unpublished work. Once you put it out in public, in reproduced form, things change. I Once I’ve purchased a copy of your DVD, you have *no* moral right to prevent me from watching it in the manner I prefer. Once you’ve published a book, you have *no* moral right to keep me from defacing, selling, or otherwise [mis]using it.

If some wacko right-wing operation puts one of these essays into one of their newsletters, with no charge for that newsletter, I *don’t* have a moral right to object to that inclusion: I’ve attached a CC license that settles that issue as a side-effect of settling the copy-

right permission issues. Heck, my weblog is on at least one blogroll that I’d prefer not to see it on (shudder)—and I don’t think I have a moral right to complain about that either.

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## Following Up

- “Vlid” instead of “valid” in the quotation within my commentary on Michael Nellis’ “What constitutes ‘information?’” (*C&I* 5:6, p. 21) was neither an error in Tomeboy’s original statement nor in Michael Nellis’ transcription of the quotation. My fingers get full credit.
- The printability tests reported in the DISCONTENT PERSPECTIVE (same issue) were done using FireFox. Some, perhaps most of the blogs on the “Losers” list print better from within the SP2 flavor of Internet Explorer 6, although I had some of the same problems with earlier IE versions.
- Blogs can change rapidly. At least three of the blogs on that “Losers” list now rate as “Winners”—because the bloggers have switched to WordPress or, as in the case of Baby Boomer Librarian, because bloggers have modified the templates enough to make Firefox (and other) printouts clean. I’ll do a followup soon, but not just yet.
- Morgan A. Wilson of *explodedlibrarian* let me know that, as you might guess if “A.” was spelled out “Anthony,” I used the wrong pronoun in referring to *him*.

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## ©3: Balancing Rights

For some people it’s simple.

- If you’re a songwriter or RIAA/MPAA member with the attitude that creative works are property, the only rights at issue are yours as the property owner. You should be able to control every use and copy made of your property, charge whatever you want, and prevent any use you deem inappropriate—and your heirs should have the same rights in perpetuity.
- If you’re a digital-rights extremist, the fact that copying most “intellectual property” doesn’t modify or eliminate the original prop-

erty means copyright is irrelevant. If something *can* be copied at no real cost, then it's *appropriate* to copy and reuse it.

Most of us fall somewhere in the middle. I assume that most readers of *Cites & Insights* fall somewhere in the middle. If you're a digital-rights extremist, my use of the Creative Commons license is irrelevant: How can I stop you from doing whatever you want with the material? If you're a "property"-rights extremist (and overlook the fact that many kinds of real property have restrictions on the use or control of that property), my use of the CC license is inappropriate, some kind of socialist gesture.

I have no ideal solution for the balance of rights. I'm not sure anyone does. As a creator of sorts, I understand that distribution is a great publicity tool—that I benefit from a certain amount of unintentional distribution, as long as it doesn't swamp the paid, legitimate distribution. But that's not the same as saying that all copying should be legitimate.

I suspect EFF is too radical on one side for my taste. I *know* much of Big Media pushes too hard in the other direction. This section of *Cites & Insights* copyright coverage looks at strains in one direction or another as various groups try to increase their rights to use or control copyright material. Very few issues fall neatly into this area; I'm slotting material based on what feels like the dominant thrust of the issue.

## Piracy, Infringement, and Peer to Peer Networking

My personal distinctions in this area:

- Allowing someone else to copy material that you know to be protected by copyright is frequently infringement. I don't condone it—but I do object to calling it piracy.
- **Piracy** as a term should, I believe, be reserved for *commercial large-scale infringement*, such as bootleg DVDs and illicit CDs of software or music. I wouldn't argue with using "piracy" to refer to *all* commercial infringement, but I think scale enters in as well.
- Peer-to-peer networks have many legitimate uses—but it's probably true that they're heavily used for large-scale casual *noncommercial* copyright infringement.
- I don't condemn the RIAA for suing those who have knowingly made large quantities of copyright material freely available for others

to copy. I do think they'd be better off attacking real pirates (which they and the MPAA certainly do) and spending less time hassling would-be customers and trying to get draconian legislation passed.

### *Deliberate infestation*

Ed Felten posted "Recording industry publishing infected P2P files?" at *Freedom to tinker* on January 3, 2005 ([www.freedom-to-tinker.com](http://www.freedom-to-tinker.com)). He cites a *PC World* story saying the industry may be publishing copies of songs that are heavily infested with spyware.

The files are encoded in a Microsoft file format. When the user plays such a file, the user's browser is forced to visit a URL contained in the file. For the files at issue here, the page at that URL uses various spyware-insertion tricks to try to infect the user's machine with standard spyware programs.

According to Ben Edelman, one such page contaminated his computer with "the most spyware programs I have ever received in a single sitting, including at least the following 31 programs..." The story also notes that for at least one such file, the spyware page is hosted by Overpeer, "a company that does lots of business with the recording industry." Overpeer spreads "spoofed" files on P2P networks, for example.

Felten wonders who approved the release of these infested files onto P2P networks. If Overpeer didn't have the permission of record companies, then it was infringing copyright. If it *did* have that permission, then there may be a different problem.

### *The shadow internet*

Here's one that may be worth reading and that I don't fully understand. Jeff Howe's article in *Wired Magazine* 13:1, named above, describes "pirate networks that are terrorizing the entertainment business" and specifically "topsites" that Howe asserts are *really* the source of "nearly all of the unlicensed music, movies, and videogames available on the Internet."

The story's interesting, but it seems to describe a set of large-scale commercial operations, the kind that produce pirated DVDs and CDs for profit. There's an estimate that this "media darknet distributes more than half a million movies everyday"—but most knowledgeable people say it's absurd to try to download movies with DVD quality or anything close to it. Is this article describing peer-to-peer sources?

### *DRUMS: In search of a file-sharing solution*

Scott Matthews and friends are trying to establish a true middle ground: an "increasingly detailed, com-

elling, and plainly productive step toward resolving the mess of the copyright wars.” The proposal, at [www.turnstyle.com/DRUMS/](http://www.turnstyle.com/DRUMS/), is a new “centralized/distributed metadatabase of authored works” vaguely modeled on DNS; DRUMS stands for Digital Rights Uniform Metadata Service.

Essentially, the idea is to create a central database, along with an authority (or a handful of authorities) that can add/update it. The root DRUMS database would likely include data such as author names, work titles, publication dates, types of work, file checksums, flags indicating which rights remain reserved and which rights have been granted, and so on. It would not contain the actual works themselves.

The root DRUMS database could then be propagated out across the Internet, in a fashion similar to DNS propagation. These distributed DRUMS databases could be queried via a simple and standard protocol, and/or portions of them could be published via protocols such as XML/RSS.

The proposal does nothing to “resolve the P2P situation,” but provides a new platform for applications and services. It’s similar to a central database for Creative Commons-licensed media, but going a little further—at least by providing an easy way to locate the rightsholder for a given work.

*Joho the blog*—that is, D. Weinberger, who says, “I am a free culture hippy”—has a February 8 entry wondering what an authorized registry would do that Creative Commons licenses don’t already do. Matthews says, “Think of it as a common resource pool...” and as adding a bit of infrastructure to CC. “Each CC work is essentially an island—think of this as making them all one big archipelago.” Two pages of comments follow, with Scott Matthews responding to several of them. For example, while CC does have a search engine, that engine “won’t ever include non-CC works” and doesn’t provide a way to build applications on top of it. Sébastien Paquet suggests that one approach might be generalizing the CC concept, then using spiders to build databases. Matthews wonders whether such a system could be sufficiently trustworthy but notes that it’s an interesting idea.

Patrick Ross at *IPcentral.info* discusses DRUMS in a February 8, 2005 post. He notes that he’s looking for a middle ground, although he continues to find people on both sides who insist that there is no middle ground. He goes on to anticipate problems with DRUMS, some of which I find questionable if Ross really is looking for a middle ground, e.g.:

3. Ensuring DRUMS doesn’t undermine the copyrights inherent to creative works not registered in DRUMS.

Since DRUMS is proposed as a *voluntary* registry, this looks like a red herring, as I’d expect from a copyright hardliner claiming to look for middle ground.

Siva Vaidhyanathan weighed in on February 9, 2005 at *Sivacracy.net* ([www.nyu.edu/classes/siva/](http://www.nyu.edu/classes/siva/)). He suggests ruminating on new ideas like DRUMS instead of shooting them down, but goes on to slam “the ad-hominem-addicted hacks at the Progress and Freedom Foundation.” I sense a bit of ad hominem in this posting as well. (Given that Siva V. capitalizes Free Culture Movement and talks about “my side,” I’m guessing he’s closer to the “copyright is irrelevant” side than I am. I haven’t read much of his stuff. I used to check *Sivacracy* but gave up on it months ago. Consider that my limitation.)

### *Random weirdness*

*Copyright* had a marvelous entry on February 6, 2005: “RIAA sues dead people.” Apparently, one of the thousands of RIAA suits was against an 83-year-old woman who died last December, claiming that she made more than 700 songs available on the internet. That’s not the heart of the posting, which is about the general success of RIAA’s mass lawsuits and the problem with that approach to “solving” the P2P problem.

