

# Cites & Insights

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## Bibs & Blather

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YBP Services, a division of Baker & Taylor, has provided some sponsorship for *Cites & Insights* since 2005. That sponsorship runs out at the end of 2009. I'm extremely grateful to YBP for those five years. Would *C&I* still be here if it hadn't been sponsored? I don't honestly know. Would it have been as robust as it's been? Almost certainly not...I would probably have looked for paying homes for many of the major essays.

I believe *C&I* still serves the field. I'd like to continue that service. Sponsorship would help—a lot.

You'll find more details on sponsorship on the first page of *C&I* 9:8 (July 2009). I'd love to hear from you.

### Library Access to Scholarship

This commentary appeared, in slightly different form, on *Walt at Random* on August 25, 2009. I'm repeating it here to give *C&I* readers who *don't* read my blog a chance to respond—say by September 25, 2009.

Here's the question: **Should I give up on Library Access to Scholarship as a continuing aspect of *Cites & Insights* coverage?**

#### *What it is*

LIBRARY ACCESS TO SCHOLARSHIP is one of several running heads for periodic essays on a given topic. The topic, in this case, is what it says—but that means it's been primarily about open access.

The difference between my coverage and others, I suppose, is that I'm focused on the library aspect of all this—that is, can OA decrease the extent to which scientific, technical and medical journals are under-

mining academic libraries' ability to pay for anything else—such as monographs and other books? Of course, I'm also interested in other issues of OA, but usually with that slant. (It's also true that I'm less firmly aligned with any “camp” than most writing in this area. I am, in effect, an OA independent.)

#### *Where it is*

I've done a fair number of LAS/OA essays—but not recently. So far, the section's only appeared once in 2009 (in the April issue). In 2008, it appeared in April, August and November. In 2007, it appeared in April (hmm: is there a theme here?), July and October. In 2006: May, October (two essays) and December.

In 2005, I see essays in January, March, June and November. In 2004, January (two essays), March, June, September and November. (Before March 2004, I used “Scholarly Article Access” or “Scholarly Access” as a heading—before I deliberately slanted the coverage to library-related issues.) 2003: May, July, September and November (two essays). Before late 2002, I didn't use thematic headings as much, but I believe there were three related essays in 2001 and 2002.

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In other words, while it's never been a dominant theme, it's been a significant recurring theme—more than two dozen essays, probably more than a book's worth if I slapped them all together.

#### *What's the point?*

Right now, I have 34 leadsheets in the Library Access to Scholarship folder—and another 58 items tagged “oa” in delicious. Ninety-two items in all.

Based on past experience, if I did my usual excerpts-and-commentary-with-synthesis approach, 92 items would yield around 46 pages.

And, frankly, I have very little desire to do the usual excerpts-and-commentary-with-synthesis on all of this material.

- **Value added:** I've never felt that I could add much value to Peter Suber's commentaries or, for that matter, Dorothea Salo's (when she was focusing on these issues). I've given up engaging Stevan Harnad or directly discussing his monotone writing (and I'm not sure I want to take on Phil Davis, although maybe somebody should). Lately, I'm not sure my synthesis and commentary are adding much value to any of this.
- **Effectiveness:** Most *Cites & Insights* readers are within the library field, I believe—and that's only reasonable, since that's my background and the focus of most topical areas. So I'm probably not reaching many scientists—or, if I am, I'm probably not doing much to convince them to do more about OA and access-related issues. As for librarians, I'd guess that my readers are mostly already convinced—that I'm neither educating nor convincing much of anybody who doesn't already get it. (I'd guess 1% to 3% of librarians read *C&I*, spiking to 20% or more for one particular issue. Those who need educating are mostly in the other 97%, I suspect.)
- **Futility:** Given what I'm reading from scientists as to how they relate to libraries and librarians, and given what I'm reading as to how they make decisions on where to publish and where to exert pressure, I'm feeling pretty futile about the whole effort. Not necessarily about OA as such—but definitely about my ability to make a difference.

### *Am I missing something?*

That's the open question. There are plenty of other places to find out about open access, most of them much more consistent in their coverage. For that matter, the cluster of OA-related articles on the Library Leadership Network draws pretty good readership, and I'll probably keep maintaining those.

If I'm missing something about *C&I*'s role or effectiveness in this area, I'm open to suggestions. But I look at article readership, feedback (or lack thereof), and my general sense of futility (and lassitude and the merits of taking a nap...) whenever I look at that folder and I think...maybe it's time to close that section.

If I do, I'll probably do a "brain dump"—very brief notes on some (probably not all) of the 92 outstanding items. I might, just for fun, put all 25-26 of the essays together and see whether they make anything coherent

enough to be given away as a combined PDF and sold as a PoD paperback. (My guess is they don't, but it would be easy to find out—and if I do this one, I *would* set the PDF price to \$0 and give it an explicit BY-NC license, just as *C&I* has a BY-NC license.)

### *Addendum*

Just for fun, I added a column to my infrequently-updated "civiews" spreadsheet—tracking downloads for issues and pageviews for essays—flagging each essay with a general category. (HTML essays didn't begin until 2004 and weren't consistently provided until 2005.)

Then I did a quick PivotTable on categories, total pageviews, number of essays in each category, and average pageviews per essay. Turns out there are slightly more HTML pageviews through 8/7/09 (just under 600,000) than there are whole-issue PDF downloads (just under 500,000).

I'm not sure how significant the results are, but they're interesting:

- Nineteen essays related to blogs and blogging are tops, with more than 2,900 pageviews each (in addition to whole-issue downloads).
- Nine essays related to Google Books and the Open Content Alliance come in a close second, just under 2,900 pageviews each.
- Eight essays related to net media (excluding nine related to Wikipedia and other wikis, averaging 1,700 pageviews) averaged just under 2,800 pageviews each.
- From there, it's a significant drop to eight conference-related essays (2,372 average), 25 copyright-related essays (2,242 average) and four (older) censorware-related essays (2,070 average)—and the whole slew of essays directly related to libraries and librarians (what's now called "Making it Work"), 43 of them averaging just over 2,000 each.
- Library Access to Scholarship? Actually better than I expected, with an average of 1,857 pageviews—just below five ebook essays and just above 25 Perspectives that don't fall neatly into a category and 30 product roundups.

So "lack of readership" isn't a primary reason to dump this section, although it's one of the weakest thematic sections. But high readership also isn't a reason to keep it.

Is there an argument that will energize me to keep covering OA? (Sponsorship for *C&I* would help, of course.) If so, I'd love to hear it by September 25 (or so), when I'll do *something* with all that material.

## Status Changes

Quick and partly repetitive notes:

- *Libraries as short-run publishers*: On hold. When the economy firms up and librarians start thinking about new ways to expand their roles in the community, I'll see whether this idea still makes programmatic and economic sense.
- *Public Library Blogs: 252 Example* is now **off the market**. *Academic Library Blogs: 231 Examples* will go off the market on or around October 1, barring at least one sale between now and then.
- *The Liblog Landscape 2007-2008* will remain available for some time to come. As far as I know, it's still the most substantial study of blogging within a field—and its continued availability in its current form relates to the next one...
- *Another look at liblogs*: That's not the title, but this project seems to be live, if only because there's been so much recent talk about blogs being passé. The new project will differ from *The Liblog Landscape 2007-2008* in a number of ways, not all of them clearly defined yet. Some of those differences:
- **More selective**: I'm not going to attempt to cover the field as comprehensively, although I will attempt to cover it broadly and transparently. I've already winnowed the list of blogs in the 2007-2008 study to 492 (from 607) by eliminating the handful of non-English blogs, eliminating blogs that didn't have at least three posts in either March-May 2007 or March-May 2008, and eliminating blogs that didn't have a Google Page Rank of 4 or higher in either fall 2008 or August 2009. I've also eliminated a few blogs that have become password-protected, not only for future study but as part of the past—after all, if someone doesn't make a blog generally available, they probably don't want it studied. The 492 figure will decline a little further (I'm eliminating blogs that have entirely disappeared), but probably not much. As for new blogs, I won't be looking as hard or as long, and they'll also have to meet the “visibility” (GPR 4 and up) and “activity” (at least three posts during March-May 2009, in this case) criteria. Note that requiring GPR 4 and up doesn't actually clobber that many blogs—only about 36 that would otherwise have been included.
- **A little easier**: I'm not willing to go to such great lengths to calculate metrics when blog se-

tups get in the way of doing that. This shouldn't make much difference in overall patterns, but further weakens any claim that this is a truly comprehensive study.

- **More narrative, more subjective**: While the new project will still use objective metrics—not including illustrations—it will include a lot more commentary (from me and from bloggers) about how and why liblogs do or don't work. Additionally, I *think* the liblog profiles will include my own comment on what the blog seems to be doing—and that will be a subjective judgment.
- **Fewer profiles?** I'm not committed to including profiles of every blog included in the study. We'll see how that works out.

This isn't a done deal (sponsorship would help here as well, since it's clear that I can't rely on book sales for minimum-wage income for the time required to do this). I could get into it and decide that the results aren't worth the effort.

Assuming I do finish the study, it's likely that some results will appear in *C&I*, that a summary will appear elsewhere (maybe several elsewheres if I'm clever), and that the full set will appear as a very different book. That book will *not* replace *The Liblog Landscape*.

## Perspective

### Writing about Reading 4

Much as I'd love to proclaim the death of “death of,” that's not going to happen any time soon. It's time to consider some fairly recent death-of-books discussions, as well as some that are close neighbors of such doom-crying. (There's a *bunch* more stuff on related deaths—print in general, newspapers, magazines—but that's for another day, maybe in a different feature.) I try to take these commentaries seriously. Really I do.

One thing I see in some of the items included in this section is confusion among several different things—or perhaps unwarranted generalizations from one situation to a set of different situations:

- **Death of traditional big-publisher model**: Some people argue that the traditional big-publisher publishing model (usually called “book publishing,” but really talking about the small number of very large publishers that forms the AAP model of publishing) has played itself out. That model can be boiled down to overpaying for some “big ticket” books, print-

ing those books by the millions, and hoping to make enough profit from those to pay back advances and printing costs a larger group of “midlist” books that might sell in the tens of thousands (or hundreds of thousands). That model might be played out—but it’s not even the whole of contemporary publishing, and has *nothing* to do with the death of books or the death of print books.

- **Death of print textbooks:** Some people argue that print textbooks will *and must* be replaced by digital texts—and *soon*. I believe it would be *desirable* for digital texts to replace most print textbooks, for a variety of reasons; I’ve said for many years that this is the most reasonable way to achieve a multibillion-dollar ebook market. The idea that digital textbooks mean the end of *all* print books, however, only works if you make one of two odd assumptions: that the only encounter kids have with reading is in the classroom, or that textbooks are somehow linchpins of print publishing.
- **Death of traditional print runs:** Tens of thousands of small publishers manage to avoid the feast-and-famine big publisher method by doing short print runs—but you could argue that trying to project the first two years’ sales of a book, and printing that many copies in advance, is a doomed business model in any case. I don’t know whether or not that’s true—but with print on demand technology, if it is true, it neither means doom for print books or, necessarily, for physical bookstores (or even for traditional publishers, although it would surely change how they operate).
- **Death of print books:** None of the above implies this one—and admittedly, I regard this one as extremely unlikely—even if “death” is narrowed to something similar to vinyl recordings, that is, “reduction to a niche market.” Here’s the thing: even if it happened, that wouldn’t inherently mean the end of book reading (where “book” means “long-form primarily textual medium”).

## Bye Bye Books?

Start with a March 23, 2009 news item in *Inside Higher Ed*—and a March 25, 2009 commentary on the item by Rhonda Gonzales on *@ the library* (rhondagonzales.wordpress.com). The item reports that the University of Michigan Press announced a shift from “being

primarily a traditional print operation to one that is primarily digital.” The title? “Farewell to the printed monograph.” Really?

- Michigan expects that by 2011, most of the monographs published each year will appear in digital editions. “Readers will still be able to use print-on-demand systems to produce versions that can be held in their hands, but the press will consider the digital monograph the norm.”
- The move comes because Michigan has concluded that the current model *for scholarly monographs*—a specialized and traditionally low-sales part of the book industry—is broken. The plan is to shift budget from printing and distribution to additional peer review and other unchanged costs—and to publish more (digital) monographs. “Significantly, they said, the press would no longer have to reject books deemed worthy from a scholarly perspective, but viewed as unable to sell.”

The move itself may be not only rational but also a good thing all around. After all, libraries and others will *still* have printed monographs when they want them—they’ll just be produced as purchased, rather than based on hopeful estimates of future demands. So the article title is wrong on its face, as well as being a fairly abrupt generalization from an experiment by one university press for *most* of its scholarly monographs. “Michigan plans shift to downloads and print-on-demand for low-demand scholarly monographs” makes a terrible headline, though.

Consider some of the comments by informed readers who *applaud* Michigan’s decision. Thomas Bacher of the University of Akron Press says “Other university presses will follow this route” and suggests that “University presses will still advance culture and print traditional titles as regional publishers.” (“Joe Editor” has a long screed—but one that suggests he didn’t bother reading the story itself.) An emeritus dean notes something not covered in the story: the Michigan press is becoming a unit of the University Library, “a logical move.” A copy editor instantly assumes massive plagiarism by students and asserts that a digital publication *from a university press* “does not and will probably will [sic] never carry the prestige of paper publishing.” (I don’t usually [sic] online writing, but when it’s from a copy editor...) Lots of folks use the article as an excuse to moan about other things entirely. One wholly anonymous poster offered an excellent comment—but one that applies to the article’s headline and some other comments, not to Michigan’s decision:

Why must we treat these opportunities as all-or-nothing propositions (“paper will lose”)? Paper continues to have benefits for certain types of publications, and electronic publication will doubtless prove more beneficial for other types. It makes sense for the OED to be electronic for quick searching, but why would I ever want to read an art history textbook on a Kindle, limited both by screen size and grayscale (or online with the stunted web-safe color palette)? Let’s think about expanding the universe of publishing and determining what path makes the most sense for different types of publications instead of hubristic proclamations about the death of one technology or another.

I’m with anonymous on this one. So, I believe, is the University of Michigan Press—as evidenced by the ten (or so) scholarly monographs each year that it expects to *continue* to produce as (preprinted) print editions.

Rhonda Gonzales, dean of the library at Colorado State University-Pueblo, did a followup post (with the same title as the article) noting “a fair bit of sadness. And a little skepticism” and raising two specific concerns. The first, in full:

I haven’t met anyone yet who actually prefers to read an entire monograph on a computer screen, Kindles notwithstanding. Sure, there are good reasons why a Kindle or other similar device is useful; like when traveling or reading in bed at night. And yes, electronic texts are useful for adaptive technology and also for full-text searching. But for regular cover to cover reading of a monograph, given the choice, most of our patrons have indicated they still prefer print.

