

The proliferation of campus-wide information systems (CWIS) was the first warning to serialists that life as we knew it would change dramatically. The concept of actually distributing these files and databases from our own campus network or library system was a dramatic shift. The very nature of these titles (they were published serially or updated on a regular basis) pulled the serialist into the fray. Suddenly the language of the shrink-wrapped license that accompanied the diskettes and CD-ROMs was not quite acceptable. Most licenses were still focused on a single user at a single workstation, while we needed rights for a local area network that involved multiple computers in multiple buildings.

As serialists and serial agents began to work with electronic publishers, it quickly became clear that these publishers were not library-oriented. Their products and their licenses were developed with the end user in mind. Their marketing, sales, and service staffs were ignorant of libraries as customers and how libraries would acquire and use their products. At this time, licenses were simple but prohibited many of the primary access and use needs of the library. The cold war had begun.

By the mid-1990s, both electronic publishers and serialists were beginning to respond to each other in tentative ways. A few of the major electronic publishers, such as SilverPlatter and HW Wilson, revised their license agreements to recognize LANs and to allow simultaneous users (at an additional cost, of course). As other electronic publishers followed suit, however, license agreements became more complex and more restrictive. Passive, shrink-wrapped licenses led to more lengthy legal documents that required a formal signature that contractually obligated the entire institution to the terms of the license. Serialists began to realize that the process had moved out of their control.

To add fuel to the fire, licenses began to restrict access, define authorized users and sites, and forbid some traditional library activities, such as interlibrary loan and archiving. The electronic publishers stated that they were simply protecting their rights in the digital age; the serialists felt that fair use rights should be protected regardless of the format. Open forums, plenary sessions, and discussion groups at professional meetings quickly ensued. Their goals were to get a better understanding of the issues and to begin a dialogue between the warring parties. Workshops were developed to educate not only serialists and electronic publishers in particular but also librarians and publishers in general.

And here we are: some battles won, some lost, and the war for our rights continues. Yes, both serialists

and electronic publishers have much more information than ever, but answers evade us. We have principles from national and international library groups for both sides to follow. We have generic sets of license terms from various interested parties. Even the serial agents are developing strategies to bring both sides together. The Digital Millennium Copyright Act of 1998 provides some hope as a peace treaty, but completion of the content and confirmation by Congress is far from a reality.

At the turn of the twentieth century, libraries were on the rise as the keystone to higher education and as a basic public institution. At the end of this century, those very rights are threatened with extinction by the information industry through licensed rights, unreasonable costs, and the power of contract law. What happened? How did libraries get pulled into this war? When will it end? What will the outcome be? No clear answers are available at the moment, but rest assured that serialists are fighting hard for our rights.

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**COPYRIGHT IN THE YEAR 2010: NO LONGER AN  
ISSUE FOR SCHOLARLY ELECTRONIC PUBLISHING\***

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**Ann Okerson**

So much time and so much energy have been devoted in the 1990s to debating issues of copyright that it seems as though the quarrels are eternal. It is relatively easy to imagine that we could find ourselves in the year 2010 still wrangling over fair use, transfer of rights, and the high cost of information. It is indeed sobering to realize how much time has passed since, for example, the North Carolina Research Triangle Universities' proposal for retention of copyright ownership by academic faculty and researchers was first floated in the early 1990s, or even how much time has

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\*This article is based on remarks given at the ICC/IFIP Third Conference on Electronic Publishing, Ronneby, Sweden, May 1999. © 2000 Ann Okerson. Readers of this article may copy it without the copyright owner's permission, if the author and Publisher are acknowledged in the copy and the copy is used for educational, not-for-profit purposes.

elapsed since the US government's 1995 "white paper" on copyright. And the arguments linger on.

But I will argue here that copyright will not be nearly as serious an issue for producers or consumers of scholarly electronic information in 2010. Insofar as copyright has a story in the early 2000s, it will be marked by continuing moves toward greater protection of owners' and producers' rights—for we must remember that the great driver behind all governmental involvement in the copyright ownership issue is respect for the huge economic engines that derive national and global billion-dollar revenues from "intellectual property" of sorts that have nothing to do with science or scholarship. That is, creations such as popular music and literature, film, video, and magazines are the chief concerns of the intellectual property business.

That realization should give us great confidence that the copyright issues that currently consume our societal energies will, in fact, be resolved by 2010. Too many powerful economic and governmental forces are interested in the successful creation of an electronic market for there to be any realistic chance of continuing uncertainty or an impasse concerning copyright. The mass-market entertainment and information producers will assuredly find a way to profitably sell their wares. The national and international laws and treaties will certainly be constructed to protect these industries; in the marketplace it is precisely the huge information vendors who will find it in their interest to deliver their product in a way that responds to the needs and practices of their consumers. One need only remember, for example, the failure of software producers in the 1980s to establish copy protection on their products to realize that the market does have power in this regard.

Opinions will vary as to whether the eventual but assured triumph of the commercial information providers is a good thing for scholarly and scientific information producers. My own belief is that two main streams of development will extend from now to 2010 and will define the academic electronic information landscape in ten years. The only real question is in which stream the preponderance of information will flow. Neither of these streams will rely heavily on the copyright regimes that are in place in 2010.

