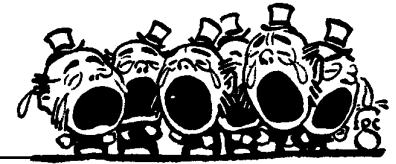


Little Red Herrings — But a Whimper



by **Mark Y. Herring** (Dean of Library Services, Dacus Library, Winthrop University) <herringm@winthrop.edu>

In my last rustication, I opined the details of the 300-page **Google Book Deal** settlement made in late 2008 between **Google** and authors and publishers vis-à-vis **Google's** massive digitization scheme (those cases, viz., *Authors Guild et al v. Google* and *McGraw-Hill et al v. Google*). As pointed out there, the settlement governs the now more than seven million titles scanned so far, and the multi-millions more to go. At least two camps have emerged about this deal: one (and by far the largest group), those who see it as a bonanza for readers because of the (literally) millions and millions of titles to choose from; and, two (and a much smaller crowd but made larger by the presence of **Robert Darnton**), those who are somewhat suspicious of a cartel for books, a giant library of materials controlled by, for, and of the **Google** monopoly. Sadly, missing in action on behalf of libraries (and apparently unable to lift a finger to help them) is **ALA**. So, herewith, some heavy finger-lifting on behalf of libraries.

A quick search of the Web will provide readers with a variety of viewpoints, but most fall into these two categories. Most interesting are those by librarians, provosts or deans who signed on with **Google** and subsequently turned over their millions of volumes to the mega-library, alias search engine. This group, originally the G-7 because only seven were initially involved, but now more than two dozen have emerged, has representatives of both camps. Some who signed on remain deliriously happy with the deal; others are less sanguine. The question remains, who's right?

It's too early to tell exactly, but we won't have to wait long. The case, as mentioned in my previous column, is on the fast-track for disambiguation, so to say, this summer. For now, I offer, ten reasons why I worry about this deal and why I fear for the longevity of libraries.

10. Intellectual Property Rights & Copyright Be Damned. **Google** is still in the business of dithering with rights not its own. Sure, it's paying \$165 million now, but that's for 7 million titles. With additional payments, it may work out to \$60 a book today, but later, after tens of millions of items are available, more like pennies on the spine. This is a very sweet deal for a company that willy-nilly took material not its own for an enterprise in which it alone stood to gain the most.

Ditto that with copyright, that (now) epigone law regulating both the created work and the creator. The rest of us mortals have to ask permission for extended use. **Google** merely asks for forgiveness, but they'll use it anyway if you don't grant it. For those who think copyright laws are too draconian, create something to be protected by those rights and then see how you feel. I suspect this is why **Mary Beth Peters** recommended

that the **Library of Congress** stay out of the **Google's** digitizing scheme, unconvinced that what **Google** was doing was within copyright (but see here <http://blog.librarylaw.com/librarylaw/2009/03/google-books-settlement-at-columbia-part-1.html>). Essentially, **Google** has given us de facto legislation for certain copyrighted material that may or may not be within legal bounds. Perhaps we'd prefer a system like China's where everything is open to all who want to use it whenever they wish. If we need a revision of our copyright laws — and not many think that's a bad idea — then why not send it through the courts?

9. Download a Book, Call Your Lawyer. The arabesque "terms of use" are such that no one knows what the rights are for the library and its users. It's unclear (see the explanation of the settlement in "Not with A Bang..." last month) if what users will be doing is or isn't within copyright restrictions. Are these the same as they've always been in libraries? Will copyright laws prevail, or will libraries have to police all its users and be responsible for what those users do while on site? If so, what will be the cost of infringement? If found in violation, who adjudicates on behalf of the libraries? On behalf of users? Since it is more likely that the library will have deeper pockets than the individual, what are those costs? I mean more than the range given in the settlement (\$0 to \$3,000,000). And what of libraries that are not part of the settlement?

8. Big Brother Is Watching. **Google's** ability to track what users read, when and how, is not the stuff for bedtime reading, unless you want to be awake all night. Because you have to log onto **Google** to read your downloads and track your other uses, what does this do to traditional library privacy, other than jettison it? Somehow, discovering that **Google** will have the ability to hold logs that read, "Patron John Q. Public entered the Main Street Public Library at 0900 hours. Viewed page 365 of *Miller's Tropic of Cancer* for 5.6 minutes. Downloaded *Steal This Book ...*" is the fictional stuff of Hollywood, only this time it's real.

7. We're All Googliters Now. Participation in the plan means what, exactly, for participating libraries? What is the ultimate cost to sign up? Does anyone know? Does anyone really care? What are the future implications for monograph budgets? Budget Director: "Why are you asking for any book money when you already have access to 12 million titles?!" Librarian (Sheepishly): "Well, we have had requests for other titles." Budget Director: "Let them eat cake (or in this case, "read" it)." Will **Google** control the cost of access over time and increase the cost of participation at will? Is **Google** the next **Elsevier**?¹ If **Elsevier** is the great Satan, what does this make **Google**? Son of Satan? Antichrist?