The appropriate answer, I suspect, is that anyone desiring a print monograph can have one—and the price of a PoD monograph shouldn’t be all that much higher than the price of a very short run traditional monograph. The other concern is *cost*—specifically, for the site licensing scheme Michigan suggests. It’s a good discussion but out of scope for this essay.

In July 2009, Roy Tennant posted “Print is SO not dead” after running across the *Print is Dead* website. One response pointed to an article about another Michigan initiative, in which the library is offering on-demand copies of public domain books through Book-Surge. He notes that Michigan is *successfully* selling print copies of books that are available online for free. “So let’s just stop saying “print is dead” and start talking about what we will increasingly have—a mixed environment of print and digital, and an increased ability to pick the format that you want for a given need.” Sounds about right.

### **Will digital kill print?**

That’s the question Roy Tennant poses in an April 6, 2009 post at his *Digital Libraries* blog (at *Library Jour-*

*nal*). His assumption has always been the same as mine—even assuming that long narrative text in digital form sometimes becomes the norm: “I’ve long said that digital will kill print similar to the way that TV killed radio. That is, it didn’t. It changed it irrevocably, but it didn’t kill it.”

But although I’ve long held the position that digital books would not completely supplant print books, so far I’ve had precious little evidence that this would be the case. Sure, I think it’s fairly obvious that there are some categories of print books that are fairly safe, such as coffee table books and board books. I mean, how many people want to give a \$300 digital device to a toddler on which to teethe? But beyond some clear categories it has been difficult to defend my position that digital books would **add** to the mix, rather than completely supplanting what came before.

Then comes a post from Chris Bourg at Stanford on how undergrads—*today’s* undergrads, “digital natives” by generational labels—use digital and print books. Bourg summarizes survey results as follows:

It is a nice mix of students who are taking advantage of the full-text indexing to help them make efficient use of the hard copies of books they checked out, and students who are using books available in full-text on Google Books as a back-up when they can’t get the hard copy.

Fears that students would abandon libraries and library collections in favor of whatever they could find online don’t seem to be coming to fruition here. Students seem to be using Google Books to supplement their library research.

Tennant concludes from this that libraries ought to avoid getting rid of print collections in the “digital future”—at least if they’re serious about serving the needs of users, “which continue to be diverse and sometimes surprising to us.”

But it’s only fair to balance real-world evidence that “digital natives” still use books with the kind of “evidence” *Wired* does so well. Thus, “Five technologies our kids won’t even recognize” by Charlie Sorrel appeared May 6, 2009 in *Wired’s* Gadget Lab. Sorrel *knows* that “tech rolls in and out of fashion” (for him, presumably, radio *did* disappear once TV entered the scene). His first of five is the VCR, where his universal evidence (a sample of one) is that nobody’s taped a TV show in years. (I would tell Sorrel that we still use our S-VHS recorder to time-shift some shows, but he clearly believes he *knows* the answer to “Does anybody out there still have a video under their TV?” Still, he’s right in the long term—VCRs are on the way out, particularly given the shift to digital TV, which analog

VCRs can't record.) But it's the second one that's particularly amusing:

### Books

This one will take a while, but paper books will eventually be the written equivalent of the vinyl record—loved, collected and sold in small numbers, but really just a niche market. The e-reader isn't nearly ready enough yet, but if the Kindle Magnum (or DX, or whatever) makes its way into schools and colleges, the formative experience of reading will be electronic, not paper, and that will be the beginning of the end.

See? Isn't that simple? One could raise a few quibbles—for example, the importance of reading at home and public libraries to “the formative experience of reading” and the unlikelihood that ereaders will *entirely take over* classrooms in time for “our kids”—not “our great-grandchildren” but “*our kids*”—to not recognize books because they've never read one. That isn't the *Wired* way, however. (The other three: handwritten letters, newspapers and “the desktop PC.” Oh, and Sorrel believes cellphones will be “the only computer most people will need.” In, apparently, a very few years.)

Oddly enough, given the technophilia of most visitors to *Wired's* website, all but one commenter disagreed with Sorrel on books (and other things)—and the one exception was remarkable enough to quote in full:

More people owned VCR's than read books. The bound book is toast.

Huh? Apart from the first sentence probably being wrong, the analogy makes no sense. But then, neither does the article, given its title. (Yes, I know, it's *Wired*; over-the-top digiphilia is the house style.)

### *On paper, Empty walls and Clutter*

Three related posts—two by Tim Bray and one by Nicholas Carr. The first, *On paper*, appeared on February 26, 2009 ([www.tbray.org/ongoing/When/200x/2009/02/25/On-Paper](http://www.tbray.org/ongoing/When/200x/2009/02/25/On-Paper)). In it, Bray celebrates a coffee-table book he just received but offers the kind of argument about the death of books that's impossible to counter—because it's a flat assertion:

[T]he future of anything on paper is obviously limited.

All you can do is say “You're right” or “You're wrong”—or, I suppose, argue over “limited.” “Obviously” isn't evidence or argumentation. Bray's really on about “dead trees,” and there we get into the issues of whether books come from old-growth timber (almost never), whether they need to be made from trees at all (no), and whether printed books make up a large percentage of paper and paperboard use (not really). But he does go on.

Newspapers? He thinks they may have a future—but “there's not a single reason in the world that they need to be on paper. I'd much rather have something small and electric beside my toast and jam.” Now, how this translates to “*the future* of anything on paper”—for *everyone*, not just Tim Bray, is beyond me. But I'm not Tim Bray.

Bray proclaims himself “bookish” but says “books are starting to feel like artifacts of the past.” Again, that's a statement—followed by “It seems that the only virtue of printed books the electronic readers won't match is pure beauty.” Another statement, followed by his explanation of why the death of print is a “good thing,” involving the horrors of the forestry industry.

The consumption of the forests in the interests of printing disposable paperbacks and superseded-every-year textbooks and whatever newspapers become is neither defensible nor excusable, looking forward.

That may be true. How it leads to the sweeping “future of *anything* on paper is obviously limited” is unclear. But in any case what we have here is a personal dictum: Tim Bray wants to be done with paper, therefore paper is dead. (I should add that it is, of course, true that the future of stuff on paper is limited, since it's not infinitely expandable. On that basis, the future of gasoline is much more limited, the future of organic agriculture is limited—and the future of life on earth is limited. So?)

The second post, *Empty walls*, is an odd one—partly because it views books *and* discs as “media” that occupy wall space in rooms. Bray wants to get rid of his discs (which he spells “disks” and uses “less” when he means “fewer,” but that's a minor point) as part of feeling “increasingly crowded by possessions in general and media artifacts in general.” Speaking as part of a couple who've never been particularly acquisitive, I'd tell Bray there's a solution to being crowded by possessions: *don't buy so much crap*. I'm a bit less ready to equate books with CDs and DVDs as “media artifacts”—but I should note that we probably only have a few hundred books in our house, largely because we tend to borrow them from libraries.

After telling us how much he wants to get rid of his discs, he proceeds to books, which he expects to have available on some Kindle-equivalent:

**Less Books** · Why would you keep a book around, once you'd read it? I can think of three reasons: One, you might read it again. Two, others in the household might (a big one when you've got fast-growing kids). Three, because it's beautiful. We try to use these criteria, but still have five walls in two rooms that are substantially covered by books.

How long till I do to the books what I'm now doing to the music? I have issues with the Kindle's business model and control structure, but clearly it's a signpost. As I wrote recently in *On Paper*, books, as we know them, are toast. Their future is as *objets d'art* and antiques, and this is a good thing.

This is all true *because Tim Bray says so*. (The rest of the post has a truly interesting prediction and projection: He believes "geek fashion" and "intellectual fashion" will move "from library to monastery"—with the height of good taste being "a mostly-empty room, brilliantly lit, the outside visible from inside." He titles that section "A Monastic Cell." It serves as a particularly useful reminder that Tim Bray is no more Everyman than I am.)

Then we get Carr's response, "Clutter," posted April 21, 2009 on *Rough type*. Carr applauds Bray's desire to get rid of CDs—partly because, in Carr's view, "The CD jewel case is the single worst technology ever invented by man." Whew. Overstatement, maybe? In any case, irrelevant to this discussion. (Sidebar: Yes, I've ripped all of our CDs and recycled a lot of the jewelboxes, although I've kept the CDs and liner notes. I'm not that much of a Luddite...and the only CDs we listen to these days are mix CD-Rs I've burned from those ripped files.)

Carr admires Bray's "dream" of shucking off material possessions, but...

But there's a deep, perhaps even tragic, flaw in Bray's thinking, at least when it comes to those books. He's assuming that a book remains a book when its words are transferred from printed pages to a screen. But it doesn't. A change in form is always, as well, a change in content. That is unavoidable, as history tells us over and over again. One reads an electronic book differently than one reads a printed book—just as one reads a printed book differently than one reads a scribal book and one reads a scribal book differently than one reads a scroll and one reads a scroll differently than one reads a clay tablet.

Carr quotes a portion of the Steven Johnson essay on changes in reading when you move to the screen (discussed in the August 2009 *Cites & Insights*) and adds this reading:

Whatever its charms, the online world is a world of clutter. It's designed to be a world of clutter—of distractions and interruptions, of attention doled out by the thimbleful, of little loosely connected bits whirling in and out of consciousness. The irony in Bray's vision of a bookless monastic cell is that it was the printed book itself that brought the ethic of the monastery—the ethic of deep attentiveness, of contemplativeness, of singlemindedness—to the general public...

When Tim Bray throws out his books, he may well have a neater, less dusty home. But he will not have reduced the clutter in his life, at least not in the life of his mind. He will have simply exchanged the physical clutter of books for the mental clutter of the web. He may discover, when he's carried that last armload of books to the dumpster, that he's emptied more than his walls.

Do I agree with Carr? *I'm not sure*...just as I'm not sure I buy the notion that reading from a well-designed digital device is inherently that different from reading a physical book. I've read too many observations of Kindle buyers who find themselves "lost in the text," not thinking about the device in hand, to be convinced that reading on a sufficiently well-designed screen is fundamentally different. And Carr's example is flawed: Ebook reading does not necessarily make books part of "the online world." If you're online while you're reading, that's by choice—and it's a choice that's not even available on some ebook devices.

### *The decline and fall of books*

If Bray's universalism from a sample of one and *IHE's* overdramatic title are a bit much, *this* title—from the May 7, 2009 *The Times*—is way overboard. The tease: "Traditional bookshops are closing; vending machines are churning out novels; and e-books are the new paperbacks; so is this the final chapter for the book industry?"

Right off the bat, you have to ask: Which of those things does not belong? "Vending machines are churning out novels"—how, exactly, does that signal "the fall of books"? It *could* suggest some impact on one aspect of the traditional book industry (that is, large-quantity printing and distribution)—but that's an entirely different issue.

Indeed, the first two paragraphs are about the Espresso Book Machine—hardly a "vending machine" but an in-store print-on-demand machine. One that produces, ahem, *printed books*. An odd way to signal the fall of books, what? Then there's the Kindle—"yet another indication that the book industry could do with a new way of distributing and selling books." And there's a discussion of Amazon's ability to handle a large range of small-selling books (many produced on demand).

What follows is a lot of text on the traditional business model of big publishers and the possibility that well-stocked bookshops might be replaced by Amazon and bookshops where most of the stock is available via print-on-demand. The final paragraph:

A Gutenberg-style revolution is not, on this evidence, expected in the next few months. But if you are a lover of well-stocked bookshops, then you should enjoy them while you can.

There's a problem here—primarily with the title. The title *has nothing to do with the story*. “The decline and fall of well-stocked bookshops” might be more accurate, but less exciting. Simply put, increasing sales at Amazon, decentralization of book publishing and greater use of print-on-demand, including in-store book production, all speak to the ongoing health of books, *not* to a decline and fall.

### *The disembodied book*

Claims that printed books are going away real soon now aren't unique to my usual sources (the U.S., Canada, UK, Australia and New Zealand). Here's one from Germany—albeit in an English-language emagazine, *signandsight.com*.

The tease says it straight up: “The age of the printed book is drawing to a close. But there's no need to mourn its passing, says Jürgen Neffe.” Who's Jürgen Neffe? “Author of a number of biographies.” What evidence does he provide? The usual: *nothing*—except the false claim that “sound and image” have already “dissolved digitally”:

**Dissolved digitally** like sound and image beforehand, limitlessly copyable, globally downloadable by the million with the click of a mouse, the book is entering the world of multimedia like its disembodied cousins from film, photography and music.

The medium of enlightenment is losing its message and probably **some sense and sensibility** along the way. Sooner or later bound piles of printed paper will be available only as luxury items in specialist shops, like vinyl records today. Even the most iron-willed bibliophiles won't be able to get their hands on Gutenberg's legacy in its current form. The collapse of the book industry, much as we mourn it, follows the logic of a long chain of bygone trades, crafts, manufacturing processes and business procedures.

The change is unstoppable, the only moot point is how long it will take to arrive. **But we're not talking generations...**

It's inevitable because it's unstoppable and, apparently, because (some) trades and crafts have been wholly superseded (although many others have not). This is a fairly typical extreme form of ahistoric commentary. (All emphasis in the original.)

Most of the rest of the 3,500-word commentary is a *celebration* of the book “freeing itself of its body” and becoming so much more in the process. Part of which is that old dream of people who don't much care for text:

If books can soon be read on all imaginable gadgets that simultaneously display images, play audio and connect to the Internet and other devices, then it is only a matter of time before their authors start to

make use of all this multimedia, to produce works that have no place in **Gutenberg's universe**.

That's right: It's the all-dancing, all-singing, all-movie version of books. Plus, to be sure, clicking through boring old linear texts to get definitions, hear appropriate music, etc., etc. And, once again, it's *inevitable*:

Whether “we” want this is as redundant a question as whether we wanted private TV channels or mobile phones or the Internet. Once the **genie is out of the bottle**, it never returns. Coming generations will not believe it could ever be contained. Like life itself, culture will crawl into every nook and cranny in an expression of its consciousness. The borders between the book and the rest of the media world will eventually dissipate as entirely as those between advertising and entertainment.

As you might expect, this would-be guru doesn't care for e-ink readers because they “do little else than allow us to read books as we know them.” (Apparently, German mobile phones must be a whole lot heftier than ours—he says “*every* mobile phone has enough memory to store and allow you to read a thousand weighty tomes.” Since smartphones are still less than 20% of the mobile phone market, this seems, um, *wrong*.) And here's what happens when you take such a blindered view of the past, present and future, sure of your Inevitabilities:

Applied to the book this question could soon be: what would we rather – that people read from monitors, or not at all?... Actually the question is not how people will read and write in the future, but whether they will write at all and how much and what?

Ah—then we get to what may be the author's real message: That, since everything's going digital any day now, and since that means it can and will be copied endlessly, we need *state-financed* newspapers and books—just as Germany apparently has state-financed radio, TV, film, theatre and art.