Karl Wagenfuehr put together a cute table comparing shoplifting a DVD vs. downloading, which Cory Doctorow posted at *boingboing* on February 10, 2005. The conclusion: Shoplifting is much safer. The minimum and maximum penalties for shoplifting pale beside the penalties for infringing.

## Digital Rights/Restrictions Management

Lots of miscellaneous items in the most intractable area of rights-balancing for digital media.

- John Borland wrote “New CD copy-lock technology nears market” on December 16, 2004 at [news.com](http://news.com). These pseudo-CDs would be the first Sony-label “protected CDs” in the U.S. (and may be on the market, for all I know), although BMG, now part of the same company, released some deliberately-defective discs last year. Supposedly, the new technology, from First 4 Internet, “wraps ordinary songs in strong encryption, but in a way that still allows regular CD players to read them.” That’s quite a claim. More later?

- I remember an odd *Wired* special issue that was sent to former as well as current subscribers and consisted entirely of favorable reviews of hot new gadgets. Cory Doctorow was unhappy that *Wired* didn't seem to care about DRM as it was reviewing "devices that are all crapped up with studio-paranoia-generated restriction technology." As related in a December 29, 2004 *boingboing* post, Chris Anderson of *Wired* responded that he takes a "middle ground" position—but Doctorow asserts that it's a false middle ground. While I increasingly regard EFF as radical or at least unreasonable in some of its tactics, I think Doctorow's right on this one. For example, Anderson's basic argument is, "much as we might want it to be otherwise, content owners still call most of the shots. If a little protection allows them to throw their weight behind a lot of progress towards realizing the potential of digital media, consumers will see a net benefit." But the whole point of DRM is to *limit* the potential of digital media—and it's mostly a *Wired* assumption that digital media are automatically better. Doctorow points out that DRM isn't protection against thieves; it's only a way to "keep honest people honest" (which Ed Felten pointed out is like keeping tall people tall). "DRM isn't protection from piracy. DRM is protection from competition." As for content owners calling most of the shots, Doctorow notes that record companies didn't get to design record players, film studios didn't get to ban VCRs (though they tried!), and that the RIAA still hasn't been able to make MP3 go away. "This is a profoundly ahistorical proposition. Never in the history of media from the dawn of the printing press right up to the invention of the DVD have we afforded this kind of privilege to incumbent rightsholders." There's more, including the astonishing fact that HBO turned on a cable flag midway through the *Sopranos* season that prevents you from burning PVR-recorded episodes to DVD—and another show that will disappear from your PVR two weeks after it's aired, whether you've watched it or not.
- A little later (January 24, 2005) Doctorow reminded us, "You're a sucker if you believe

no-DRM, no-release threats from Hollywood." The studios and networks have consistently threatened that "high-value" content would be withheld from broadcast TV if the broadcast flag wasn't implemented. Viacom (owner of CBS) flatly said in a December 2002 filing that CBS "will cease providing any programming in high definition for the 2003-2004 television season" if the broadcast flag wasn't in place by summer 2003. Pretty much the entire CBS prime-time schedule continued to be available in high-def in 2003-2004: The network was a leader in making a broad schedule available, and the DRM case was pure bluff.

- The ever-thoughtful Prof. Edward W. Felten (normally "Ed Felten" in these pages, but he deserves proper respect once in a while) posted "Groundhog Day" at *Freedom to tinker* ([www.freedom-to-tinker.com](http://www.freedom-to-tinker.com)) on February 3, 2005. He suggests that SunnComm might consider the holiday to be more like the movie, where you keep repeating the same unpleasant events over and over. SunnComm's announced a new "copy protection" technology that might not rely on people leaving Autorun in place (or disabling it with the Shift key when inserting the CD), as the previous "protection" technology did. Felten notes that other CD-DRM technologies rely on data errors that would be ignored by regular CD players but would prevent CD-ROM drives from making clean reads. As he notes, that never worked very well—partly because lots of portable and other CD players use computer CD drives, making these pseudo-CDs unplayable, but mostly because defect-reading problems tend to get corrected. Reading the PR for the new technology, Felten concludes that it will inherently have the same problems.
- *Scientific American* editorialized on February 14, 2004, "Beyond the big ©: Copyright becomes 'no right to copy.'" The piece starts by noting that *Romeo and Juliet* was adapted from Arthur Brooke's poem *The Tragical History of Romeus and Juliet* (itself based on a French translation of various Italian stories), so that a contemporary Shakespeare "would be spending a lot of time with lawyers. After briefly

noting recent trends in copyright legislation, the editorial says, “Copyright in its current form fails to strike a balance between the extremes of allowing total control over every work—‘all rights reserved’—and an anarchic system in which pirates steal wantonly without recompense to owners. Overly strong property rights can threaten the Internet as a medium capable of fostering dynamic interchange of ideas.” Nicely put. The editorial goes on to mention Creative Commons, BBC’s plans to make archival material available for noncommercial use, and the need for the internet to be “more than an outlet for commercial interests.”

- Good old Macrovision. According to Ed Felten’s February 15, 2005 post, they’re at it again, with a *new* passive anti-copying technology for DVDs: RipGuard, which “tries to code the DVD data on the disc in a way that triggers bugs in popular DVD ripping programs, while remaining readable on ordinary DVD players.” It’s more ludicrous than most, even though RipGuard could be modified: Most ripping programs are legally questionable in the U.S. anyway, and it’s fair to assume they’ll be updated as quickly as the bugs are encountered. Macrovision can’t change the program on already-released DVDs. The most this can do is inconvenience honest people while having little or no effect on pirates.

### *Is DRM evil?*

Getting back to the first Cory Doctorow item, Chris Anderson’s post carried the title above and appeared on December 29, 2004 on *The long tail* (of course Anderson is writing a blog as he turns a decades-old truth about most media into a hot new *Wired*-approved book), [longtail.typepad.com/the\\_long\\_tail/](http://longtail.typepad.com/the_long_tail/).

You’ve already read portions of Doctorow’s response. Anderson asserts that *Wired* is “unashamedly activist on issues we believe in, and DRM abuse is one of them. It’s just that we take a more pragmatic stance to serve a more mainstream audience.” He goes on to offer a confused combination of pro-Lessig but also pro-DRM because it’s “pro-consumer” rhetoric. Here’s one of those quotes that sends middle-of-the-roaders like me up the wall:

The real question is this: how much DRM is too much? Clearly the marketplace thinks that the pro-

tections in the iPod and iTunes are acceptable, since they’re selling like mad. Likewise, the marketplace thought that the protections in Sony’s digital music players (until recently, they didn’t support MP3s natively) were excessive and they rejected them.

Give me a break. How many iTunes users make conscious decisions that Apple’s level of DRM is “acceptable,” as opposed to not thinking about it? For that matter, if the iPod didn’t support MP3, would it *really* be selling that well? Anderson gives the game away almost immediately: He bought a Media Center 2005 PC “to serve as a central tv/video/music/photo server for or house.” He loves it. It streams “content” to various boxes and to TVs. “It has some DRM restrictions, including not streaming DVDs over the network...but nothing I care about that I can’t work around in one way or another.”

I’m not sure what to say here. He’s got a “central [media] server” that can’t be used for DVDs. Or, presumably, for any other stuff with DRM. If he’s “working around” it with software—that’s probably a DMCA violation. So why didn’t he go with a DRM-free media server, this editor who believes “the market” is the appropriate place to decide how much DRM is too much? “I just can’t be bothered.”

“Did I sell my soul to the Man? No, I just got a cool technology that makes our life a little bit better. In the real world, that counts as a win.” And, in the process, sold your technological future to the Man. You don’t have to be as far to one side as EFF to see what’s wrong here.

### *Digital rights management: A failure in the developed world, a danger to the developing world*

That’s the title of a lengthy paper prepared by the Electronic Frontier Foundation and a group of other organizations, intended for the International Telecommunications Union, ITU-R Working Party 6M Report on Content Protection Technologies. You’ll find it at [www.eff.org/IP/DRM/itu\\_drm.php](http://www.eff.org/IP/DRM/itu_drm.php).

The executive summary is three pages of bullet points working off the primary premise:

This paper discusses the failure of DRM in the developed world, where it has been in wide deployment for a decade with no benefit to artists and with substantial cost to the public and to due process, free speech and other civil society fundamentals.

*No benefit to artists:* that’s a strong claim. At the end of the summary is this paragraph, which makes the claims even stronger:



Policy-makers around the world have to juggle many priorities: industry, public interest, cultural preservation, education, and so forth. DRM has been positioned by its adherents as a system for accomplishing many of these goals with little cost. In fact, the reverse is true: DRM exacts a terrible cost to the public, to performers and authors, to educators and cultural institution [sic], and it delivers nothing in return. DRM is a system for delivering less freedom to performers and authors and the public while charging more. It is all cost, no dividend.

Does the paper make that extreme case? You'll have to read it yourself: I'm not prepared to offer a conclusion. It certainly includes some strong examples of the cost of DRM and the ways it discourages innovation. It's **worth reading**.

