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Long Island Library Resources Council Committee on Resource Sharing and Coordinated Acquisitions, Interlibrary Loan Committee -- Licensing and Managing Electronic Resources -- April 5, 2002, New York Institute of Technology

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Christine Wondolowski Gerstein

Hofstra University

BORN & LIVED: Worcester, Massachusetts; Ithaca, New York; Rochester, New York; Brooklyn, New York.

EARLY LIFE: Interested in music, museums, geology.

FAMILY: Zany, brilliant, eclectic, and interested in everything.

EDUCATION: B.A. Emmanuel College / Music; M. Mus. Ithaca College / Music - Vocal performance; M.L.S. SUNY/Geneeseo / Music Librarianship.

FIRST JOB: Teaching music in an elementary school system in Southbridge, Massachusetts.

PROFESSIONAL CAREER AND ACTIVITIES:

For the past fifteen years, I have been a collection development librarian at Hofstra University, Hempstead, New York.

I'm heavily involved in activities of Hofstra Chapter of the American Association of University Professors and currently hold the office of 2nd Vice President for Collective Bargaining.

I also serve as Bibliographer of the Publications Prizes Committee of the American Musical Instrument Society and develop an extensive bibliography of journal articles about musical instruments which is published every other year in the *Newsletter of the American Musical Instrument Society*.

IN MY SPARE TIME I LIKE TO: Sing, travel, read, tend house plants, learn new repertoire for flute, and visit friends.

FAVORITE BOOKS: Medical textbooks.

PET PEEVES/WHAT MAKES ME MAD: People who don't do what they say they will.

PHILOSOPHY: Enjoy life, be happy and sybaritic, and above all, good to your mother.

MOST MEANINGFUL CAREER ACHIEVEMENT:

Not yet achieved.

GOAL I HOPE TO ACHIEVE FIVE YEARS FROM NOW:

Recover fully from my zany upbringing and extensive cervical spine surgery tentatively scheduled for June 2004.

HOW/WHERE DO I SEE THE INDUSTRY IN FIVE YEARS:

Less print, more technology, and librarians ever more instrumental in the education process.

Long Island Library Resources Council Committee on Resource Sharing and Coordinated Acquisitions, Interlibrary Loan Committee

Licensing and Managing Electronic Resources — April 5, 2002, New York Institute of Technology

by Christine Wondolowski Gerstein (Hofstra University)

Licensing and Managing Electronic Resources A Selective Introduction to Information Sources

Print Sources:

Buchanan, Nancy L. "Navigating the Electronic River: Electronic Product Licensing and Contracts." *Serials Librarian*, vol. 30, no. 3 / 4 (1997): 171-182. Practical overview of the licensing process for electronic products with a focus on the information librarians need in order to deal accurately and effectively with vendors and contracts.

Crews, Kenneth D. "Licensing for Information Resources: Creative Contracts and the Library Mission." In *Virtually Yours: Models for Managing Electronic Resources and Services*, edited by **Peggy Johnson** and **Bonnie MacEwan**, 98-110. (ALCTS Papers on Library Technical Services and Collections, no. 8.) Chicago: **American Library Association**, 1999. Provides an overview of basic legal issues involved in the acquisition of licenses for electronic information resources. Examines fundamentals of contracts, authorized agents, unenforceable contracts, and conflicts between contracts and copyright. Addresses acquisition of resources through purchase versus license, contracts for user rights, preservation and backup copies, first-sale doctrine, displays and performance of works, classroom use and distance learning, interlibrary loan, fair use, and preservation of the public domain.

Davis, Trisha L. "Legal Issues: the Negotiator's Perspective for Getting to the Heart of the License." In *Virtually Yours: Models for Managing Electronic Resources and Services*, edited by **Peggy Johnson** and **Bonnie MacEwan**, 118-126. (ALCTS Papers on Library Technical Services and Collections, no. 8.) Chicago: **American Library Association**, 1999. Explores the information librarians need in negotiating licenses for electronic information. Discusses negotiating parties, defining what is being licensed, license terms, product pricing, definition of "authorized user" and "site," contractual obligations, and limited warranties and liability statements.

Davis, Trisha L. and **John J. Reilly.** "Understanding License Agreements for Electronic Products." *The Serials Librarian*, vol. 34, no. 1 / 2 (1998): 247-260. With an emphasis on contractual issues, examines the steps required in understanding, acquiring, and processing a license agreement for an electronic product.

