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## Op Ed-Random Ramblings

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## Libraries as a Source of Materials for Illegal Copying: Potential Implications for eBooks

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One dirty library secret, as least in official library publications, is that libraries of most types provide materials for illegal patron copying. I will quickly add that libraries are doing nothing illegal, as will be explained in more detail below, but they are a rich resource for copyright violations. I spent two hours of Internet searching for information on this topic. *Library Literature & Information Science Full Text* included nothing on the subject from my queries with all the search terms that I could think of. I had a bit more luck in *Library and Information Abstracts* where I found one article from 1985 on illegal patron copying of library software within the United States and a few more articles that dealt with other countries. *Wikipedia* wasn't much better, as I found nothing particularly useful on this subject. I turned to Google last with the search terms "patron copying" and "libraries." I found a blog post on this issue ([http://blog.librarylaw.com/librarylaw/2006/02/library\\_liabili.html](http://blog.librarylaw.com/librarylaw/2006/02/library_liabili.html)) and an answer to this question by the *New York Times* ethicist, **Randy Cohen** ([http://www.nytimes.com/2006/10/08/magazine/08wwln\\_ethicist.html?\\_r=1&ex=1161489600&en=3b0ec154e44ac76f&ei=5070](http://www.nytimes.com/2006/10/08/magazine/08wwln_ethicist.html?_r=1&ex=1161489600&en=3b0ec154e44ac76f&ei=5070)). Interestingly, he concluded that "although copying an entire work is seldom legal, it is sometimes ethical."

Why did I have such great difficulty in verifying in print what all but the most obtuse librarians know? Patrons check out library materials, particularly CDs and non-protected games, to make illegal copies. Many don't think that they are breaking the law or doing anything wrong. They take out a dozen CDs and bring them back the next day for another dozen. They sometimes boast about their copying when checking the materials out. Increasingly, they bring their laptops to the library to make their illegal copies without even checking out the materials. My public library guest lecturer told my class that the librarians and staff know what patrons are doing. Occasionally, this topic comes up on library discussion lists. In one case, the librarian asked if she had to tell the patron to stop copying the CDs within sight of the reference desk. I responded that I thought that she did have a legal obligation but was immediately corrected by another responder, more expert in the law than I, who said that not intervening was legal. To my mind,

the answer is simple. **Librarians keep quiet because they don't want to lose the special status that they have under current copyright law.**

Section 109 of the *U.S. Code* gives a special exemption to nonprofit libraries to lend "phonorecords" and computer software, which is interpreted to include games that run on computers (<http://codes.lp.findlaw.com/uscode/17/1/109>). Anyone can lend console games because of their special formats that make copying difficult if not impossible. Some believe that libraries should include the same notice that they post near copy machines on every computer and printer since the law doesn't say "photocopy machines" but rather "reproducing equipment." The end result is that libraries have become a wonderful repository of materials that patrons can use to make illegal copies without making the library in any way responsible for the copyright violations. Unlike downloading songs and software illegally, which carries a risk of discovery, however minimal, through monitoring Internet traffic, catching a patron copying a CD at home is nearly impossible.

By now, you may be asking what does this all have to do with eBooks. While I can't read the minds of publishers, perhaps they too are worried about libraries becoming a repository for the acquisition and subsequent distribution of eBooks. Like music CDs, eBooks are reasonably expensive even at the *Amazon.com* price of \$9.99. Your next question should be "But what about digital rights management (DRM)? I thought that **Kindle** and **Nook** eBooks had copy protection." For a general answer, I'll repeat what I read this week: "Any copy protection is defeated sooner or later and most often sooner." More specifically, last semester when I was discussing copyright, I bet my students that I could find in five minutes a way to hack **Kindle** eBooks. Within two minutes with a most obvious search that I'll leave you to figure out, I discovered a YouTube video with detailed instructions including visuals on how to remove copyright protection from **Kindle** eBooks. I won't even double check that this video exists because I don't want to be accused of helping anyone violate the *Digital Millennium Copyright Act*.

A final question might be why readers don't look for these unencrypted eBooks on the Internet the same way that many

gamers find their illegal games. To begin with, the library is an easy, convenient source. Some libraries are loading their circulating **Kindles** with bestsellers so that the patron has one-stop hacking for the most desirable publications. Second, as I stated above, getting illegal materials on the Internet poses a small risk of being caught. A third issue is that the bad guys who make the illegal materials available on the Internet often do nasty things to the people who are looking for illegal content. Downloading an illegal eBook may bring along malware that turns your computer into a zombie and drains your bank account through keylogging software. Even visiting a potential download site may expose your computer to a drive-by attack. In the same way as is true for copying CDs, getting eBooks to convert illegally is much safer if they come from the library.

Perhaps this issue doesn't have the importance that I've given it in this column. If patrons have checked out eBooks from the library, maybe they will read them for free and would have never paid cash for a legal copy. One of the fallacies in the calculations about the dollar losses from piracy is the assumption that the pirate would have bought the book, CD, game, or whatever. To use myself as an example, I have the soul of a collector. I buy my CDs legally at garage sales for a quarter or less. I've collected well over 1,000 but listen to only a handful. I'm happy, however, to know that I have this large music library just in case. Similarly, some people will want to have a large collection of eBooks as long as they are free, whether or not they plan to read them. Some believe that piracy ultimately helps the content producers by making them better known, though I don't think that the income from author readings will ever approach that of rock stars with their concerts, tee shirts, posters, and other sources of income beyond their recordings. In support of not using DRM, one blogger asked this week whether it would be better to sell 10,000 copies with DRM or to have 100,000 unprotected copies in circulation with 10,000 of them legally purchased by honest folks.

Only the publishers could say whether illegal copying of eBooks is a concern, but I expect that they would prefer to remain silent to avoid publicizing this possibility. 🐘