## Everything Else

Sometimes-brief comments on a range of documents and reactions, not all of them brief.

### *Righting copyright: Fair use and "digital environmentalism"*

This Robert B. Boynton essay appears at [www.bookforum.com](http://www.bookforum.com), as part of *Bookforum's* February/March 2005 issue. Boynton starts with, "Who owns the words you're reading right now?" and explores that question a little: If you purchased a copy of *Bookforum* you can lend or sell it to anyone; you can link to it on the internet but can't duplicate the whole thing on your web site without permission; you can copy it for teaching purposes but not sell those copies—but if Boynton made the pages into a collage and sold it, the customer couldn't alter the collage.

Boynton claims that the "logical goal" of Google Print is to give readers "full access to the entire contents of that library," and says this goal "will be undercut by our intellectual property laws." This assumes a lot about Google Print's logical goal—and his further note that *someone* will develop software to link Google Print to a convenient PoD service seems to suppose that Google won't link to a PoD service itself. I think it likely that Google will do exactly that, at least for out-of-print books.

Boynton notes some "copyright horror stories" and Richard Posner's argument for strengthening fair use and invoking the "doctrine of copyright misuse." Some good stuff here; **worth reading**.

### *Does first sale apply to DVDs?*

The proprietor of *FurdLog* ([ms11.mit.edu/furdlog/](http://ms11.mit.edu/furdlog/)) posted a puzzled entry on March 14, 2005, "First

Sale' and DVDs?"—noting an odd comment in a *news.com* item that day:

Selling a used DVD outright can be legally iffy, as it gets into complex copyright issues, but Peerflix offers a way around the sticky legalities.

The story was about Peerflix (an odd site for trading DVDs) and other new entrants into unusual movie distribution. The blogger prefaced a lengthy quote with "I'm not sure where this article comes off arguing that 'first sale' doesn't apply when it comes to DVDs, but I expect I'll get an answer soon enough." After the excerpt comes this: "Something in the EULA/shrinkwrap that I missed? Why doesn't 'first sale' apply to DVDs?" The blogger then suggests a possible link to a *March 1997* article from Mitchell D. Kamarck of Rosenfeld, Meyer & Susman, LLP, "specializing in intellectual property and entertainment-related litigation."

That article, pretty clearly written from an absolutist perspective on intellectual property rights, celebrates the forthcoming downfall of the First Sale Doctrine in the U.S.—and suggests that the Clinton administration "retreated from recommending abolishing the First Sale Doctrine altogether" because of the political clout of the videocassette rental industry.

Though the rental industry won the war over [the IP rights report], it will lose the war with the advent of DVD. Unlike the videocassette format, the DVD format can exploit existing exceptions to the First Sale Doctrine: the rental records and computer software rental exceptions. Both of these exceptions were created in response to growing record and software rental markets that prevented the copyright owner from realizing the full value of a copy of the work upon the first sale of that work.

That rhetoric should tell you all you need to know about Kamarck's stance: If you resell something you legally purchased that happens to be (or, actually, *contain*) copyright material, you're depriving the copyright owner of a part of the "full value" of that copy. No rental (without special license), no resale, and—I would assume—none of that socialistic free lending by public libraries. (Doesn't that also "prevent the copyright owner from realizing the full value"?)

Kamarck goes on to discuss the success of the recording industry in gaining a special law in 1984: You can't rent sound recordings. It was a pure power grab, and it worked. (Ever wonder why there are no CD rental stores? That's why.) In 1990, computer software makers made a similar grab, possibly with better justi-

fication—which is why you can't rent software either (unless you're renting *access* to the use of software).

The article—which you can find at [www.rmslaw.com/articles/art65.htm](http://www.rmslaw.com/articles/art65.htm)—celebrates the likelihood that the motion picture industry will exploit either or both exceptions: Providing the option of listening to a DVD soundtrack without watching the movie, then claiming that this makes the DVD a sound recording, or providing embedded software for viewing options and claiming that this makes the DVD a computer program. Kamarck goes on to predict that this means studios will only produce \$20-\$30 DVDs for the few movies that will predictably sell in the millions (with those DVDs including “no permission for rental”) and sell the same movies, plus all the other movies, at much higher prices to rental stores (with permission to rent).

In any case, the article continues, First Sale will go away “because of international pressures” thanks to trade agreements and the like.

It's interesting to read a hard-core copyright advocate celebrating the demise of customer flexibility. There are two fundamental problems here, one general and one specific to the *news.com* piece:

- Kamarck's article appeared *eight years* ago—at the dawn of the DVD industry. Given the, um, careful attention to enhanced revenue possibilities displayed by MPAA, isn't it astonishing that NetFlix (and its competitors) exist, and that Blockbuster *primarily* rents DVDs and computer games at this point? I don't remember hearing of multi-billion-dollar suits against NetFlix or Blockbuster.
- Apart from the fact that there is no EULA on a shrinkwrapped DVD, the sound recording and computer software *rental* exemptions do nothing to eliminate the remainder of the First Sale doctrine, specifically your right to sell something you purchased. There's no indication that selling a used DVD is any more “legally iffy” than selling a used book.

If that last statement isn't true, I'd expect additional huge lawsuits against SecondSpin, half.com, and eBay, just to name a few.

### *CEA's Declaration of technology independence*

The Consumer Electronics Association is hardly some socialist fringe group. It's composed of businesses, many of them big—the companies that make audio, video, home theater, gaming, and other electronic

equipment. When it comes to copyright, CEA tends to argue for balance—because the organization knows that unbalanced copyright will interfere with the freedom of its members to innovate and sell new products in an open market.

The brief essay introducing this Declaration, posted March 16 at [www.ce.org/publications/vision/2005/marapr/p06.asp](http://www.ce.org/publications/vision/2005/marapr/p06.asp), includes this paragraph:

We need to advance the fight against the unbalanced importance given to protection of IP and the increase in litigation against innovators. Public policies should encourage innovation and allow people to make full use of the opportunities provided by new technologies. IP issues need to be redirected to focus on encouraging and advancing creativity rather than on protecting existing business models.

The *Whereas* portion includes seven paragraphs about the *Betamax* holding and the “revolutionary technologies” that have resulted, and the extent to which Big Media has “resisted, opposed or sought to stifle new technologies and products, despite the fact that these technologies transform markets and create new avenues for profitable content creation and distribution.” Two notable (non-adjacent) paragraphs:

Our nation attracts the world's smartest and most innovative people because our society embraces and encourages entrepreneurship. Our nation of immigrants has created the world's largest technologies and communication systems. Currently, our leadership is being threatened by the content industry's misguided attempts to protect intellectual property...

...[F]alse equations have been drawn between intellectual property and real property, noncommercial home recording and commercial piracy, and national creativity and sales of particular products and formats, such as CDs.

The “Therefore” clauses boil down to six requests of policymakers, copied here in full:

- “**Recognize** that our founders instituted copyright law to promote creation, innovation and culture rather than to maximize copyright holders' profits, and that it can do this only if new technologies are not stifled and fair use rights are upheld;
- “**Reaffirm** the *Betamax* holding that a product is legal if it has significant legal uses;
- “**Resist** pleas by big content aggregators for new laws, causes of action, liabilities and ways to discourage new product introductions;

- “**Re-establish** the fundamental rights of consumers to time-shift, place-shift and make backup copies of lawfully acquired content, and use that content on a platform of their choice;
- “**Re-examine** the length of the copyright term and explore avenues for content to be readily available for creative endeavors, scholarship, education, history, documentaries and innovation benefiting society at large; and
- “**Realize** that our nation’s creativity arises from a remarkable citizenry whose individuality, passion, belief in the American dream and desire to improve should not be shackled by laws that restrict creativity.”

That’s not a bad prescription for balanced copyright—and it comes from big business. But not Big Media. As always, one wonders where Sony is in all this...

### *Reproduction of copyrighted works by educators and librarians*

Just a quick note on this 22-page PDF, “Circular 21” from the United States Copyright Office. It’s dry reading but may be useful when you’re considering difficult issues relating to fair use and photocopying. The circular, available at <http://www.copyright.gov/circs/circ21.pdf>, brings together “some of the most important legislative provisions and other documents dealing with reproduction by librarians and educators”—including some history of the discussion surrounding legislation, particularly in those cases where the House and Senate disagree. **Hard reading but potentially very useful.**

### Offtopic Perspective

## Family Classics 50 Movie Pack, Part 2

#### Disc 7

*Little Lord Fauntleroy*, 1936, b&w, John Cromwell (dir.), Freddie Bartholomew, Dolores Costello, Guy Kibbee, Mickey Rooney. 1:38 [1:32]

Charming in its own way, and a decent print that doesn’t seem to have six minutes missing. Freddie Bartholomew is the star; Mickey Rooney is his pal, a shoeshine boy. The envelope blurb gets the plot wrong, but that’s OK. \$2

*The Eagle*, 1925, b&w, silent (with unrelated orchestral score), Clarence Brown (dir.), Rudolph Valentino, Vilma Bánky, Louise Dresser. 1:13. [1:30]

Here’s an oddity: The opening credits include “Music score by Michael Hoffman,” but there’s no correlation between the music (which I assume was added later) and the plot. I have no idea why IMDB’s timing is 17 minutes shorter than the actual run time of the DVD. I’ve never seen a Rudolph Valentino movie before. Here, he’s an astonishingly ineffectual hero whose main virtues are being very pretty (not handsome, pretty) and reasonably honorable. Still, it’s one of those silent classics. The print’s in poor shape, but you can watch through it. \$1

*The Great Dan Patch*, 1949, b&w, Joseph M. Newman (dir.), Dennis O’Keefe, Ruth Warrick. 1:34.

