

February 2010

@Brunning: People & Technology: At the only Edge that Means Anything/How We Understand What We Do

Dennis Brunning

Arizona State University, dennis.brunning@gmail.com

Follow this and additional works at: <https://docs.lib.purdue.edu/atg>



Part of the [Library and Information Science Commons](#)

Recommended Citation

Brunning, Dennis (2010) "@Brunning: People & Technology: At the only Edge that Means Anything/How We Understand What We Do," *Against the Grain*: Vol. 22: Iss. 1, Article 27.

DOI: <https://doi.org/10.7771/2380-176X.5857>

This document has been made available through Purdue e-Pubs, a service of the Purdue University Libraries. Please contact epubs@purdue.edu for additional information.

tion. **GSU** has, in fact, been a “free rider” on this system for years, not even paying its fair share of permission fees to support the system indirectly. It remains to be seen whether, under the revised policy, these payments will increase significantly, as they should.

My own personal view is that the idea of “transformative use,” as deployed in the Second (not the Ninth) Circuit, holds a lot of promise for the way university presses should regard fair use, both as users and as publishers. Indeed, many of our presses are now using fair use to defend such practices as not seeking permission to use film stills in scholarly books about that medium of culture, which is a classic example of “transformative use.” What we should continue to oppose, as basically threatening our continued survival and as constituting a parasitical form of publishing, is the mere duplication of copies with no value added, which is what mostly happens with coursepacks and e-reserves. This is the difference between “creative” and “duplicative” types of copying that **Georgia Harper** emphasized in her blog. **Congress**, unfortunately, opened the Pandora’s box when it included a reference to “multiple copies” in the language of Section 107, and we have been suffering from this ever since. I have no less an authority than **Crews** himself admitting, in his Chicago book, that “despite its denials, **Congress** was unquestionably changing the law” (p. 33). As **Crews** explains, “three subtle, but important, changes in Section 107 emerged during congressional reviews and hearings: fair use was expressly applied to the reproduction of materials; it permitted multiple copies for classroom use; and the nonprofit character of a use became an explicit factor in the fair use equation” (p. 32).

In fact, the study of fair-use jurisprudence that **Congress** asked the Copyright Office to prepare leading up to the revision of the law in 1976 revealed that no judge had ever ruled that straightforward reproduction of a copyrighted work for its own sake was a fair use. While “multiple copies” are now referenced in Section 107 explicitly, we can reasonably argue that this should be interpreted in a *de minimis* sense because, as **Judge Newman** famously said in the **Texaco** decision, whatever social utility this kind of copying may have, it has nothing to do with what fair use traditionally meant:

We would seriously question whether the fair use analysis that has developed with respect to works of authorship alleged to use portions of copyrighted material is precisely applicable to copies produced by mechanical means. The traditional fair use analysis, now codified in section 107, developed in an effort to adjust the competing interests of the authors — the author of the original copyrighted work and the author of the secondary work that “copies” a portion of the original work in the course of producing what is claimed to be a new work. Mechanical “copying” of an entire document, made readily feasible by the advent of xerography... is obviously an activity entirely different from creating a work of authorship. Whatever social utility copying of this sort achieves, it is not concerned with creative authorship.

It is anyone’s guess how the **GSU** case will ultimately turn out, and it is not the purpose of this article to make any predictions. **Judge Evans**, presiding in this case, has shown herself to be well-informed about copyright and respectful of past opinions. She is no **L. Ray Patterson**, who was actually the defense

attorney in one of the copyright cases she handled in her district in which he was on the losing side. And her interpretation of “transformative use” follows the functional test developed by **David Nimmer** in the authoritative treatise *Nimmer on Copyright* rather than the radically new type of functional analysis propagated by the Ninth Circuit in various of its rulings over the past several years. (For more about these types of functional tests, see my article “Is ‘Functional’ Use ‘Transformative’ and Hence ‘Fair’?” in *Against the Grain*, v.21#3, June 2009.) While I had earlier predicted that **Judge Pierre Leval**, who is credited with greatly influencing judicial thinking about “transformative use,” would not find the Ninth Circuit’s decisions to be consistent with his own concept, only to be disabused by **Leval** himself when he gave the **Christopher Meyer** Memorial Lecture titled “Did *Campbell* Repair Fair Use?” at **George Washington University** on June 2, 2009, **Leval** in private correspondence subsequently did affirm that he does not “read **Perfect 10** as authorizing, or opening the door to, free distribution of books to students on the grounds that that is a transformative use, all the more so when the books are themselves of an educational nature. I rejected virtually the same argument in the **Texaco** case, which I had in the district court. I recall making the observation that allowing **Texaco** free access to the scientific publications of the plaintiffs on the ground that **Texaco** was using them for scientific purposes would be an appropriation of the plaintiffs’ market.” So, whatever **Judge Evans** may think about the Ninth Circuit cases, we may hope that she, like **Leval**, will still reject the kind of sweeping argument about “transformative use” that **Crews**, following **Band**, puts forward to turn fair use into a truly radical justification for merely “duplicative” copying. 🐼

