

June 2011

Biz of Acq -- Acquisitions and the Digital Repository

Steven Douglas

University of Maryland Baltimore, sdouglas@hshsl.umaryland.edu

Michelle Flinchbaugh

University of Maryland Baltimore County, flinchba@umbc.edu

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



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

Recommended Citation

Douglas, Steven and Flinchbaugh, Michelle (2011) "Biz of Acq -- Acquisitions and the Digital Repository," *Against the Grain*: Vol. 23: Iss. 3, Article 32.

DOI: <https://doi.org/10.7771/2380-176X.5910>

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.

Cases of Note from page 60

and others. **Montz** and **Smoller** were not amateurs at this, and showed screenplays and videos to illustrate this cutting-edge, high-concept series. But the studios showed no interest. Or at least feigned disinterest.

Because shortly thereafter, **NBC** partnered up with **Pilgrim Films** to produce *Ghost Hunters* in which — wait for it! — a crack team of paranormal sleuths with cool gear roamed the earth investigating weird stuff.

So **Montz** and **Smoller** went to law.

The Suit Against the Suits

Montz and **Smoller** alleged an implied-in-fact contract pursuant to custom and practice in the industry. Their ideas would be confidential and not be divulged without **Montz** and **Smoller** sharing in the moolah. And **NBC** and **Pilgrim** exploited the ideas for big bucks without cutting in **Montz** and **Smoller**.

Defendants won a dismissal on the basis of federal copyright claim preempting the state-law claims.

The Law of the Case

Ideas pitched to movie and TV producers can't be protected by copyright. They are after all ideas and not expression. 17 U.S.C. § 102. But they can sho' nuff be stolen. And that violates the implied contract to pay the writer if the idea is used.

Desny involved an idea pitched to the famous director **Billy Wilder** of *Sunset Boule-*

vard and *Witness for the Prosecution*. *Ace in the Hole* was based on **Floyd Collins** being trapped in a cave for two weeks. **Wilder** failed to pay the idea pitchman and lost the lawsuit.

But what about this preemption thingy? It kicks in trumping state law whenever the issue is “within the general scope of copyright.” 17 U.S.C. § 301(a). But ideas not within a fixed medium are not within the scope of copyright. Which is to say the yow-yowing of a fast talking pitchman. Which the case calls ideas that are “still purely airborne.” Or hot air if you will. And even if written down, [i]n no case does copyright protection for an original work of authorship extend to any idea ... [or] concept ... embodied in such work.” 17 U.S.C. § 102.

To escape preemption, the state cause of action must assert rights different from those protected by copyright. A *Desny* claim has that extra element — the agreement to pay for the use of an idea. This implied agreement is a personal one between the parties and has nothing to do with the monopoly protection of copyright. See *Rokos v. Peck*, 182 Cal. App. 3d 604, 617 (1986). Implied-in-fact contracts are personal between the contracting parties and effective only between them. *Id.* at 617.

“A copyright is a right against the world. Contracts, by contrast, generally affect only their parties; strangers may do as they please, so contracts do not create ‘exclusive rights.’”



ProCD, Inc. v. Zeidenberg, 86 F.3d 1447, 1454 (7th Cir. 1996). Which is to say an evesdropper not party to the contract could grab the idea and run with it.

Some More History

Defendants had been removing *Desny* cases to federal court and arguing preemption with some success. Resulting in a law review article of course. See

Glen L. Kulik, *Copyright Preemption: Is This the End of Desny v. Wilder?*, 21 Loy. L.A. Ent. L. Rev. 1, 14 (2000). And *Worth v. Universal Pictures, Inc.*, 5 F. Supp. 2d 816, 822 (C.D. Cal. 1997) boldly held “[m]ovie screenplays, the subject matter at issue, are encompassed within the federal copyright law. Therefore, Plaintiffs’ cause of action for breach of implied contract is preempted.”

But then a lowly district court held an implied-in-fact contract claim survived preemption. “[T]he whole purpose of the contract was to protect Plaintiff’s rights to his ideas beyond those already protected by the *Copyright Act...*” *Groubert v. Spyglass Entm’t Group*, No. CV 02-01803, 2002 U.S. Dist. LEXIS 17769, 2002 WL 2031271, at 4 (C.D. Cal. July 23, 2002).

And the **Great Nimmer** descended from on high and expressly penned an approval. See *Nimmer* § 19D.03[c][2].