A fine story of harness racing and true love triumphing over high society. Very good print, thoroughly enjoyable picture. \$3

*My Dear Secretary*, 1949, b&w, Charles Martin (dir.), Kirk Douglas, Laraine Day, Keenan Wynn, Helen Walker, Rudy Vallee, Irene Ryan, 1:34

Was Kirk Douglas really that young once—not to mention Rudy Vallee, Irene Ryan, and Keenan Wynn? First-rate knockabout romantic comedy, generally excellent print with better-than-usual sound quality. Oh, and the female lead (Laraine Day) is the strongest and most sensible character in the whole group—and comes out on top in the end. \$3.50

#### Disc 8

*Royal Wedding*, 1951, color, Stanley Donen (dir.), Fred Astaire, Jane Powell, Peter Lawford, Sarah Churchill, Keenan Wynn. 1:33.

Fred Astaire dancing on the walls, on the ceiling, and on a cruise ship dance floor in heavy seas—with Jane Powell, who’s very good. Excellent print through most of the movie (with slight damage in a few minutes), and a wonderful movie—not much of a plot (and Peter Lawford didn’t exactly set the screen on fire with his thespian abilities), but great dancing, fine singing, and just plain charming. Technicolor, generally vivid color. \$3.50

*At War with the Army*, 1950, b&w, Hal Walker (dir.), Dean Martin, Jerry Lewis. Polly Bergen. 1:33 [1:30]

This one was on the previous (non-TreeLine) multi-pack, so I didn’t watch it again. The print seems fairly good, with the sound odd (it almost reads as muffled stereo) and some damage. Lewis isn’t nearly as over the top as you might expect. \$2

*Our Town*, 1940, b&w, Sam Wood (dir.), William Holden, Martha Scott, Guy Kibbee. 1:30.

Thornton Wilder cowrote the screenplay for his own play and weakened the originally-downbeat ending in the process, but it's still a wonderful play. Opened up for the screen: There's still a narrator talking directly to the audience (the stage manager in the play) but the scenes are spread throughout the town and surroundings. Mediocre print, unfortunately, with damaged sound track and picture throughout; the play deserves better. \$1.50

*The Little Princess*, 1939, color, Walter Lang (dir.), Shirley Temple, Richard Greene, Anita Louise, Cesar Romero, Arthur Treacher. 1.31 [1:33]

This was apparently Shirley Temple's first Technicolor movie, and she's once again the adorable little girl who must endure suffering until it all works out in the last five minutes. That said, the print is excellent (essentially perfect, with vivid colors and clear sound), the cast includes some fine characters (Cesar Romero as an Indian major domo, Arthur Treacher as an elocution teacher/showman). Temple at this stage is too sweet for my taste, but it's still a good movie. How early was this for Technicolor? Here's a clue: The studio logo opening is in black and white! \$4

#### Disc 9

*My Favorite Brunette*, 1947, b&w, Elliott Nugent (dir.), Bob Hope, Dorothy Lamour, Peter Lorre, Lon Chaney Jr., Frank Puglia. 1:27.

The print's generally very good, although the sound track is scratchy. An odd blend of noir mystery and Bob Hope's comedy, with the tale narrated by Bob Hope as a children's photographer-turned-private eye who's on death row. Enjoyable, with a great cast. \$2.

*The Pied Piper of Hamelin*, 1957, color, Bretna Winstone (dir.), Van Johnson, Claude Rains, Jim Backus, Kay Starr, Doodles Weaver. 1:29 [1:27]

Made for TV? While the print's generally very good, there are quite a few little gaps—more disturbing than usual since this is a musical. Van Johnson has two roles (one of them the Pied Piper). The conceit here is that the music is all by Grieg. The problem here is that it's a lackluster picture. OK, but no more than that. \$1.

*The Big Trees*, 1952, color, Felix A. Feist (dir.), Kirk Douglas, Eve Miller, Edgar Buchanan, Alan Hale Jr. 1:29.

The print's excellent (the sound sometimes less so), but there's not a lot of depth here. Supposedly, Kirk Douglas did this one for free to get out of a studio contract. He does as well as can be expected with the thin material. Certainly watchable, but any good movie of the week would do just as well. \$1.

*Beyond Tomorrow*, 1940, b&w, A. Edward Sutherland (dir.), Harry Carey, C. Aubrey Smith, Charles Winninger, Maria Ouspenskaya, Rod La Rocque. 1:24.

The print and sound are both seriously flawed early in the movie, better later. This is a ghost story of sorts (three aging bachelor engineers sort-of adopt two struggling young people, the three are killed in a plane crash as the couple are getting engaged, the three come back as ghosts, with one of them trying to guide the couple...); it's nicely done (and the special effects are convincing for the time), but the print gets in the way somewhat. \$1.50.

#### Disc 10

*The Flying Scotsman*, 1929, b&w. Castleton Knight, dir., Ray Milland. 0:59.

Even though the opening credits mention music and show "Recorded by the RCA PhotoPhone system," this is a silent movie with an appropriate score and lots of dialogue slides, about a train engineer (on the Flying Scotsman) who reports his associate for drinking on the job, causing the associate to be fired. The associate swears revenge. The next day is the engineer's last run (after 30 years of on-time safe performance)—and the new associate has been making a play for the engineer's beautiful daughter (but doesn't know whose daughter she is).

And if that isn't exciting enough, with the well-filmed locomotives and the likelihood of an attempted train crash, something else happens just over halfway into the film (30:12 out of 59:04)—we hear voices. And from then on, except for about a minute shortly thereafter, it's a full-sound flick, including dialogue and the sounds of the locomotive. This was apparently one of the transitional movies, partly filmed in full sound, partly not.

Pretty good print, good soundtrack, and just enough plot for the short running time. A very young Ray Milland. Worth a look. \$2.

*Flying Deuces*, 1939, b&w. A. Edward Sutherland (dir.), Stan Laurel, Oliver Hardy. 1:09 [1:08]

If you like Laurel & Hardy, you'll probably like this one quite a bit—they're Americans in France who wind up in the French Foreign Legion because the fat one's trying to forget one of the young ladies at the hotel, who he's fallen for and who turns out to be married. The flying sequence is remarkable (and seems to wind up with the fat one dead and the other stranded somewhere in France), but otherwise it's L&H, like 'em or not. Decent print, some damage.

*The Blacksmith*, 1922, b&w, silent with unrelated orchestral score. Buster Keaton (dir. and star). 0:19

So how do you squeeze 50 movies onto 12 discs averaging six hours per disc? Stretch the definition of “movie” a little—as in some “festivals” of shorts or, in this case, a single silent short. Keaton’s a blacksmith’s apprentice during that period when blacksmiths dealt with horses and cars interchangeably. This isn’t the subtle acting Keaton; this is physical comedy, and lots of it. The music is wildly inappropriate (Pomp & Circumstance?). The print’s pretty good. \$1 on its own.

*Africa Screams*, 1949, b&w. Charles Barton (dir.), Bud Abbott, Lou Costello, Clyde Beatty, Frank Buck, Max Baer, Buddy Baer, Shemp Howard, Joe Besser. 1:19.

Another overlap with the freebie DoubleDoubles, so I didn’t watch it in full. The print seems to be in good shape; the sound almost seems to be stereo at times, but that’s probably just damage. As I noted last year, this is a relatively low-key movie, even with two of the Three Stooges in small parts. Enjoyable. \$2.

*The Magic Sword*, 1962, color. Bert I. Gordon (dir.), Basil Rathbone, Estelle Winwood, Gary Lockwood, Anne Helm, Liam Sullivan. 1:20.

Bert I. Gordon wrote, directed, produced, and (with his wife) did the special effects for this story—released by United Artists, but clearly not a big-budget movie. (The special effects probably don’t stand up to close scrutiny—or, really, *any* scrutiny.) You get Basil Rathbone as a villainous sorcerer (Lodak), Estelle Winwood as a slightly batty 400-year-old witch, Gary Lockwood as her adopted son (of many generations royal blood), Anne Helm as the beautiful young princess kidnapped by Lodak to be fed to his dragon a week later (the dragon needs one woman a week, but in this case there’s also bad blood with the king), and Liam Sullivan as the treacherous knight who says he’ll rescue her for half of the kingdom and her hand in marriage.