I could note other oddities in this article—e.g., the broad statement that “newspaper publishers in the USA are keen to distribute their own reading devices free of charge to their subscribers as a cost efficient alternative to printing and distributing their papers.” I must have missed this broad movement to provide free ereaders...

Maybe I should cut the writer some slack: He wrote the piece in German. Maybe he didn't really write all those sweeping generalizations and erroneous readings of current history. Or maybe it's just another “death of” article from someone who, in this case, apparently wants state subsidies for his biographies.

### *Reality changes more slowly than I like to think*

Since I've been grumping about sensationalistic titles that misrepresent the content of the articles, it's time



to applaud a singularly good title—one in which the author, Mike Shatzkin, concludes that maybe, just maybe, he's been a little overenthusiastic. (The piece appeared July 8, 2009 on *The Idea Logical blog*, which shows up in browser headings as *The Shatzkin Files*; [www.idealog.com/blog/](http://www.idealog.com/blog/)). Shatzkin is founder and CEO of The Idea Logical Company, active for decades in the bookselling and publishing industry—and a believer in “the transition to digital delivery of published material.” He also walks the talk: As he notes in a comment, “I have been reading ebooks for 10 years. I prefer them to printed books.”

He's reporting on a panel at NYU as part of a summer publishing program, where he shared the stage with four others and spoke to several dozen “very attentive 20-somethings with a serious interest in publishing.” It sounds like a great panel. One publisher “spoke optimistically of a revival of *book* reading, as in printed ones.” A writer spoke about her self-publishing experience (and calls 1,500 copies a success—which I'd *absolutely* agree with). One speaker talked about print-on-demand. And one former editor talked about his new recipe-aggregation website and got lots of feedback by asking poll-type questions.

Then comes the fun part:

As the conversation evolved to a close, I realized I had a precious opportunity. Though I'm considered to be wildly (crazily?) forward-thinking in some circles, expecting print runs of books to nearly disappear in 20 years, for example, I am unabashedly conservative in others. For example, the idea of books as collaborative or social experiences leaves me cold and it *really* leaves me cold to think of interrupting good narrative reading to explore links and, particularly, to see video.... Maybe today's generation would find it boring not to have a video interlude interrupt unbroken text. Well, with all these very smart Born Digitals in one room, I'd... ask!

So, with time running out, I got the indulgence of the organizers to ask the crowd a couple of questions. The first one was: “how many of you read ebooks?”

Two hands went up. Two.

The next question was not worth asking. But I sure got a dose of new information to ponder.

It's important to note that the plural of anecdote is not data for this finding any more than it is for the “other side” (“my kid prefers ebooks, therefore all Born Digitals prefer ebooks”). But it is an anecdote involving somewhere between 50 and 100 people—and there's the salutary note that it gave a firm believer in “going digital” reason to pause. (My take? Twenty years is a long time. I would be astonished if new print books aren't still produced and sold in the hundreds of mil-

lions twenty years from now—but I wouldn't want to bet on traditional *print runs* being a dominant or even major part of the business.)

What first appears to be a *set* of comments turns out to be one comment and a conversation between Shatzkin and the commenter. The commenter is another one who doesn't read print books any more (*me, therefore the world?*) and feels that Shatzkin asked the wrong question. But then, this commenter also says that California's odd little initiative toward digital textbooks (with the readers paid for how? with vouchers?) makes the transition to digital books *in general* a “done deal.” If he heard my opinion—that textbooks could, *and possibly should*, move to digital form without any serious effect on the rest of the print publishing market—he'd probably just dismiss me as someone who doesn't get it.

### *Why is the book biz so scared?*

That's only part of the title of this August 14, 2009 *Entertainment Weekly* (or *EW.com*) piece, and it's not the primary part: The first is “Dan Brown's ‘The Lost Symbol’” This is a digression of sorts—about the peculiarities of “the book world,” which may endanger traditional publishing a whole lot more than ebooks do.

To wit: Publishers are worried that people will go online or into bookstores to buy Dan Brown's book—”and they won't buy anything else.” Some even argue that the no-doubt major hooah around this book “will drown out media coverage of other books—and eat into sales of those books too.” I like Thom Geier's comment:

It doesn't take a Harvard symbologist to see that this is mostly sour grapes and a whole lot of hooey. It reminds me of the stink that publishers raised over the Harry Potter series, successfully persuading *The New York Times* and other outlets to demote the titles from their adult best-seller lists so that J.K. Rowling titles wouldn't hog up so many slots. *Why do we have to compete with a book that appeals to a youth-skewing mass audience, beyond the usual Starbucks-sipping B&N crowd?*, the publishers asked. *That just isn't fair!*...

Geier suggests that, for all but a handful of other books that *might* debut as #1 bestsellers, the Brown book will make *no difference at all*. Similarly, media attention for the Brown book is mostly attention that goes to mass-culture phenomena, not other books.

It's the other way around, as Geier concludes, given that a lot of Brown buyers probably aren't habitual book buyers: “It's hard to see how a sudden swell of motivated book consumers is a bad thing. Even if only 5 percent of *Symbol* buyers pick up another book, isn't that a good thing?” Commenters generally

agreed, other than those too busy putting down Brown's books.

### *The revenge of print*

This piece by Eric Obenauf appeared in the July-August 2009 *The Brooklyn Rail* ([www.brooklynrail.org/2009/07/express/the-revenge-of-print](http://www.brooklynrail.org/2009/07/express/the-revenge-of-print)). It's a reminder that *The Biz* can be a dangerous place to be. Obenauf says,

Today, anyone involved in the business—from newspapers to magazines, from book publishers to advertisers—seems certain about the fate of the printed word. There is a widespread belief that is now accepted as nearly absolute: Print is being replaced by screens and in a generation or two will be obsolete.

This “widespread belief” could be right, I suppose; “a generation or two” is a long time—although if we use 15 years as a generation, then I expect to be alive for two more of them, and I *definitely* expect print to be around for the rest of my life. But I'm not in *The Biz*. Obenauf notes some counterindications:

- Jacek Utko, an architect who became art director for several newspapers in former Soviet bloc nations, transformed the newspapers, and increased readership by anywhere from 29% to 100%.
- Dave Eggers says print is alive and well and tries to provide evidence for that view.

Ah, but Obenauf is after something much more important—and offers insights that may show *why* some traditional print publishers appear to believe in (and welcome?) the death of print:

It is true that print is probably not sustainable at the current volume. For those who depend upon dollars tallied in spreadsheets to measure success (or even whether or not to initially accept a book for publication), **the concept that there may be a cap to their print audience spells doom for the medium...** However, the reality of the situation is much less dramatic: there is space for print not only to exist in modern society, but to thrive, if undertaken on a realistic scale. [Emphasis added.]

Let's say “print”—crudely defined as books, magazines and newspapers—is about a \$100 billion industry in the U.S. at present. (I *think* that's low, since I believe magazine and newspaper advertising revenue alone add up to \$75 billion or so, and BISG figures for U.S. book publishing run to about \$40 billion—but it's a nice round number.) And let's say that, given advertising issues and places where digital media really *should* replace print, the plausible market in, say, 2024 (one generation from now) is \$50 billion in today's dollars.

That's a huge decline, and for quite a few newspapers, magazines and publishers, it might be the end of the line. But it would *not* be the end of print as a

medium; it could even be the renaissance of a more sensible set of individual media—e.g., does it *really* make long-term sense for big magazine publishers to mail me big, overstuffed, glossy monthlies where I'm not even paying \$1 a copy towards the actual costs?

The next portion of the essay is intriguing and suggests that contemporary Big Publishing has a fatal flaw: Instead of existing to create books to inspire and inform culture, too much of Big Publishing works to meet immediate demands for hot-button topics.

For someone writing in New York City, another two paragraphs constitute a revelation—one that many of out in *The Sticks* (i.e., anywhere *except* New York) know but that seems to escape the New York group:

Some point out the ever-shrinking space allotted for book reviews in newspapers and magazines as further evidence of print's rapid decline. There is always a big to-do when a major newspaper folds its stand-alone book review or incorporates the designated space within the pages of a more general section...

However, this is not in any way indicative of a popular lack of concern for books... Instead, it is a matter of book review sections not generating the advertising revenue necessary [to maintain them]...

The reason most metro dailies don't have separate book review sections and that the San Francisco *Chronicle's* Sunday Books section (still a separate section) is six to eight tabloid pages, not eight to sixteen broadsheet pages is simple: New York publishers do little book advertising outside of New York publications, and without advertising, book review sections are unsustainable.

Obenauf would like to see a higher goal for publishers—a goal that is, I believe, foremost in the operations of most small and medium-sized publishers: “The mission for book publishers and print media at large should be to create a product that is irreplaceable and indispensable.” Then he comes to a real kicker, the “this club is too popular, so nobody comes here anymore” argument by oxymoron:

There is a stock response by some corporate publishers—followed by an eye-roll—that there are simply too many books being released. Technology has made it possible for anyone to become a publisher which has in turn created a virtual avalanche of books barraging consumers and leaving them shell-shocked and incapable of pulling the trigger on the purchase of a hardcover tell-all of addiction and abuse by a childhood television star. Or, at least not in as large of numbers as they had previously. Therefore, logic follows that this goes to enforce that print is dying and the end is nigh.

There are too many books. Therefore, books are dead. Gotcha. But this version peels away the oxymoron:

There are too many *different* books, and they take away from blockbuster sales. The difference between AAP estimates of total publishing revenues and BISG estimates suggest to me that, if the big publishers simply disappeared overnight—or put *all* their energy into ebooks—there would be a healthy and wildly diverse print book publishing industry in the U.S., one with sales in a comfortable eleven-digit range (that is, more than \$10 billion). Obenauf sees an interesting possibility:

I believe that book publishing will re-generate in the near-future into two separate models: the corporate model, which strives to attain the widest possible “readership” in as short of a time-span as possible by use of electronic devices, interaction, and gimmicks; and the print model, sustained by independent, university, and re-branded imprints of large houses, that believe as Eggers, in reading as a “beautiful rich tactile experience,” and who are satisfied with a book selling five thousand copies.

Is corporate book publishing dead? Probably not—but maybe it needs a good shaking up. Does a possible death of that best-seller model mean the death of print? Perhaps it’s the other way around. Read the whole article; it’s excellent.

A sidenote here about a post (or set of posts) that I’m *not* discussing—namely “Bits of destruction hit the book publishing business” on *ReadWriteWeb*. I’m leaving it out partly because it’s about “the biz”—the current version of corporate book publishing—and partly because it’s probably not complete. The series does include interesting analysis and certainly doesn’t come to any sort of “books are dead” conclusion; quite the contrary.

### Timing

Let’s close with an oddity—one of my posts from *Walt at random* and a commentary on that post on *A blog around the clock*. Neither was primarily about the death of print or books, but both touch on it. My post—“Five years on”—appeared July 29, 2009 and was inspired by my awareness that the 250-movie pack of mysteries on DVD I was starting to watch would probably be finished (that is, I’d finish watching it) in around five years. And that I’d seen lots of projections that within five years, DVD would be dead, books would be dead, what have you would be dead.

So, since I’m not much for making prognostications but am acutely aware that most things just don’t move that fast, I offered my own quick response:

If you believe some pundits, physical media will all be gone in five years—we’ll rely on that great digital jukebox in the sky for everything, when and as we need it. I don’t buy that for a minute. For a variety of

reasons, I firmly believe that many of us will be buying physical media five years from now, enough to make for healthy industries.

On a medium-by-medium basis? I’m deliberately not a futurist, but here’s my best guess:

- **Music:** Even though CDs have already reached the 25-year mark (over the history of recorded music, a given medium has typically been dominant for about 25 years), they still represent the majority of music sales (about 2/3), despite widespread assumptions that CDs are already dead. There are two reasons for that: First, every DVD player is also a CD player; second, no replacement **physical** medium has succeeded (and those that have been attempted were, by and large, CD-equivalents). I’d bet that there will still be a multibillion-dollar (per year) CD industry five years from now, although it will probably be considerably smaller than today’s industry. But I’ll also bet that vinyl will still be with us five years from now, even though I’m not among the “digitization destroys music” brigade. (Not even close: The day we purchased our first CDs was a bit after the day we purchased our last LPs.)
- **Films & video:** I’m nearly 100% certain that there will still be a large (that is, multibillion\$) commercial market for DVDs five years from now—and almost certainly a decade from now. Unlike music, the infrastructure for a truly workable universal video jukebox isn’t in place—and, as with music, there are millions of us who actually prefer a physical object. I’m about 90% certain that Blu-ray Disc will also be a multibillion\$ market five years from now. Will Blu-ray become dominant over DVD? Short of a forced conversion, I think it’s unlikely—not because there’s anything wrong with Blu-ray but because most people either don’t notice the difference or don’t care about the difference. (By all accounts, a very large percentage of people who own HDTVs never actually **watch** high-definition TV. Those people aren’t going to pay \$1 more for a Blu-ray version, much less \$5 more.) I think Blu-ray will do just fine, but for some people, anything short of market domination is a failure, in which case I think Blu-ray will fail.
- **Print magazines:** Not going anywhere. Of course some are failing. Some **always** fail, and recessions aren’t great times to start magazines. It’s a tough time to start Yet Another Business Magazine (sorry, *Portfolio*); it’s a tough time to start Yet Another Any Sort of Magazine. I’ll still be subscribing to print magazines five years from now and ten years from now, and probably still paying absurdly low prices for some of them.
- **Print books:** Do I even need to discuss this one? Unless you believe that an 0.2% dip in sales in the

midst of the worst recession in decades means Books Are Doomed, there's really no sensible discussion here. I *hope* ebooks, done right, take a few \$billion of the book market *where ebooks do it better*—but I don't happen to believe that ebooks are likely to “do it better” for most long-form narrative fiction and nonfiction in my lifetime, much less the next decade. (I plan to be around three more decades, with luck, and my family history suggests that's on the short side.)

- **Print newspapers:** I believe that hundreds of *small and medium-sized* print newspapers will still be around five and ten years from now; they've generally been doing better than the huge metro dailies. I hope that the better metro dailies will still be around—but I'm a little less sanguine. (Will we renew the *San Francisco Chronicle* next year at more than \$400 a year? Hard to say...but I'd sure miss it, even though most content is available at SFGate.)

So, there it is: My personal take on what I think's likely as regards physical media. I know some hotshot futurists say Everything's Going Digital Real Soon Now. I also know the history of new and old media—and the wonders of DRM aren't really helping. (Yes, Amazon probably did what it had to—but it also waved a Big Red Flag about the mutability of that big celestial jukebox. The book you “purchased” yesterday may or may not be the book you're reading today...)

I could be wrong about any of these. I could be wrong about all of them—but I'd be very surprised...

