

December 2012

If Rumors Were Horses

Katina Strauch

Against the Grain, strauchk@cofc.edu

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



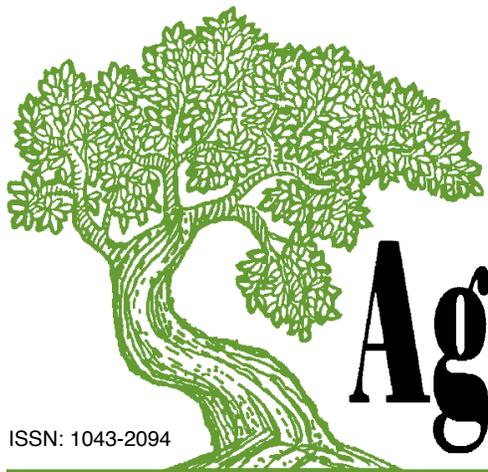
Part of the [Library and Information Science Commons](#)

Recommended Citation

Strauch, Katina (2012) "If Rumors Were Horses," *Against the Grain*: Vol. 24: Iss. 6, Article 3.

DOI: <https://doi.org/10.7771/2380-176X.6217>

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.



Against the Grain

“Linking Publishers, Vendors and Librarians”

ISSN: 1043-2094

Going Out on a Limb: Pushing the Boundaries of DDA

by **Jonathan H. Harwell** (Head of Collections & Systems, Rollins College’s Olin Library) <jharwell@rollins.edu>

Who would’ve thought 20 years ago that librarians would now be building our collections with books we haven’t even paid for? Or that publishers would collectively strike a deal to agree not to charge us for these books unless our patrons used them substantially?

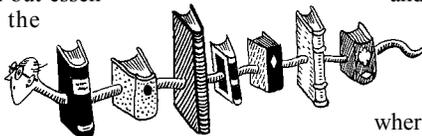
Patron-driven acquisition for print books has been around for a while. For example, the **University of Vermont Library** worked with **YBP** to set up PDA for print books in 2007, based on rush ordering in response to patron requests from the library catalog. But the old model of invoicing upon acquisition still held. The real growth in the patron-driven business model has been enabled by combining two innovations: eBooks and usage-triggered invoicing (a more accurate term than patron-driven acquisition but with a much more awkward acronym). Librarians can now select eBooks for the collection via approval and/or manual selection, obtain access for patrons, and greatly expand the size of the library while only paying for those titles that are triggered by a specific level of usage.

We’re already seeing additional innovations, such as consortial DDA; short-term loan options (which save the library money in the short term but essentially drive up the purchase price of each title); and **ebrary’s** Extended Access model (which allows librarians to specify that when a single-user title is accessed by more than one patron, they will automatically upgrade to multi-user access if available, purchase another copy, or provide a short-term loan).

So, suddenly the definition of a library “collection” has completely changed. We’re already used to the complexity of a journal count, with so many full-text aggregate databases in our collections. Now a book count is just as complex. With DDA, we can provide lots more books with instant and seamless access, and whether or not we’ve paid to lease or purchase them yet, our payments make no difference to the patrons.

I predict more innovations on the way. We’ve yet to see DDA for multimedia and articles (more sustainable than pay-per-view, and much more sustainable than subscriptions); and access points beyond library catalogs, discovery services, and eBook platforms (meeting our patrons where they are).

Against the Grain published a special issue on this topic in June 2011. Now that even more libraries and publishers are using DDA, and many more are planning to use it, our authors are taking account of where we are now. Take a look and learn how it’s going, and what librarians and vendors are thinking. Thanks especially to **Kris Baker** of **YBP** for brainstorming with me about where we’re headed with DDA. We hope you enjoy the notes from our phone conversation. Let’s all keep envisioning the future, especially if it means going out on a limb! That’s the only way change happens.



If Rumors Were Horses

Happy New Year! There has been a lot of activity over the past few months.

Elsevier has acquired the New York city-based **Knovel Corp** which provides a web-based application that integrates technical information with analytical and search tools to drive innovation and deliver answers for engineers. Founded in 2001, **Knovel** has developed a deep knowledge of the engineering community and is a valuable tool for thousands of engineers and students in more than 700 corporations and engineering schools worldwide. Recently named by research firm **Outsell** one of the “10 to Watch” in scientific/technical and medical publishing, **Knovel** has expanded its offerings and customer base as multiple factors have influenced the engineering technical

reference market segment. “This is a great new chapter for **Knovel**,” said **Chris Forbes**, **Knovel** President and CEO. The acquisition is effective immediately and financial terms of the transaction are not being disclosed. My long-time friend and one of my favorite people ever, **Debbie Hodges** who used to work for **ProQuest** now is working for **Knovel**. I will tell you a secret! **Debbie** helped me pick out my mother-of-the-groom dress way back when! And now I need a mother-of-the-bride dress. Where are you when I need you, **Debbie**? www.knovel.com