Gary Lockwood and six sometimes-dead knights from six nations get involved, seven curses come into play, little men clench their hands in front of the princess in her cell (I’m not sure why repeated hand-clenching is supposed to be terrifying, but she reacts appropriately), the witch gets a spell wrong and undoes Lockwood’s magic sword instead of doubling its powers...and, well, there’s lots of plot here, including the witch’s chess-playing monkey and two-headed servant. Pretty good print, slightly damaged sound, cheapo scenery and some name-actor chewing thereof. I can’t figure out how a 1962 film got into the public domain, but this is cheapo fantasy despite the cast. Maybe UA just let TreeLine use it for nothing? Not bad, actually. \$2.

## Disc 11

*Father’s Little Dividend*, 1951, b&w. Vincente Minelli (dir.), Spencer Tracy, Joan Bennett, Elizabeth Taylor, Don Taylor, Billie Burk, Russ Tamblyn, Paul Harvey. 1:22 [1:19].

Somewhat faded print with some missing moments, damaged soundtrack. All of which is too bad, because it’s a good movie with Spencer Tracy in deadpan comedic form. The plot turned up again in *Father of the Bride 2*. \$1.50.

*Utopia*, 1951, b&w. Léo Joannon (dir.), Stan Laurel, Oliver Hardy, Suzy Delair. 1:22.

The print’s in fair shape (a few missing frames)—but this is the last Laurel & Hardy movie and it shows. The act was getting old, as were the actors. Apparently filmed in France (running 1:40 as *Atoll K* in the French version), with all actors except L&H dubbed. Watchable, but made me feel that one Laurel and Hardy every five years was enough. \$1

*The Big Chance*, 1933, b&w. Albert Herman (dir.), John Darrow, Mickey Rooney, J. Carrol Naish. 1:02 [1:00]

I’m surprised the timing is only two minutes short: The dialogue has so many gaps that I gave up halfway through. The print is OK otherwise, but I found this unwatchable.

*Kid Dynamite*, 1943, b&w. Wallace Fox (dir.), Leo Gorcey, Huntz Hall, etc. 1:07 [1:06].

Speaking of unwatchable...I gave up on this one after the first 15 minutes, *not* because of the print but because I just couldn’t hack another movie with the East Side Kids. This was the third one in the set; that’s *at least* two too many.

## Disc 12

*The Iron Mask*, 1929, b&w, silent (with score, narration by Douglas Fairbanks, Jr., and sound effects added in 1952), Allan Dwan (dir.), Douglas Fairbanks. 1:35 or 1:43 [1:12]

Here’s an oddity: A silent movie with full orchestral score, continuous narration, and sound effects. The way I saw it, the release date is 1952, it’s a lot shorter (1:12), and there’s sound throughout—a composed musical score, generally-appropriate sound effects (horses, dogs, pistol shots), and most importantly, Douglas Fairbanks Jr. does a rousing narration throughout the movie. Impressive. Although I wonder about the other 20 minutes. Maybe they were cut on purpose: One review of the full flick says it’s slowed by long flashback sequences, and there are no flashbacks in the movie I saw.

You may think of Douglas Fairbanks as “Douglas Fairbanks, Sr.”—but he was never billed that way! This is good but not great Douglas Fairbanks, with a fair amount of humor and swordplay mixed in with the “further adventures of the Four Musketeers” plot. Decent print quality, decent sound. \$2.

*The Lost World*, 1925, b&w/tinted and toned, silent with unrelated score, Harry A. Hoyt (dir.), Wallace Beery, Bessie Love, Lewis Stone, Arthur Conan Doyle. 1:04 or 1:33 [1:08]

On the positive side, this movie has remarkably good special effects for 1925 (the dinosaurs and other prehistoric creatures aren't perfect, but they're not laughable either), Sir Arthur Conan Doyle appearing briefly in a movie based on his novel, and Wallace Beery as a classic mad professor, with hair out to there and a temper to match. It's good fun. On the negative side, it's a little choppy at times and the print's in so-so condition. \$1.50.

W. C. Fields Festival, consisting of *The Dentist*, 1932 [0:21], *The Golf Specialist*, 1930 [0:20], and *The Fatal Glass of Beer*, 1933 [0:20]. All b&w, W.C. Fields.

*The Fatal Glass of Beer* is supposed to be one of Fields' greatest flicks. It's certainly a little surreal and a prime example of well-played schtick, particularly the repeated “It ain't a fit night out for man nor beast” with its consistent results. The other two have less story and more descent into simple slapstick. I thought I was a W.C. Fields fan; I found this trio disappointing. Fairly good print and sound quality. \$1.

*The Road to Hollywood*, 1946, b&w, Bud Pollard (dir.), Bing Crosby, Bud Pollard (narrator). 0:56 [0:53]

It would be nice for the set to go out with a bang, but this is more of a whimper. Bud Pollard, an exploitation director, came up with a stunt to make some quick bucks. He uncovered three comedy shorts made by Danny Kaye for Mack Sennett; when Danny Kaye hit it big in the movies, Pollard stitched footage from the three into a movie he called *Birth of a Star*—a perfect second feature for theaters that could advertise a big-name star. So Pollard did the same again, this time stitching together excerpts from four Mack Sennett two-reelers starring Bing Crosby, made in 1931 and 1932, with lots of Pollard narration and laudatory comments. The whole thing is just a different form of exploitation. The four short musical comedies on their own might be interesting; the composite is a mess. The print's only so-so.

## The Second Half—and the Whole

By my estimation, the second half is worth \$40—and I think the comparison to the \$59 for the first half is

about right. While there are some excellent movies here, the set seemed to run out of steam toward the end. But what I'm saying is that this \$25-\$33 set is worth \$99 by my fairly tight reckoning. That's an incredible bargain.

In terms of my random education in early cinema, I have these first impressions from this set as a whole:

- Rudolph Valentino seems more pretty boy than actor, but that may be the part.
- Douglas Fairbanks was first-rate in every respect.
- My memory of the Three Stooges and Laurel & Hardy suffers when faced with the actual footage, but Abbott & Costello still look good. The East Side Kids? Not to my taste.
- Some silent pictures were great. Some were terrible. No news there!

*Till the Clouds Roll By*, *A Star is Born*, *Long John Silver*, *The Inspector General*, *The Time of Your Life*, *The Scarlet Pimpernel*, *My Dear Secretary*, *Royal Wedding*, *The Little Princess*: Nine first-rate movies with excellent or very good prints for \$25 bucks. Think of the other 41 as a bonus—and, in the cases of *Life with Father*, *Jack and the Beanstalk*, *The Last Time I Saw Paris*, *The Jungle Book*, *Gulliver's Travels*, *The Kid*, *Son of Monte Cristo*, *Captain Kidd*, *A Farewell to Arms*, and *The Black Pirate*, those bonuses are distinctly worth watching.

If you just can't stand b&w movies, you should skip this set. Otherwise—it could be better, but even beyond the 19 movies listed here, it's pretty good.

## Moving on

The second megapack I purchased was the Sci-Fi set. They're mostly C flicks. Watching 50 in a row might be a bit rough. Then I picked up two later sets—the megapack of good-quality TV movies, and the recent megapack with heavyweight Hollywood star power.

I'm chickening out—or finding a balance. I'll split exercising between cheap sci-fi and classy TV movies, one disc at a time. That means it will be at least six months before another OFFTOPIC PERSPECTIVE, if I keep doing them here. Meanwhile, as part of the ever-evolving relationship between *Cites & Insights* and *Walt at random* ([walt.lishost.org](http://walt.lishost.org)), I'll probably post reviews for each disc on the weblog as I finish each disc—four (or five) movies at a time.

## Ethical Perspective

# Weblogging Ethics and Impact

There's no stopping metablogging (blogging about blogging), which guarantees lots of weblog entries about the ethics of weblogs. I ran into enough of these, along with related essays that aren't weblogs and weblog entries only indirectly related to ethics, to form the basis for an interesting discussion.

My own position has changed since the first ETHICAL PERSPECTIVES: REPUBLISHING AND BLOGGING (*C&I* 5:3). I have a weblog—not my LISNews “weblog lite,” but a full-fledged (if lighthearted) weblog, *Walt at random* (walt.lichost.org). I try to follow most ethical and other guidelines I've seen for weblogs, giving credit for ideas whenever I can, using appropriate links—but studiously ignoring market-oriented advice on how short my sentences and posts should be.

### *J.D. Lasica*

J.D. Lasica posted the nine-page essay “The cost of ethics: Influence peddling in the blogosphere” at *Online journalism review* on February 17, 2005. Lasica notes the inevitability that “the captains of commerce would latch onto” weblogs as they become more popular and worries about the ethical standards bloggers should follow “when offered payments or freebies...for buzz.”

For example, if there are ads on your weblog, how can readers be sure the ads don't influence content? Did Marqui's experiment (paying bloggers to mention the company) cross an ethical threshold? Does a formal code of ethics for blogging make any sense—and how could it be enforced? What about wholly sponsored weblogs?

Lasica says bloggers don't play by the same rules as journalists (where there's supposed to be a wall between editorial and advertising) and don't seem to think they should. I'd hope that's not true. Five points appear to be widely (not universally) held as appropriate principles for bloggers: Transparency, following your passions, being honest, trusting your readers to form their own conclusions, and maintaining independence and integrity. I've surely seen a few bloggers who won't be happy until all readers form the same conclusions the bloggers do, but the other four tenets seem common to most blogs I read.