@Bunning: People & Technology

At the only Edge that Means Anything / How We Understand What We Do

by **Dennis Brunning** (E Humanities Development Librarian, Arizona State University) <dennis.bunning@gmail.com>

Google Zeitgeist 2009

If you haven’t, check out **Google Zeitgeist**. The algorithmic aladdins in Mountain View have compiled local lists for the most popular searches of select US cities and then ranked them based on how unique these searches were for that city. A search is unique if it is “disproportionately popular in a particular city compared to the rest of the country.”

Here are the ten most unique and popular searches in the Chicago, Illinois area:

1. impact cps
2. cta bus tracker
3. second city cop
4. rta trip planner
5. Southdown star
6. metromix Chicago
7. Harold Washington college
8. paws Chicago
9. Chicago public library
10. uic.edu

The most popular “impact cps” is the grade tracking site for Chicago Public Schools. There are two transportation system Websites, a popular blog, a local online edition of the *Sun-Times* newspaper, a local entertainment weekly newspaper, and a local

no-kill animal shelter. Interestingly, four sites are higher education sites.

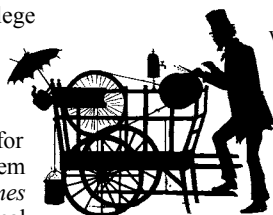
Repeated throughout the city by city accounts are education sites and most impressively many library sites. Admittedly there are also many jail sites which bear some kinship with public school grade tracking sites (progress through a system!).

It’s difficult to say what the search scientists at **Google** make of these popularities. It’s probably read as the dominance of the Internet by youth (who else goes to school, gets in trouble, and take the bus...). More practically, it illustrates how simple we understand search; and that search is local.

What we need to know, though, is what users search when they arrive from **Google** to the sought after cyber-place. And this **Google** isn’t telling us. We assume this is proprietary and the **Zeitgeist** here will remain secret and protected. For librarians, however, it is edifying to confirm our space is unique, popular, and local.

Your link: http://www.google.com/intl/en_us/press/zeitgeist2009/cities.html

continued on page 60



Let's Get Back to Lending — and Why You Should Buy the National Geographic on DVD

Apologies to public libraries. You lend for a living. You even want to buy **Kindles, Nooks,** and **Sony E-Readers** to lend.

At academic libraries we've seemed to have forgotten about lending. Our circulation numbers are going down. Even IOLS sales people shuffle their feet at the mention of circ systems. Oops...one more overpriced module in a library environment habituated to aggregated access. Sorry — you have books?

We know we shouldn't think this way, but we do. It's sad and a bit wrong. Unlike our bankers, we should lend.

Take **National Geographic** on DVD for example. **NATGEO**, as they liked to be called, has put together an imaged collection of all their magazines since 1888 on fast-access, visually stunning digital video. Powered by **Adobe AIR**, the industry leader in visual and text presentation, this is a neat package. In six DVDs you get a basement of *National Geographic Magazines*.

As the DVD box says, every page of every issue. We might add — digitization done right — no thumbs, canted or missing pages, and similar artifacts of rushed digital preservation. **Microsoft Bing** is on board with a nifty browser allowing search and browse by political map or terrain.

Academic librarians will always ask — is it online? Can it at least be networked? Wrong questions. Some stuff just doesn't require the added cost of online license. The **National Geographic** experience is born in individual discovery and serendipity. You glance at an issue at the doctor's office; you discover a boxful at a yard sale; some kid passes one around during Show & Tell (we remember *Little Miss Shanghai*, 1957).

National Geographic is our world. Boxed. Here you go, bring it back in two weeks. Handle the DVDs carefully. Renew online if no one is waiting. We need the circ stats.

Your link: <http://www.nationalgeographic.com/completeng/>

Another Ranganathian Moment

Neglect at peril publisher direct mail. Our mail basket brims with catalogs, announcements, prize contests, mail-back postcards and the like. We've not reached the tipping point of "e" over "p" in this marketing medium. Not even close. Why do publishers persist in this deluge? Haven't they learned about the needle in the haystack conundrum?

It is, though, sort of fun to spend a rainy day sorting through office mail.

Recently a **Lexis Nexis Mathew Bender Arizona Law Enforcement Publications** brochure founds its way our way. Once you buy something from **Lexis Nexis** you become a pen pal for the rest of your life. It's a great friendship since no upkeep is involved on your part. Someone or something at **Lexis Nexis** thinks about you and just wants you to know "we're here, here for you."