Saw that the vivacious **Sue Vazakas** (did you know that she is Greek?) posted some detailed blog entries about **Charleston 2012** on the **Johns Hopkins Sheridan Libraries**

continued on page 6

What To Look For In This Issue:

A Tale of A Band of Booksellers, Fascicle 20: Competition..... 62
Building an Investigative Culture and a Meaningful Tool..... 80
Does the Focus on Banned Books Subtly Undermine Intellectual Freedom?.....82

Interviews

Kristine S. Baker 36
Helen Henderson & Hazel Woodward..42
Norman Desmarais 44

Profiles Encouraged

Michele Casalini 40
Information Power Ltd. 44
Casalini Libri..... 51
Gracemary Smulewitz..... 79
Plus more..... See inside



From Your (staying indoors) Editor:

Y'all, it's cold outside! I prefer cold to hot but this winter is too cold in my book. I know those of you up North with snow and ice think I am a wimp. I have to confess — you are right!

Hope that everyone had a great holiday break. I sure did. Of course I was working on *Against the Grain* along with many others. **Jonathan Harwell** has done an admirable job of assembling papers on demand-driven acquisitions also known as patron-driven acquisitions. I know that we at the **College of Charleston** are getting ready to do a small pilot in a few areas so I have read these papers with great interest! **Debbi Dinkins** contrasts librarian and teaching faculty selections, **Dara Elmore** talks about cost-per-use, **Lindsey Reno** has a unique suggestion for an acquisitions/reference partnership, **Andrew Welch** and **Teri Koch** explore the “just-in-time” “just-in-case” dynamic as it relates to PDA. Finally, **Sarah Forzetting** and **Erin Gallagher** go into consortial PDA from the vendor’s perspective. **Jonathan** also interviewed **Kristine Baker**, Director of Digital Sales at **YBP** about DDA. In our **Op Ed** **Katy Ginanni** doesn’t think that working for vendors is joining the “dark side” and I have to agree. **Tony Ferguson** focuses on publishers and old ways. **Cliff Lynch** reminds us of **Lee Dirks** who, with his beloved

wife **Judy** was killed so tragically August 28, 2012.

We have two Special Reports, one by **Don Hawkins** on Indexing and another by **Candace Mooney** on **W.T. Cox**. Our interviews are with **Kristine S. Baker**, **Helen Henderson** and **Hazel Woodward**, and **Norm Desmarais**. **Deb Vaughn** sends us a review by **William Joseph Thomas** and **Tom Gilson** does his usual great reference reviews. We have **Cases of Note** by **Bruce Strauch** and **Questions and Answers** by **Lolly Gasaway** to spice up our legal section. **Alex Holzman** writes about open access monographs from the publisher’s perspective and **Leila Salisbury** and **Doug Armato** tell us about their university press panel in **Charleston 2012**. **Biz of Acq** is about print serials check in by **Barbara Pope**. We have several reports of meetings — The **Frankfurt Book Fair**, the **Online Audiovisual Catalogers Conference** and final reports from the **31st Charleston Conference**. In **Acquisitions Archaeology**, **Jesse Holden** asks about our obligations as professionals. **Scott Smith** tells us about his new small library. **Papa Abel** completes his **Tale of a Band of Booksellers**. **Donna Jacobs** explores Poland and Nobel Laureates. **Collecting to the Core**



Lainie Brown (EBSCO Publishing) sent along this picture of her little Christmas elf. Isn't she adorable?

is about manuscripts in medieval studies, **Analyze This** is a new column by **Rossi Morris** on **usage statistics**. **Sam Demas** talks about sharing print collections and **Bob Holley** asks about banned books and intellectual freedom. Finally,

Dennis shines his inimitable light on Google and several sessions at **Charleston Conference 2012**.

Whew! I am out of breath or is it keyboard!! And, guess what — Suddenly it is summer outside! Excuse me while I put on my shorts and take a walk. Oh! And Happy New Year!

Love, Yr. Ed. 🌿



Letters to the Editor

Send letters to <kstrauch@comcast.net>, phone or fax 843-723-3536, or snail mail: *Against the Grain*, MSC 98, The Citadel, Charleston, SC 29409. You can also send a letter to the editor from the *ATG* Homepage at <http://www.against-the-grain.com>.

Dear Editor:

Here's a picture of our new grandchild. Mother **Capron** and daughter are doing well! Considering that she had to wait out the hurricane in NYC before arriving, we may nickname her **Sandy**.