Gregory, Vicki L. "Copyright and Licensing Issues." In *Selecting and Managing Electronic Resources: A How-to-do-it Manual*, by **Vicki L. Gregory**, 67-85. (How-to-do-it Manuals for Librarians, no. 101.) New York, London: Neal-Schuman Publishers, Inc.: 2000. Provides useful coverage of in-

tellectual property rights, including purchase of information versus licensing of a product. Reviews the current status of copyright and the Uniform Computer Information Transactions Act (UCITA), and its effect on the concept of fair use. Covers aspects of license negotiations including choosing a license negotiator, licensing considerations and provides a useful "Licensing and Negotiations Work Form."

Schmidt, Karen A. "Licensing: Pitfalls and Protection for the Collections." In *Virtually Yours: Models for Managing Electronic Resources and Services*, edited by **Peggy Johnson** and **Bonnie MacEwan**, 111-117. (ALCTS Papers on Library Technical Services and Collections, no. 8.) Chicago: **American Library Association**, 1999. Focuses on the library's review of the language of licenses and license implementation, and on the effect of licenses on library users and collections.

Soete, George J., and Trisha Davis, compilers. *SPEC Kit 248: Managing the Licensing of Electronic Products*. Washington, D.C.: Office of Leadership and Management Services: **Association of Research Libraries**, 1999. Results of an ARL survey which explores the growing standardization in licensing practices. Includes representative documents pertaining to the topic such as position descriptions, licensing guidelines and agreements, forms and checklists, examples of standard contract language, and a selected reading list of books, journal articles and Websites.

Strauch, A. Bruce, editor. *Publishing and the Law: Current Legal Issues*. New York: **Haworth Information Press**, 2001. [Co-published simultaneously as *The Acquisitions Librarian* 26 (2001).] Examines the background and recent developments in copyright and electronic publishing, copyright and fair use of multimedia resources, present and future threats to fair use doctrine, and the transition from copyright to licensing in the acquisition and use of information. Provides a contract law primer and key elements of a licensing agreement.

Websites:

Building Digital Libraries: Making Smart Licensing Decisions — <http://www.infotoday.com/cilmag/jun00/guenther.htm> — Article by **Kim Guenther** in *Computers in Libraries*, vol. 20, no. 6, which focuses on the decision-making process for content, ownership and access, and management of electronic products.

Crash Course in Copyright — <http://>
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www.utsystem.edu/OGC/IntellectualProperty/cprtindx.htm — Copyright tutorial developed for faculty by the Office of General Counsel of the University of Texas System.

Copyright and Intellectual Property — <http://arl.cni.org/info/firm/copy/copytoc.html> — Extensive site containing documents and postings on Federal Relations and Information Policy; analysis and documents concerning the Digital Millennium Copyright Act and the Copyright Term Extension Act; database proposals and legislation from the U.S. 105th and 106th Congresses; documents and analysis concerning the Uniform Computer Information Transactions Act (UCITA); and additional resources on copyright and fair use.

Digital Millennium Copyright Act Report - U.S. Copyright Office/Library of Congress — http://www.loc.gov/copyright/reports/studies/dmca/dmca_study.html — The 1998 Digital Millennium Copyright Act (DMCA) includes changes that support copyright owners' contention that the right to lend (including a library's right to lend) should not apply to digital works. Section 104 of the DMCA required the U.S. Copyright Office to conduct a study to begin "an ongoing evaluation by Congress on the relationship between technological change and U.S. copyright law." Their report focuses on three areas traditionally handled under copyright law that have changed in the digital environment: first sale doctrine and the issue of digital transmission of copyrighted works, temporary incidental copies, and archival copying of computer programs. The document includes public commentary from the library community, publishers and private citizens.

Electronic Collections Development — <http://www.library.yale.edu/~okerson/ecd.html> — A collection of links to policy documents from research libraries regarding the development of collections in a library environment marked by the challenge of electronic resources.

Electronic Sources of Information: A Bibliography — <http://library.usask.ca/~dworacz/BIBLIO.HTM> — Online bibliography dealing with all aspects of electronic publishing which includes print and non-print materials, periodical articles, monographs and individual chapters in collected works. Continually updated, this resource includes over 1400 titles and thousands of URLs. See citations under "Copyright and Ownership" and "Fair Use."

