November 2013

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Recommended Citation
Astle, Deana; Hamaker, Chuck; and Strauch, Katina (1991) "The Combination Nemesis," Against the Grain: Vol. 3: Iss. 2, Article 15.
DOI: https://doi.org/10.7771/2380-176X.1048

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The Combination Nemesis

by Deana Asle (Clemson University)
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Katina Strauch (College of Charleston)

As we go to press, there is much going on in the news. So, “The Nemesis” this time is a “combination” column by all three of us. You guess who wrote what!

Well, the big news right now is the purchase of Pergamon by Elsevier. Originally reported as a possibility in the Financial Times (Against the Grain, v.3#1, February, 1991), we all nonetheless never believed that it would happen. After all, Robert Maxwell began his meteoric rise with Pergamon in 1959 and built it to a mammoth company which reportedly sold for 440 million pounds ($764.9 million) to Elsevier. (Wall Street Journal, March 29, 1991, p.B6; New York Times, March 29, 1991, p.C1). We all know that this acquisition is something very significant for scientific publishing. Between Elsevier and Pergamon, some 1050 journals will be published by the same house (750 Elsevier, 400 Pergamon). And when Schlosser, the President of Elsevier U.S., in the meeting with Pergamon employees on Thursday, March 28, reported the sale of Pergamon to Elsevier, he assured everyone that Pergamon would stay the same and only be a division of Elsevier instead of a division of Maxwell Communications. However, another person on the agenda, a Personnel Director, spent time explaining the severance pay that would be paid out. The story is that there are people smoozing around Pergamon even as we speak from Elsevier and Macmillan U.S. (a remaining Maxwell-owned publishing company) and that they will be offering the remaining Pergamonites jobs or giving them pink slips. It seems a fairly easy bet that some people and journals will be consolidated and that we will see a shake up of Pergamon as we know it. Will some prices rise? That remains to be seen. According to the Wall Street Journal article, “Elsevier said the acquisition of [Pergamon] will slow its growth in per share earnings to about 10% in 1991, but that ‘growth will increase to the usual percentages thereafter.’” (“the company considers annual profit growth of 15 to 20% ‘usual’”) Apparently Maxwell, who recently bought the Daily News (N.Y.) (see The New York Times, March 13, 1990, p.1; see also this issue page38) is moving away from scholarly publishing. Some speculate that when Maxwell could not acquire Harcourt Brace Jovanovich several years ago, Maxwell decided to expand in other areas. The future? Mr. Pijnenborg, an Elsevier director, says “greater scale in scientific publishing will make it easier for Elsevier to make ‘substantial investments’ in electronic delivery of scientific information over the next decade.” It will certainly be interesting to see what develops as the months and years go by. In the meantime, we wish our best to our friends at Pergamon. And Elsevier, too, for that matter.

As we go to press, Time for April 8, 1991, (page 21) has an insert regarding “Maxwell’s Hall of Shame.” In this unflattering piece of information, Time points out some of Pergamon’s “official or groveling accounts of dictators.” (Five are listed including one on Nicolas Ceausescu.)

Also reported in the same issue of The Wall Street Journal on the same page as the Pergamon/Elsevier buyout (March 29, 1991, p. B6), is the verdict in the famous case of six large textbook publishers (Harper & Row, McGraw Hill, Penguin U.S.A., Prentice-Hall, Richard D. Irwin, William Morrow, Basic Books, and John Wiley) versus Kinko’s Graphics Corp. In Manhattan, federal judge Constance Baker Motley “ruled that photocopied anthologies, which take excerpts from textbooks, infringe the textbook publishers’ copyright.” Kinko’s, you may remember, had said that what they did was okay because it was for educational purposes, but Judge Motley saw it differently. “The use of the Kinko’s packets, in the hands of the students, was no doubt education,” she said. “But she said that the commercial purpose of the packets, or anthologies, as well as the significant portion of the original work that was copied made the Kinko’s product a copyright infringement.” The statutory damages: $510,000, plus Kinko’s is supposed to pay the legal fees of the publishers, no doubt a big ticket item, estimated to be “greater than the damages.” The AAP (Association of American Publishers) had filed an amicus brief in the case and is no doubt happy with the decision, probably an understatement. Anyway, it appears that the use of anthologies will be greatly curtailed and it’s back to library reserve rooms for many such activities. (There is also an article on this case in the April 3, 1991, Chronicle of Higher Education, front page.)

A Supreme Court decision (Feist Publications v. Rural Telephone Service, no. 89-1909) was reached...
regarding copyright and creativity (see The New York Times, March 28, page. C1). The ruling which stemmed from a case in Kansas where a small telephone company had originally won a case in a lower court against a publisher who had incorporated the little phone book into one which covered more of the state. Justice Sandra Day O'Connor said in the opinion that "copyright rewards originality, not effort," and that 'in no event may copyright extend to the facts themselves.' In the case of the white pages... alphabetical listings of names and addresses 'do not satisfy the minimum constitutional standards for copyright protection' because they are 'devoid of even the slightest trace of creativity.'" Apparently, this does violence to a previous basic copyright doctrine, "the sweat of the brow" doctrine. O'Connor's opinion went on to say that "the vast majority of compilations would still be entitled to copyright protection as being based on some kind of 'original selection or arrangement.' But she added that the protection was 'limited to the particular selection or arrangement,' and not to the facts that were being arranged." Very interesting. Some people out there are wondering whether or not a catalog record is "an address" of a book and, so, is not entitled to copyright.

