IMHBCO (In my Humble But Correct Opinion): OCLC, Trademarks, and the Library Hotel

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more) in all its guises. "It was one of the four or five greatest magazines in America", says Morris Dickstein, professor of English at New York University.

Dickstein says "the main influence of Partisan Review came from its freewheeling intellectual style, which was exactly raising high-profile and colloquial discussions as well as its historical and modernism in general. This work was a poison pill. I think it must be in considering that Partisan Review's natural constituency" over the years.

For 66 years the magazine was edited by its co-founder, William Phillips, until his death late last year at age 94. Ownership then passed to Boston University, and after polling a large group of intellectuals, BU made the decision to suspend publication this past spring. Because Partisan Review wielded such influence over the years, it spawned several imitators that were better funded and published more frequently. According to Dickstein, "the uniqueness of the magazine diminished and disappeared", becoming increasingly less relevant after the end of the Cold War. In a sense, says Dickstein, "the magazine became a victim of its own success."

Advice to the Lovelorn from Jurassic Park

Some people say that a second marriage is the triumph of hope over reason. Whether or not you agree with this sentiment depends, I'm sure, on your personal experience. But what can we say about a fourth marriage? Author Michael Crichton recently offered some success tips for wedded bliss: "You should want to spend a lot of leisure time together, sharing the same interests... if she wants to go shopping and you want to go hiking, you have a problem." According to Crichton's fourth wife, Anne-Marie Martin Crichton, living with her husband while he was writing was like "living with a body and Michael is somewhere else." The couple recently divorced. Failing to follow his own advice cost Crichton $31 million, as the blushing bride of 14 years got their 65 acre estate in Bedford, NY (near the Clonts, Martha Stewart, Ralph Lauren and only 15 miles from the one-quarter acre estate of your humble correspondent), their 20 horses, two tractors and an art collection (in contrast, on our estate we have several cats, a lawn mower, and lots of fake-Columbian art, which may partly explain our continued marriage).

Crisis Looms as Academic Heavyweights Debate Theories of Literary Criticism

Critical Inquiry, the academy's most prestigious literary theory journal, convened a panel of scholars to discuss the recent demise of theories in the humanities. After the French assault of the 1960s—deconstruction and post-colonialism, and the earlier psychoanalysis, Marxist and structuralism theories of the 1940s and '50s, the academics gathered in Chicago to attempt agreement on a new approach in this time of criticism crisis. WJ Mitchell, University of Chicago, according to the New York Times, set an upbeat tone by declaring "We want to be the Starship Enterprise of criticism and theory." From this high point, the discussion languished toward Bush-bashing and condemnation of American foreign policy. As if to demonstrate the importance of this event, Henry Louis Gates arrived late, saying "I thought I was in the wrong room... because I thought we'd be talking about academic jargon, not people, that Qaeda and Iraq." Sander Gilman of the University of Illinois, Chicago, managed to get the debate back on track by stating, "I would make the argument that most criticism, and I would include Noam Chomsky in this—is a poison pill. I think one must be careful in assuming that intellectuals have some sort of insight... (in fact) they have been wrong almost all the time... and wrong in corrosive and destruktive ways.

Stanley Fish nodded approvingly and said, "I like what that man said. I wish to deny the effectiveness of intellectual work." Homi Bhabha was the only panelist to disagree, saying, "intellectual work has its place and its uses." Gates rose to argue that he had never seen "the liberation of people of color because of deconstruction or post-structuralism." Trying to explain why so much of the forum was devoted to attacks on American foreign policy instead of discussion of literary theory, Catharine R. Simpson of New York University theorized "This particular group of intellectuals has a terror of being politically irrelevant."

Random House to Create New Imprint;
Will the Launch Party Take Place in the Sewer?

Back in the good old days when Senator Joe McCarthy could ruin your career with the "pinko" word, he eventually generated enough public disgust to bring about his own demise. Today, however, personal attacks and inflammatory accusations ensure your steady employment as a TV talking head and your book on the bestseller list. But who ever believe that the venerable Random House, urged on by its German parent Bertelsmann, would use its Crown Publishing unit to provide a new venue for venal right wing writers.