On August 2, 2009, “The perils of predictions: Future of physical media” appeared on *A blog around the clock*, a direct “riff off of” my post (as the blogger says within the post). His overall comment on my post: “He takes a cautious, conservative tack there, for the most part. I am supposed to be the wide-eyed digi-evangelist around here, but I was nodding along and, surprising to me, agreeing with much of what he wrote.” He notes his own approach to questions requiring predictions (trying to duck specifics and look at the needed order of events, while avoiding actual numbers). If pressed, he'll suggest things that might happen “pretty soon” (10 months to 10 years), “within our lifetimes” (10 to 100 years) and “in the far future” (25 to 1,000 years). He thinks I “unnecessarily hampered” myself by using a strict five-year measure—but, of course, I was *deliberately* looking at what I think of as the short term. As he notes, social change doesn't happen as fast as technological change, and—a key point, one I wish more pundits would keep in mind—that the “disappearance of existing technologies...is the domain of societal change, not technological.”

He also offers four useful considerations:

- New media technology hits first in big cities in the developed world—ignoring billions of people in more rural areas as well as the whole developing/undeveloped world.
- Changes in technology depend on existing infrastructures—in a complex manner. Thus, if landlines will “die,” it will happen faster in developing nations *because they don't have fully-developed landline systems*
- People adopt new technologies at different rates—and traditionalists and fans of old tech stay around for a long time.
- If producers of an older technology have any sense, they adopt to new niches. “Horse breeding is still a multi-billion dollar business.”

He also offers his takes on my specifics and, other than Blu-ray (which he thinks will be essentially dead and I think will be healthy but not dominant), there's not much disagreement. And as far as “Digital Natives” spelling any near-term doom for print books, he's more emphatic than I might be: “We have a long way to go before we have something that new generations will adopt as ‘their’ technology.”

Other than the Blu-ray question (where my confidence level in my own take is not terribly high), the only real disagreement here is whether I “unnecessarily hampered” myself by using a specific date. I don't think so—because what I was commenting on was the feverish “death of X” predictions, most of which have short time horizons.

I was bemused by one comment—another one of those “nobody goes to that club; it's too popular” items. This commenter thinks print books are going to disappear “sooner rather than later” in part because book lovers *own too many books* and can't cope with the sheer bulk. (Ever hear of the public library? I *read* a fair number of books, now that I'm back to using the library, but *collect* very few—and I've never thought much about the smell of a new book or the feel of its binding, particularly when I'm reading a mass-market paperback...)

Yes, the death of print books *might* change the way we read (or it might not, depending on the success and uses of ebook readers)—but that death seems no more imminent now than it did in 1982, when early prognostications of books dying within a decade were being made. Check with me in 2013, or 2019; I'll bet there will be loads (hundreds of millions) of print books (and loads—possibly even tens of millions—of ebooks) being published, sold, purchased, circulated and read in both years.

## Trends & Quick Takes

# Endless Freekiness

No, that's not a typo. As a term, "Andersonomics" (which I've used elsewhere) isn't happening—but the various flavors of "X wants to be free" continue to aggravate more than they inform. Here's one from November 2007—"Against free" in Nicholas Carr's *Rough type*. Carr notes a New York *Times* op-ed by Jaron Lanier titled "Pay me for my content."

It's an interesting op-ed—if only because Lanier does something almost unheard of for a guru or pundit. Here's the relevant comment, after noting that he used to dismiss those who complained about the "unremunerative nature" of content on the Internet:

Stop whining and figure out how to join the party! That's the line I spouted when I was part of the birthing celebrations for the Web. I even wrote a manifesto titled "Piracy Is Your Friend." **But I was wrong. We were all wrong.** (Emphasis added.)

Whuh? What's that? Admitting you were wrong? *Outrageous!* Lanier notes that, as with others in Silicon Valley a decade and more ago, he thought the web would increase business opportunities for writers and artists—but he's finding the opposite. The big names are "assembling content from unpaid internet users to sell advertising to other internet users." You know—user-generated content and the like. Lanier thinks there should be better ways to provide *affordable* online content, ways that reward creators. That's been difficult (micropayment schemes over the years have generally failed), but he makes a good point. He also thinks it's important and concludes:

We owe it to ourselves and to our creative friends to acknowledge the negative results of our old idealism. We need to grow up.

Carr plays The Realist:

"Free" comes more from the inherent economics of the digital world than from the technical structure of online distribution and commerce. You can try to change the structure, but if you can't change the economics your efforts will likely go for naught.

I'm not sure what that means, but I am sure Carr thinks he settled the discussion. The "inherent economics of the digital world" mean nobody's going to pay for content. Gotcha.

Commenters? One says he's paying for Carr's content by coming to his site, since "you show me ads and make money doing so." **Bzzt.** Sorry, wrong answer, thanks for playing. Carr only runs ads for his own books. I'm guessing most real bloggers (other than su-

perstars) who use AdWords find that clickthrough-based pricing means they're giving up sidebar space for little or no revenue. This snarky commenter gives a more substantial (if even less friendly) answer as well: "While I like your content, I don't like it that much. So if you want to get 'paid' for your content, go write a book." (Which Carr did, to be sure.)

Seth Finkelstein notes the first-level truth: people *do* pay for online content in two categories—porn and financial information. He also notes that "cultural content" has always been a tough (and frequently subsidized) market.

## Losing the Books?

James Cortada wrote "Save the books!" as a Viewpoint in the December 2007 *Perspectives* from the American Historical Association. (Go to [www.historians.org/perspectives/](http://www.historians.org/perspectives/) and search for the December 2007 issue.) Cortada, a long-time IBM employee who's also a historical writer, believes libraries are getting ready to jettison their 19<sup>th</sup> and 20<sup>th</sup>-century books once they've been scanned (no matter how badly).

A problem is slowly emerging for historians in the form of librarians discarding books from their collections, a procedure that has potential long-term consequences for scholars doing research in the years to come. We need to understand the features and magnitude of the problem and begin to address it today...

The pace of disposing of such materials is about to pick up sharply over the next few years because Google is rapidly scanning tens of millions of volumes, with the intent of making these available online. Large research libraries are willingly participating by making their materials available to Google: Harvard, Michigan, and Oxford Universities, to name a few. Their goal is noble: to make millions of volumes of information available online in a convenient fashion and, soon, searchable. That last function—"searchable"—means enabling a Google search through all the scanned pages for information; for example, one that could list every reference made to oneself.

Once the scanning project is well underway, the temptation for librarians to dispose of their paper copies of books will be enormous because of lack of space and budgets to keep the originals. Their arguments will be exactly the same as what we heard over the past decade with magazines and journals: easy access, convenience, and so forth. The limitations of that strategy will also be the same, most notably the loss of the serendipitous effect of walking down an aisle of books on a topic of interest or the ability to work with the original artifacts as read in their day, compromising our effectiveness as researchers.

I'm not sure what to say about this commentary (it's roughly 1,800 words, of which I've quoted just over 260). I'd *like* to say it just won't happen—that libraries, and particularly ARL libraries, wouldn't be that rash. On the other hand...well, Cortada does bring up newspaper microfilm and the extent to which libraries have abandoned print magazines.

Cortada's *point* is this:

Historians individually and as a community should help librarians appreciate the value of holding on to individual volumes that make up the ephemera of earlier times and not simply capture an image of those books. One cannot assume that they appreciate the urgency of this issue; assume nothing, and have the obvious discussion with your university librarians about what to save. In short, inject yourself and various historical associations into the decision-making process that determines what is to be saved or discarded.

Is this happening? If so, how are libraries responding?

## Sipping from the Firehose

**A digression:** Some astute readers—hell, some *non-astute* readers—may note both an unusual level of randomness in this edition of TRENDS & QUICK TAKES and the use of older source documents, going back to 2007 in the cases above. (A digression to this digression: How on earth can T&QT be anything *but* digressions?) The randomness, which is SOP for T&QT, comes in part from the second factor: I'm trying to get just a little caught up. I've started using delicious (look, Ma, no interpunctuation!) to mark items I want to discuss or use, either for Library Leadership Network or here, rather than printing lead sheets on the spot. (Then I may go back and print lead sheets to organize a discussion—or I might use the items directly.)

But I've only been doing that since March 2009—and I already have 643 items bookmarked (as of 1 p.m. on September 11, 2009). *Six hundred and forty-three*. I've never had anywhere near that many lead sheets waiting to be used (or at least I don't think so). Roughly 20 of those are for LLN (those ones get used faster—that's my job!), leaving what, 620 or so for C&I—including 50 tagged "tqt" and many others that could wind up here.

So I'm trying to get a *little* caught up on earlier material, a process that may take a while. I see roughly three dozen items in the folder. Some of those I'll toss when I get to them; a few, I'll find I've already discussed elsewhere. Some will go into a different folder. The rest? You're seeing some of them now.

Maybe that *isn't* a digression. The next item up is "The beauty of the dialectical process," posted January

10, 2008 on  *davidrothman.net*—and it is at least in part about information overload and whether such a thing exists. You could consider the three dozen T&QT lead sheets and 620 virtual lead sheets a symptom of information overload—or you could consider my current approach to finding and flagging interesting source items an example of effective (or partially effective) filtering. My opinion? See the subhead for this item: I believe we're getting better at learning to *sip* from the firehose.

The post itself is part of an ongoing discussion between David Rothman and Dean Giustini. The background (or part of it!):

- Giustini published an editorial in the December 22, 2007 *BMJ* entitled "Web 3.0 and medicine." Among other things, Giustini says we need the Semantic Web because people spend too much time searching, not finding. He says, "In medicine, finding the best evidence has become increasingly difficult, even for librarians. Despite its constant accessibility, Google's search results are emblematic of an approaching crisis with information overload, and this is duplicated by Yahoo and other search engines..."
- Rothman, who's no great fan of "web 2.0" (or "library 2.0") as a term, isn't thrilled about "web 3.0" either—and did some self-proclaimed fisting of Giustini's editorial. He takes issue with both sentences quoted above. To the first, he responds: "I don't think I can agree with this premise. I think that Web tools have made the best stuff increasingly easier to find *for those with the skills to use the tools*." His response to the second is more tentative: "Huh? How are Google search results emblematic of information overload?" More generally, he takes issue with blaming Google for information overload or glut, saying it's the other way around: "in the hands of a skilled user, Google is a powerful tool for filtering out the chaff."
- Giustini, correctly calling the discussion amicable, offered a riposte in his own blog to Rothman's "Huh?" comment:

Google most certainly is *emblematic* (a visible symbol) of information overload, and in fact is the information specialist's laboratory for it. It's well-documented throughout the blogosphere that web 2.0 has resulted in too many RSS feeds, too much data and information from disparate sources with little connection to each other.

*Google is the epitome, the very gateway to all of this information.* 100-200 million searches a day! So yes we do have information overload for most searchers in

Google. 99% of the information that we are finding in Google is irrelevant to medicine.

*Infoglut is the most shocking byproduct of web 2.0.*

(All emphasis as in the original—except that Giustini has the first paragraph highlighted with a yellow background.)

Which brings us to this post. Regarding the first sentence:

I see honest disagreement here.

I think Google is emblematic of the way that the clever application of technology *overcomes* “information overload.” The Web is huge, filled with an insane amount of information that is varyingly good, bad, ugly or [fill in your favorite adjective here]. But if one uses Google to search for **Google Scholar Dean**, the first four results are about Dean Giustini, the author of the UBC Google Scholar Blog. It took typing *three words* and I found EXACTLY what I was looking for in about 0.51 seconds. To me, this doesn't paint an image of Google as a symbol of information overload.

As to the second sentence of the first paragraph, excerpting:

[T]here are many popular positions (technical, political, philosophical...) expressed in the blogosphere (and elsewhere) that I believe to be wrong-headed, foolish, unwise or silly...

I'm sincerely flabbergasted to hear a librarian (or any information professional) complain that there is “too much data” or “too many RSS feeds”.

“Web 2.0” doesn't cause an information glut. What causes an information glut is *being an information glutton*, taking on more than anyone can reasonably manage. There aren't too many RSS feeds. Rather, there are *users who subscribe to too many RSS feeds*. The solution isn't for less data to exist, the solution is smarter, more selective use of the data. The tools that help us filter and manage the information that we care most about are continuing to improve in power and sophistication...

There's more (a lot more), but let's leave it at that.

I've been on both sides of this long-term discussion—and at this point, I agree with those who say the problem isn't information overload, the problem is inadequate filtering. I still monitor 500 blogs, according to Bloglines—and that doesn't cause me much grief. After all, I certainly don't *read* every post from beginning to end! (With changes in blogging behavior, 500 feeds may mean fewer than 60 posts per day, and rarely more than 100. Note that those 500 feeds do *not* include mediablogs or other blogs with dozens of posts each day.) The 640+ delicious items at the moment? Realistically, I probably *have* had 300-400 lead sheets at a time. Now, the recent backlog doesn't

use real paper until it's been re-filtered by a second look. It all works. It's all good.

## Show Me the (Real) Money

That's Steve Smith's version of my “top tech trend” for this year, “Show me the business model”—but it's farther-reaching. It's also the title of his March 2009 *EContent* column—which notes that, for all the attention paid to internet media, “the real money isn't there yet.” (Not that the eyes are either: a recent report says that, for all of YouTube, Hulu and the others, 99% of all video is still watched on TVs.) Smith notes that on-air and print advertising sells at much higher rates—and produces more revenue—than most digital models. “We talk ad nauseam about digital being the real ‘growth center’ for media, but how can it be called growth without growing revenues?”

His advice for making money in online media boils down to five principles:

- **Reaggregate.** (Find more audiences, realizing that you'll get a lot less from each audience member.)
- **Charge advertisers more.** (Online ads are relatively cheap at this point; maybe online/offline integration will help.)
- **“Go hybrid”**—make sure people pay you for something somewhere, don't assume ads will pay the bills.
- **Deal in data:** “Ultimately, online publishers are not selling advertising against content but against audiences.”
- **Create content on the cheap.** “The age of mass media is over... The money available for original content creation will shrink ... permanently.”

If that's all true, it's sad. Is it true? I'm not sure.

## Cheap Tweaks

Computer magazines tend to be full of tweak articles, various ways you can improve (or at least modify) your computing experience—frequently for free. It's a little rarer for things like TV and home theater, which makes “Money for Nothing and Your Tweaks for Free” in the June 2009 *Home Theater* fairly refreshing.

Some of the tweaks are free, some are inexpensive—and I suspect most people will find something here they can use and hadn't thought about. Sometimes that's as simple as cleaning the dust off your flat screens once in a while—using microfiber cleaning cloths or brushes specifically designed for the job (*never* Windex, and *never* spray a fluid directly on the

screen). There are quite a few others, first for TVs, then for sound systems.

