

December 2010

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Recommended Citation

Ferguson, Cris (2010) "Technology Left Behind-The Temptations of Netflix," *Against the Grain*: Vol. 22: Iss. 6, Article 43.

DOI: <https://doi.org/10.7771/2380-176X.5721>

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Technology Left Behind — The Temptations of Netflix

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Use of **Netflix** subscription services within libraries has been on the rise in the past few years. The appeal of the **Netflix** services is clear, providing easy, quick, and inexpensive access to a wide variety of video titles that libraries may not be able to afford to purchase. And there are a plethora of potential uses, including supplementing existing media collections, functioning as an alternative to Interlibrary Loan, and acting as a way to screen potentially costly library purchases. However, the **Netflix** terms of use specify that DVDs and streaming media are to be used for personal use. Some libraries have argued that their use of the streamed video and the rented DVDs falls within permitted use as acceptable under copyright law, but the company has recently gone on the record stating that library use of DVDs is a violation of its terms.

Netflix Subscriptions

It is clear that **Netflix** does not offer institutional subscriptions. As a result, libraries using the service take advantage of existing plans aimed towards individual users. **Netflix** subscription plans include delivery of DVDs via the mail and unlimited streaming of TV episodes and movies over the Internet. DVDs are sent to the user in packaging that doubles as pre-paid return envelopes. With the exception of the limited plan, all of the plans limit the number of DVDs that the user may have at one time but permit the user to swap out DVDs as often as he or she likes. As of November 2010, the company began offering a streaming-only plan that does not include DVD delivery. Videos can be streamed to the user's television via a variety of devices including the **Wii**, **Xbox360**, **PlayStation3**, or a streaming video player, such as one from **Roku** (<http://www.roku.com/>). Personal computers can also be used to view the streamed content.

Pricing for the subscription plans varies, depending upon the number of DVDs the individual (or library) wants to have rented at one time. The cheapest possible plan, costing \$4.99 per month, allows the user to have one DVD at a time with a limit of 2 DVDs per month. The most expensive plan, at \$55.99 a month, permits users to have up to 8 DVDs at one time with an unlimited number of DVDs per month. Complete subscription options and pricing can be found on the **Netflix** blog. (<http://blog.netflix.com/2010/11/new-plan-for-watching-instantly-plus.html>)

Use of Netflix by Libraries

Netflix is being used by academic and public libraries alike. For the most part, libraries appear to be using the subscription programs that permit a larger number of DVDs to be obtained at a one



time. While public libraries will let patrons check out **Netflix** DVDs for personal use, the trend in academic libraries is to limit use of the DVDs to faculty and staff at the university. Usage policies, check-out periods, and fines vary from library to library.

In the April 15, 2008 issue of *Library Journal*, **Lynn Blumenstein** reported on two public libraries in New Hampshire, the **Sanbornton Public Library (SPL)** in Sanbornton, NH and **Cook Memorial Library** in Tamworth, NH, both of which had set up **Netflix** subscriptions. A post on the **SPL** Website dated January 28, 2010 indicates **SPL** still uses **Netflix**. With up to three titles available at any point in time, **SPL** lends out **Netflix** DVDs to patrons for 3-day periods. The right-hand column of the **SPL** Website indicates which 3 titles the library currently has rented from **Netflix**. (<http://splnh.com/>)

Pacific Lutheran University Library provides information about its **Netflix** program on its Website, clearly stating that use of the **Netflix** service is limited to classroom use by faculty. Guidelines are provided as to the type of movie that is suitable for ordering via **Netflix**, and the checkout policies are clearly defined. Faculty members may check out items for 7 days. DVDs must be returned within 30 days, or the patron will be charged a \$50 lost fee. **PLU Library's** Website indicates that they currently use a program allowing 6 DVDs to be borrowed at one time. (<http://www.plu.edu/~libr/get-help/netflix.html>)

Ciara Healy's article "Netflix in an Academic Library: A Personal Case Study" in the Winter 2010 issue of *Library Trends*, outlined the **Netflix** program she implemented while employed at **Wake Technical Community College** in North Carolina. **Healy** indicated to the *Chronicle of Higher Education* that at **Wake Technical** "she set down strict guidelines for access to **Netflix** material. DVD loans were restricted to faculty members who planned to use the materials in the classroom, not for at-home entertainment. [**Healy**] allowed students to access streaming video from the **Netflix** Website, but only under supervision on a computer in the library." (**Kaya** Sept. 2010)

Rebecca Fitzgerald, Acquisitions Librarian at **Scheele Memorial Library** at **Concordia College** in New York, described **Concordia's** use of a **Netflix** subscription in a guest post on **Tame the Web** (<http://tametheweb.com/>) in September 2010. **Fitzgerald** stated that **Concordia** started out with one account allowing 8 DVDs (the maximum number) at one time. Within a short period of time, a second account was created to handle the large amount of traffic. The library uses **Netflix** to provide

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access to popular titles and national released documentaries. As a result, **Fitzgerald** says, they have been able to focus their spending on more academic materials, such as high quality educational films from **Insight Media** and **Films for the Humanities and Sciences**. (**Fitzgerald** 2010) **Fitzgerald** has this to say of the service, "Netflix has saved us an enormous amount of money (around \$3,000) by allowing the physical rentals as well as instant play."