Welcome **Olivia Hayden Levine!**

William M. Hannay (Schiff, Hardin & Waite)
<whannay@schiffhardin.com> 🌿



AGAINST THE GRAIN DEADLINES VOLUME 25 — 2013-2014

2013 Events	Issue	Ad Reservation	Camera-Ready
Annual Report, ACRL	February 2013	01/04/13	01/21/13
MLA, SLA, Book Expo	April 2013	02/22/13	03/18/13
ALA Annual	June 2013	04/05/13	04/29/13
Reference Publishing	September 2013	06/21/13	07/15/13
Charleston Conference	November 2013	08/23/13	09/09/13
ALA Midwinter	Dec. 2013-Jan. 2014	11/08/13	11/25/13

FOR MORE INFORMATION CONTACT

Toni Nix <justwrite@lowcountry.com>; Phone: 843-835-8604; Fax: 843-835-5892; USPS Address: P.O. Box 412, Cottageville, SC 29435; FedEx/UPS ship to: 398 Crab Apple Lane, Ridgeville, SC 29472. 🌿

Rumors from page 1

Travel pages. **Sue** talks specifically about the **TRLN (Triangle Research Library Consortium)** deal with **OUP**, also **Duke's eBook Advocacy Group** and **eBook Boot Camp**. Her report goes on for too many pages to reproduce here but I recommend that you look it over! <http://jhulibrarietravel.blogspot.com/2012/11/charleston-conference-november-2012.html>

Featuring another session at **Charleston Conference 2012**, did you see **Find>Search** on Friday, November 9. It was a great panel that took the position that **SEARCH** is only a stepping-stone to **FIND**. Moderated by **Meg White** (Rittenhouse), it included **Elisabeth Leonard** (SAGE), **Stanley Wilder** (UNC-Charlotte), **Elizabeth Willingham** (Silverchair) and **Marjorie M.K. Hlava**. And did y'all see that **Marjorie** (founder and chair of **Access Innovations, Inc.**), is among 32 New Mexicans honored as 2013 “Women of Influence” by **Albuquerque Business First**. A pioneer in the information management industry, **Marjorie** founded **Access Innovations** in 1978. She holds

continued on page 34

Op Ed — Ivory Tower vs. the Dark Side: A Rebuttal to “Joining the Dark Side”

by **Katy Ginanni** (Collection Development Librarian, Hunter Library, Western Carolina University)
<ksginanni@email.wcu.edu>

The April, 2012, issue of *Against the Grain* included an article by **Laura Harris**, “Joining the Dark Side,”¹ which I read with interest. **Harris** described her transition from working in an academic library to working for **Springshare**, the developer and vendor for the wonderful LibGuides. The article held interest for me personally, since I experienced a similar change earlier in my career. I had spent seven years in academic libraries when I received an unexpected and unsolicited job offer from **EBSCO Subscription Services** (later **EBSCO Information Services**). Like **Laura**, I had not considered working for a vendor. Well, that’s not quite true. I had actually talked with a couple of folks at **EBSCO** before, but only for a possible position at their headquarters in Birmingham, AL. I thought I was completely uninterested in any sort of customer-facing position. And yet, that is what I ended up doing (in three different positions) for fifteen years!

During the first year of my tenure with **EBSCO** I was talking with a colleague at a reception, and I started a sentence with, “When I was a librarian...” Seconds later, **Lynn Fortney**, director of **EBSCO’s** Biomedical Division, turned away from her own conversation to interrupt me with, “You are *still* a librarian! You just work in many libraries now, instead of one.” And that is the ethos that I shared with the many other librarians at **EBSCO**. We were librarians who happened to be working for a vendor. But during my years at **EBSCO**, I came to have great respect not only for many of my non-librarian colleagues, but also some of our competitors and the publishers with whom we collaborated. And of course, not all of those other vendor-types were librarians. What I respected about those other folks was their integrity; their knowledge not only of their businesses but also of the libraries (and, by extension, the library users) they served; and their sincere concern that they and their companies provide a good service or product for their customers.

For years, I have attended conferences with programs about the “vendor-librarian” relationship. In fact, I was still a baby librarian when I attended my first **Charleston Conference** back in 1988, and while listening to someone drone on about a particular publisher, I wondered, “But why is this

publisher being criticized for making money? Isn’t that the point of a business in a free market? Should we expect to get that publisher’s journals at cost?” I was, most definitely, naïve and idealistic. Certainly I have since come across publishers with whom I wish I could refuse to do business. Another early lesson I learned at **EBSCO** was the Golden Rule: He who has the gold rules. Some publishers have content that we simply cannot *not* buy.

But I digress. My real point is this: Why on earth, after so much discussion of the vendor-librarian relationship and talk about how we can work as partners and we should collaborate to meet the needs of our end users, do we still refer to vendors and publishers as “The Dark Side?” In my opinion, this only perpetuates the belief that vendors and publishers are inherently untrustworthy, perhaps even evil.