## Everything's Not Quantitative

I haven't spent much time with the Wolfram Alpha search engine, or answer engine, or whatever you choose to call it. But I have spent enough time—and read enough informed commentary—to recognize Steven Levy's woo-woo “The Answer Engine” writeup in the June 2009 *Wired* for what it is: Levy once again losing critical detachment in the face of something suitably Shiny. Consider the conclusion:

[O]nce Alpha tells you how many Nobel Prize winners were born under a full moon, you'll know that we've moved one step up the evolutionary ladder of knowledge.

Wolfram claims that Alpha “makes it easy for the typical person to answer *anything* quantitatively.” OK, let's step back—unless Wolfram's misquoted, that's just dumb, because many questions do not admit of quantitative answers. Maybe he said “answer *anything* quantitative”—that is, that Alpha will make it easier to answer *quantitative* questions—which could be a relatively small subset of knowledge and the questions we'd like to answer.

Levy's level of detachment is usually obvious from the start of an article, and this one's no exception. His example of using Alpha: “Type in a phrase, hit Return, and **knowledge** appears.” (Emphasis added.) After a cheerleader act for Stephen Wolfram, he comes up with this detached comment:

So when Wolfram asked me, “Do you want a sneak preview of my most ambitious and complex project yet?” he had me at “Do.”

I bet he did, Steven. It's one thing to be a fanboy; it's another thing to be so blatant about it.

The Alpha site itself isn't quite so woo-woo:

Wolfram|Alpha's long-term goal is to make all systematic knowledge immediately computable and accessible to everyone. We aim to collect and curate all objective data; implement every known model, method, and algorithm; and make it possible to compute whatever can be computed about anything.

I'd even argue with that more modest claim—unless “systematic knowledge” reduces knowledge to that which is computable. I suspect Alpha's claims are way too broad even in that case, but who knows?

Spending time with Alpha (in August 2009), I find that my naïve questions generally yield the Alpha equivalent of “Does not compute.” So I went to the examples—and I have to say, they offer a strange, befuddled form of knowledge. Say I want to compare

the *New York Times* “vs” the *Wall Street Journal*. (I don't, but that's an example.) Alpha returns comparative circulation and the names of the publishers (also the websites and countries of publication). Frankly, about the *least* useful contrast you can make between these two publications is that one has twice the circulation of the other—but it's a *computable* distinction. So I tried a few more... “Analog vs Asimov's” yields “isn't sure what to do with your input.” (Using the full names of the two publications doesn't help.) “Time vs Newsweek” yields the same “not sure what to make of it” result...which makes the first example seem, um, *canned*. I tried a few more, ones that are *directly* equivalent to the example given. PC World vs PC Magazine? Isn't sure. EContent vs Online? Ditto. Modesto Bee vs San Francisco Chronicle—ah, another case where it gives relatively useless numbers. Stereophile vs Absolute Sound (a meaningful comparison)—no result. (Yes, I tried others—with little success.)

My first response to Levy's example was “Who cares? How does that ‘fact’ add to the store of human knowledge?” My second response—thinking it over—was to check Wolfram|Alpha, *two months* after an article in which Wolfram says “his engine would have no problem doing this on the fly.” Guess what? “How many Nobel Prize winners were born under a full moon?” asked on August 9, 2009 yields: “Wolfram|Alpha isn't sure what to do with your input.”

Um, Steven? Before you tout the wondrous abilities of a new device and give an example of those abilities, *shouldn't you try the example?* (I expected this one to work—because I expected it to be a canned result.)

The site proudly claims to already contain “10+ trillion pieces of data, 50,000+ types of algorithms and models, and linguistic capabilities for 1000+ domains.” We get that “systematic knowledge” phrase again along with wording touting Alpha's “ability to understand free-form input.” If it can understand free-form input, why can't it *do anything* with it?

I managed to come up with some workable examples—but “workable” in an odd sense. “UC Berkeley vs USC” yields a table that makes the two institutions look pretty much alike—except that USC has a higher percentage of grad students and is thus, presumably, a more serious institution. How many people believe USC is directly comparable to, or better than, UC Berkeley? Well, *computationally*, USC shines...

Maybe there's the rub—quite apart from the extent to which suggested examples are peculiar examples (that is, broader sets of the same things simply don't work). The things that Alpha tells me about USC and UC Berkeley aren't all that significant—



they're a small collection of facts. But they are computable.

Yes, it's possible that Wolfram|Alpha will someday be more than a sideshow. Levy's level of adulation is, if nothing else, wildly premature.

When a different writer at *Wired.com* did a little item saying W|A is no good at "cool" searches, commenters were on him with a vengeance—mostly saying "It's not a search engine" and defending its magnificence. One of them gave an example—and the example may illustrate the limits. He notes that "Male age 19 6'2" 215 pounds" will yield a table with BMI, ideal weight, fat mass and a couple of other facts (or presumed norms). *But that's not how someone would use it*, I believe. I typed in exactly the equivalent for my own age, height and weight, and did indeed get such a table (saying my "ideal weight"—one of those odd constructs—is two pounds less than my actual weight, even though my BMI is well within the preferred region). But, you know, I'd be more likely to ask "Am I fat at 5'10" and 161 pounds?"—and that question yields, well, you know by now. W|A *claims* an ability to understand free-form input, a claim at which it manifestly fails.

Another rave review of W|A cites the things it does very well—and they're a very limited set of things, mostly returning results that aren't particularly useful...and wrong in at least one case. The commenters get more and more into "You're not asking the right questions," which is a tough defense for a tool, particularly when one asks *precisely* the kind of questions suggested by the site. At least one example of what W|A does so well is apparently *also* canned—directly comparable searches just don't work. Many comments cite abstruse questions—but, as the writer noted, many perfectly normal *computational* questions just don't work.

Sure, it's alpha. Sure, it's a specialized tool—but when it fails at the very claims it makes for itself, and when its results fail the significance test in so many cases, one wonders whether there's a fundamental disconnect. When more careful commentaries admit that it's "kinda picky" and demands a "specific syntax," it's clear that the site's own claims far outstrip reality...and, to be sure, Steven Levy's fanboy commentary.

## Professional Social Networking

In February 2008, Karin Dalziel wrote two successive essays on "professional social networking" at *nirak.net – musings of an LIS student* ([www.nirak.net](http://www.nirak.net)—note that Dalziel now has her Master's but has kept the subtitle). You'll find them on February 6 and 7 respectively:

"Professional social networking: why and how" and "Do's and do not's of professional social networking."

What is professional social networking? In Dalziel's case, it doesn't mean she's doing social media as a career—it means she's used social networking *for* her career. Since she explicitly uses a Creative Commons Attribution (BY) license and it's very good stuff, I'll quote most of the posts, with comments at the end of each post.

When I started library school a yearish ago, I knew no one in the library world. I had never heard of Stephen Abram or Walt Crawford, let alone Meredith Farkas or Karen Schneider. I had only started working in a library a few months before, and despite the fact that my first job was as a page in a library, my knowledge about libraries was limited.

I found that I really liked my first library class...and it spurred a lot of thoughts in my existing blog. As time went on, my blog became more and more about library stuff. At the same time, I sought out other library blogs and subscribed to them. At one point I was subscribing to hundreds of library blogs—I have cut back since then. Reading blogs did several things—it gave me glimpses into the different types of careers I might have, it clued me into what librarians were talking and thinking about now (something reading the professional literature just didn't do) and also let me experience what a conference was about before I went. By selectively delving into the archives of some of the more long running blogs, I was able to gain an appreciation of where the profession has been in the last few years.

After reading blogs and writing for a while, I started commenting. I tried to keep up with my comments [and found a Firefox plug-in, cocomment, that watches comments for her]. I also started to examine my other web presences. I had a MySpace profile...I cleaned it up a bit so it looked presentable for potential employers and colleagues to find. I started actively seeking out librarians on social networks—looking through friends of friends for names I recognized, mostly. I did the same on Flickr, signed up for a Facebook account, etc. I joined the Ning network "Library 2.0" and was active there for a while...

Somewhere along the way I redesigned my site and migrated to WordPress from Movable Type. I created a second site at [karin.dalziel.org](http://karin.dalziel.org) to serve as my C.V... I started treating everything online as part of my professional identity—this may not always be important, but I believe it makes a difference, especially in the year or two before job hunting. That said, I tried not to totally stifle myself, either—much of my life is online, after all, and I don't want to completely cut that off. Another big change was to start using my real name for nearly everything—commenting, site lo-

gons, etc. I still have a few places where I use an alternate logon, but there aren't many...

Now I am in the maintenance phase of my online life—I take a look at new applications occasionally, but mostly stick with what I have...

#### **A few specific examples of what online networking has done for me:**

I created an “Open Access for Librarians” presentation for a class... This was the first thing I put on my “Publications, Presentations and Projects” part of my professional website. I quoted Dorothea Salo's blog *Caveat Lector* in my presentation, so I sent email with a link to the presentation on my own site so she would know. (At the time, I considered this more of a professional courtesy than anything....) Dorothea linked to my presentation (and complimented my on my website!!) and it was also picked up by Peter Suber and *American Libraries Direct*... It was also featured on the home page to my own library's website.

More recently, I gave a brown bag talk on Zotero, a open source citation management program I have been using for over a year... I added the talk to my website...and told people about it in Twitter and on my blog. I also responded to a request for slogans on the Zotero forum, pointing to the research LOLcats I made for the presentation on Flickr. I got a nice email thanking me, and got a free Zotero Tshirt and stickers. I was also recommended to do another presentation on Zotero.

#### **Can it work for you?**

I don't necessarily think the online social networking approach will work for everyone, but for me, it has been amazing. I can't afford to go to that many conferences...but online I can take part in conversations I wouldn't otherwise be able to. It's not a replacement for traditional, face to face networking, publishing, and conferences, but it is a great supplement. Another huge advantage for me is that I am a little shy when meeting people for the first time, but if it is someone I know from online, I at least have a way to start up a conversation.

Dalziel didn't set out to build The Dalziel Brand as such, but she picks up on what I consider important lessons: Using your real name (or at least using a consistent handle, so people know who they're dealing with), being aware of your online totality, recognizing that your online identity is part of your professional identity—and following up possibilities to see where they can lead. I'd add “and believing you're as qualified to speak up as anybody else out there,” but she doesn't explicitly say that.

Portions of the second post, leaving out most of the details:

**Do:** Learn how each social network works...

**Don't:** Use networks to spam people...

**Do:** Choose the networks that work for you...

**Don't:** Join networks for the sole purpose of asking for a favor...

**Do:** Put up pictures of yourself...

**Don't:** Put up potentially embarrassing pictures of yourself...

**Do:** Check your name in search engines...

**Don't:** Fall for “Search Engine Optimization” offers...

**Do:** Share your knowledge...

**Don't:** Become locked into your opinion...

**Do:** Carry business cards with your web address at all times...

**Don't:** Complain, gripe, be snarky, or otherwise be overly negative...

**Do:** Utilize a number of social networking sites in your “main” site...

**Do:**...Link early, link often.

**Don't:** Limit your networking to online.

**Do:** Use Creative Commons licensing whenever possible...

This concentrated list is 121 words out of 1,142 in the original post. The other thousand-odd words add meat to these bones; the whole is a remarkably sound starting point for social networking. I wish I'd had this list ten years ago—and I might benefit from it now as well. Not that I'd always agree 100% with everything in the list; what fun would that be?

Oh, and with regards to the final “Do”: On February 22, 2008, Dalziel posted “Why I use Creative Commons and not public domain,” after someone (commenting on another blog entirely) called Creative Commons a “great leap backwards” from Public Domain. It's an **excellent** post, well worth reading.

## **Quicker Takes**

Scott Rosenberg's written a book about blogging—and maybe it's not surprising that *Wired's* related interview says it's *not* likely anybody's written a “coherent narrative of blogging” within a blog. (OK, the interview's by Steven Levy, so you can't expect a lot...) Here's the first and probably stupidest question and Rosenberg's good response. “Here's something I bet a log of people ask: If blogs are so great, why did you have to write a book?” The response: “It's an inevitable question, but it's illogical. When Greil Marcus writes a book about Bob Dylan, do you say to him, ‘Why'd you write a book? You should have written a song.’”

➤ There's an interesting article in the July/August 2009 *ONLINE* (36 pages before my column, which *of course* you should read), “Don't Con-

fuse Me with Facts: Explaining Research-Based Information to Experience-Based Listeners.” It begins with a discussion of how the author answers a question she says she’s “often asked,” namely “Why is it that there are more kids with disabilities than when we were young?” She goes through a laundry list of reasons that isn’t really true—and says that, when she gave a similar answer to one medical technician, the person said “But I still think that there are more.” Which she interprets thus: “In other words, ‘Don’t confuse me with the facts!’” This is interesting because, in her spiel, there are *lots* of suppositions and assertions—but *not one quantifiable fact*. Later, we get a perfectly reasonable question followed by “You can hear what the speaker really wants to rant about beneath the reasoned question.” I dunno. I have problems with “research-based” responses that don’t cite any research. Maybe that means I don’t care about facts, but I don’t think so.

- Kate Sheehan makes a useful distinction in “time’s on our side (sometimes)” —a February 23, 2008 post at *loose cannon librarian*. A discussion on a library list over whether libraries should buy Blu-ray discs involved a couple of other assertions: That downloads will wipe out discs anyway, so why bother—and that relying on downloads increases the digital divide. (OK, there was more to it—the view that, what the heck, nobody *cares* about better picture quality, so why bother with Blu-ray?) Sheehan suggests that they’re both right—but on different time scales. That is: Downloads will (or might) *eventually* (maybe) replace DVDs and Blu-ray discs—but not for a long time yet, and particularly not for people who don’t even have 768K “broadband” yet, much less the 20Mbps broadband you’d need for true high-def streaming. In other words, what a library should buy *now* for use over the next five to fifteen years is different from where things might *eventually* wind up. Would you consider a library that refused to buy audio CDs in 1990 (or 1995 or 2000—or, for that matter, 2009) because, after all, eventually downloads will replace them “forward-looking” or anti-patron?
- Sometimes a rant is so well done and probably so deserved that you just feel the need to link to it. So it is with the brilliantly titled “Post #103” by Mike Simpson on *A splash quite unnoticed*, which appeared on May 29, 2008. You’ll find it

at [www.ice-nine.net/~mgsimpson/asqu/archives/103](http://www.ice-nine.net/~mgsimpson/asqu/archives/103) (the dash is part of the URL). Simpson had stomach flu and had been watching “Some Vendor’s webinar” (I’m delighted to say Simpson also loathes “webinar” as a term). There’s no way I can do this piece of writing justice through excerpts, but I will quote four sentences from two paragraphs, separated by an ellipsis: “While we’re on the topic of your horrible slides, why are there gross grammatical errors in your canned presentation? Do you read your own slides to make sure they make sense?”... “You have now claimed that open source products require a huge investment in local support costs. You are now a lying tool.” Seriously good stuff.