6. A Riddle Wrapped in a Mystery Inside an Enigma. The **Google** deal is more complex and confusing than even copyright law. This means that none of us have any idea what's going to happen, save for **Google** which has a good idea of what they intend to do. We can't really say that x or y will happen because no one can predict how this settlement will go, where it will end, or how it will address future issues. The best we can do about it, as **Robert Darnton** said it, is "vigilance: see as far ahead as you can; and while you keep your eyes on the road, remember to look in the rearview mirror." I would add, "But objects you see are closer than they appear." This strikes me as a ridiculous turn of events for the collective intellectual capital of the world's cultures. Moreover, it does not even treat orphaned works, or rather treats them in a manner so inscrutable it's hard to say what the future holds for them. And what happens if **Google** (a commercial entity) gets sold or even goes out of business. (If it can happen to **Bear Stearns** and **Merrill Lynch** (and even **netLibrary**), is **Google** immune?)

5. Digitization Redux, Anyone? Nowhere can I find any plan for re-digitizing these works. Everything I read assures me that this digitization medium is not good for, say, 100 years. (http://www.cendi.gov/publications/04-3dig_preserv.html#10; <http://www.clir.org/pubs/reports/pub80-smith/pub80.html>) As far as anyone knows, it's not good for 50. In fact, experience shows that digitization in its various modalities so far has not even been good for 25 years. So what's the plan? Is this the built in obsolescence for these materials? Will those that get used be re-digitized and saved, while those that aren't fall not only off the shelf, but even out of the dustbin of history? Furthermore, can we be sure that we can digitize copies of digitized images since it's likely that some of the originals will be in no condition for another round? Surely others are a little troubled about this. Some friends tell me not to worry. "It'll be figured out when it needs to be figured out," they assure me. "And the Titanic was unsinkable!" I reply.

4. The End of Publishing. By the end of this decade, it's likely that few if any newspapers will be left (*The Seattle-Intelligencer* is one the most recent deaths of many). Most weeklies will begin the sad trek as their readers go a-whorin' after digital news gods in cyberspace. (If you don't worry about this, take a look at **Nicholas Kristof's** "The Daily Me" 18 March 2009.) After that, the monthlies and so on. Meanwhile small publishers will vanish without a trace, and possibly without even a comment, though they'll begin by going all digital ("Books Gone Digital" will be the new X-rated video) first. Take, for example,

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the **University of Michigan Press's** recent decision to henceforth publish only digital offerings. Soon, very few traditional publishers will be around to publish anything, save online blogs for the like-minded. But never fear; the Web is here! Will it follow that market niche of television mind-numbing inanities because we'll have millions of things available to read, just as there are now hundreds of channels on the tube? Besides, the intellectual content of the Web is already like television, only more so. Be still my heart.

3. *Cn Urdts?* We already know that reading on the Web is not the same as reading in print. Whether this is merely a function of 500 years of evolutionary print-based reading that will eventually be wiped out by 500 years of Web-based reading, no one knows. And does anyone care? We don't comprehend Web-based reading as well as print-based reading either, but again, it doesn't matter because you can always look it up. It might even be the same answer as the one you got last week. And if memory diminishes after age 27 according to a recent scientific report, why should we bother (<http://news.bbc.co.uk/2/hi/health/7945569.stm>)? Memory is overrated and, and, something else. I forget what.

2. *Move Over AT&T. Google's in Town.* Remember how bad cartels used to be? Well, they're not anymore because **Google** said so. This is a settlement for one company that has structured the pricing so as to generate maximum revenue returns. Something about this rings an **AT&T** bell. But **Google** is a friendly, altruistic cartel that we can all trust with everything, most especially our intellects, right? What's really neat is that we don't actually need our intellects anymore because **Google** will determine what we need, when we need it, and the reasons for asking for it. So close your eyes and smile. We needn't think for ourselves. In fact, it's much better that we don't.

1. *This Is the Way Our World Ends.* Whether **Google**, the Web, eBooks and all the rest meant for it to turn out this way, it's headed in the direction of the perfect storm, the perfect storm that washes up libraries. If libraries were a bad idea, or had failed in their missions, or had been surpassed by newer and better technologies, then they would deserve obsolescence. The sad truth is that they have not failed, just been considered failures. For fifty years we've been trying to get rid of paper, and now all the technologies are here to finally do it. By now readers have doubtless guessed that I am less sanguine about this settlement than say **Peter Hirtle** or others writing about it. No, I don't think it's the best we can get and I don't think it's best for libraries. I do think it's the one we'll get because too many of us have already capitulated, not to a future we want or need, but to one that we'll settle for.

Our lobotomized brain trust, **ALA**, seems to think all this is fine because it has yet to lift a finger against any of the new technologies, even a philosophically questioning one. Rather it gathers all its fingers together and claps like

a buffoon while **Google** and the rest shove us out the door. "Buy this rope," said **Google**, and **ALA** did. "Put it around the library's neck," said the Web, and so **ALA** did. "Now both of you jump off the cliff," said eBooks," and so here we all go.

Okay, maybe that's a little harsh. But where has **ALA** ever said an opposing, discouraging word about any of this, or wagged a warning finger that perhaps we're heading in a less than right direction? No, instead **ALA** spends its time renaming libraries something other than anything that sounds like the profession that reveres books while remaining at the forefront pooh-pooing anyone who becomes a librarian because of the love of books. It would be nice if our professional organization were a little more interested in our future beyond becoming a subsidiary of **Google** et al. It would be nice if just once, **ALA** would call for a collective breath-taking instead of its breath-taking silence on that score, juxtaposed against its earsplitting cheerleading for **Google** et al. 🌸

Endnotes

1. I think **Robert Darnton** also said this but got into print before I did. His deadline was sooner than mine.