I know that upon reading this, many people will think, “This woman needs to get a sense of humor.” And indeed, the title of this column was proposed as a tongue in cheek suggestion. It turns out that I feel too passionately about this to make an attempt at humor, because language matters. In ways that our conscious minds sometimes aren’t aware of, language affects and influences the way we think and feel about others. In the seminal *The Handbook of Nonsexist Writing*, **Miller** and **Swift** give examples of ways that sexist, or non-gender-neutral, writing can affect

the ways that little girls see the world. Non-gender-neutral language can put limits on what little girls can imagine for themselves and their futures. In the

United States, many institutions — including schools, colleges, universities, and local and state governments — have placed bans on “hate speech,” which is usually recognized as any communication

that maligns a person (or people) based on his or her gender, sexual orientation, race, or other identifiers. It is becoming more generally recognized that hate speech can lead to hate acts.

Now, I’m not suggesting that after engaging in disparaging talk about vendors, even in jest, some librarians may escalate to keying cars, or putting nasty signs in a vendor’s office, or violating their civil rights. But talking about vendors in a negative way, *even in jest*, could lead people not to trust them fully, or not treat them fairly in a business negotiation. So I ask you to consider removing that tired, not really so funny phrase — referring to vendors as “the dark side” — from your vocabularies. In the end, it really affects us all. 🐼



Endnote

1. I later learned that it was not **Laura Harris’** intention to title the column “Joining the Dark Side,” and that there was a miscommunication somewhere in the editing process.

Rumors from page 6

21 patent claims in two patents for a number of technological processes including automatic text processing and management and software-based methods for searching chemical names in text-containing documents. She was chosen from more than 400 nominees by a panel of judges based on her leadership, community service and support of other women in the professional world. Congratulations to **Marjorie!** Hip Hip Hooray!
<http://www.bizjournals.com/albuquerque/>

I am especially interested in all the innovative formats/types of information delivery products that are emerging every day. And from all directions! **Amherst College** is launching a new digital publishing venture that will offer peer-reviewed books written by leading scholars in the humanities and the social sciences that are then carefully edited and made available for free online. Conceived by **Amherst College Librarian Bryn Geffert**, **Amherst College Press** will be housed in the college’s **Frost Library** and will solicit manuscripts from scholars who may be especially receptive to new publishing paradigms at a time when traditional

continued on page 53

8 Library Services That Will... Make You Smile.

- 1) **Publishing Sources** - Almost 200,000 at our disposal
- 2) **New Title Selection Plan** - Immediate notification
- 3) **Electronic Ordering** - Simple online ordering system
- 4) **Early Release Program** - Immediate availability guarantee
- 5) **Cataloging** - We do the busy-work for you
- 6) **Comprehensive Reporting** - Up-to-the-minute order status
- 7) **Duplicate Order Alert** - We're on guard, you avoid hassles
- 8) **Paperback Reinforcement & Binding** - Avoid expensive wear & obsolescence

For more details, visit:
emery-pratt.com



“Things always go smoothly with Emery-Pratt. Their people are knowledgeable, and always provide friendly, rapid service.”

Cameron University
Lawton, OK

Emery-Pratt

Dependability. Reliability. Smileability.

1966 W M 21, Owosso, MI 48867-9317
Phone: 800 248-3887 • Fax: 800 523-6379
emery-pratt.com



From the Reference Desk from page 52

drug metabolism and interactions. It also provides a wealth of toxicological, regulatory, and marketing information, all written by leading international experts in the field... This reference is essential for researchers interested in all aspects of drug development, and chemists, pharmacologists, pharmaceutical specialists, toxicologists, molecular toxicologists, and clinicians, including practitioners and physicians.” (*Encyclopedia of Drug Metabolism and Interactions* is available online now. For further information visit wileyonlinelibrary.com/ref/lyubimov.)

In August, **Cambridge University Press** published *The Cambridge History of Religions in America* three-volume set. (ISBN: 9781107013346, 2736 pages, \$450). Edited by **Stephen J. Stein, Indiana University**, Bloomington, this reference “traces the historical development of religious traditions in America, following both their transplantation from other parts of the world and the inauguration of new religious movements on the continent of North America. This story involves complex relationships among these religious communities as well as the growth of distinctive theological ideas and religious practices. The net result of this historical development in North America is a rich religious culture that includes representatives of most of the world’s religions...” 🌿

Rumors from page 34

academic presses are reducing the number of titles they publish. “We will be the first university or college press to publish books solely under an open-access model,” said **Geffert**. “Although several university presses publish a few books each year under such a model, I do not know of another university press in the United States doing all books, **all open-access**.” **Amherst College Press** will publish solely in liberal arts disciplines such as political science, literary studies, history, economics and anthropology — areas for which **Amherst** is well known. The press will produce books in formats that will be suitable for most e-readers; print-on-demand may be available. The press will not focus on print production or distribution. Plans are in place to hire a director and two editors to staff the press. Funding for the press will come from the **Frost Library** and from an endowed position for which the college is currently raising money. The college also expects that the content of the **Amherst College**-affiliated literary magazine *The Common* will be freely available online under the open-access model governing the press, while *The Common* will continue to use its own resources to produce the publication’s print version.