IP @ The National Academies — <http://ip.nationalacademies.org/> — Serves as a guide to the National Academies' extensive work on Intellectual Property and a forum to discuss ongoing work in the area. The Library section provides annotated links to documents of the National Academies.

Liblicense: Licensing Digital Information: A Resource for Librarians — <http://www.library.yale.edu/~llicense/index.shtml> — Keyword searchable Website devoted to issues surrounding the licensing of electronic resources by libraries. Includes standard license terms and definitions, links to other Websites related to licensing, a bibliography of licensing articles (some with links), a section on authors' licenses, links to model licenses, and access to the moderated liblicense-l listserv.

Licensing Digital Resources: How to Avoid the Legal Pitfalls (2nd edition) — <http://eblida.org/ecup/docs/licensing.htm> — Coordinated by the European Bureau of Library, Information and Documentation Associations (EBLIDA), this licensing guide was compiled in order to assist librarians in understanding the meaning and consequences of common licensing clauses.

Licensing Electronic Resources: Strategic and Practical Considerations for Signing Electronic Information Delivery Agreements — <http://www.arl.org/scomm/licensing/licbooklet.html> — ARL document which addresses institutional policy, license review and revision, costs, location, ownership and indemnification. Discusses who will use the resource, location of resource access, downloading and printing material, and institutional control and restriction of licensed material.

Licensing Models: Model Standard Licenses for Use by Publishers, Librarians and Subscription Agents for Electronic Resources — <http://www.licensingmodels.com/> — Standard licenses designed for the acquisition of electronic journals and other electronic resources which contain the terminology needed to express most of the variables publishers and librarians - and the subscription agents who are experienced in handling the supply of journals - will meet in negotiating licenses.

Licensing Principles (2000) — <http://ifla.org/V/ebpb/copy.htm> — Prepared by the International Federation of Library Associations and Institutions, this document outlines thirty-two principles relevant to all aspects of electronic information licensing.

Principles for Acquiring and Licensing Information in Digital For-

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Op Ed — Little Red Herrings: Filter-tipped Libraries

by **Mark Y. Herring** (Dean of Library Services, Dacus Library, Winthrop University)
<herringm@winthrop.edu>

Is it possible to say something positive about Internet filtering in libraries and not have everyone, including your mother, call you a wild-eyed, hidebound, neo-Nazi bashi-bazouk? No, of course not, but I'm going to try to anyway.

Our story begins in the late 1930s, when the **American Library Association**, working hand-in-glove with the **American Civil Liberties Union**, issued its **Library Bill of Rights**. In a word, the document said everyone had the right to read and no one, of course, disagreed with this. The innocuous document served well enough over the coming years because everyone remained agreeable and sensible about what reading is, and what constituted this right. But nestled in its midst, the document also heralded ALA's embrace of an absolutist view of the First Amendment, one shared by the **ACLU** and many others. The right to read came to mean, in absolutist terms, we must select everything for fear of censoring anything. No one really did this but the ideal could not be easily gainsaid, except at the operational level, a minor, devilish detail.

Unfortunately, bad enough is seldom left alone. Later, during the turbulent sixties and early seventies, **ALA** issued its *Intellectual Freedom Manual* (hereinafter *IFM*). By now nearly everyone was activist-minded and *IFM* (and **ALA**) proved no exception. The *IFM* spelled out this right to read by adding prohibitions to prohibitions: librarians should not sequester what they considered to be adult materials because this flew in the face of the absolutist view. Further, there were to be no adult shelves so labeled because this, too, smacked of even the faintest hint of restriction.

All of this came under the guise of preventing our libraries from becoming bare, ruin'd choirs but there was more madness than method. Children, under this absolutist view, had as much right to the *Joy of Sex* as anyone; and librarians were not to act in *loco parentis*. Fast-forward to 2004 and it comes as no surprise that **ALA** has joined forces with the **ACLU** once more to issue a clarion call against Internet filtering and the protection of pornography in the nations libraries.

What is curious about all this, however, is **ALA's** duplicity. **ALA** spokespersons dismiss, dismissively, the argument that young people would ever surf for porn. In an astounding admission of self-delusion, **Leonard Kniffel**, editor of **ALA's** official publication for librarians, *American Libraries*, wrote, "Kids don't have time to sit at library computers and

troll for smut, nor do they wish to." (And the former President did not have sexual relations with that woman, **Monica Lewinsky**, either.)