And all the copyright leaders and followers and get-out-of-the-way-ers prostrate themselves before the sacred writ of **Nimmer**. Not least of which is the 9th Circuit. 🐼

Biz of Acq — Acquisitions and the Digital Repository

by **Steven Douglas** (Head, Collection Management, Health Sciences and Human Services Library, University of Maryland Baltimore, 601 W. Lombard Street, Baltimore, MD 21201; Phone: 410-706-8856; Fax: 410-706-8860) <sdouglas@hshsl.umd.edu>

Column Editor: **Michelle Flinchbaugh** (Acquisitions Librarian, Albin O. Kuhn Library & Gallery, University of Maryland Baltimore County, 1000 Hilltop Circle, Baltimore, MD 21250; Phone: 410-455-6754; Fax: 410-455-1598) <flinchba@umbc.edu>

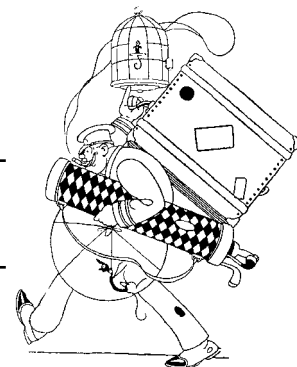
While many libraries are establishing digital repositories and archives, few have the resources to hire dedicated repository staff. This provides an opportunity for serials and acquisitions departments which are increasingly finding their traditional work withering away. Librarians and technicians in acquisitions departments generally have a broad array of existing skills that can be applied to populating institutional repositories. Acquisitions librarians are skilled in managing the flow of materials as they enter library collections, and acquisitions staff have at least moderate computer skills and are accustomed to doing skilled yet redundant print-based work. Acquisitions staff are also accustomed to working with the various licenses and user agreements needed to obtain digital materials.

This paper is based on the authors’ experience in integrating institutional repository work into their departments at the **University of Maryland**, Baltimore Health Science and Human Services Library and the **UMBC’s** Albin O. Kuhn Library.

Health Sciences and Human Resources Library Collection Management Department Support for the UMB Digital Archive

The staffing of the Collection Management Department at the Health Sciences and Human Services Library (HS/HSL) of the **University of Maryland, Baltimore (UMB)** has not changed in over ten years. While collection practices have shifted toward e-resources, the staffing remains strongly oriented toward acquisition of print resources. The Head, Collection Management oversees library-wide collection development and supervises serials, acquisitions, and budgeting for resources. He is assisted by a Digital Resources Librarian whose major responsibility is establishing and maintaining access to electronic resources. Four paraprofessional Library Technicians perform traditional serials and acquisitions tasks. The Serials Technician is responsible for journal check-in and claiming, the Bindery Technician manages the commercial

continued on page 62



bindery contract and does basic book and journal repairs, the Accounting Technician handles standing orders and deals with the campus procurement office, and the Acquisitions Technician is responsible for managing an approval plan and firm orders of books.

As journals have switched mostly to electronic, and just-in-case book purchasing has dwindled, it has been necessary to find new enjoyable and meaningful tasks for the library technicians to perform. The Acquisitions Technician, in particular, has increasingly taken on digital resources duties, collecting journal statistics and maintaining the journal and eBook A to Z list. All of the technicians are involved in proactive checking of access to and bibliographic data about both eJournals and eBooks. Still, it is clear that as collections continue to evolve it is necessary to repurpose the serials and acquisitions staff.

An opportunity presented itself in a fortunate confluence of events. First, the HS/HSL began exploring the idea of providing a digital archive as a service to the campus. Second, the Library's historical collection was presented with the papers of **Florence P. Kendall**. **Dr. Kendall** was a pioneer in the field of Physical Therapy, a leader of the **American Physiotherapy Association**, and instrumental in getting Physical Therapy recognized as a profession in the State of Maryland. The Library recognized that this collection could very well serve as an important component of the new digital archive. And third, the **National Network of Libraries of Medicine, Southeast Atlantic Region (NN/LM SEA)** began to offer awards to support the digitization of significant collections.

The Head, Collection Management applied for and won a \$5,000 award from the **NN/LM SEA**. With this money the Library purchased a high-quality scanner, storage, and peripherals necessary to digitize the **Kendall Collection**. With the assistance of IT staff, all of the Collection Management Department Library Technicians were trained in using the scanner and given the task of digitizing documents for a period of four hours a week. As the **UMB Digital Archive** moved closer to reality, staff began to submit the works that they had digitized to the archive.

This project was a tremendous success. Staff enjoyed the change of pace from their regular duties and recognized the importance of the work they were doing. As one staff member put it, while it is often challenging to get the best digital reproduction of an aging, typewritten document, it makes it easier for our patrons to access information that previously would have been hidden in boxes behind locked doors in the Library's historical collection.