https://www.amherst.edu/aboutamherst/news/news_releases/2012/12/node/445320UJU
<http://chronicle.com/blogs/ticker/amherst->

college-introduces-open-access-press-for-the-liberal-arts/52725

<http://listserv.crl.edu/wa.exe?A2=LIBLICENSE-L;5eb6fba.1212>

Speaking of the **Charleston Conference**, we had great **Twitter** input from the awesomely energetic **Rachel Fleming** (Western Carolina University) who is a recent member of the **Charleston Conference planning group**. **Rachel** asked several questions and gave us input regarding Twitter feeds! And talk about energetic **Don Hawkins** blogged the Conference. Check it out on the Conference Website! <http://www.katina.info/conference>

I was interested in **Michael Winecoff’s** (UNC-Charlotte) Custom **financial reports poster session** on Thursday. His session illustrated ways to export ILS from fund or associated fields into Excel and create custom reports. See his slides at <http://2012charlestonconference.sched.org/event/2c48e0c6fb79731ea173b518387c3468#.UPMnKbYry3g>.

Was excited to get an email from **Audrey Melkin** (Director of Business Development, Atyon) <Audrey@atyon.com> the other day via **Linked In**. **Audrey** said that it was freezing in NYC. She said it was cold outside as well as in her apartment! Can you believe that **Audrey** has been at **Atyon** for over nine and a half years, longer than any of her other gigs at **Oxford University Press, Wiley, Henry Holt, and CatchWord/Ingenta**.

continued on page 54



LEGAL ISSUES



Section Editors: **Bruce Strauch** (The Citadel) <strauchb@citadel.edu>
Bryan M. Carson, J.D., M.I.L.S. (Western Kentucky University) <bryan.carson@wku.edu>
Jack Montgomery (Western Kentucky University) <jack.montgomery@wku.edu>

Cases of Note — Copyright — Measure of Damages

Column Editor: **Bruce Strauch** (The Citadel) <strauchb@citadel.edu>

FRANK GAYLORD, v. UNITED STATES, UNITED STATES COURT OF APPEALS FOR THE FEDERAL CIRCUIT, 678 F.3d 1339; 2012 U.S. App. LEXIS 9719.

Frank Gaylord held copyright on a cluster of statues — “The Column” — nineteen stainless steel sculptures of a platoon of soldiers. This is the centerpiece of the Korean War Veteran’s Memorial in the National Mall in D.C. The **USPS** issued a stamp commemorating the Korean War armistice, and — you guessed it — it featured a photo of “The Column.” 86.8 million of these stamps were sold. And the **Post Office** made no attempt to seek **Gaylord’s** permission. Rather, it licensed the image from a photographer.

The stamp grossly infringed in three classes of items: (1) stamps used to send mail; (2) stamps kept by collectors; (3) images of the stamp on retail goods. **Gaylord** did not care for this and sued in the Court of Federal Claims under 28 U.S.C. § 1498(b). He won and then won again on the appeal. The case was remanded on the issue of damages, which is what this is about.

Gaylord wanted a 10% royalty on \$30.2 million in revenue. He was denied this — **given \$5,000!** — and again went up on appeal.

Section 1498(b) waives U.S. sovereign immunity for copyright infringement. As to damages, it says “recovery of his reasonable and entire compensation.”

And now we get to wrestle with what that means.

Gaylord said reasonable royalties are the presumptive award under § 1498(a) — patent infringement by the U.S. — and should be presumptive under (b) — copyright infringement. He presented evidence of the royalty he typically received for letting folks put “The Column” on t-shirts and miniature statues.

The **USPS** called the 10% royalty speculative and argued \$5,000 represented “the market value at the time of the taking.” They had never paid more than that, and never would. So that was the market value.

Leesona Corp. v. United States, 599 F.2d 958 (1979) — a patent infringement case — limited “reasonable and entire compensation” to a reasonable royalty. *Id.* 968. Punitive damages were excluded as being more than “just compensation.” *Id.* And **Leesona** held “the proper

measure ... is what the owner has lost, not what the taker has gained.” *Id.* at 969.

Our appeals court in **Gaylord** held copyright damages under 17 U.S.C. § 504 — stealing by ordinary folk not the government — are appropriate here. As **Gaylord** cannot show “lost sales, lost opportunities to license, or diminution in the value of the copyright,” the damages should be based on “the fair market value of a license covering the defendant’s use.” *See On Davis v. The Gap, Inc., 246 F.3d 152, 164 (2d Cir. 2001).*

You arrive at this sum based on a hypothetical, arms-length negotiation by the two parties. “In situations where the infringer could have bargained with the copyright owner to purchase the right to use the work, actual damages are what a willing buyer would have been reasonably required to pay to a willing seller for plaintiffs’ work.” **Jarvis v. K2 Inc., 486 F.3d 526, 533 (9th Cir. 2007).**

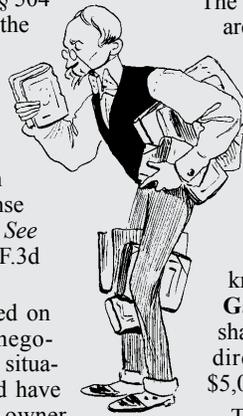
The trial court looked only at what the **USPS** had paid in the past, and that was in the \$1,500 to \$5,000 range.

