

Canadian Association of Research Libraries
Copyright Committee
Task Group on E-Books

E-Books in Research Libraries: Issues of Access and Use

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E-Books in Research Libraries: Issues of Access and Use

The academic library's *raison d'être* is to provide access to resources for scholarship. All academic library collections and services derive from this purpose. Historically, academic libraries have developed principles of access to scholarly resources based on the use of print materials. These have shaped user expectations. Over time the principles and expectations were codified into national copyright legislation and now form the *sine qua non* of access levels. These established principles are under some threat from at least three sources: from technology that can limit access and use; from the use of contracts; and from the notion that licensing is the most appropriate avenue to provide access to resources for scholarship. Academic libraries are in a new, electronic environment where the delineation of access to scholarly materials is not universally shared and must be carved out afresh. Access achieved in print books must now be re-negotiated in licensing agreements for e-books. Libraries, therefore, must ensure that all negotiated contracts reflect the principles of access and reinforce their significance to the academic enterprise.

Academic libraries were in a similar position with electronic journals. For the last decade or more, electronic journals were in the forefront of collection development issues. In order to address access issues, Canadian academic libraries were in the vanguard to develop standard agreements or model licenses. Model licenses are now well entrenched. The academic library community has extensive expertise gleaned from the journal experience and is now in a position to negotiate from a stronger, more knowledgeable position as considerate deals with agreements for electronic books. As well as the experience from journal licenses, the Canadian academic library community has some powerful jurisprudence from the CCH case (discussed on page 8 et seq.) to guide a more forceful stance in negotiations.

The Canadian Association of Research Libraries (CARL) Task Group on E-Books undertook to consider and to make recommendations to the CARL Copyright Committee on issues of access and use of e-books in research libraries. The report includes:

- A literature review;
- A review of e-book licenses and comparisons with print;
- An examination of differences between access and use of print books and e-books and impact on scholarship;
- An outline of the issues of access and use of e-books in Research Libraries including recommendations for the CARL Copyright Committee.

A Definition and Brief History of the E-Book

Defining the word 'e-book' depends largely on the context in which the term is used. While Coyle describes an e-book as simply the electronic form of a literary work, Anuradha considers an e-book to consist of both digital content as well as physical devices, such as handheld e-book readers (2001, 314; 2006, 662). For Rao, e-books are comprised of texts published in electronic form as well as physical books converted into digital form, and also books in computer file format, or an electronic file of words and images of monographic character, all of which can be displayed on a desktop, notebook computer, or portable

device, including dedicated e-book readers (2003, 86-87). For the purpose of this study, Rao's definition has been adopted with the addition of Bolick's conceptualization of the e-book as a "discrete deliverable download product [which] can straddle the line between purchased item and licensed item" (2003, 44). Finally, an "e-book reader" is defined as a combination of software and any type of device that is able to display an e-book.

E-books were invented in 1971 by Michael Hart, a student at the University of Illinois. He would later go on to found Project Gutenberg, the first and largest collection of free e-books available online. The first commercial e-book was launched by Random House in 1981. By the mid-1990s, e-books were beginning to be seen as a legitimate alternative- and also as a potential threat- to traditional print publishing (DeSouza, 2004, 6). This threat has yet to materialize, however, as e-book purchases continue to represent only a very small segment of the total book market. In 2003, for example, e-book purchases in the United States totaled only \$10 million of the \$24 billion total book market (Ibid.).

Although e-books continue to represent only a small portion of the total book market place, the e-book supply has grown steadily over the past 20 years, with an average annual rate of growth of approximately twenty percent (Just, 2007, 160). As of August 2006, 135 492 e-books were available in the American market, compared to 1 218 397 hardcover titles (Ibid.).

North American libraries have been among the earliest adopters of e-book technology. While some public libraries have faced low e-book acceptance and usage by their patrons (see Hawkins, 2002), academic libraries have generally found better acceptance of e-books. The California State University E-book Pilot Project saw 94% of its e-books used between March and December 2001 (Langston, 2003, 25). At the end of the pilot project an additional 2, 32 e-books were introduced to the collection. A study of the usage of a collection of 303 e-books at Victoria University of Wellington, New Zealand, indicated a substantial usage rate, with the authors observing that users "seem to be attracted to large collection of e-books, and prefer a large collection to a small, highly selective collection... the most popular subjects used were business and economics, and computer science" (as cited in Langston, 2003, 22). A survey of librarians by ebrary in 2007 indicated that 88% of respondents owned or subscribed to e-books, with 45% further stating they had access to over 10,000 (ebrary, 2).