Lasica's discussion of Marqui's pay-for-blogging experiment is weakened significantly for knowledgeable readers by calling Elizabeth Lane Lawley, a professor at Rochester Institute of Technology, “Rensselaer Polytechnic Institute lecturer Liz Lawley.” Yes, Liz is what she usually goes by—but it's hard to believe any journalist could be too lazy to distinguish RIT from RPI and a lecturer from a (tenured) professor. (**Full disclosure:** I've known Liz since before she had a Ph.D. I disagree with her on lots of things and we haven't seen each other in a couple of years. I like and respect her quite a bit.) How hard can it be to double-click on a vita when you're talking about someone who's active on the web? Particularly for a hotshot web journalist like Lasica who seems concerned with ethics and journalism?

The next example strikes me as naïve: Om Malik criticizing a bunch of Silicon Valley “influentials” for being offered free products or services “to tout or not tout as they please.” Malik believes that after you write about a product “you ship it back.” I must say that, when I was reviewing CD-ROMs, it never occurred to me to send them back to the publishers—any more than it would occur to a book reviewer to ship the book back to the publisher. If that makes me unethical, so be it. I appreciate the fact that *Consumer Reports* buys everything it tests and that *Condé Nast Traveler* doesn't accept free travel—but I recognize that those are exceptions.

There's no question about one guideline:

If bloggers are paid by a corporation to write about the company, they're no longer acting as amateur journalists. Journalists cannot and do not accept payments from sources.

Lasica notes that bloggers are free to do so—but at that point they're not journalists.

Liz Lawley blogged about the article one day later, noting that her trust in the piece “is somewhat marred by JD's poor fact-checking” but that Lasica “does a decent job of outlining the issues in the debate.” Lawley defends her Marqui posting (it was impossible to ignore the sponsored nature of her posts)—but she didn't renew the contract.

Dan Gillmor posted “Blogging sponsorship, silicon valley style” on February 23, 2005. He notes a local blog announcing its first sponsor: “[T]he announcement comes in the form of an advertorial full of praise for the sponsor.” Gillmor compares this to a newspaper running a Page One story to praise a new

advertiser that's agreed to buy a full page ad each day. "Now, I'm not telling you that some newspapers don't bend over in sleazy ways for big advertisers. But I can't imagine a newspaper doing what I hypothetically suggested above. It would be over the top."

Is the comparison apt? Possibly—if the blog in question claims to be equivalent to a newspaper. But possibly not: Given the way blogs work, if the blogger is clear about the sponsorship, I don't know that there's anything wrong with saying nice things about the sponsor in the same post. Blogs are *not* newspapers; you can't push the analogy too far.

### *Librarian way*

A March 12, 2005 posting (programmingpeers.com/librarianway) discusses Cyberjournalist's *A Bloggers' Code of Ethics* (see *C&I* 5.3), and brings in Rebecca Blood's *The Weblog Handbook* and that book's section on ethics. I disagree with the relativist view of ethics suggested here: "Ethics really depends on your viewpoint, your culture, your local community of peers, and the time in which you live." I partially agree with this comment:

You have to decide how much credibility you want—and what your readership thinks is [credible]. If you have an intentionally biased Web site *and your readers know your bias*, then like intentionally biased newspapers and television programs, you are [credible]. [Emphasis added]

Not necessarily: Better to say that a transparent bias does not automatically discredit a medium—but it doesn't automatically give it credibility either. Some clearly liberal or clearly conservative publications and websites are credible. Some, on both sides, are full of disinformation and propaganda.

### **Civilities: An Ethics-and-Impact Cluster**

Jon Garfunkel writes *Civilities: constructing informative viewpoints* (civilities.net), with extensive entries on media, politics and the internet. He's given to lengthy essays, many interesting and provocative. I saved a handful posted between March 10 and April 8, which sparked this PERSPECTIVE as a whole. It's about ethics but also about impact, classification, archetypes and mapping the blogosphere.

Start with "Media legitimacy: The core responsibility of the media," posted March 10. "The ideal of journalism is to be responsible to the truth." That's a strong and appropriate start. "There is a common belief that blogging can meet this challenge." Can it? Has

the nature of the "contract" changed—does blogging really "put journalists in closer contact with their readers"? Garfunkel points out that "at larger scales, it's impossible" for the reader to become part of a "conversation." Some of the most popular blogs don't allow comments, undermining most of the "conversational" aspect.

Circling back to the "Webcred" conference, he notes that some of the "little guys" took issue with the claim of people like Gillmor to be blogging champions of the little guys. As Seth Finkelstein has pointed out on many occasions, and as Garfunkel quotes here, it's not that blogging eliminates gatekeepers—it just "has a *different* set of gatekeepers." This whole set of questions, and related issues of legitimacy, inspired Garfunkel to prepare a set of questions on legitimacy.

### *The legitimacy survey*

That set of questions appears the same day with the title "How legitimate are you to your readers?" or "Legitimacy: How responsible are you to your readers?"—depending on when you hit the post, as far as I can tell. (Changing the name of a post doesn't raise ethical questions, but it's a trifle irritating.) The list consists of 28 questions in seven categories: Consistency, Who are your readers, What sources do you use, What sources do you read, What tips do you get, Response, and Corrections. Garfunkel's looking for responses—but he also talks about "a perfect score," which makes no sense given the nature of these questions. Go to *Civilities* for the full set: Not only doesn't the blog have a Creative Commons license, it explicitly says "All rights reserved."

I should note that he refers to my "Dangling Conversation" PERSPECTIVE as "a thorough job of considering which online technologies facilitate conversations," which is not what he's after. His site requires registration prior to commenting—which I consider an obstacle to conversation but he calls "a value that protects the names of the innocent from misuse." I dunno: Seems to me that requiring a real email address should do that nicely (as *Walt at random* does because it's the WordPress default): If the blog proprietor is suspicious of any name, he can use the email address for verification or hold the comment until there is verification.

Some of the questions are (in my opinion) just plain strange for a weblog. "Do you admit when you don't know things, and how often is that?" I, for one, usually don't blog about something if I'm aware that I



don't know anything about it. That would seem a fairly standard limitation. Some of us, who don't own our blog hosting environment, can't answer some questions ("How many regular readers do you have?") and might be bemused by a question like, "Of your regular readers, how many do you know?" Well, I've met four or five people who I know have read *Walt at random* at least once—but even an obscure weblog such as that will have many more readers I've never heard of. To quote a Phil Ochs title (ah, the blog and the journal do mesh), I do try to go "Outside of a small circle of friends."

Some additional questions seem hardly worth answering. "Do you give any signal as to how confident you are, in a give[n] piece, that you've given the best sources that you can find to your readers?" Nah, I hide the good stuff, and only give my readers some junk that's handy. "Do you wrap up a conversation with a 'final word' to ensure everybody that you've listened to all their points?" Many good comments don't require responses—and "final words" suggest an end to the "conversation." On the other hand, there are good questions here—I'm nitpicking.

### Intent

This March 14 essay is a brief attempt to divide bloggers into four archetypes, a shorter version of a much longer essay (which I admittedly haven't read). Here's his breakdown, paraphrased:

- If you don't write for a public interest of some sort, you're a "**singer**"—like the majority of weblog writers, just singing your own story.
- If you're already well known beyond your online personality, you're a "**ringer**," "slumming it online, and we don't care any more about you now."
- If you focus on a narrow set of subjects, you're a "**stringer**"—"You tell me something new that you care about, and you make me want to care about, too."
- Otherwise, if you're more interested in providing the larger context for a story you're a "**finger**," and if you'd rather advocate a political viewpoint you're a "**winger**." He notes, "Some days it's tough to tell the difference."

Garfunkel admits these are just archetypes. He regards himself as a stringer, focusing on "constructing informative viewpoints, the study of how ideas are structured, promoted, and agreed upon." Within the library field, I suppose I'm a "ringer"—but *Walt at*

*random* is more the blog of a singer, and I'm happy enough with that.

### Identity

Garfunkel has ambitions to classify lots of blogs and bloggers. He's looking for *answers* to his questions, preferably building a "census" of some form. That's ambitious, but I'm not sure to what end. This March 15 post asks whether you use your real name—or, if you use a pseudonym, can your real name be discovered? Most library bloggers can answer "yes" to one of the two; so can I, to the first. He wants to know the "standard demographics categories"—age, sex, race, religion, location, language, education, occupation. I wonder why most of these matter *at all*. He goes on to propose "three additional questions" for each category: Is this known or easily guessed by your readers, do you write about your association with this identity, do you seek out people of the same backgrounds to engage, do you seek out people of "opposite" backgrounds to engage? (Yes, it's true again: Nobody expects the Spanish Inquisition.)