Geez. Are artists that desperate to get on stamps?

At any rate this was erroneous. The **Post Office** could rely on previous cheapskate purchases and hide behind self-serving “internal policies” that supposedly prohibited them from paying more. *See Rite-Hite Corp. v. Kelley Co., 56 F3d 1538, 1555 (Fed. Cir. 1995).*

And could potentially steal something of astronomical value for a mere \$5,000.

What the infringer wants to pay is not the measure. Rather you should look at evidence from both sides to find the fair market value.



Post Office has not paid more than \$5,000 but **Gaylord** consistently licensed images of “The Column” for a 10% royalty.

The photographer believed the monument architects owned the rights to “The Column” and agreed to pay a 10% royalty to them for all sales and licensing of his photo. And incredibly, the **USPS** licensed the stamp image for use on retail goods for a royalty of 8%.

And Again It’s Remanded

Of course, you so frequently don’t know how these things turned out, but **Gaylord** seems to be in pretty good shape. The trial court was pretty much directed to give him a lot more than \$5,000.

There was discussion of how the value might be arrived at. Were stamps used to mail letters of value because of “The Column” or primarily because they were postage? A one-time fee might more accurately capture the value here, but an arbitrary cap of \$5,000 is not appropriate.

\$5.4 million in stamps were kept by collectors. This is pure profit for the **Post Office** as they didn’t have to handle any mail. This seems to lean toward the 10% royalty.

And then there’s all the retail junk the **Post Office** sold — pins, postcards, magnets, framed art, cancellation keepsakes, and other philatelic collectibles decorated by “The Column.” Again, this leans toward royalty, and the recovery is not limited by the **Post Office** profits.

Presumably because govt. management is so inefficient, the production and merchandising costs are unnaturally high. And the USPS — like Hollywood — could just show no profit for a royalty to apply to. 🐷

Rumors from page 53

Moving right along, in warmer NY days, **Audrey** said she has seen **Athena Michael** (once at Wiley) and **Sharon O’Connell** (at Yankee and YBP) and they supped Moroccan in New York! **Athena** is no longer at **Wiley** but

she landed on her feet! I just can’t remember where! Help, someone!

Heard from the wonderful **Chuck Hamaker** the other day. You will remember that **Chuck** missed the Conference this year because he was sick! Boo hiss! Anyway, **Chuck** sounds good and is doing all sorts of new things (as always)

continued on page 55

Questions & Answers — Copyright Column

Column Editor: **Laura N. Gasaway** (Associate Dean for Academic Affairs, University of North Carolina-Chapel Hill School of Law, Chapel Hill, NC 27599; Phone: 919-962-2295; Fax: 919-962-1193) <laura_gasaway@unc.edu>
www.unc.edu/~unclng/gasaway.htm

QUESTION: *Now that the HathiTrust case has been decided, what impact will it have on an academic library? Does the decision impact e-reserves at all?*

ANSWER: On October 10, 2012, the judge issued the opinion in *Authors Guild v. HathiTrust*, 2012 U.S. Dist. LEXIS 146169 (S.D.N.Y. 2012). From its Website, the **HathiTrust** is defined as: “a partnership of major research institutions and libraries working to ensure that the cultural record is preserved and accessible long into the future.” (<http://www.hathitrust.org/about#>). Open to institutions around the world, there are more than 60 partner libraries that make up the **HathiTrust**.

It is estimated that **HathiTrust** members have scanned more than seven million copyrighted works to date for the repository. In June 2011, the **University of Michigan** announced that it would make available to its students and faculty works from the corpus that it had determined were orphan works so they could access and download them. The university had established a protocol for searching for an author and posting the names of these works for 90 days in order to determine whether it would deem the work to be an orphan. Several other schools joined the project. In September 2011 the **Authors Guild** filed suit claiming that it had strong leads to authors and estates that hold copyright to the first 167 works listed by **Michigan** as orphan candidates. Then **Michigan** announced that it was suspending the program of determining which works were orphans, but it continues to host the seven million digitized works.

The litigation concerns whether an association can sue on behalf of its author members, and the judge answered that question in the negative. He also made a number of other interesting findings. (1) The scope of fair use is not limited by the section 108 library exceptions. (2) Search indexing is transformative and therefore is a fair use. (3) Libraries are not making commercial uses despite the fact they partnered with Google to obtain the digital copies. (4) Providing access for print-disabled individuals is fair use, and there is no market for such nor is one likely to develop. (5) There is no proof that **HathiTrust** is creating any security risks. (6) Defendant universities are

required to provide equal access to the print-disabled, which is allowed under section 121 of the *Copyright Act*.