Further duplicity abounds. Librarians censor daily, or rather restrict in such a way that the end result is as if censoring had taken place: this book is too expensive; that database is too narrow; this CD-ROM is too general. Moreover, while filtering merely removed the chance that **John Doe** can surf for porn at the library's expense (he can still go home and surf until his heart's content, or until his wife gongs him with an iron skillet, whichever comes first). On the other hand, when library A chooses not to buy database B (probably owing to expense) it's that unlikely that any individual can or will.

If truth be told, we even do a bit of the ideological censoring. For example, you'll not find many treatises by the **John Birch Society** in our nation's libraries; nor will you find much of the **KKK's** hate-mongering. Neither will you find much, if any, in the way of anti-gay or anti-lesbian materials. When we librarians remove or omit materials, we call it selection. When the little, blue-haired old lady, toting a purse the size of a railcar wants to take from the library **Madonna's** book titled *Sex*, we excoriate it as censorship.

It's not that the material substance of the absolutist views of the First Amendment arguments is disagreeable; it's the casuistry behind it that wrecks from effluvia. What distinguishes us from animals is our ability to make fine distinctions. We do not, for example, call a

monkey with a paintbrush, **Picasso**; his work may *look* like modern art, but we think we see a difference. Most people understand that while you may go native in your living room, you cannot do that at the local Wal-Mart. Or rather, you may, but only until the police arrive.

What puzzles me is that we cannot seem to make these same distinctions when it comes to pornography in the library. If one bare-bottomed shot is filtered, so goes the **ALA** argument, well, then there goes the intellectual neighborhood. In essence, librarians have been reduced to saying all words or pictures on a page or monitor are the same. All are potential information. The argument is akin to saying we should never arrest anyone for fear of arresting an innocent person. Yet, we know that words hurt, that ideas have consequences; and we know that pornographic materials, whether soft-

or hard-core, whether glossy or full color, high or low resolution, are bad for people. Report

after report teaches us that **Tom Schiro**, **Ted Bundy** and thousands of others have confirmed it: and, the nearly three in five men addicted to some form of it underscores how late the hour is. We know that vice, seen too often, familiar with its face, is something we first endure, then fondle, then embrace. This may not seem very open-minded to some people, but then, as **Flannery O'Connor** pointed out, some people are so open-minded their brains have fallen out. 🍌

Next Issue: The Tangled Web of the Web.

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mats — <http://www.indiana.edu/~libsalc/policies/ucal.html> — Principles developed to guide librarians in the **University of California Libraries** in developing and reviewing proposals to and from, and in negotiating contracts with, providers of information in various digital formats. Covers issues in collection development, costs and pricing, licensing, functionality, and archiving of information in digital formats.

Scholarly Electronic Publishing Bibliography — <http://info.lib.uh.edu/sepbl>

sepb.html — Developed and updated by **Charles W. Bailey** of the **University of Houston Libraries**, this bibliography presents selected English-language articles, books, and other printed and electronic sources useful in understanding scholarly electronic publishing efforts on the Internet. Most sources have been published after 1990, and links are provided to sources that are freely available on the Internet. Includes numerous citations relevant to intellectual property rights, license agreements and other legal issues.

Software and Database License Agreement Checklist — <http://www.utsystem.edu/OGC/Intellectual>

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Chairman of the Board, EBSCO

by Katina Strauch (Editor, *Against the Grain*) <kstrauch@comcast.net>

ATG: A June 11, 2004 news release announced your plans to retire from EBSCO, effective July 1, 2005. What are your plans after that date?

JS: I will continue to be EBSCO's Chairman of the Board and will remain active in understanding, monitoring and helping the company's activities. One definition of retirement is rising two or three mornings weekly with more favorable timing. I will take more personal time to be with family, enjoy the outdoors and travel to the more off-track places of the world. On July 1, 2004, I was named Chairman of the Board of Trustees at **Birmingham-Southern College**. For a number of years, I've served as Chairman of its Academic Affairs Committee, so I'm looking forward to this new opportunity. With 39 years as President of EBSCO, I have no slackening of determination that the company will continue to do right by its constituencies and that we will continue to grow in services and scope.

ATG: Tell us about EBSCO's growth in your various sectors. You seem to be doing well in the EBSCO Publishing end with electronic databases and are having real growth. But is the serials subscription service growth flat or decreasing?