- Sometimes there’s a story title that, to some of us, writes the story better than what follows. In this case, it’s from a June 5, 2008 *BusinessWeek* article: “**Online polls: How good are they?**” Maybe you’ll find the story more convincing than I did (although it raises a few flags, it basically says fine, just fine.)
- I never got around to doing a predictions-and-followup story this year. *Silicon Alley Insider* put together a nice set of “the worst predictions for 2008” in a December 29, 2008 story—one that also cited some reasonably good ones. Some of the worst? *PC World* said Linux would gain major market share. CNet predicted broadcast TV would die (in 2008!), that PCs would become passé and a cluster of other bad guesses—er—*informed* projections. *InformationWeek* and others saw the internet defeating Chinese (and other) censorship. *BusinessWeek* saw fast and major changes for AOL. *TheStreet* saw the Wii falling out of favor. (Among several “best predictions,” the story includes “the shine comes off Google”—which is presumably why people are touting GoogleWave as the best thing since the internet, feel that GoogleReader could be a FriendFeed replacement, and seem actively *hostile* to the idea that another search engine could be useful.)

## Copyright Currents

# Musings on Fair Use

When I was doing so much copyright-related writing that I felt the need to split it into four parts, I separated balancing rights (©3) from locking down (©4). That’s really not a workable split, and most copyright

coverage (what there is of it—it's been more than a year!) is likely to return to COPYRIGHT CURRENTS.

It felt like a good time to review commentaries on fair use over the past couple of years—but there's no good way to discuss fair use without, at times, discussing DRM (and DMCA), given the tank-size hole DMCA blows in the heart of fair use. So this piece knows no boundaries. It's primarily about fair use but brings in DRM, DMCA and, to be sure, our friends at RIAA. (No, I'm *not* going to discuss Google Book Search. Google abandoned fair use as an argument, which I believe was a tragic decision from a public-good viewpoint, making Google instantly more evil, but a sensible decision from a business perspective. Neither am I going to discuss Amazon's amazing show of pseudocourage regarding the text-to-speech feature in the Kindle 2—asserting that it's fair use but abandoning any actual *defense* of fair use. Pseudocourage is cheap; *real* courage can be expensive.)

## Sections 106 and 107

Some folks in Big Media claim that fair use isn't a law—it's only a defense against copyright infringement. While fair use is a defense against infringement, it's also a law. This law, Section 107 of Title 17 of the U.S. Code:

Sec. 107. - Limitations on exclusive rights: **Fair use**

Notwithstanding the provisions of sections 106 and 106A, the fair use of a copyrighted work, including such use by reproduction in copies or phonorecords or by any other means specified by that section, for purposes such as criticism, comment, news reporting, teaching (including multiple copies for classroom use), scholarship, or research, is not an infringement of copyright. In determining whether the use made of a work in any particular case is a fair use the factors to be considered shall include -

- (1) the purpose and character of the use, including whether such use is of a commercial nature or is for nonprofit educational purposes;
- (2) the nature of the copyrighted work;
- (3) the amount and substantiality of the portion used in relation to the copyrighted work as a whole; and
- (4) the effect of the use upon the potential market for or value of the copyrighted work.

The fact that a work is unpublished shall not itself bar a finding of fair use if such finding is made upon consideration of all the above factors

The tank-size hole DMCA blows in the heart of fair use is simple enough. DMCA prohibits products or services that circumvent technological measures that control access—and fair use is explicitly *not* a defense against

DMCA claims regarding *access* to a work. (According to the law itself, DMCA doesn't prohibit circumventing measures that control *copying*—but in the real world that appears to be a distinction without meaning.)

It might be useful to repeat the six exclusive rights granted to copyright owners in Title 17 (Section 106):

Subject to sections 107 through 122, the owner of copyright under this title has the exclusive rights to do and to authorize any of the following:

- (1) to reproduce the copyrighted work in copies or phonorecords;
- (2) to prepare derivative works based upon the copyrighted work;
- (3) to distribute copies or phonorecords of the copyrighted work to the public by sale or other transfer of ownership, or by rental, lease, or lending;
- (4) in the case of literary, musical, dramatic, and choreographic works, pantomimes, and motion pictures and other audiovisual works, to perform the copyrighted work publicly;
- (5) in the case of literary, musical, dramatic, and choreographic works, pantomimes, and pictorial, graphic, or sculptural works, including the individual images of a motion picture or other audiovisual work, to display the copyrighted work publicly; and
- (6) in the case of sound recordings, to perform the copyrighted work publicly by means of a digital audio transmission.

There are other limitations on these rights in addition to Section 107. For example, Section 108 provides limited exceptions for libraries and archives; Section 109 is, in effect, the First Sale Doctrine (when you buy a copy of a copyright work, you can generally dispose of *that copy* as you wish, including lending, selling or giving it away); Section 110 exempts *some* performances and displays, largely for instructional purposes. One difference: the other sections are typically detailed, where Section 107 is brief and vague.

**But it's still the law.**

Does it *matter* whether fair use is a defense against infringement or an exception to exclusive rights? Yes, it does—see “Terminology and Dancing Babies” below.

## What You Buy When You Buy Media

It's easy to get confused about the relationships among copyright itself, First Sale, DMCA, fair use—and, well, just what you're *buying* when you buy “a book” or “a movie.” That's particularly true given the trend toward copyright maximalism. Sascha Segan wrote “Digg, DVDs, and Spartacus” in the July 17, 2007 *PC Magazine* and kicked it off with a bang:

When you buy something, you should own it. You should be able to do what you want with it—as long as what you’re doing is personal and private. Unfortunately, there’s a law that says otherwise, and many Americans have finally reached the point where they’re going to stand up and take real action against this law, rather than just complain about it. The question is whether the big media corporations will side with the people.

Well, no, that’s not really the question—it’s already clear that some of Big Media is saying “the law” (DMCA) doesn’t go far enough and wants even more restrictions on what you can do with your own stuff. Still, Segan makes it clear in the pull quote: “If I buy *The Matrix* on an HD DVD, I should be able to rip it, convert it to Xvid format, and watch it on my laptop. There shouldn’t be anything illegal about that. But there is.”

Segan isn’t a pirate and doesn’t condone piracy. “Content creators should be paid for their work. But the balance between consumers and content ‘owners’ has gotten way out of whack.” Recognizing the imbalance is a start.

There are three issues here:

- Whether you “buy *The Matrix*” or whether you buy a disc that **contains** *The Matrix*.
- Whether there’s a useful distinction between access and copying for digital media.
- Whether “shifting” of all sorts (time shifting, place shifting, device shifting) is or should be covered by the First Sale doctrine.

Big Media argues that you’re not buying *The Matrix*—you’re buying a disc that *contains* the movie. While you have First Sale rights for that disc (you can give it away, lend it, sell it), you have *no such rights* for the movie itself.

When you shift—when you rip the movie to computer or convert it to a different format—you’re shifting *the movie*, not the disc. And it doesn’t work like *Star Trek* transporters: Shifting the movie to your notebook computer does not destroy the disc. There are now (at least) two copies of the movie that can be watched by more than one person simultaneously. Is that legitimate? Should it be?

Is there a useful distinction between access and copying when it comes to digital media? Perhaps not. Although DMCA theoretically doesn’t prohibit circumvention to allow copying—at least when the copying is for fair use purposes—by preventing circumvention for access, it *effectively* does the same thing.

Two years later, it’s easy to say that Segan overestimated the willingness of Americans to “take real action” (other than illicit copying). Should DMCA be

modified *at least* so that I could legally make a digital copy of a two-second clip from a movie to include in a review, a classic form of fair use? Should it be modified enough to allow the shifting Segan wants? I’m not sure of my own answers to those questions. The rest of this scattered commentary will note some points along the way.

## FAIR USE

For some time, the good news about copyright-related legislation has been that attempts to tilt the balance even further towards Big Media and rightsholders have (generally) stalled. The bad news? Attempts to restore some balance or deal with issues that discourage progress in the sciences and arts (what copyright’s supposed to promote) have *also* stalled.

Rich Boucher (D-VA) has for years attempted to introduce balancing legislation. In the early years of the millennium, Boucher introduced bills that would explicitly apply Section 107 to DMCA—that is, make it legal to circumvent protections for fair use purposes. Those bills were swatted down with little difficulty.

In 2007, Boucher introduced another version (cosponsored by Charlie Wyatt, R-California, and Zoe Lofgren, D-Silicon Valley), this time with help from that mysterious group that crafts acronymic bill names. This one, HR 1201, was the Freedom and Innovation Revitalizing U.S. Entrepreneurship act—or FAIR USE. FAIR USE did *not* establish a fair use defense to circumvention. Instead, it made specific changes. To quote a summary from Boucher’s website:

The legislation instead contains specific exemptions to section 1201 of the Digital Millennium Copyright Act which do not pose a comparable potential threat to their business models. For example, the proposed legislation would codify the decision by the Register of Copyrights, as affirmed in a determination made by the Librarian of Congress under section 1201(a)(1) of the DMCA, to allow consumers to “circumvent” digital locks in six discrete areas. The bill also contains narrowly crafted additional exemptions that are a natural extension of these exemptions.

Other new elements of bill include limiting the availability of statutory damages against individuals and firms who may be found to have engaged in contributory infringement, inducement of infringement, vicarious liability or other indirect infringement. A more narrowly crafted provision codifying the Supreme Court’s Betamax decision to eliminate any uncertainty about a potential negative impact on the Supreme Court’s holding in the Grokster case is also contained in the legislation.

Finally, given the central role that libraries and archives play in our society in ensuring free speech and continuing access to creative works, the bill includes a provision to ensure that they can circumvent a digital lock to preserve or secure a copy of a work or replace a copy that is damaged, deteriorating, lost, or stolen.

The six discrete areas? Alex Curtis did a nice job of annotating them in a March 5, 2007 post at *PublicKnowledge*. His comments, with provisions doubly indented.

(i) an act of circumvention that is carried out solely for the purpose of making a compilation of portions of audiovisual works in the collection of a library or archives for educational use in a classroom by an instructor;

This DMCA limitation is very pinpointed, and similar to one newly granted by the Copyright Office itself during the DMCA exemption hearings. It's going to be hard for folks to argue against libraries, archives, or professors.

(ii) an act of circumvention that is carried out solely for the purpose of enabling a person to skip past or to avoid commercial or personally objectionable content in an audiovisual work;

This limitation is similar to one proposed and passed into law in 2005. This would put the limitation squarely in copyright law. It also puts the content industry in the unenviable position of saying that consumers shouldn't be able to fast-forward through commercials or objectionable content.

(iii) an act of circumvention that is carried out solely for the purpose of enabling a person to transmit a work over a home or personal network, except that this exemption does not apply to the circumvention of a technological measure to the extent that it prevents uploading of the work to the Internet for mass, indiscriminate redistribution;

A limitation for home and personal networking, expressly forbidding willy-nilly Internet distribution. The content industry is going to have to be creative when they tell consumers and legislators why they should have to buy specialized copies of their digital media for every device, when the content can be transferred easily in these limited environments, without the fear of piracy.

(iv) an act of circumvention that is carried out solely for the purpose of gaining access to one or more works in the public domain that are included in a compilation consisting primarily of works in the public domain;

Using copyright law, DMCA or not, to protect something you don't even own, like works in the public domain, is reprehensible. Go ahead, try and defend it.

(v) an act of circumvention that is carried out to gain access to a work of substantial public interest

solely for purposes of criticism, comment, news reporting, scholarship, or research; or

Ahh...this is more like what we know of as fair use. It's a limited view of it, but it's very straight-forward, and thus, harder to argue against.

(vi) an act of circumvention that is carried out solely for the purpose of enabling a library or archives meeting the requirements of section 108(a)(2), with respect to works included in its collection, to preserve or secure a copy or to replace a copy that is damaged, deteriorating, lost, or stolen."

Preventing digitally protected works from being lost due to deterioration of media is a problem that Brewster Kahle has been asking the Copyright Office to address. Instead of being a temporary DMCA exemption, this one would be permanent. And again, hard to argue against.

Curtin believed this bill had a good chance of enactment. (AALL, ALA, ARL and the Consumer Electronics Association, among others, backed it.) So what happened? It was referred to subcommittee on March 19, 2007—and never heard from again during that session of Congress, which ended at the end of 2008. It probably didn't help that, for example, *Ars Technica* essentially dismissed the bill as half a loaf. As usual, the result was no result. Will something like it—or something that would *actually* restore fair use—be reintroduced? Not so far.

## Doug Johnson on Fair Use

Doug Johnson, Director of Media and Technology for the Mankato (MN) Public Schools, runs a first-rate blog on school technology and library issues—*The Blue Skunk Blog* ([doug-johnson.squarespace.com/blue-skunk-blog/](http://doug-johnson.squarespace.com/blue-skunk-blog/)). He writes about fair use *a lot*. I'll just note some items since early April 2008, when Johnson posted "Paradox land" and began a series of posts on "Changing how we teach copyright" and, later, fair use scenarios.

### *Paradox land*

Johnson begins this April 7, 2008 post with two images from Eric Faden's "A Fair(y) Use Tale"—the standard FBI copyright infringement warning on the left, a modified version on the right. The heart of the modified warning:

Federal law allows citizens to reproduce, distribute, or exhibit portions of copyrighted motion pictures, video tapes, or video discs under certain circumstances without authorization by the copyright holder.

This infringement of copyright is called "fair use" and is allowed for purposes of criticism, news reporting, teaching, and parody.

That's a narrow modification, intended to ape the FBI warning itself. (Isn't it interesting that publishers don't see fit to include an ominous FBI seal on the copyright pages of books and magazines—or for that matter on CD labels?) It's too bad that Faden's version uses the word "infringement"—wouldn't it be better to call it a "limitation on copyright" or "exception to copyright"?

Johnson is proposing that educators change their approach to using—and teaching about—intellectual property, but found himself thinking about paradoxes and contradictions in this area (he'd been writing other copyright-related posts, resulting in lively conversations). Some of the issues, with my (unindented) comments as appropriate):

While intellectual property, especially in digital formats, becomes an increasingly important "wealth generator" throughout the world, the laws surrounding it are becoming less understandable, more complex, and less relevant, especially to this generation of remixers and content-sharers.

The term **intellectual property** biases the discussion. Maybe Johnson should stick to **copyright**—and avoid "property" as a biasing term.

While today's students want to use others' digital works, often without regard to the legal protections they may carry, many of these students' own creative efforts will be the source of their incomes and they will need a means of protecting their own work and want others to respect intellectual property laws.

This is a classic paradox—but also a difference between *some* copyright protection and *maximalist* copyright protection. If a student (or teacher!) thinks they deserve more protection for their "creations" (almost never 100% original) than they're willing to grant others, they're either ignorant, ethically challenged or hypocritical. There's a vast middle ground: Balanced copyright.