According to The Wall Street Journal for March 4, Rupert Murdoch's News Corp is testing the water on selling some of its magazines like New York, Premiere, New Woman, Seventeen, European Travel & Life, Mirabella, Soap Opera Weekly. There seems to a crisis of conscience and general angst as some magazine editors come and go and people try to figure out what sells magazines: analytical essays, columns, self help or what? (see also The Wall Street Journal for March 27, 1991, p. B1) One of the few magazines that's doing well is The Quayle Quarterly. (see Time, April 8, 1991, page 21) The circulation for this publication increased a whole lot in a year. "The Connecticut-based newsletter [is] dedicated to keeping a watchful eye on the vice presidency."

The Bulletin of the Medical Library Association (January 1991, volume 79 no.1) has two incredibly articulate and provocative responses regarding first the library, publisher, scholar relationship(s) and second the role of librarians as professionals. The responses are by Leide B. Gilman, Head of Collection Development at UCLA Center for Health Sciences, and the articles are entitled "The Scholarly Publishing Imbroglio: A Personal View," and "Thoughts About Librarians as Defined by Mark Plaiss." These are worth reading in their entirety because they point out many of the old familiar problems that we all face daily in the library and scholarly publishing environment.

For those of you out there who have not heard the saga of Les Livres Etrangères (LLE) and the Slavic serials subscriptions which they handled, we give you the following summary. Most of the information has been gleaned from the electronic newsletters, ACQNET and the Newsletter on Serials Pricing Issues. In late February LLE in Paris closed its export business due to new requirements for hard currency up front by the newly-privatized Mezhdunarodnaya Kniga (MK) which handles distribution of many Soviet periodicals and books. According to Darrell Hammer of the Political Science Department at Indiana University, the Soviet government stopped subsidizing many companies at the first of the year including Aeroflot and MK which were then forced to initiate "commercial accounting." As a result Aeroflot demanded payment in hard currency from MK before it would transport its shipments; MK does not have hard currency unless it gets it from subscribers. As a result, "1.5 million subscribers around the world...are not receiving journals and newspapers for which they have paid, and...there are more than 100 tons of periodicals piled up in warehouses waiting to be shipped out of the U.S.S.R. His information comes from Moskovskie Novosti, 10 (March 10, 1991) in an article whose title translates to "The Press: The Reader Goes to the End of the Line."

With the demise of LLE, MK apparently transferred the subscription list for the titles formerly handled in Paris to Victor Kamkin demanding confirmation from subscribing libraries by March 1 of their intention to renew lest they risk losing their January issues. This gave many libraries less than a week to identify titles and make a decision. Most libraries responding to ACQNET have renewed their subscriptions previously provided by LLE with Kamkin for the 1991 year, but plan to reassess the... continued on page 43

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situation for the 1992 subscriptions. According to one reporting library, MK has stated that Kamkin is at present its sole distributor—at least in the U.S.

Nadia Zilper, Slavic and East European Resources Bibliographer at Stanford, expressed some other concerns in a letter to Kamkin which was published in ACQNET. She described her great concern about the “outrageous price increase due to shipping charges.” She continues, “It is interesting to note that in the 1990 Mezhdunarodnaia Kniga catalog Gazety i Zhurnalny SSSR the prices were in rubles. The catalog also had a stamp; 1 ruble = US $1.70. The 1991 catalog provides prices in US dollars. These prices are much higher than the 1991 escalated prices in the USSR, even if the conversion is done according to the least favorable US dollar conversion rate. We thought that the unusually high price for subscriptions in hard currency was probably due to the shipping cost.

“We were surprised to receive your letter dated February 22, 1991 about an additional outrageous shipping cost. We would be more than happy to pay shipping expenses if the subscription price accurately reflected the Soviet price converted into dollars. Since we already pay in dollars the extremely high prices for Soviet subscriptions, we consider it poor business practice for you to charge us an additional, very high price for shipping.”

With shrinking budgets and rampant cancellations in many libraries now, these extra costs to libraries will probably result, as Ms. Zilper fears, in the disappearance of many of these titles from US libraries. Though the demands by Aeroflot for hard currency for shipping may be the major factor in the dramatic rise in shipping cost, the bottom line is that these titles are becoming much more expensive to purchase.

This situation may indeed lead to a reduction in the number of Slavic titles held by US libraries. Cost is part of the problem, availability is another. As this issue goes to press, concerns have emerged about the difficulty of getting publications from Czechoslovakia which were previously easily obtainable. The ability of American libraries to provide information to their users now faces another challenge.

The Chronicle of Higher Education for April 3, 1991, front page, has an article about overhead charges for federally sponsored research. This article by Colleen Cordes (“Universities Review Overhead Charges; Some Alter Policies on President’s Home”). “Administrators say they are anxious to avoid the kind of political and public-reations fiasco that has struck Stanford University for its charges to the government.” This has been all over the newspapers and was even covered a few weeks ago on “Twenty Twenty,” but we point this article out for your information.

One more little tidbit. There is an e-mail filter in the works. (The Wall Street Journal February 28, 1991, p. B1). All of us know there’s a lot of e-mail out there and that it can sometimes take hours out of an already packed day to read through it all. Well, enter BeyondMail, “a $250 software program that looks at e-mail as it comes in and decides what to do with it. Users decide how to program their own computers to set priorities.” Or Wijit, “another e-mail filter with an MIT pedigree, likely to be acquired by Dun & Bradstreet’s software unit.”

Whew! We’re exhausted and this is just the tip of the iceberg. Over and out.

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Yes, I’m off to another meeting...it’s a tough job but somebody has to do it.