JS: Yes, EBSCO Publishing is pleased and thankful for its continued strong growth with our proprietary databases as well as a continuously increasing collection of licensed databases. Our systems have the key mission of improving resource awareness and convenient access from article databases to full text whether derived from publisher e-journal output or our investment in digitizing content.

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Property/dbckfrm1.htm — Checklist developed by the **University of Texas System** that focuses on licensing issues and suggests ways to remedy identified problems through online interaction with the checklist.

Values Conflict in the Digital Environment: Librarians Versus Copyright Holders — <http://www.unc.edu/~uncclng/Columbia-article3.htm> — Article by **Laura N. Gasaway** in *Columbia-VLA Journal of Law & the Arts*, vol. 24 (2000), that explores the contrasting core values of librarians, publishers, and society with regard to copyright; the highlighting of these value differences by the various exemptions of the Copyright Act; and library licensing and access to electronic products.

URLs were verified on August 3, 2004.
Compiled by **Christine Wondolowski Gerstein, Hofstra University**.

Our serials subscription service has seen growth from former **RoweCom** customers who have come to us after the **RoweCom** demise, as well as new library and institutional customers not associated with **RoweCom** who have selected EBSCO. The overall average serials expenditure by customer shows slight growth, indicating customer budgets remain under pressure.

ATG: What sort of defection are you seeing by libraries and by publishers in terms of using the subscription agent as a middleman?

JS: Early in the life cycle of e-journals, there were many different business models and approaches. Some e-journal purchases went direct to publishers, some by **Elsevier** mandate and others by buyer choice. As the transition process has settled and gained more maturity among all involved, we are seeing those who formerly supported the publisher-direct model return to EBSCO. The advantages we offer in providing single-source service for multiple items from multiple publishers provides us every opportunity to be as beneficial with e-journals as we are in the print world.

As the number of available e-journals has increased exponentially, it is clear from our customers that this new environment has led to administrative overload, which is amplified if they deal directly with publishers. In the past, we have seen formerly order-direct print purchases come to us, indicating greater recognition of this administrative load. Now, after several years of dealing with e-journals, we are seeing e-journal orders coming back after having initially been direct to the publisher. The latter is increasing based on our review of the statistics. It is driven by many of the same factors that drove order-direct print to agents plus new factors related to e-journals. These range from inadequate publisher back office service and invoicing performance to ILS integration to the need for complete collection history and reporting.

As both publishers and libraries make the transition to e-journals, EBSCO is hard at work

to provide full service on both sides of the equation. We are confident that our single point of access for global e-journal needs translates into library convenience and efficiency, and that this is the main driver of strong internal growth in our e-journal volume.

ATG: The transition from print to electronic access, record keeping, ordering, etc., is a huge one for all of us. How does the subscription agent, with one foot firmly in the print world, survive in this new user-friendly but perhaps agent-unfriendly environment?

JS: The environment is not agent unfriendly. An agent, in whatever field, is an intermediary between many on each side. Only if the need to control, manage and simplify between the many vanishes does our opportunity wither. And we definitely do not see that occurring.

When **Academic Press** first initiated what might be described as "more content for supposedly the same purchase commitment but surely at a higher cost to the library," some major STM publishers followed suit. **Elsevier** distinguished itself with the construction of a large "sales" organization. This sales organization was not needed to sustain the value of editorial content. The content and its value have not changed. This new sales staff has "sold" what arguably would have naturally migrated from print to electronic because of innate conveniences associated with electronic information.

Some publishers have feared the improved usage measurement of the electronic environment would cut subscriptions and revenues. They have likely packaged and priced due to this fear, and they have fielded a staff to "sell" such. Others have simply been justifiably nervous about the other side of the transition and have deployed more library visitors than ever to "stay close." Throughout all, the content itself and not the media in which it exists is the essence of consumption. The content is what has the ultimate value.

A reaction to the overall transition has been that a market with a set price for each title changed into a kind of flea market arena for batch-and-bunch negotiation replete with professional lawyer and accountant negotiations. Illogical pricing differences from buyer to buyer have developed as well as difficulties that compound administrative problems for agents, buyers, libraries and publisher back offices, as commonality in pricing has faded.

How to survive? This agent (EBSCO) will continuously seek to understand the customer need and to engineer to be helpful enough not to be unneeded. Our solutions are valuable and must be the best.

ATG: Our reference librarians at the College of Charleston find EJS "unreliable." What sorts of improvements do you plan to make, if any, to EJS?

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