As I See It! -- To License or Not to License? SERU's the Question

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theater, had gone to Oxford, her name was Annabel.) The London populace re-materialized. Lots of people were walking, and some entrepreneurial types were selling tea in paper cups. Four cents wouldn’t buy me tea, but even so, I started to feel like a person again. Annabel said I was very brave and I said no, very stupid, and she said well, perhaps both. She made me laugh.

After about an hour, we parted ways, but the Marriott sign was in sight. The lobby was chockablock with people who should have checked out but were trying for another night, because Heathrow was closed. I began dripping, as my snow melted. I elbowed to the counter and asked for my room. They asked for my ID, passport, driver’s license?

The whole story again. They called Bonnie’s room, but she wasn’t there. (She was walking back from her appointment on the other side of London. She had miles to go yet.) I asked them to let me in. They said not without ID, but I could wait in the bar. I said, “You’re not listening. I have four American pennies. No bar.” They said sorry, I might be anyone, they couldn’t let me into the room.

I got steely. “Look at me,” I said, pointing to my dripping hair, and getting the counter wet. “As you can see, I am a Harmless, Middle-aged, American Woman. Now. Let Me. Into. That. Room.” (Okay, in hindsight, the tone of menace probably made “harmless” sound pretty debatable, but I was winging it at the time.)

Finally, they let me into the room. I had been planning my next move. I would tell Bonnie, but she’d known me since junior high and harbored no illusions. I couldn’t call anyone who saw me as a capable adult, but I could call my travel agent! I did, and asked if she could contact United, and figure out which bus I’d left my purse on, and see about getting it back. She said she’d try. But she didn’t call back.

A couple of hours later, the hotel room phone rang. It was my teenage daughter. She said, in her patented calm-and-patient tone, “Mom, your purse will be at Heathrow, at the United lost and found counter, where you can retrieve it tomorrow.”

I asked how she knew about my purse. She said, “Oh, everybody knows about your purse. The bus driver found it right away, and took it to United. It had your business cards in it, so United called your office in Portland, and they called Oxford, but no one in either office knew where you were, though they asked everyone on staff. You should have called and told somebody what happened. People have been searching for you for hours.”

It was true. My mortifying secret was common knowledge. Absolutely everyone knew I had left my purse on a bus. New people, people I had never met, people in Oxford, they all knew I had left my purse on a bus. After I got home, people who hadn’t exchanged six words with me in months would stop me in the hall, and say how glad they were I was okay, and what happened, anyway? How could I leave my purse on a bus? Did I know about those little passport-holder things you can wear around your neck?

It was good for me. Valuable life lessons abounded: If you are in trouble, tell everyone immediately. They will find out anyway, they might help, and it saves time. Also, it turns out that other people never thought you had it all together in the first place, so they are often kind and consoling. Plus, for me, there was a special bonus: for years afterward, people would bring me their bonehead travel disaster stories, as if I were a collector of such things. In time, I became a collector of such things. It’s not a bad gig at all.
ity undreamed of in print, but no custom and practise that might govern its use. Neither publishers nor librarians were confident about their respective rights and responsibilities where online journals were concerned.

When in doubt, we resort to professional advice. As the issues arising from the use of electronic content revolved around copyright, the professionals we referred to were our lawyers. And part of a lawyer’s professional responsibility is to protect the client from damage when things go wrong. That is why much of any license agreement contains provisions that only become important when a dispute arises. That is why they contain such detailed definitions and provisions on permitted and prohibited uses. That is why warranties and indemnities, and jurisdiction are important. They are there “just in case.”

While librarians might have hoped for the quick emergence of a predictable standard license that all publishers would adopt, the reality has always been that each publisher’s license was going to be drafted without reference to what other publishers might be doing. That is because publishers cannot talk to each other about such matters. Suppliers cannot collude with each other over price or license terms. It is simply illegal, whether under US anti-trust law or competition law in the European Union or elsewhere. Those laws are designed to foster competition between suppliers, and usage rights to online content would certainly be seen as competitive features between publishers.

Moreover, in this uncertain new world universities and other institutional customers insisted on a formal agreement in which terms would be clearly set out. Even those publishers that posted a simple set of terms and conditions on their newly created websites found that many libraries in publicly funded institutions still insisted on a formal signed agreement — is created. It is still enforceable if things go wrong. My only criticism of the SERU Guidelines is that it does not make this clear. Non-lawyers often think that a contract exists only where supplier and customer agree and sign a formal contractual document. But a contract is created when a sale takes place, or access is granted to online content. Money changes hands. A product or service is supplied. A contract is created, in this case incorporating the SERU Guidelines.

SERU represents another staging post on creating custom and practice that renders formal licenses redundant. Even in-house counsel will welcome the relief when there are so many other calls on their time and expertise. So why do so many publishers and libraries appear to be so cautious? Come on, sign up. Simplify the subscription process. Make everybody’s life easier.

Rumors

Speaking of entrepreneurs, Excelsior College, a distance-learning institution based in Albany, N.Y., with 33,000 students scattered across the country, has outsourced its library services to the Johns Hopkins University, where a team of four employees is dedicated to maintaining Excelsior’s virtual library and assisting its students with questions both online and over the phone. Word is that Johns Hopkins Library will get $1 million for this service. See “Library For Hire: Johns Hopkins U. Sells Services to an Online College,” by Caitlin Moran, Chronicle of Higher Education, December 10, 2008, http://chronicle.com/article/8310.html?utm_source=at&utm_medium=en http://www.against-the-grain.com/rumors.

HAD A GREAT VISIT FROM MICHAEL BRAGG (University Account Manager, Thomson/Reuters/ISI) MICHAEL. BRAGG@THOMSON.COM> THE OTHER DAY. HE MADE A PRESENTATION ABOUT THE NEWENHANCEMENTS TO WEB OF KNOWLEDGE. MICHAEL WAS TELLING ME THAT HE WILL NOT BE IN CHICAGO AT ALA BECAUSE HIS SISTER IS GETTING MARRIED AT THE SAME TIME AND HE IS IN THE WEDDING.