Regnery, the Fox News of the publishing world, has been so successful with a number of conservative bestsellers that other publishers have overcome their visceral abhorrence of the right wing. Some have dipped their toes in the sea where Rush Limbaugh swims. Crown, however, will now surf the wave, launching Crown Forum and planning to publish about 15 conservative books a year. (Penguin announced their intention to launch a similar conservative imprint soon after the Random House/Crown Forum press release.) Not that there's anything wrong with this. After all, publishers are in the business of giving readers what they want, and a glance at the Times bestseller lists make it abundantly clear that readers like the right and the left. That's healthy in a democracy. But perhaps we should pause, and contemplate Crown Forum's first blockbuster: The insufferable Ann Coulter debates with her Joe McCarthy defense, "Treason: Liberal Treachery from The Cold War to the War on Terrorism." Treason? "You can go to jail for that. Can't honest people disagree? Or even dishonest people, for that matter. Can't we passionately disagree without resorting to the kind of name-calling that is designed to destroy reputations? Is there no low blow that a publisher decides is too offensive? "Random House" ought to know better, and they would be the first to howl if anyone accused them of publishing treasonous books. This is more than bad taste. This kind of rhetoric is unhealthy for democracy.

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OCLC, Trademarks, and The Library Hotel

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When OCLC filed a complaint of trade mark infringement against New York's Library Hotel over the hotel's use of the Dewey Decimal Classification® system, word of the suit spread quickly through various online discussion lists. The library community's response was swift and generally incredulous. How could a company claim to own Dewey? How could it be that a hotel's use of the Dewey system constituted some kind of commercial threat? What was OCLC thinking?

OCLC responded promptly to the growing outcry, issuing a public statement that was sent to a number of list and individuals. OCLC explained itself by invoking the responsibility of trademark owners to protect their trademarks continued on page 86

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<http://www.against-the-grain.com>
or risk losing them. As the company put it:

OCLC is disappointed that legal action had to be taken against The Library
Hotel. This is an unusual event for OCLC. However, trademark law imposes
affirmative obligations on trademark owners to protect their trademarks,
or risk losing all rights in those marks through legal abandonment. We felt
that abandoning our rights in the Dewey trademarks was an unacceptable result
for the OCLC membership.

As the company pointed out later in the an-
nouncement, it had repeatedly asked The Li-
brary Hotel to sign a document acknowledg-
ing OCLC’s ownership of the Dewey trademark
and stipulating that the hotel was using the sys-
tem by permission of OCLC. The hotel refused
to do so, and OCLC finally decided to sue.

That explanation mollified many librarians.
The Library Journal Academic Newswire wrote
sympathetically of OCLC’s plight in an issue
dated September 23, quoting Joseph Dreitler
(an attorney with Jones Day, the firm repre-
senting OCLC in the suit) as saying that the suit
was “unfortunately necessary” and that
OCLC had merely asked the hotel to “simply
sign some form of agreement acknowledging
that the hotel’s use of the Dewey Decimal Sys-
tem was granted by permission of OCLC.
All OCLC needed was a piece of paper they
could put in their file.” The News Wire quoted
Dreitler further as saying that OCLC was never
interested in pursuing any kind of payment from
The Library Hotel; all it wanted was acknowl-
edgment of OCLC’s ownership of the Dewey
system. (The story did not mention that
OCLC’s is now seeking damages to the tune
of triple the hotel’s profits since its opening.)

Not everyone was reassured by OCLC’s response, however. Some librarians
remained unmoved, and said so publicly. As Check
Hamaker, of the University of North Caro-
olina at Charlotte, put it in a posting to the
LILICENSE-L list: “This case just makes
librarians and their organizations look dumb and
dumber.” Outside the profession, people were
even more incredulous. The popular NPR game
show “Wait, Wait, Don’t Tell Me” used the story
as a ridiculous example of “things people think
belong to them.”

