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

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zines 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 critical yet jokey and colloquial, rooted in sources as wildly varied as Yiddish humor, Talmudic debate, sectarian Marxist polemics, modernist intransigence, and psychoanalytical unmasking. Versions of this style surfaced in journals of different political stripes. ... (that) drew away talented writers and eroded *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 63 acre estate in Bedford, NY (near the **Clintons**, **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 lawnmower, and lots of fake pre-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 mandarins gathered in Chicago to attempt agreement on a new approach in this time of criticism-crisis. **WJT 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

more) in all its guises. "It was one of the four or five greatest maga-

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. Instead, it was Al 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 destructive 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 would 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 venomous 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** debuts with her **Joe McCarthy** defense, *Treason; Liberal Treachery from The Cold War to the War on Terrorism*. Treachery? 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. 🐸

IMHBCO (In My Humble But Correct Opinion)

OCLC, Trademarks, and The Library Hotel

by **Rick Anderson** (Director of Resource Acquisition, The University Libraries, University of Nevada, Reno, 1664 N. Virginia Street, Reno, NV 89557; Phone: 775-784-6500 x.273; Fax: 775-784-1328) <rickand@unr.edu>

When **OCLC** filed a complaint of trademark 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 believe 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 lists and individuals. **OCLC** explained itself by invoking the responsibility of trademark owners to protect their trademarks

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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 announcement, it had repeatedly asked **The Library Hotel** to sign a document acknowledging OCLC's ownership of the **Dewey** trademark and stipulating that the hotel was using the system 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 News Wire* wrote sympathetically of OCLC's plight in an issue dated September 23, quoting **Joseph Dreitler** (an attorney with **Jones Day**, the firm representing 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 System** 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 acknowledgment 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 **Chuck Hamaker**, of the **University of North Carolina** at Charlotte, put it in a posting to the **LIBLICENSE-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 issue and did not respond to requests for further comment. (Those interested can read the full statement at <http://www.oclc.org/news/announcements/announcement40.htm>, and may decide for themselves whether it answers the question.)

The more interesting legal question is this: if the **Dewey** system is a valuable trademark, why then does OCLC not pursue the hundreds of libraries that make use of it in a way similar to that made by **The Library Hotel**? Libraries all over the country organize their offerings according to the **Dewey** system, and make prominent mention of it in their literature and signage. They do so without ever mentioning OCLC, without indicating that "**Dewey Decimal System**" is a trademark, and without signing any kind of license agreement. Given this reality, in what way is OCLC's trademark being harmed by **The Library Hotel**?

I called OCLC to pose that second question, and ended up speaking with **Mr. Dreitler**. He explained that OCLC is more than happy to have libraries use the **Dewey** system without acknowledgment. "People who buy the **Dewey** schedules for use in a library are encouraged to do so," he said. But, I then asked, what if a library were to use the **Dewey** system without buying the schedules? "That's okay," said **Dreitler**, "because they're not selling a product. OCLC wants people to use **Dewey** in libraries, but not in hotels or restaurants without proper attribution and permission."

Dreitler's answer still leaves me wondering, though. As holder of the trademark, OCLC certainly has the legal right to let libraries use it and to forbid hotels to use it. But don't libraries have an obligation to formally acknowledge the true ownership of the trademark, just as OCLC is insisting **The Library Hotel** do? And if OCLC tacitly permits hundreds of libraries to use its trademark without acknowledgment or formal permission, how will a judge regard its sudden concern for trademark integrity in the case of **The Library Hotel**?

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 know 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, signage 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 asked it to sign a document acknowledging OCLC's right to grant or deny permission to use **Dewey**. Had the hotel signed, I think it would thereby have contractually 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 Hotel** 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 speculator toward safer investments, like derivatives 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 December 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 apparently, *trying* to sell) **RCA eBook** devices and content 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 Richter scale, and testifies to the bears' depression.

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