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Questions & Answers -- Copyright Column

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But What About That Pesky Memo That Turned Up In Discovery?

There are two Ninth Circuit cases that deal with post-transfer letters. In the first, two movie producers orally contracted with famed vampire author Anne Rice to write a story they called a “Bible” that would be used to produce derivative works. No written contract was signed, but she delivered a story, got $50,000 and later wrote The Mummy as a novel. The producers were not able to exercise their rights and sued.

Case dismissed for lack of writing under section 204(a).

Under the Statute of Frauds, they would have been in court.

But headstrong Rice — doubtless without knowledge of her horrified attorney — took it upon herself to write the producers and tell them that even though the contracts were never signed, she “honored them to the letter.”

The producers tried to reopen the case via the letter. But the Ninth Circuit said the letter was written three and a half years after the alleged oral contract. It was not “substantially contemporaneous with the oral agreement.” And “Rice’s letter — though ill-advised — was not the type of writing contemplated by section 204 as sufficient to effect a transfer of the copyright to THE MUMMY.”

Konigsberg International, Inc. v. Rice, 16 F.3d 355, 357 (9th Cir. 1994).

ILL ADVISED. I love it.

While Big Idea’s internal memo was contemporaneous, Konigsberg shows that not all documents referring to the existence of a contract or admitting to one will satisfy 204(a).

And we go to the second case. TV company negotiated an exclusive license with a distributor. Distributor’s negotiating agent drafted an internal memo with terms of an agreement and then signed it. A whole bunch of faxes went back and forth with references to a “deal” but no terms of the deal.

Then there was a fax saying the distributor was waiting for the contracts. This eliminated any “hint of finality.”

TV company waved the distributor’s internal memo with all the terms. But the court said this was meaningless because it was never communicated to TV company. Radio Television Espanola S.A. v. New World Entertainment Ltd., 183 F.3d 922, 928 (9th Cir. 1999).

Basic contract law. So sublime. Radio Television Espanola is on point with Lyric Studios. Plurries of faxes without a final contract. An internal memo never meant to be communicated to Lyric. Unlike the Statute of Frauds, the parties behaving as though there was a contract does not allow them in front of a jury for a swearing contest.

Konigsberg, 16 F.3d at 356.

204(a) is far more strict. Get a blankety- blanky writing.
ATG Special Report — ILL Purchase Express

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Abstract: The authors describe criteria, problem analysis, pilot project, and implementation of Penn State's ILL Purchase Express program to convert interlibrary loan requests to rush-order acquisitions via the approval plan. Significant in the process is that no selector intervention is required. ILL and Acquisitions staff facilitate the entire process aided by e-portable data.

Key words: access, acquisitions, approval plan, e-portable, interlibrary loan.

As the use of technology has flourished in the operation of the library, processes have grown more efficient. An interesting by-product of so much e-portable data has been to associate processes that were formerly unacquainted. We see online reference services crossing over into the circulation realm and partnerships that made sense but were too cumbersome to manage now find efficient collaboration. ILL Purchase Express, Penn State's response to the access vs. ownership debate, is one such partnership.

Penn State University Libraries formed a task force in August 2001 to examine the possibility of rush purchasing materials that were being requested through interlibrary loan. Could we purchase materials to enhance our collection while simultaneously meeting the users' urgent need? This project was undertaken based on the University of Wisconsin-Madison's "Book Express" and Purdue's "Books On Demand" successful book purchasing programs.

The task force was comprised of representatives from the Interlibrary Loan Department, the Acquisitions Department, and the Collection Development Team, all stakeholders in the process to determine if a similar purchasing program would be a viable option for Penn State. Analysis of request sampling resulted in a unique purchasing model called "ILL Purchase Express" which melded collection development guidelines with ILL requests by rushing ordering books which ostensibly would eventually be acquired through the Libraries' major approval plan vendor.

Literature Review

Currently, there are several ILL offices using some model of purchase-on-demand service. Some purchase any title priced below a set threshold, while others ask collection specialists to evaluate an order.

Williad Public Library purchases out-of-print books requested through their ILL system because items were hard to find from other libraries and out-of-print bookstores offered reasonable prices. University of Virginia Library provides a "Purchase Request" link from their homepage offering users a choice to have the Library purchase the material instead of asking for an ILL. University of Hong Kong found it more cost effective to purchase material instead of requesting an ILL from overseas. Purdue began a practice to purchase recent English imprints within an established cost range rather than borrow them. University of Wisconsin-Madison purchases books from Amazon, Barnes and Noble, or directly from a publisher, when ILL requests meet their chosen criteria.

Background

Penn State University is comprised of 24 campus locations with 40,000 students at the main campus, University Park, and 40,000 at other campuses. Both Interlibrary Loan and Acquisitions are centralized at the University Park campus. Books owned by any of the Penn State Libraries are requested through the CAT, the online catalog, via the Sirsi Unicorn Demand Management module. Books are shipped between campuses daily. For books not owned by Penn State, there are several options. Users can request through ILLiad, the OCLC ILL management system or they can request books directly through a local consortium's catalog called E-ZBorrow (http://www.lethigh.edu/~inputcl/) and

<http://www.against-the-grain.com>