Of course, the wags at NPR were wrong.
The Dewey system really does belong to OCLC — that’s not the question. The question is
whether OCLC is wise to sue The Library
Hotel for trademark infringement. To answer
that question for ourselves, we should probably
ask two others:

First: Given that OCLC cites the welfare
of its member libraries as its goal in choosing who may and may not use the
Dewey system, we should probably ask exactly how libraries benefit from
OCLC’s exercise of that control. If
OCLC wins this suit, will libraries be
better off, and if so, how? I posed this question to Bob Murphy, of OCLC’s
communications office. He referred me
to OCLC’s public statement on the is-

There is another question. To win its case
I would imagine that OCLC is going to have to
demonstrate that Dewey is, in fact, a viable and
valuable trademark in the library community
which Dreitler says is OCLC’s marketplace.
To prove that, I think it will have to demonstrate
that librarians recognize Dewey as the trademark
name of a commercial product. I’m pretty sure
that most librarians do not, in fact, recognize it
that way. Yes, they buy the Dewey schedules from
OCLC, but it’s one thing to think that
OCLC publishes the schedules and another to
know that the term “Dewey Decimal System”
is itself a trademark of the company. My
library’s copy of the 1989 edition of the Dewey
schedules does indicate quite clearly, on the
verso of the title page, that the term “Dewey
Decimal System” (among other related terms)
is a registered trademark of OCLC. So OCLC
can certainly make a case that librarians ought
to know — but since most librarians apparently
do not, and since they have been demonstrating
that ignorance by freely using the term
without acknowledgment in their own literature,
signatures, and Websites, and since OCLC
has never taken libraries to task for trademark
infringement, will a court be sympathetic to
OCLC’s claims now?

With all of these issues in mind, I think The
Library Hotel may have been smart to tell
OCLC (in Dreitler’s paraphrase) “basically…
to get lost” when OCLC’s document
acknowledging OCLC’s right to grant or
deny permission to use Dewey. Had the hotel
signed, I think it would thereby have contractu-
ally acknowledged OCLC’s right to revoke
that permission in the future, and would have
been constrained by the terms of the contract to
submit to that revocation if it happened. By not
signing such an agreement, The Library Ho-
tel is forcing OCLC to argue the viability of
“Dewey Decimal System” as a trademark in
court — and that’s a case that OCLC may have
some difficulty making.

On the other hand, maybe the case will be
a slam-dunk win for OCLC. I’m no lawyer and
no fortune-teller. I’m just a librarian asking
questions.

I, User — The eBook Prospectus: 2004

by Rick Lugg and Ruth Fischer (R2 Consulting)

Column Editor’s Note: This prospectus explains what you should know about eBooks before you invest. Please read it carefully. The SEC has not approved or disapproved this offering, or determined if this prospectus is truthful or complete. Any representation to the contrary is a criminal offense. — RL

It’s been a confusing couple of months here in eBook World, enough so to turn the steeliest
calculator toward safer investments, like deriva-
tives of CEO salaries. On the one hand, we’ve
seen enough gloomy news to suggest that the
Promised Land may actually consist of Florida
mangroves, and yet, almost simultaneously, new
companies and products have entered the fray,
reviving at least the rhetoric of boomtown. In
short, a great time to be alive!

The bears can point a paw toward B&N.com’s surprise announcement on September
9th that it would stop selling eBooks, effective
immediately. (Customers have until Decem-
ber 9th to complete downloads of previously
purchased Adobe and Microsoft Reader titles.)
B&N.com’s decision followed by some months
that of Gemstar, which ceased selling or appar-
ently, trying to sell) RCA eBook devices and con-
tent in June. Given B&N.com’s early leadership
in eBook selling, and its extensive customer reach,
this equates to at least a 5.0 on the industry’s Rich-
ter scale, and testifies to the bears’ depression.

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