#### **INFORMATION STREAM #1 — ACADEMIC AUTHORS**

The first stream of developments in the next decade will surround information that flows more or less

unmediated from academic authors to their readers. Without the intervention of publishers (vendors, editors, and the like), authors and academics are communicating increasingly in informal to more formal electronic modes and venues. Because these authors' interests lie mainly in the transmission of information and not in acquiring any revenue from the process (academic authors and researchers are characteristically compensated by their employers rather than through their publications, as journalists are), money does not need to change hands. Such author-to-reader information will flow relatively freely without license or copyright concerns—except for the concern that authors will have about assuring that their information is not commercialized against their will or copied and redistributed under some other author's name (i.e., plagiarism). The Los Alamos National Laboratory's high energy preprint archive, launched in 1991, is an early precursor of this kind of model, but it is striking to observe that in 1999 the director of the National Institutes of Health in the US—arguably the most important funding science agency around the world—has spoken on behalf of creating a preprint distribution process that will make the products of funded research available quickly and at no charge to the recipients.

#### **INFORMATION STREAM #2—ACADEMIC PUBLISHERS**

The second, parallel stream of academic information is that produced by individuals and organizations who need to be compensated for their production work. This stream will include the high profile producers of information—the learned societies and the for-profit publishers, those who add value to raw scholarly and scientific information. They are professionals, and they engage in this activity because of the compensation they receive for their value-adding expertise. In this category we already see that electronic information producers and consumers alike recognize that copyright law does not provide an adequate framework to guarantee either side its needs in the relationship between producer and consumer. In the last few years, licensing agreements have ceased to be the kind of one-sided documents that a landlord hands a tenant—that sort of lease agreement in which, if one reads the fine print, it seems that all the responsibilities are the tenant's and all the rights are the owner's. Instead, in an ongoing, quiet process of negotiation and accommodation we have seen enormous progress towards a

mutual settling on terms and conditions for the use of electronic information that assures the publishers of their revenue streams and at the same time assures the users that their information access and reuse needs will be met. Landmarks in this development include the recent (early 1998) recognition by at least one major for-profit publisher that interlibrary loan can continue to be a feature of the practice of libraries that buy journals from publishers, even in the electronic information landscape.

While licensing recognizes the overarching authority of copyright, it moves the parties into the domain of contract law. In that domain it becomes possible to work out practical agreements between the willing buyer and the willing seller. Because the terms of the license or contract agreement are limited in time and coverage, both sides can often be more venturesome and take greater risks to secure an agreement and make a sale (more so than would ever be the case under the regime of the copyright laws of nations). If the agreed upon terms do not work for one party or the other, those terms can be amended when the contract comes up for renewal. At the same time, the universe of contracts that is negotiated in this way begins to build and shape a community of practice far more flexibly and pragmatically than would be possible if one were depending on the laws of nations to change to fit circumstances. An electronic information licensing contract requires one publisher and one customer to make a deal together, whereas change in copyright law requires vast interests to find long-term compromises and assurances for the preservation of their interests. Copyright law changes slowly and should change slowly. Licensing can adapt far more rapidly and effectively to the world as it really is.

This is not to say that the world of licensing is or will be free of tensions. But the tensions are becoming familiar ones. Chiefly there exists one single familiar tension: price. Long before electronic transmission of information became a reality, journal producers and subscribers had begun to wrangle over price, and at times even came to a kind of grudging accommodation. Price rises are moderated, or not, by the behavior of customers who cancel some subscriptions and take out some new ones. The journal marketplace is one in which perhaps no one thinks they are getting a really good deal, but the continuing prosperity of the publishing industry suggests that everybody agrees that they are getting a tolerable deal—even if they then try to get a better one next time. The world of licensed electronic information will be even more like that:

price will be an issue and customers and producers will be variously at odds with each other, but nevertheless deals will be made and information will flow. In that regard, 2010 will be a lot like 1990.

Will these two streams come together? It is too early to tell how much impact the second stream will have on authors' behavior or to what extent the academic culture will modify itself to accept the validity of informally distributed electronic information. It is clear, however, that the formal journal publishers, both for-profit and not-for-profit, will want to find means to capture at least some of the articles that have been distributed at no charge to add value through repackaging, polishing, and distribution. The dialogues between the representatives of the two streams will be in many ways the most interesting ones of the next decade. And there will be negotiations; at times they will involve contracts. Copyright will simply cease to be the key issue.

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## CHANGES IN COPYRIGHT OWNERSHIP

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As we approach the end of the century we can already see significant changes in the ownership of the copyright of articles in scholarly journals. The next century promises even greater changes. There are two primary reasons that authors are considering retaining their own copyrights: (1) publishers that require complete transfers of the author's rights and (2) the increasing cost of subscriptions to scholarly journals and its concomitant impact on academic libraries. Additionally, the development of distance learning courses is forcing universities to reconsider ownership of these courses; a recent court decision recognizes authors' rights over those of publishers.

## COPYRIGHT TRANSFERS

Traditionally, publishers of scholarly journals required authors to execute a complete transfer of copyright as a condition for getting the article published. This gave