He offers his own three (4) answers to the demographic slices, but not the slices themselves. I would note that "opposite" is only meaningful for the second slice (what's the "opposite" of white, lapsed Methodist, California, or English, for example?). I'll be happy to answer most of the questions: 59, male, "white," Mountain View, CA, English, BA in rhetoric, library systems analyst. My religion is my business. As for the 3 (four) subquestions, I'd say most of them are irrelevant to my blog and to most of the blogs I read. Very few library webbloggers spend much time on ethnic, religious, "locational," or sexual issues. I write some items related to where I live and what I do and maybe my age. I certainly don't specifically seek out middle-aged white males from Silicon Valley to engage, and I do seek out much younger library people of all stripes to keep my mind active. Mostly, though, the census is just irrelevant to me and most library bloggers.

I can guess the religion in which *Library stuff's* proprietor may have been raised: So what? I know where some library webbloggers live and what they look like; in other cases, I haven't a clue. In no case *does it matter at all*—these just aren't considerations for weblogs unless the weblogs are focused on such personal considerations. Here's an example: *Caveat lector* is (at times) a deeply personal weblog. I have no idea how old Dorothea is (or I didn't until a few weeks ago), I don't know where she lives, I have no

idea what her ethnic background and religion are—and none of that matters.

### *Bloggers from the A-list to the Z-list*

This one, posted, March 20, 2005 shows considerable ingenuity and I **heartily recommend it**. Loaded down with links, which in my usual old-media fashion I haven't followed, it's enjoyable on its own. Getting past a brief commentary on the renowned A-list ("You know who you are..."), Garfunkel goes on to define 26 more categories (two for "X"). Just a couple highlights, once you get beyond the semi-serious "B list" (actually the "**Be-list**. Or more precisely, the Wanna-Be List") and the "**C-list**" consisting of grassroots journalists who "see everything":

- "The **E-list** is for the people who have no idea what blogs are. Or they do and don't care. They are still using mailing lists...some still call them e-lists."
- "The **LJ-list** is of people who use LiveJournal. They have a completely different culture than the blogosphere. They write in their journals for their friends, not for you, you nosey web-surfer."
- "The **R-list**: For Red-Staters..."
- "The **Why-list**. Why is the blogosphere so self-focused?..."

Go to all the links, and you'd get a curious cross-section of the "blogosphere," I suspect. You'd also lose an hour two that you could never get back, but isn't that what the internet is for?

### *Draft: Social Media Scorecard*

Here's one that has nothing to do with ethics. Garfunkel offers up a "scorecard" for 32 blogs, identified as "people [and groups] who identify as bloggers...and who seem to write about social media a good portion of the time." This isn't the classic "A list" although there's some overlap. What interests me most about this essay isn't the table itself—so far, I'm not a big "social media" person—but the concept behind it and his discussion of the measures involved.

Here's what he uses, paraphrasing and excerpting enough to stay within the bounds of fair use (hey, Jon, get a CC license!):

- Occupation, "grossly an abstraction" but enhanced by his anagram "CLUB" for related factors: **C**onference-goers/presenters, **L**inked to by others within the list, **U**niversity-affiliated, and **B**ook-published. Only two on the list get the full CLUB. Four have no letters

at all (in addition to the six group blogs in the list). My assumption is that "Conference" is restricted to those conferences about blogging and social media, and related conferences that Garfunkel tracks—and I suspect "Book-published" may be a bit narrower than I might think. (Or not.). Also general location (e.g., "US-BayArea")

- When the person started writing online and when the blog started.
- Frequency, the number of posts published in the first 12 weeks of 2005, sometimes estimated. (Garfunkel notes that the frequency of posts "generally is inversely related to the size of the posts.")
- Subscriptions at Bloglines, the only readily available public measure of readership.
- Inbound links and sources as asserted by Technorati; the table is arranged in descending order by inbound links.
- Three tentative computed measures that he lumps together as A, the amplification factor—a measure of effectiveness, if you will. A1 is the number of links divided by the number of posts. A2 subtracts the sources from the links (since many single links are really blogrolls) and does the same division. I can't figure out what A3 actually is or means, but it has something to do with the longevity of the weblog.

He admits "these are cheap calculations of imperfect data" but still sees patterns. If you're interested in social media and some of the "top" bloggers in that field, read it for yourself. As it happens, I have five of these weblogs in my Bloglines list, and should probably add a sixth and seventh—and as it also happens, only one of those five ranks high on any of the measures.

"Impact" (or "amplification") is one of those curious measures in net media, particularly with weblogs, since it involves assumptions about motives. If you're a "singer" (going back a couple of entries), you might be happy to have ten subscribers and an "impact" that can't be measured—you might even prefer it that way. For that matter, the nature of the audience may be more significant than its size. According to this essay, *mamamusings* (Liz Lawley's own weblog) has fewer Bloglines subscribers than *Walt at random*—but it has far more impact, albeit mostly in a different commu-

nity. (Liz is also part of *Many2many*, a group blog that scores high on almost any measure of reach.)

I'm blown away by some of the frequency figures. Dave Winer posted 1,094 items in 12 weeks: How is that even possible? Robert Scoble did 800, Jeff Jarvis 763. Can these folks really have that much to say that anyone wants to listen to? Well, Winer and Scoble have inbound links by the thousands—even more than Joi Ito, Jeff Jarvis and Dan Gillmor.

Some of you may have guessed where I'm going with this particular extended discussion: What would such a study show within library-people weblogs? (I don't mean weblogs produced by libraries, and I don't say "librarian" because I'm including myself in this group.) Such a study wouldn't be too hard to conduct. I'd probably throw in one or two other measures such as "conversation intensity"—average number of comments per post over a given period—and maybe a measure of overall *amount* of writing. Hmm.

### *The New Gatekeepers*

A series of essays with this title considers the likelihood that weblogging is no more a level playing field than traditional journalism and that the A-list are "gatekeepers" of a sort. The series may be ongoing. I have mixed feelings about this topic, as I do regarding Seth Finkelstein's occasional discussions of the blog power law and the difficulty of people outside the A-list being heard.

For big political and social topics on a grand scale, I believe it's all true. What I say about a general political and social topic at *Walt at random* or what Seth says at *Infothought* will have infinitesimal impact compared to comments from Jeff Jarvis, Markos Moulitsas Zuniga (DailyKos), Dan Gillmor *et al.*

Fortunately, life is as full of smaller interests and topics as the media is of niche magazines, small-run books, and tiny-circulation newsletters. Jeff Jarvis says there are actually "a hundred A-lists," one for each subject; I'd say it's more like several thousand. Jon Garfunkel responds that "*certain subjects are of more interest than others*: politics and the press, which touch on everything else."

To which I respond: "It depends." If "touching on everything else" is the key to interest, then we should all be discussing water, air, and food—and most of us spend as little time thinking about the press as we do thinking about air and water. I'd guess that most sensible people spend relatively little time each day thinking about politics. Most of us have other inter-

ests and concerns, most of those interests and concerns narrower than politics and the press. I've never read DailyKos, Jeff Jarvis (except back when he was a third-rate writer for *TV Guide*) or most other Big Names, and I don't believe my life is the poorer for it.

I've suggested that there's an "A-list" among library-related weblogs, but I've done so in a light-hearted manner and I'm beginning to think I'm just plain wrong. Yes, a few weblogs have four-digit Bloglines subscriber counts (and, doubtless, substantial Technorati ratings) and a slightly larger group have high three-digit counts (400 and up): If there's an A-list, that's the group. I don't consider those people gatekeepers in any real sense. Their friendliness or hostility to a new weblog won't make it or break it. They don't (usually) gang up on other bloggers. It's not even clear that they're taken more seriously than bloggers with smaller readerships. Some of the most influential library-related blogs fall into my casual "B list" categorization, with 100 to 399 Bloglines subscriptions—and a few fall into the "C list" (20 to 99).

Maybe I'm fooling myself. It's certainly true that a few of the A-list people seem to be speaking at a *lot* of conferences, and maybe there's a direct connection.

Getting back to Garfunkel's posts, "Part 2: Who they are" (April 5) discusses some of the "new gatekeepers" and their tendency to disclaim any special importance. Garfunkel wants to be heard by a wider audience; in that quest, he's become convinced "that there truly was an A-list" and that there are questions about their legitimacy and the power they wield. It's an interesting essay, best approached with some caution. There's one wild generalization: Going beyond the note that A-list bloggers "primarily link to each other," Garfunkel says "just about everybody links to them—whether in their blogrolls, or in everyday citations." That's a highly specialized use of "just about everybody," apparently restricted to those who blog about politics and the press (and maybe social media).

Technorati claims to track eight million weblogs and more than one *billion* links. The highest-ranked *individual* weblog has 15,358 links from 10,318. Only three weblogs have links from more than 10,000 sources; only 15 have links from more than 5,000.

"Just about everybody" turns out to be roughly 0.125% for the most "powerful" individual weblogger. **99.8% of weblogs** have no links to the top individually run weblog. At least 97% of all weblogs have no links to *any* of the top 15 "gatekeepers." By real-world

standards, that translates to “Nobody links to the gatekeepers.”

How many people *read* these enormously powerful gatekeepers? If Jeff Jarvis’ actual readership is ten times his Bloglines count, that comes out to 13,000 people: Not bad for a small-town newspaper but wretched for a Dominant Voice. On Garfunkel’s list of 32 prominent social-media weblogs, only one has as many Bloglines subscribers as the top two library-related weblogs. It does make you wonder.