Print and CD-ROM with updates dominate this part of legal research. We've got handbooks, field guides, manuals, "laws," and preparation. Who's got space for all this erudition? The best lawyers wield only the most slender of briefcases; less is more for these legal guys and gals. And cops--well, they've got more important stuff like Taser gun instructions to pocket. What's that laptop in the squad car for?

One title that might raise the eyebrow of cop and prosecuting attorney is **Lexis Nexis Legal Research Solutions for Prisons**. LNPRSFP, as the brochure it, is an "entire inmate library... a single external hard drive." We learn that the **Lexis Nexis** Corrections Team has worked closely with corrections officials to put together "an appropriate collection of legal resources that fits an external hard drive small enough to hold in your hand and conforms to right-of-access guidelines while controlling the costs of expensive upkeep and space for printed materials."

We're sure that law librarians and especially corrections librarians are aware of library 2.0 in the big house. Still let's share some more:

- easy to use, easily searchable "reducing inmate complaints"
- Works offline without "security risks with Internet Access and the costs associated with print publications."
- always current "easy-to-install updates, ensure inmates have the latest decisions."
- doesn't require specialized IT "plug-and-play simplicity, through USB 2.0 port, quickly connects or disconnects to your network or computer."

Wonder if it is lock-jack compliant in the event of loss? Can it be baked into a cake?

Your link: http://www.lexisnexis.com/government/agencies/prison_solutions.pdf

Mutual Admiration Society — Web Scale Discovery

*I say her kisses are like wine, his kiss is
just as good as mine*

And that's how we pass the time of day

*We belong to a Mutual Admiration Society
My baby and me*

Mom and Dad used to dance to **Louis Prima's** version of this tune from Broadway. They danced for fun, they danced to make-up. It was the 1950s; it was working class tract housing in the industrial Midwest. More on this in a second.

After a slow start, *Discovery Services* (AKA *Second Generation Catalog*, "not federated search," one-box search, Web-scale services) is gathering steam. **Marshall Breeding's** great guide and directory to library technology lists at least six major providers and integrated online catalog systems in use with these providers. To the matrix, library managers!

Public libraries and public library networks/systems seem keen on **Aqua-Browser**. In fact, it leads the market in "not federated search." You build it from your MARC database so it is incredibly vendor-neutral. Its strength is the visual relationships it creates with the MARC data; a visual path to books.

To search books, journals, and more, you need heavier lifting than what **Aqua-Browser** provides. Here the big guys step in. **OCLC's Local WorldCat** was one of the first on the scene offering Web-scale, consolidated indexing of your books, journals, and databases. Just over a year ago, **SerialsSolutions** (a **Proquest/CSA** company) announced beta sites for **Summon**, a Web scale discovery service to "quickly search, discover and access reliable and credible library content."

At heart these and similar products rely on available indexing meta-data mapped to current holdings at the book or article level. You search this index, it returns citations matching your search, and then you link out, through your open-url resolver, to the content.

Done right, this works well; compared to federated search it is outright miraculous.

The hard part is making sure the meta-data are complete. This is where the bigger vendors thrive. They own a fair share of available meta-data, either from indexing/abstracting they do in-house or database services they own.

To get all this to work requires mutuality. Mutual users get to use each other's mutual meta-data. If you wondered why you subscribed to so many databases with so much overlap, now you know. You were waiting to be discovered!

This mutuality is important for everyone. Libraries need one search box access to content. They also need their vendors to index and deliver this content. And the vendors — well, they need more and more of us.

And now **EBSCO Publishing** shows up with its product, **EBSCO Discovery Services**. What's interesting about **EDS** is that it looks, feels, and acts like **EBSCOhost** — on adrenalin. This is the **Teresa Brewer** or **Rita Hayworth** version of Mutual Admiration Society. **Summon** and **Local WorldCat** are sold as extras — alternative versions of library search at your library. You've got to maintain database subscriptions one way or the other, or you get, as one vendor puts it, the "thin meta-data." **EDS** is sold this way too but it needn't. It could just be the great interface you get with **EBSCOhost** products. One day it is just **EBSCOhost**. The next day you've got all this extra stuff.

Soon the market may dictate that these vendors just give you discovery — or face a wild rush out of their aggregated databases. Until then, no matter whom your partner is, success pivots on dancing cheek-to-cheek in the Mutual Admiration Society.

What if there isn't meta-data? When the music is over (**Doors** — *the End*) in the next column...

Your links:

<http://www.serialsolutions.com/summon/>

<http://www.oclc.org/worldcatlocal/default.htm>

<http://www.ebscohost.com/discovery/default.php>

[http://en.wikipedia.org/wiki/Mutual_Admiration_Society_\(song\)](http://en.wikipedia.org/wiki/Mutual_Admiration_Society_(song))

<http://www.librarytechnology.org/discovery.pl?SID=20100118618194580> 