It is the Collection Management Department's intention to leverage this experience into a new role for itself in the Library. As the **UMB Digital Archive** continues to grow and attract submitters, the department will offer digitization services to faculty and departments from throughout the campus.

Acquisitions and Electronic Thesis and Dissertations at UMBC

UMBC uses **ContentDM** to house its digital collection. A primary emphasis of **UMBC's** Special Collections is photography and the history of photography, and **ContentDM** was originally purchased to house digitized photographs. However, over time the collection on **ContentDM** has grown to include records, proceedings, reports, digitized books, and electronic theses and dissertations (ETDs). Some of the material has been digitized from print collections, but a portion of the documents are submitted in digital format as they are published including some ongoing serial publications.

In February 2009, the Acquisitions Librarian proposed that the Acquisitions Unit take responsibility for digital transfer services for the digital collections. The workload of the unit had been declining, and all indications were that it would continue to decline. Ordering processes had been streamlined and required less staff time, and plans for the purchase of eBook packages and a switch to patron-driven acquisition for eBooks suggest that staff time spent on ordering will continue to diminish. The *D-lib* article, "A Set of Transfer-Related Services," (<http://www.dlib.org/dlib/january09/>

[littman/01littman.html](http://www.dlib.org/dlib/january09/)) suggested a new set of services the unit could provide, including:

- Acquiring digital content
- Conducting quality review of digital content
- Moving digital content between systems
- Inventorying, manipulating, and ingesting digital content into the repository

Initially, the proposal was that the acquisitions unit provide these services for the ongoing e-serials that were being placed in the repository, but it was apparent that a more pressing need was the management of ETDs. Not only was the process of reformatting XML metadata from **Proquest to ContentDM** extremely time consuming, but the librarian who had been managing the process had resigned. The Acquisitions Librarian had some experience in managing and manipulating large data sets and believed that she could probably automate the process using **Microsoft Access** or **Excel** features and train her staff to carry them out.

It soon became apparent that managing ETDs would involve more than just devising a system for ingesting metadata into the archive. Communication with the Graduate School was poor, so there was no clear idea of when and how many ETDs were expected. There was also a problem with providing links to the ETDs from the Library's catalog. It became clear that along with carrying out ongoing ETD work, the following tasks needed to be completed:

1. An automated system for reformatting ETD metadata needed to be developed.
2. Print theses and dissertations need to be received and paid for.
3. A system for knowing what theses and dissertations were expected and when needed to be developed.
4. A method for preventing the inclusion of personal information in ETDs needed to be implemented by the Graduate School.
5. A method for loading ETD metadata into **OCLC** as catalog records had to be devised.
6. A plan for maintaining the integrity of URLs in the catalog had to be put into place.
7. And inconsistencies between the ETD collection and other **ContentDM** collections had to be investigated and resolved.

The Acquisitions Librarian initially attempted to use **Microsoft Access** for the metadata conversion process, but soon discovered this would not work because of **Access's** limits on field size. She discovered that **Microsoft Excel** also has XML utilities, but that they are included in a Developer's Tab that is turned off by default upon installation. Using the XML utilities, formulas, and macros, she was able to develop an **Excel** template for changing **Proquest** XML metadata into a form that could be ingested by **ContentDM**.

After a minimal period of testing, the ongoing processing was then handed off to an Acquisitions Technician. The Technician, who is computer savvy, learned a number of new software packages as well as new **Excel** features for handling the ETDs, including **Filezilla** for downloading files, **7-Zip** for unzipping files, **Adobe Acrobat** for manipulating PDF's, and the **ContentDM Client** for loading files to the **ContentDM** server. While she was readily able to handle this complex procedure, many exceptions were discovered. Often an ETD did not fit the general procedure, so the Acquisitions Librarian had to investigate and expand the procedure to cover a number of special cases. After a period of about a year, nearly all exceptions were documented, although the Technician occasionally still discovers new variations.

In **UMBC's** case, the work grew far beyond the original scope of the project, and completing all of the tasks will require long-term effort. The Acquisitions Librarian, who considers herself a novice in this field, has already received a request to share her work from another library that by chance came upon her ETD procedure, which is available on the open Web, and has heard that her **Excel** template for reformatting **Proquest** metadata for ingest into **ContentDM** has been successfully modified by that library for its own metadata and is currently in use there. Despite the ongoing challenges, the success of the endeavor has left the Acquisitions Department at **UMBC** well-positioned to expand its role in providing digital transfer services as the time spent on traditional Acquisitions decreases. 🐾