The opinion has little effect outside of the Southern District of New York, and it has no impact on electronic reserves. Further, the **Authors' Guild** has announced that it intends to appeal the decision to the Second Circuit U.S. Court of Appeals.

QUESTION: *A photographic collection was donated to the library. May the library now reproduce items from the collection for posting on the Web? How should the photographs posted on the Web be attributed?*

ANSWER: If the donor owned the copyright to the photographs and if the copyrights were transferred to the library, the answer is yes. From the wording of the question, however, it appears that this was a simple transfer of ownership and not a written transfer of the copyrights as well. If the donation is fairly recent, it would be simple to go back to the donor and ask for a clarification of the ownership of the copyrights. Assignments of copyright must be in writing.

If the library does not own the copyrights, then it needs permission to post any of the photographs. It may get permission for the reproduction (posting) without owning the copyrights, but copyright ownership would be preferable. Assuming permission to post the photographs, proper attribution would be to the photographer with a note that the collection resides in the collection of the library.

QUESTION: *The library has received a donated item that is obviously a reproduction. May the library accept that copy and use it?*

ANSWER: Certainly, the library can accept the donation. Adding the item to the collection, however, is another matter. Libraries may add lawfully-acquired materials to their collections, but a copy that was a not a legitimate copy in the first place retains that status. Thus, adding it to the collection is problematic to the collection. The reason that a library might decide to accept such a donation even though it cannot add the item to the collection is to satisfy a donor. Most libraries have a policy to the effect that the library decides on a case-by-case basis whether donated items are added

to the collection and which items are sold or disposed of in another manner. So, accepting the donation and then disposing of the reproduced copy falls within this policy.

QUESTION: *An academic library is concerned about including art images in dissertations that reside in repositories or which are in the ProQuest database that is widely accessible to thousands of subscribers. Is such inclusion fair use?*

ANSWER: Including photographs in dissertations is no problem when the dissertation is just maintained in the university library. When it is put on the Web, however, it is published; the same is true with **ProQuest** availability. A good question to ask is if the dissertation were to be published by a university press, would the press require the author to seek permission? Most often the answer is yes.

The fact that some of these are photographs of works of art may make some difference if the underlying work is in the public domain. *Bridgeman Art Library v. Corel Corp.*, 36 F. Supp. 2d 191 (S.D.N.Y. 1999) held that exact duplication of paintings into transparencies was permitted because the underlying works were in the public domain and the photograph of that work had little originality and could not qualify for copyright protection on its own. So, if the photographs are of public domain paintings, inclusion of reproductions of the images is no problem. Photographs of three-dimensional works (like sculpture) may possess the requisite originality so that a photograph of even a public domain sculpture may qualify for copyright.

The “low-resolution” photograph cases really dealt with thumbnails, and it is likely that the photographs included in dissertations are more than thumbnails. It certainly may be fair use to include these, but there are no cases that say so. Accompanying the photograph with comment and criticism is important, but it will not necessarily insulate the use of the photograph from copyright infringement. 

Rumors from page 54

at **UNC-Charlotte!** During the Conference, we (**Tom Gilson**, **Jack Montgomery** and I) had the pleasure of interviewing **Chuck's** fantastic boss, **Stanley Wilder** (mentioned above in **Meg White's** panel). The **ATG**

Penthouse Interviews are all emerging online at <http://www.against-the-grain.com> and <http://www.katina.info/conference>.

Had a great email from **Alena Ptak-Danchak** who said she was so sorry to have to miss the **2012 Charleston Conference**. **Alena** had to attend a workshop in Thailand which unfortunately took place at the same time as **Charleston!** She says she will see us next year

for sure! **Alena** is Keeper of Scientific Books and Head of Bodleian Science and Medical Libraries at the **Radcliffe Science Library**. What a great title — keeper of Scientific Books! <http://www.bodleian.ox.ac.uk/science>

The live-wire **Susan Campbell** sent word that her last day of work was Friday, December 28. **Susan** is moving to a new house in the

continued on page 65

Another respondent noted that serials check-in is outsourced. One person noted that all of its titles are online except for leisure titles, which are not checked in.

Question five asks whether libraries that do not do check-in use another process to keep track of their serials. Eight respondents answered the question. Answers varied widely. Two respondents answered that they do not have any alternative process. One respondent said that serials immediately go to shelf and if there is no spot on the shelf, the issue might be an annual or something the library does not keep, and the student takes it to a staff member. That person adds that they do monthly checks for issues needing to be claimed. Another library said their check-in is outsourced. Another library said that they keep issues in boxes, but do not have much space, so some of their serials are online. One library noted that their library keeps a list of the library's serials and has a marc record.

Question six asks all survey respondents whether serials check-in is still as relevant as it once was and if there is the need for change. 61.3% responded that it is still relevant. 20.3% responded in the negative. 18.4% responded that they were not sure. 10.9% of survey respondents skipped this question.