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The **University of Washington Libraries** conducted a three-year pilot project of **Netflix** services, offering access through its Media Center. However, the subscription has since been cancelled. According to **John Vallier**, Head of Distributed Media Services at the **UW Libraries**, the service has not been missed. They have been able to respond to faculty needs through robust collection development efforts. **Vallier** noted that a service such as **Netflix** could be useful for a smaller school that could not afford to purchase materials.

Reaction by Netflix and Librarians

The **Netflix** Terms of Use specifically state, "The use of the **Netflix** service, including movies and TV shows made available to you by us, is solely for your personal and non-commercial use." (<http://www.netflix.com/TermsOfUse>) In addition, **Netflix** has indicated that it considers the use of **Netflix** subscriptions by libraries to provide access to DVDs and streaming video to patrons against its Terms of Use. **Travis Kaya's** September 18, 2010 post in **Wired Campus** on the *Chronicle of Higher Education* Website stated that "lending DVDs out for faculty members to project on-screen in class or allowing students to watch streaming video from a **Netflix** account is something the company 'frowns upon,'" according to **Netflix's** Vice President of Corporate Communications, **Steve Swasey**. **Swasey** told the *Chronicle* "We just don't want to be pursuing libraries. We appreciate libraries and we value them, but we expect that they follow the terms of the agreement."

In the same piece, **Ciara Healy** said that in setting up the **Netflix** program at **Wake Technical Community College** "she acted according to federal copyright law, which allows faculty members to share legally obtained material in face-to-face instruction." However, the question has been raised as to whether a court of law would consider a library's use of **Netflix** "personal." **Kevin Smith**, **Duke University** Scholarly Communications officer, told *Library Journal*, "[T]hose terms of use may indeed trump rights that one has under the copyright law; they are part of a private agreement between **Netflix** and a user with can create liability only for those two parties if there is a breach of terms." (**Hadro** 2010)

In response to recent articles and blog posts discussing the lending or streaming of **Netflix** videos by libraries, some library folk have voiced their disapproval. **Meredith Farkas**, Head of Instructional Services at **Norwich University** in Vermont and author of the "Technology in Practice" column in *American Libraries*, posted an entry on her blog in which she reprimands libraries. Voicing concern about the legality of library actions, **Farkas** says, "**Netflix** does not have institutional subscriptions. Therefore, what the library is doing is in violation of **Netflix's** terms of services and opens them up to legal repercussions." In a September 18, 2010 post on his blog, **LibraryLaw** blogger **Peter Hirtle** agrees, saying "I don't see how a library subscription to **Netflix** could be considered to be "personal" — not when the purpose of the subscription is to lend the movies to others, rather than watch them yourself (as if a library could even watch a movie.)"

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Standards Column — Taming the World of Data: Pressures to Improve Data Management in Scholarly Communications

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There is a giant and rapidly growing wild-west-like expanse in scholarly communications. It has few boundaries, few rules, and appears as expansive as the Big Sky country of Montana. I'm speaking of the world of research data, which has exploded in both size and scope since the turn of the millennium. An often-quoted report by IDC in 2008 (<http://www.emc.com/collateral/analyst-reports/diverse-exploding-digital-universe.pdf>) concluded that the pace of data creation had exceeded the capacity to store that information and with the rapid implementation of sensors and data creation tools of every type, this trend is unlikely to abate. Diverse and complex problems exist in managing all this data.

External factors are also driving this growth in data availability and distribution. In 2007, **President Bush** signed the **America COMPETES Act** (PL 110-69) into law, which among many other things requires civilian federal agencies that conduct scientific research to "develop and issue an overarching set of principles to ensure the communication of open exchange of data and results to other agencies, policymakers, and the public." This led various organizations,

both within and outside the federal government, to review their policies on data management. In October, the **National Science Foundation** amended its grant proposal submission guidelines to require the inclusion of a detailed Data Management Plan. This change is in support of **NSF's** new **NSF Data Sharing Policy** (<http://www.nsf.gov/bfa/dias/policy/dmp.jsp>), which states that recipients of grants are "expected to share with other researchers, at no more than incremental cost and within a reasonable time, the primary data, samples, physical collections and other supporting materials created or gathered in the course of work under NSF grants. Grantees are expected to encourage and facilitate such sharing." They are not the only grant funding organization to expect awardees to facilitate and participate in data sharing. The **National Institutes of Health** has been a leader in promoting data sharing (http://grants.nih.gov/grants/policy/data_sharing/) since 2003. Other non-government sponsors of research such as the **Wellcome Trust** (<http://www.wellcome.ac.uk/About-us/Policy/Policy-and-position-statements/wtx035043.htm>) — a global charitable foundation that sponsors research

in bioscience, medicine, and the environment — and the **Australian Research Council** (<http://ands.org.au/guides/code-awareness.html>) have implemented policies on data sharing. These are only a few examples among many throughout the world.

While the number of organizations demanding that scholars share their data is increasing, there is not yet clear understanding of how to accomplish all the sharing that is being mandated. The political, legal, technical, curatorial, and publication aspects of data sharing are problems our community will be addressing for a considerable time to come. Several organizations have begun addressing aspects of the complexity, including **CODATA** (<http://www.codata.org/taskgroups/>), **ICSTI** (http://www.icsti.org/documents/Numeric_Data_FINAL_report.pdf), **Science Commons** (<http://neurocommons.org/report/data-publication.pdf>), the **Dataverse Network Project** (<http://thedata.org/citation/standard>), **NISO** (<http://www.niso.org/workrooms/supplemental>), and the **UK's Digital Curation Center** (<http://www.dcc.ac.uk/resources/policy-and-legal/policy-tools>

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