While protection of individual property rights is given legal precedence, many argue there is a moral precedent and there may be economic value to placing all intellectual works into the public domain as soon as possible.

Yes, I'll argue that—there is *absolutely* economic value in making works available for others to use and build on. But I would define "as soon as possible" to mean "as soon as the creator has had a reasonable time to benefit from exclusive rights over their creation."

Prohibitions are ubiquitous on media, but the warnings disregard fair use and may not be legal. Case law related to the use of digital media is scarce. Technology changes faster than the legal system can keep up.

These are key points. Are some warnings actually copyfraud—and would it be reasonable to make copy-

fraud a crime? Unfortunately, the case law on fair use is so thin as to be nearly useless.

While librarians are considered the copyright experts in their buildings, they too often become the copyright "cops" instead. The experts on whom practicing librarians reply give "safe" advice that tends to honor the rights of intellectual property owners, not consumers.

Another key point: If experts tend toward a permission society, practice can become even more unbalanced than the law. I might reword the second sentence, though—*good* advice can honor *both* sets of rights (and I much prefer "citizens" to "consumers"). Maybe just "advice that tends to favor the interests of copyright holders over citizens in general"?

Thoughtful teachers and librarians (can fail as) intellectual property use role models by being:

followers of the letter of the law who err on the side of the information producer

or questioners of the legality and ethical value of current law and practices who err of the side of the information consumer

*Questioning* the ethics of current law and legality of current practices shouldn't be a problem. Counseling outright disobedience and flaunting outright infringement is something else.

While intellectual property shares many qualities of physical property, it also has unique properties that many of us still struggle to understand. A physical apple and copyright protected song from Apple both may sell for \$.99. Your assignment: Compare and contrast the "unauthorized acquisition" in financial, moral, and practical terms.

Why I don't like the term "intellectual property"—it emphasizes the "property" aspect and it's really not that simple.

Johnson suggests four changes he's thinking of recommending. In part:

1. Change the focus of copyright instruction from what is forbidden to what is permitted....
2. When there is doubt, err on the side of the user.
3. Ask the higher ethical questions when the law seems to make little sense...
4. Teach copyright from the point of view of the producer, as well as the consumer.

I find very little to disagree with here, but I'm not a teacher. I do notice that, in this list, Johnson shifts to "copyright" as a term—a much better term than "intellectual property."

### *Changing how we teach copyright*

This series of posts began on April 8, 2008 and concluded on April 11, 2008. Particularly if you're an

educator, I heartily recommend the full series, which includes one post on each of the four items above. Here, I'll focus on items related to fair use and balancing interests.

In Part 1, Johnson cites the term "Hyper-comply," used in *The Cost of Copyright Confusion for Media Literacy* ([www.centerforsocialmedia.org/files/pdf/Final\\_CSM\\_copyright\\_report.pdf](http://www.centerforsocialmedia.org/files/pdf/Final_CSM_copyright_report.pdf)) for the practice of avoiding *possible* infringement at the expense of fair use (and effective education). Johnson's assertion—and I find it wholly inarguable:

As information professionals, **we have as great an obligation to see that staff and students get as complete access and use from copyrighted materials as possible, as we do in helping make sure they respect copyright laws.** Period.

He says teachers need to teach the concepts and tests of fair use and cites some existing fair use guidelines. (I like the preamble to one such set, as it describes fair use as providing "certain limitations on the exclusive rights of copyright holders," a much more value-neutral term than "defense for infringement.")

One problem with any set of guidelines is the lack of clarity and definitive case law. The *Fair Use Guidelines for Educational Multimedia* uses fairly typical limits: up to 10% or 3 minutes (whichever is less) of a "motion media" work, up to 10% or 1,000 words (whichever is less) of a textual work, up to 10% or 30 seconds (whichever is less) of music and lyrics...but there's the surprising claim that "an entire poem of less than 250 words may be used" as long as you don't use more than three poems by one poet or five poems from an anthology. On the other hand, these are guidelines for a special category: educational multimedia projects that aren't widely distributed (two use copies, one archival copy) or retained for a long period (no more than two years).

In the second post, Johnson argues that the default assumption should be that use of materials is allowed unless such use is specifically forbidden "and legally established in case law." He cites the Google Book Project as a case in point; it's unfortunate that Google abandoned fair use as a defense. He notes that the overbroad "all rights reserved" warning in some books is, in fact, **wrong**: It attempts to negate fair use. He offers his own district's policy on copyright as a poor example: "All of the four conditions [of the Fair Use Doctrine] must be totally met to qualify a work for use or duplication under this clause." That's not what Section 107 says—not even close.

[T]here is an inherent bias toward copyright owners when copyright "experts" offer advice about particular situations. A lawyer, a book author or columnist

who answers question on copyright issues may be held liable for the advice they give—that if proven wrong, may result in litigation, fines or a finding against the person who originated the question. The common advice given becomes "assume the U-turn is illegal." As one of my college days t-shirts once read, "Question authority!"

That's a good point—although some of us make a point of saying "I'm not a lawyer and this is not legal advice." (Nor will I offer specific advice on specific situations in writing; I'd point to Section 107 and say "Think it through.") Johnson points to some sources that are more inclined to aggressive fair use application—and includes four pieces of advice, one of which I have to take slight issue with:

Place the onus of proof of wrongdoing on the provider, not the proof of fair use by the user.

Assume the U-turn is legal.

Ask forgiveness, not permission.

Be subversive.

Unfortunately, the first one may be right ethically but not legally. In practice, it's pretty much up to a user to demonstrate fair use. Should that be true? I don't believe so.

One comment on this post points out a problematic paragraph regarding Creative Commons and the assumption that creators have, or desire, exclusive rights. (My own take: If you *don't* desire exclusive rights, Creative Commons makes it easy to weaken them—but that should be a conscious act.) That paragraph, though, has nothing to do with fair use.

The third post offers a longer version of the brief statement used earlier—and I like this one better:

Be prepared to answer questions when the law seems to make little sense, when a law is inconsequential, when a law is widely ignored, or when breaking the law may serve a higher moral purpose.

Johnson notes blue laws (restricting commercial activities on Sunday) as parallel to some copyright laws—ones so routinely ignored and badly enforced that they're largely pointless. Unfortunately, with copyright, "routinely ignored" doesn't help much if Big Media or some individual rights-holder looking for a jackpot payday comes calling; despite one unfortunate slogan of the EFF, 20 million—or 30 million, or 100 million—downloaders can indeed be wrong.

But *should* some forms of casual infringement be illegal—and, maybe more important, should they be subject to statutory damages? Johnson cites his son downloading a movie—after his son had paid twice to see the movie in theaters and with plans to buy it when the DVD came out. The son wonders what harm this



“infringement” is causing. I’d ask another question: How is it that the penalty could be \$250,000, not the \$20 (or so) that the DVD would cost? (I know one answer, but it only applies to the source *providing* the digital copy, not to the downloader.)

Johnson offers an interesting list of common uses regularly interpreted as illegal—but where he regards the illegality as effectively meaningless. Some of them:

Showing movies in class for entertainment or reward without a public performance license.

Playing a commercial radio station that plays popular music in a public venue, including classrooms and gymnasiums.

Making a diligent effort to contact a work’s owner with no response and then using the work.

Converting 16mm films or videotapes *that are not available for purchase* into DVD to a newer format.

Making copies of copyrighted materials of online resources (that can be read online without cost) for classes.

I’d suggest that “or reward” makes the first one ambiguous—and that the third, an important case, is the orphan works issue, an important issue on its own. I’m not going to suggest which of these are or ought to be fair use; I will agree that some are distinctly within the blue laws category. Johnson’s comment on all of them:

The uses above have either no or minimal impact on a copyright holders’ profits. Overly strict enforcements of the letter of copyright laws will lead to creating scofflaws of not just students, but teachers, and make all copyright restrictions suspect.

Here, Johnson makes what I believe to be an important point, one I haven’t seen made all that often: Copyright maximalism can *damage* copyright by making it seem abhorrent in general. By the same token, greater use of fair use provisions might *strengthen* copyright by making its core provisions seem more reasonable. (Not sure what you can do to make “life plus 70 years” seem reasonable...)

Here’s an interesting item: According to Temple University, “There’s never been a lawsuit involving a media company and an educator over the rights to use media as part of the educational process.” Beyond that, I’d certainly agree that by *not* encouraging use of fair use provisions in the classroom, school and academic librarians help weaken fair use.

The fourth installment in this series is fairly specific to educators and less focused on fair use; it’s valuable, but I won’t spend time on it. I do like the idea that students should think about their roles as probable creators of copyright material (“producers”) as well as users of

copyright material (“consumers”). I also very much like the specific notion that people need to understand that copyright serves more than just Big Media.

### *Fair use scenarios*

An interesting (and ongoing?) series of posts, each offering a specific scenario that raises fair use questions. You need to read the posts themselves and consider your own responses. Some of these are categorized as “Fair use scenario” rather than “Ethical behaviors.”

Johnson introduced the series with a November 15, 2008 post, “Fair use scenarios.” In it, he cites one scenario and the three questions that are relevant to all of the scenarios:

1. What is the copyrighted material? Who owns it?
2. Does the use of the work fall under fair use guidelines? Is the use transformational in nature? Can this be considered “educational” use?
3. What is your level of comfort in helping create such a product? Are there any changes or limits you might like to see that would make you more comfortable with this project?

Since then, I’ve seen a number of scenarios, such as these (summarized):

- A teacher’s students have been building a closed wiki including art images portraying the human body—some of them from subscription databases. She wants to open the wiki to the general public.
- An elementary school is putting on a play with legitimate performance rights—and in the past, parents have been allowed to videotape performances. This makes the music director nervous; he’s afraid clips will wind up on YouTube or Facebook.
- An instructor wants to use a clip from a movie (on DVD) to spur discussion—but to use the clip he has to bypass copy protection on the DVD.

As you can see, some of these (and the others) raise difficult issues. That makes them interesting—and, in some cases, they’re not hypotheticals, they’re real.

I didn’t plan to spend this much space on Doug Johnson’s work—but it’s thought-provoking and deserves attention outside the school media center community.

## Code of Best Practices in Fair Use

A new *Code of Best Practices in Fair Use for Media Literacy Education* comes from the Center for Social Media at American University; it’s a 24-page PDF, freely downloadable. You’ll find the link and an introduction at

[www.centerforsocialmedia.org/resources/publications/code\\_for\\_media\\_literacy\\_education/](http://www.centerforsocialmedia.org/resources/publications/code_for_media_literacy_education/). Doug Johnson noted the new code in two posts (November 10 and 11, 2008) on *Blue Skunk Blog*, and others have also noted it.

### Go read it.

Maybe that's all I need to say. The publication is short and meaty enough that I see little point in quoting excerpts, and I'm certainly not about to take issue with the guidelines. I will quote portions of the introduction (or is that also the complete document?) that strike me as saying important things about fair use:

From the beginnings of fair use in the courts, judges have drawn the connection between this special doctrine of copyright law and the central importance of education in the American republic. The word "education" appears prominently in the preamble to Section 107 of the current Copyright Act, where the doctrine is codified. In addition, educators who rely reasonably on fair use are insulated against statutory damages in Sec. 504(c)(2). However, there have been no important court decisions—in fact, very few decisions of any kind—that actually interpret and apply the doctrine in an educational context. This means that educators who want to claim the benefits of fair use have a rare opportunity to be open and public about asserting the appropriateness of their practices and the justifications for them...

Law provides copyright protection to creative works in order to foster the creation of culture. Its best known feature is protection of owners' rights. But copying, quoting, and generally re-using existing cultural material can be, under some circumstances, a critically important part of generating new culture. In fact, the cultural value of copying is so well established that it is written into the social bargain at the heart of copyright law. The bargain is this: we as a society give limited property rights to creators to encourage them to produce culture; at the same time, we give other creators the chance to use that same copyrighted material, without permission or payment, in some circumstances. Without the second half of the bargain, we could all lose important new cultural work.

Copyright law has several features that permit quotations from copyrighted works without permission or payment, under certain conditions. Fair use is the most important of these features. It has been an important part of copyright law for more than 170 years. Where it applies, fair use is a user's right. In fact, as the Supreme Court has pointed out, fair use keeps copyright from violating the First Amendment. New creation inevitably incorporates existing material. As copyright protects more works for longer periods than ever before, creators face new challenges: licenses to incorporate copyrighted sources become more expensive and more difficult to obtain—and

sometimes are simply unavailable. As a result, fair use is more important today than ever before.

**Fair use is flexible. It is not uncertain and it is not unreliable.**

Copyright law does not exactly specify how to apply fair use, and that gives the fair use doctrine a flexibility that works to the advantage of users. Creative needs and practices differ with the field, with technology, and with time. Rather than following a specific formula, lawyers and judges decide whether an unlicensed use of copyrighted material is "fair" according to a "rule of reason." This means taking all the facts and circumstances into account to decide if an unlicensed use of copyrighted material generates social or cultural benefits that are greater than the costs it imposes on the copyright owner.

Fair use is flexible; it is not unreliable. In fact, for any particular field of critical or creative activity, lawyers and judges consider expectations and practice in assessing what is "fair" within that field. In weighing the balance at the heart of fair use analysis, judges refer to four types of considerations mentioned in the law: the nature of the use, the nature of the work used, the extent of the use, and its economic effect (the so-called "four factors"). This still leaves much room for interpretation, especially since the law is clear that these are not the only permissible considerations. So how have judges interpreted fair use? In reviewing the history of fair use litigation, we find that judges return again and again to two key questions:

Did the unlicensed use "transform" the material taken from the copyrighted work by using it for a different purpose than that of the original, or did it just repeat the work for the same intent and value as the original?

Was the material taken appropriate in kind and amount, considering the nature of the copyrighted work and of the use?

If the answers to these two questions are "yes," a court is likely to find a use fair. Because that is true, such a use is unlikely to be challenged in the first place.

The introduction also includes a number of "common myths about fair use" and responses to those myths. I find two of those myths particularly interesting (which is not to slight the others), partly because the second one is repeated so often by Big Media:

**Myth:** Fair use is just for critiques, commentaries, or parodies.

**Myth:** Fair use is only a defense, not a right.

Take a look at the page—and the discussion that follows.

A guest post by Kristina De Voe, posted November 14, 2008 on *ACRLog*, discusses the "release event" for the new Code, links to an archived stream of the

event and also links to a related Wiki, *Unlocking Copyright Confusion* (copyrightconfusion.wikispaces.com/). De Voe offers this note about the situation and the event:

Whether helping faculty design amazing curricula or helping students with research projects, promoting a stronger culture of fair use within our institutions allows us to help empower our users in accessing and utilizing media rich resources – available from our libraries or elsewhere. It is no surprise to me that comments about the Code from librarians were celebratory (there were cries of “Hallelujah” and even “This rocked my world!”) because too often, I think, we become bogged down by the image of librarians as gatekeepers of information.