Question seven asks what libraries should do instead of check-in. 81 respondents (or 23.2% of respondents) answered the question. Among the more notable comments include someone who states that the relevancy and necessity of check-in is dependent on the library's mission and circumstances. That person added, "Even where electronic serials constitute the norm, a decision to check in print (or not) must be determined by the role and relative importance of the print themselves rather than the volume of or degree of emphasis on electronic titles." One

Appendix – Copy of Survey Text

To Check in or Not to Check in: A Survey of Librarians on the Relevance of Serials Check-in

This survey is designed to determine the prevalence of libraries that do serials check-in and whether it is relevant in today's world of an increasing presence of electronic journals. Whether you check in on an ILS or a kardex makes no difference. We are simply interested in whether you check in your serials and why or why not.

1. Which option best describes your library type?
 - Academic Library
 - Community College Library
 - Public Library
 - Law Library
 - Research Library
 - Corporate Library
 - Other Library Type
2. Does your library do serials check-in?
 - Yes (*advances to question 3*)
 - No (*advances to question 4*)
3. If your library does serials check-in, what is the purpose?
4. If your library does not do serials check-in, why not?
5. If your library does not do serials check-in, do you use some other process?

Is there a need for change? My research hinges on whether serials check-in is still relevant in today's world where electronic journals are the norm for many libraries. It is reported in the library literature that some libraries have ceased doing check-in of their print serials.
6. Do you feel that serials check-in is still as relevant and necessary as it once was?
 - Yes • No • Not Sure
7. If you answered no to the previous question, what do you think libraries should do instead?

person indicates that academic libraries should treat popular magazines differently than academic serials to be bound. One respondent cites the dangers of losing online access and the consequent need to have print as a backup. However, another person says that libraries should "concentrate staff on functions that are forward-looking and support electronic access," as print serials are rarely used. Another says that libraries should keep brief catalog records, as detailed ones are unnecessary. Someone else states that libraries should shelve their issues and not worry about them. One person notes that check-in's value has diminished, but added that they cannot imagine what will replace it to keep track of print serials that libraries must retain and preserve. A couple of respondents said that their institutions had ceased check-in, which resulted in faculty and library staff being confused about the availability of serials, so the libraries resumed check-in. One respondent noted that libraries should focus on patron service and added that patrons will likely not check on an issue's arrival, so check-in data would be useless to them.

Discussion

The author submits that these survey results say that check-in is not relevant for some libraries and is for others. The reasons are not the same for all libraries in question. For some libraries, serials check-in may be required by legal or institutional auditing purposes, while for others, it may be due to patron preference or the lack of online access. However, if a library is considering ceasing serials check-in, the library should consider the size and organization of the collection, and library service models.²⁴ The library should also consider its mission, determine if the library's constituents value serials check-in data, and create a plan. Questions about collection and usage statistics, budgeting, accreditation, work flows, and training should be addressed. Also, if the library is planning to rely on online access, assessing its reliability and sustainability is important.

Conclusion

It is not news that serials librarianship is changing faster than libraries can keep up and becoming increasingly complicated. The long-time trend of libraries emphasizing ownership of print materials has been gradually shifting towards online access in many libraries since the 1990s with the inception of aggregator databases. Cuts in budget and staff and increasing serials costs have further complicated the issue, making it vital for libraries to do more with less. These factors have caused some libraries to shift around staff assignments and budgets and for some, to make changes that they may not have considered before, in order to cope. "Doing more with less is an everyday practice; examining traditionally unchallenged assumptions is a necessity."²⁵ For some libraries, one change has been to buck print serials check-in, something long considered necessary. This study's data reflects that the necessity and relevance of serials check-in depends on the library, its constituents, and how the library best serves patrons. 🌿

see *Biz of Acq* endnotes on page 66

Rumors from page 55

spring which she is remodeling. And she is looking forward to spending more time with grandkids! Though she will keep her **York College** email, she says it will be better to use this email address — <smcc922@yahoo.com>. Oh! Almost forgot! **Susan** will be at Midwinter in Seattle!

Speaking of babies, just got a great picture of **Dennis the grandfather Brunning's** new granddaughter — **Mia Catherine** — 8.9 pounds! **Mia Catherine** joins big sister **Elianna**. Picture will be in a forthcoming issue.

Tony Ferguson may have retired but not really! He has been riding planes and trains and buses all over the world. But he had time to send us a **Back Talk** that he wrote on a some sort of borrowed device and he even wrote about publishers and buses, this issue, p.86.

And — listen up!! Do any of you want to conduct your own interview of someone in a library, a publisher, or an aggregator or whatever? **Against the Grain** would love it! Please write me and tell me who you would like to interview! Or, if you want to suggest that we interview someone ourselves, we are listening! Send an email to either me <kstrauch@comcast.net> or **Tom Gilson** <gilson@cofc.edu>!! 🌿