That’s the charm of net media. We get claims of “A list,” dominance and enormous power—with numbers that wouldn’t register in traditional media.

Finally, here’s “The new gatekeepers, part 3: Their values,” posted April 8. He cites eight values “associated with, and celebrated in, the blogosphere”—then considers “what values they replace: Freedom over responsibility, Anonymity over traceability, Immediacy over thoroughness, Talking over listening, Breadth over depth, Ego over deference, Involvement over detachment, Serendipity over coherence.”

Garfunkel groups four values as pointing toward “quantity over quality.” He also notes that the values cited are those that press critics dislike, and that (some) blogs are exacerbating the flaws of 24-hour “news” channels. “This wasn’t supposed to be how journalism was saved.” That’s true, and I’m inclined to believe that blogs won’t “save” journalism or that it necessarily *needs* saving. Still, despite my nitpicking (and despite Garfunkel’s tendency to leave out words—he’s no better a proofreader than I am), this essay is well worth reading and thinking about. That’s particularly true if you *do* believe weblogs have some relation to journalism.

### Session Report: ACRL 2005

# What’s Next? Academic Libraries in a Google Environment

Joy Weese Moll

This presentation on Google was a late addition to the ACRL Conference, announced on an addendum sheet rather than in the bound program. Adam Smith of Google described the current status of both the Google Scholar and the Google Print initiatives. John Price Wilkins of the University of Michigan discussed

Google Print from the perspective of one of the participating libraries. Both presenters took questions at the end for about twenty minutes. People were still standing in line at the microphones to ask questions when the session ended.

Adam Smith briefly described Google, the leading search engine company with 52% market share. The core business is advertising. Google subscribes to a strict “separation of church and state” putting the ads in the right column and not allowing search results to be polluted. The Google philosophy is to develop products quickly and to push them out, marked as Beta test. The products will be improved based on observations of users and on user feedback. Google wants input from the library community regarding both Google Print ([print-support@google.com](mailto:print-support@google.com)) and Google Scholar ([scholar-support@google.com](mailto:scholar-support@google.com)).

## Adam Smith on Google Print

The Google Print project ([print.google.com](http://print.google.com)) has two components. Publisher partnerships form one component—Google indexes material that it receives directly from the publisher. The results of searches of these materials, which are covered by copyright, are displayed as three short snippets from the published material in a KeyWord in Context format.

The second component of the project consists of partnerships with libraries. Library books that remain in copyright are displayed in the same way as the publisher-supplied material. Library books that are in the public domain are displayed full text with no browsing restrictions. “No library books were harmed during the making of this project.” The libraries, not Google, choose what is digitized and in what order.

Smith acknowledged that determining whether a publication is in public domain requires a lot of work. To start with, Google is using very blunt rules. In the U.S., if it was published prior to 1923, it is public domain. Otherwise, Google treats it as a copyrighted work. Other blunt rules are used to apply to material that is governed by international copyright laws.

When books appear in Google search results, there is also a link to the record in Open WorldCat ([www.oclc.org/worldcat/open/default.htm](http://www.oclc.org/worldcat/open/default.htm)) to assist users in finding the book in local libraries. These results are most easily brought up by putting “book” as the first word in the search terms.

Smith made it very clear that this project is in its infancy. Google considers itself to be an international

company and intends to participate in digitization projects in other countries and other languages. Smith acknowledged that Google cannot digitize everything. Rather, Google wants to be a catalyst for digitization efforts, not the only game in town. Google's digitization project will help them build tools that will improve the searching of digital libraries created by universities, governments, and other organizations.

Google's motivation for Google Print is to enhance the quality of the search. Smith believes that Google Print does not signal the beginning of the end for libraries, that the roles of Google and libraries are complementary, and that Google Print will help the user discover and use library resources.

### **Adam Smith on Google Scholar**

The goal of Google Scholar ([scholar.google.com](http://scholar.google.com)) is to "create the best scholarly search experience" by providing an easy to use search in a single place. The relevancy rankings are different from those in Google, placing a heavy emphasis on citations. The results display links to multiple versions of articles (including pre-prints and repository copies) grouped together, giving precedence to the publisher version. Google Scholar displays results that represent off-line content, including books through Open WorldCat.

Current coverage of Google Scholar includes full text indexing of most scholarly publishers and societies. Google is still working to develop agreements with Elsevier and the American Chemical Society and would appreciate librarian encouragement to those two organizations. Google Scholar also indexes PubMed, institutional repositories, and more.

Google recognizes that Google Scholar will be most useful in academic environments if it works through OpenURL link resolvers so that users can easily access library-licensed resources available at their home campuses. That functionality has been implemented in a pilot program, done in cooperation with all the major link resolver vendors. Watch for it to roll over to Beta testing soon. Google is also interested in working with libraries that developed their own link resolvers ([scholar-support@google.com](mailto:scholar-support@google.com)).

Google Scholar, like Google Print, is a new project with many challenges ahead. Currently, the database is not updated frequently enough. Since rankings depend on citations, important recent articles do not appear at the top of the listing, even when they

probably should. Methods for disambiguating authors' names have yet to be developed.

### **John Price Wilkin on the library perspective**

John Price Wilkin, from the University of Michigan, began his presentation by stating, "Google has been a fantastic partner." He confirmed that Google is using nondestructive methods of digitizing and that UM retains both the physical book and a digital copy, a preservation surrogate, of each book. Wilkin believes the primary responsibility of the library is to be the long term curator of the physical and digital material.

The University gets a digital copy, identified by barcode. The scan is 600 dpi for print and 300 dpi for color/grayscale. The library specified the naming convention. The files have Optical Character Recognition. The quality is at least as good as what the University of Michigan had been doing for years on their digitization projects.

The library can do whatever it likes with its digital copies. UM will put their copies on-line when they develop specialized tools that better serve the UM audience than the tools Google provides for a general audience.

The plan is to digitize all 7 million books in the University Library (at UM, this does not include the law and business libraries but those libraries may enter into their own agreements with Google). Google indemnified the University of Michigan against any legal issues that arise from copyrights.

The digitization project at the University of Michigan has begun with material stored in remote shelving. These books are organized by size which helps with the workflow. The preservation librarians are providing lots of guidance.

Wilkin asked that we begin to consider the transformative implications of the Google Print project. He wondered about broad social issues like the effect of wide, efficient, democratizing access to information. He says that the project has already proven to be a factor in driving clarification of intellectual property rights, including the orphan copyright issue.

Wilkin also wondered about the transformative implications of Google projects on libraries. What are the possibilities for a cooperative, universal library? What are the implications for library-as-place given the paradox of rising gate counts as more information goes on-line? If libraries cede the generalist role to

Google, how can they facilitate specialization in service? How can Google Print and Google Scholar free up resources for related issues like institutional repositories and scholarly communication?

## Questions and Answers

Is Google aware that U.S. government publications in federal depository libraries are copyright free and will they be digitizing them?

Yes and yes.

Is the quality of OCR good enough for voice output?

Google has an accessibility team and is aware of the difficulties involved. Solving it for Google Print is considered a long-term project.

What progress is being made on addressing the difficulties of determining if a work is protected by copyright?

All the participating libraries and Google sent letters to the U.S. legislature requesting resolution of the orphan copyright issues. Google is encouraging a database of copyrights so that libraries and others can determine easily if a work is protected by copyright.

How does one search material that is not in English, particularly if it uses Cyrillic or Asian characters?

Adam Smith: "We haven't solved all of the world's problems. We are very aware of the difficulties there." He said they are working on it but the project is in the very early stages.

Google Print and Scholar may reinforce the notion that everything is on the web. What is Google doing to mitigate that impact?

Adam Smith: "Information literacy is critical, a critical skill going forward."

John Price Wilkin: "What better way to deal with that perception than to make sure as much as possible is on the web?"

What impact will Google Print and Google Scholar have on Open Access?

Wilkin felt that what Google does is work with publishes and libraries in their current respective roles, so the Open Access issue is orthogonal to these projects. "It will be back in our court."

Are the bindings of the books digitized in the Google Print project?

Yes.

## Comments

The prevailing attitude of Adam Smith and John Price Wilkin was enthusiasm for the possibilities of two projects that have just started. They are aware of many challenges. Google moves quickly to solve the easy ones (like using link resolvers) and devotes some resources to work on more difficult ones (like searching with Chinese characters). While the audience displayed less enthusiasm, the questioners seemed guarded and curious rather than hostile. As a student librarian concerned about the future of my newly chosen profession, I was pleased to see the high level of cooperation and understanding between Google and the partner libraries. Although it is difficult to predict the impact of these projects, the potential for mutual benefit is greatest in an environment of mutual appreciation.

Joy Weese Moll, [joy@mollprojects.com](mailto:joy@mollprojects.com), will graduate in December 2005 from the School of Information Science and Learning Technologies at the University of Missouri. See her blog, *Wanderings of a Student Librarian*, at [joy.mollprojects.com/blog](http://joy.mollprojects.com/blog).

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## Masthead

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