### *Educational fair use: a provocation*

Peter Jaszi is the new intellectual property scholar at the Center for Intellectual Property and, as such, has taken over *Collectanea* (Chaucer.umuc.edu/blogcip/collectanea). This post, on March 30, 2009, notes the *Code*—among other things—but focuses on “the curious dearth of case law interpreting the fair use doctrine where core educational functions are concerned.” How much of a dearth?

In the years since 1841, when Joseph Story first cooked up the fair use doctrine, there have been **no decided cases**—that’s right, no cases!—that address the legal status of core educational functions conducted in and around conventional schools. The closest we come (and it’s not very close!) is *Encyclopedia Britannica v. Crooks*, 542 F. Supp. 1156 (W.D.N.Y. 1982), which stands for the somewhat underwhelming proposition that schools can’t invoke fair use to justify a wholesale program of off-air taping for possible future classroom use! [Emphasis added.]

Excerpts from Jaszi’s “two modest suggestions” for what educators should be doing in this regard:

1. First, it’s important that educators refrain from claiming too much under the heading of fair use—and, in particular, that they avoid the simple (and erroneous) proposition that merely because a use is educational, it is definitionally fair...
2. Second, it is crucial to develop the arguments for treating various kinds of educational use as “transformative.” Like it or not, this is the current mantra of fair use jurisprudence, and educators need to recognize this jurisprudential fact and respond accordingly. They need to generate more and better explanations ...of how educational uses don’t just repeat quoted material for its original purposes, but both repurpose that material and add value to it...

If amateurs like me are puzzled by the word “transformative,” we’re not helped by the number of times that word actually appears in Section 107. Go back and look: I’ll wait.

**None. Zero.** Not once does that term appear. Not once is there a suggestion that “doing something essentially new and original, using the older work as base material” (as one commentator expands “transformative”) has *any bearing* on the four tests. Personally, I find the situation confounding: Apparently, the courts are most interested in a concept that’s *simply not there* in the law itself.

For now, let’s move on...

## Terminology and Dancing Babies

Who cares whether fair use is an exception to exclusive rights or a defense for infringing uses? Among others, the Electronic Frontier Foundation, in a case that involves Prince, YouTube and a 29-second clip of a dancing baby. The case is *Lenz v. Universal*—and note the order of the names.

The basic story (from *Ars Technica* items):

- Stephanie Lenz posted a clip of her 18-month-old son Holden dancing to Prince’s “Let’s Go Crazy” on YouTube in February 2007. The clip was less than 30 seconds long and clearly an original work making use of Prince’s music. (The music’s *really* hard to hear in the background—and at best is relevant for half of the clip. The judge’s finding in August 2008 says it “can be heard for approximately twenty seconds, albeit with difficulty given the poor sound quality of the video.”)
- Universal Music Publishing Group issued a DMCA takedown notice to YouTube in June 2007. YouTube suppressed the video.
- Here’s where it gets interesting: Lenz posted a counternotification, saying the clip was *not* an infringement. YouTube failed to reinstate the video—for the better part of a year. Then, in April 2008 and with the backing of the Electronic Frontier Foundation (EFF), Lenz *sued Universal* to recover legal expenses and for an affirmative judgment that the clip is not a copyright infringement.

Takedown notices are made under threat of perjury. Publishers issue takedown notices by the thousands—Viacom alone has issued more than 200,000 takedown notices. Is every “infringing” clip studied to make sure it’s not a legitimate use? What do you think?

- Universal, never one to let bad enough alone, actually claimed in April 2008 that EFF’s suits are, in fact, SLAPPs—strategic lawsuits against public participation. Universal says (according to an April 28, 2008 *Ars Technica* story—I

couldn't make this stuff up!) it's the victim of "an ongoing campaign by the Electronic Frontier Foundation to deter copyright holders from protecting their rights."

- In the court case itself, Universal insists that there's no such thing as a self-evident instance of fair use: "Whether a use does or does not amount to a fair use is never 'self-evident,' but is reached only after a defendant first affirmatively pleads it and then proves it after an intense equitable balancing of multiple factors." Note "defendant" here—and note that *the burden of proof is on the defendant*, an interesting "guilty until proven innocent" situation. That's the classic "fair use is infringement" argument.
- While the judge didn't buy the SLAPP nonsense, it did dismiss Lenz' suit on April 8, 2008, saying the argument of copyfraud (not the term used) was weak—and that an affirmative ruling in favor of the clip wasn't needed because "Universal has indicated it had and presently has no intention of ever asserting an infringement action directly against Lenz based on the 'Let's Go Crazy' video." (From CNet coverage.) But the judge left the door open just a crack...
- A new suit, filed ten days later, argues (among other things):

Defendants had actual subjective knowledge of the contents of the Holden Dance Video and that it did not infringe any Universal copyrights on the date they sent YouTube the takedown notice regarding the Holden Dance Video... Defendants should have known, if they had acted with reasonable care or diligence, or would have no substantial doubt had they been acting in good faith, that the Holden Dance Video did not infringe any Universal copyrights on the date they sent YouTube their complaint under the DMCA.

- In July 2008, facing the second case, Universal came up with a remarkable new claim that speaks directly to the terminology issue: Takedown notices don't need to consider the fair use doctrine, because *fair use is still infringement*. Specifically, when the judge asked Universal's lawyer "Are you saying there cannot be a misuse of a takedown notice if the material is copyrighted?" the lawyer responded "I don't think 'fair use' qualifies." (Universal was arguing that the case against it should be dismissed because *there was no case*—because fair use is *irrelevant* to whether something infringes copyright.)
- On August 20, 2008, the judge refused to dismiss the lawsuit—and in doing so, substantially

strengthened the interpretation that fair use is an exception, not just a defense. (Universal also said that, because it never *admitted* that the takedown notice misrepresented the video's copyright status, it couldn't be guilty of making a "knowing" misrepresentation. The judge didn't buy that argument.) You'd need to read the August 21, 2008 *Ars Technica* report for some of the even sillier arguments put forward by Universal, including the claim that the YouTube video might undermine the market for *licensed* videos of babies dancing to Prince's music.

The case isn't over—it hasn't even come to trial yet. But the judge's refusal to dismiss points useful directions. It cites the section of DMCA that requires that a takedown notice represent "a good faith belief that use of the material in the manner complained of is not authorized by the copyright owner, its agent, or the law." (The judge italicizes that clause for emphasis.) Universal argued that fair use "is merely an *excused* infringement of a copyright rather than a use *authorized* by the copyright owner or by law" while Lenz argued that "fair use is an authorized use of copyrighted material, noting that the fair use doctrine itself is an express component of copyright law." The judge quotes Section 107—remember the phrase "**is not an infringement of copyright**"?

The judge also notes both the Congressional history around DMCA (which was represented as a careful balancing act rather than a massive gift to copyright maximalists) and the Supreme Court's record—all of which support the novel idea that, when a law *explicitly* says something is not infringement, *it's not infringement*.

It may be worth noting that the judge doubts Lenz's ability to prove bad faith—but there's enough there to continue to trial. EFF hailed the ruling as "a major victory for free speech and fair use"—and others agreed. *Freedom to tinker* has an essay about the epistemological questions raised by the ruling, which seem to boil down to whether copyright holders would have to stop using automated generation of takedown notices and actually *review* supposed offenses manually. The author of the post (on August 22, 2008) seems to feel that, if manual review of a large sample of flagged-by-computer clips finds that "enough" of them are actual infringements (say, 95%), then the publisher could have a "good faith belief" that the automated takedown notices are accurate. There's a lovely response to that in the comments: A 95% success rate also means that one of 20 takedown notices "is bogus...and will damage an innocent person." Another commenter notes that pub-

lishers insist that permission be handled on an individual basis—so it's unreasonable to use unexamined mass takedown notices. "Copyright holders should have to live by the same rules that they insist everyone else must follow."

Any "it's usually right" basis for legal action is *extremely* iffy by its nature. Let's say that 99% of the time somebody is charged with murder, they're guilty. So can we abandon the appeals process and simply shoot anyone charged with murder—after all, we'd be right 99% of the time? Clearly not. Backing away from death, let's say a facial-recognition program can scan TV shows and recognize actors who are using illegal drugs 99% of the time—and that the inventor of the program publishes lists of "druggie actors." (DMCA notices *state* an infringement; they don't suggest the *possibility* of an infringement.) Would you care to defend the inventor against that 100<sup>th</sup> actor?

## Conclusion

Most of what's here is more than a year old. That doesn't make it less relevant. *Lenz v. Universal* hasn't come to trial yet—and may never—even though it deals with a 2007 incident. In that case, the judge's August 2008 findings may prove to be more significant than the outcome of the case itself.

This is a more encouraging set of copyright discussions than I've done for a while. Given that, I'll stop here—before we get to the ways that DRM and DMCA interfere with the reasonable use of material. A small early section of this article (included frankly, because it's been sitting on my computer for too long) gives one inkling of how complicated things get. But for now, it's enough to say we *might* be getting some clarity on fair use and its status—and that clarity may directly negate what too much of Big Media's been saying for years. Fair use *is* the law, and fair uses do *not* violate copyright—and, most of the time, fair uses aren't that hard to spot.

## My Back Pages

### Hiding Behind Legality

*PC World* ran a sad article in the April 2009 article, "Manage your e-mail safely while driving." Even the title gives me chills. Sure, it's about "web-based voice services that let you manage messages through spoken commands while you keep your hands on your wheel." But you're *still* focusing on email and actively *managing* it, which is likely to take even more of your attention than a cell-phone call...and it's fairly well demonstrat-

ed that driving while talking on a phone (hands-free or not) is at least as dangerous as driving drunk.

A number of people wrote outraged letters. One of them put it succinctly: "Advising readers on how to 'safely' manage e-mail while driving is condoning irresponsible driving habits."

*PC World* chose to respond to the letters. It's that response that gets them a mention in MY BACK PAGES. Besides quoting the focus of the article, the response is this:

**At this writing, hands-free cell phone use remains legal in all 50 states.**

In other words, articles recommending irresponsible actions are *perfectly OK* as long as they don't recommend explicitly *illegal* acts. Glad that's cleared up.

The same issue includes another fine example of the curious intersection of ethics and legality, in an item on whether iTunes App Store reviews are trustworthy. One of the many (apparently) fart apps (it's hard to type that) makers claims that a competitor posted bogus comments about this highly worthwhile application. The response of the competitor? There's nothing wrong with posting anonymous reviews of a competitor's item: "I see no reason to disclose that you are a competitor." After all, Apple guidelines don't *require* it...

The author of the little "you're more important than anyone else, so why not handle email while driving?" item returns with a long article on "astounding things your hardware can do." It's a wonder. You can run Mac OS X on your netbook...and, even though the writer even *says* that "you're wading into legal and ethical issues" if you do so ("issues" as in it's a blatant violation of Apple's license), *that's the lead item*.

## Twenty After and Twenty Before

You know the old sociological observation—that, in parties or other multi-conversational settings, lulls in conversation tend to happen at 20 after and 20 before the hour? It's almost certainly nonsense, of course—the result of selective observation.

What are we to make of a "burning question" item in the May 2009 *Wired*, where the question is "Does my gear know when its warranty ends—or does it just seem that way?"

Most of the article claims that "gadgets" fail just after their warranty ends because they're designed that way, and goes on about "warranty calculation." Finally, we get a much more likely explanation: Selective memory or "loss aversion."

Think about it. Your computer probably came with a 90-day or one-year warranty; similarly, most

other consumer electronics. What percentage of your consumer electronics items have actually died shortly after that period? If it's even 10%, I'd be astonished—and *Consumer Reports* would be all over it if this was a common occurrence. There's a reason they almost always advise against taking extended warranties: Because, for most products, if it survives the first 30 days, it will probably survive for years to come.

As far as I can tell, even the author of *Made to Break*, while apparently suggesting an actual conspiracy to make products that break when the warranty expires, recognizes the much larger problem: People buy newer devices because they're newer, even though the old ones are perfectly usable. Giving the conspiracy theory pride of place and most of the space in the item is classic *Wired*—but I'll argue it's bad journalism.

## Back on the Excess Trail Again?

Ken C. Pohlmann, ever in love with bright shiny things, has an endpiece in the June/July/August 2009 *Sound & Vision* lamenting the recession—but he has faith. He believes studies that people will find ways to overspend on *luxuries* (such as high-end stereo/home theater gear) even when they can't afford their rent. "The point is that luxuries make us happy, and everyone wants to be happy." When that point continues to be made as people are getting foreclosed on, something is wrong—and something definitely includes Pohlmann's celebration.

He *celebrates* the fact that (some) people stopped car-pooling as soon as gas prices went down a little. He draws a nice little circle: only 4% of college graduates are unemployed (and, after all, who really cares about others?) He's certain that when "clever companies" introduce "revolutionary new stuff"—"3-D video or Smell-O-Vision or what"—"whatever it is, we'll want it." And Pohlmann will be polishing the shiniest of the new toys.

## Wet iPhone? No Problem, Send Money

There's an odd item in the July 2009 *PC World*. Apparently, iPhones are supersensitive to sweat and steam: "Vigorous workouts have proved produce enough perspiration to cause iPhones to shut down." Apple's response has been typical: "So buy a new one—with a new service contract." But the company has seen the error of its ways. When your iPhone's gone defective, you make an appointment at your local Apple Store—and get a replacement. **For \$199.** Maybe new, maybe refurbished, definitely not up-

graded. The good news: You don't have to extend your service contract. How kind!

Or, as they suggest, you can get a waterproof case for the iPhone. They suggest one that's only \$350.

## We Regret Nothing

I do give *Wired* this: They have chutzpah. The July 2009 issue has a sidebar updating an earlier feature about a from-scratch "eco-city," Dongtan. It "had us totally psyched" and suggested the master plan was "like the source code for an urban operating system." That was two years ago. Since then? Basically, nothing except a bridge and tunnel to the island city got built—and most likely, nothing will. *Wired's* response: "We regret nothing. As the planet gets more urbanized, cities need a fundamental rethink." They cite a *new* eco-city project and hope "that one really will be awesome."

Cities need a "fundamental rethink"? Planned cities have worked out so well up to now? *Rebuilding* entire cities, or building new ones that displace agriculture and other uses, is a great use of resources? Clearly, I'm not on *Wired's* wavelength.

That becomes clear once more when the tiresome Steven Levy, a few pages later, writes up Neil Young's massive *Archives* project—10 Blu-ray discs in the first volume, with four more similar releases to come. Levy's concerned with Bigger Issues: he inserts the note that "the very concept of physical media is racing toward obsolescence." (The *concept* is becoming obsolescent? Really?) And at the end, as he opines that the full project should move to the cloud, he concludes: "The alternative—a stack of 40 or 50 Blu-ray disks on the verge of irrelevance—would just leave us helpless."

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## Masthead

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