Although complete figures for the growth of the market in Canada are not currently available, an analysis of electronic monograph titles held and purchased by CARL libraries demonstrates both the growing importance of e-books to CARL libraries and also the importance of libraries to the e-book market. Expenditures on electronic monographs have grown from \$1,127 372 in 1999-00 to \$6,048 491 in 2006-07- a staggering 436.5% increase. In the past year alone, CARL libraries have acquired 2, 890 369 electronic monograph items. Electronic monographs currently represent approximately 13% of total monograph titles held by CARL libraries, and that number is expected to continue to grow over the next several years.

Literature Review

The importance of e-book collections continues to grow in academic libraries. Issues of access and standardization of business models are slowly gaining prominence in the discourse on e-books and electronic content. While there is an abundance of literature on e-books and their place within academic libraries (see Hawkins, 2000; Dowdy, 2001; Jantz, 2001; Snowhill, 2001; Connaway, 2003; Doctorow, 2004; Garrod, 2004; Dinkelman et al. 2007), few articles have discussed the impact of e-book licensing agreements on access. This review explores several themes that can be drawn from the literature, including the confusion and instability of the current market, issues of access and management, and the discussion of rights and requirements that has arisen in relation to negotiation strategies for licensing agreements. Ultimately, the literature illustrates the tentative nature of current e-book business practices, including the development of technology, standards and licenses.

Confusion and Instability in the E-Book Market

The e-book marketplace is in a state of flux. Vendors, technologies and business models are evolving. As noted by Crawford, many of the major e-book market players from 2000, including Librius, ZeroHour and Glassbook, have either folded or been absorbed by other, larger vendors (2006, 43). Technological standards for e-book hardware and software have yet to be clearly defined, in part because the technologies available for e-books have not yet stabilized (Anuradha and Usha: 2006, 662).

Coyle describes the development of the Open eBook (OEB) publication structure as an effort to create a common e-book format and avoid the “standards war” commonly seen in the development of new products (2001, 316). Though the motivation behind this format was to assist in the rapid and widespread production and use of e-books, OEB content is not available to the general public. Instead, various proprietary formats, which can be equipped with Digital Rights Management (DRM) technology, are sold to consumers. These include AdobePDF, Microsoft Reader, PostScript and the DAISY Digital Talking Book. For Coyle, the lack of clear technological development standards has resulted in continued “tense and trying times” for the somewhat chaotic e-book market (Ibid, 315).

While technological standards for e-book formats, digital rights management and distribution and promotion are currently being developed, Coyle observes that discussion of the needs of consumers, including libraries, is nonexistent. She argues that librarians need to recognize that their needs are not “driving current market developments, even though some standards developers have libraries in mind as users of their future product” (Ibid. 316). Rao argues that not only must industry-wide standards be developed to ensure that e-books are available on, and exchangeable between, multiple platforms, but also that DRM standards must be adapted if e-books are to remain viable for libraries (2003, 11-13).

The plethora of business and licensing models has also led to confusion in the e-book marketplace. While Wicht (2006, 15) argues that e-books are being “packaged and sold in

ways that offer librarians and their users unprecedented flexibility and functionality,” others do not view the situation in such a positive manner. Bolick contends that the plethora of business models has led to librarians winding up with a “hodgepodge of licenses from numerous publishers” that are inconsistent in terms of terminology, provisions for access and cost.” (2003, 49). Buczynski echoes this claim, and argues that market prices for electronic content have yet to be established (2006, 173). Rice discusses the “bewildering array of different licensing arrangements”, but maintains that most can be grouped under three broad categories, including print, database and Open Access models (2006, 28). Model licenses may provide a much-needed step towards standardization of electronic content management, which is especially desirable in light of the currently ambiguous copyright environment (Brennan Croft: 2001, 165). As articulated by Brennan Croft,

A model license gives a library a template for negotiating a favourable contract point-by-point with a vendor. It protects the vendor by clearly defining what the library plans to do with the product, and can also benefit both parties by eliminating unenforceable clauses. A library may use the license verbatim, or use parts of it to negotiate replacement clauses in existing vendor licenses clause-by-clause. A library may even choose to use existing model licenses as a basis for developing its own model license... (Ibid.)

Algenio and Thompson-Young, however, counter this claim and argue that a standard business model and license for e-books would be impossible to achieve as e-book technologies, business models and licenses are still in their formative stages (2003, 117-118). They also note that there is lack of standards for content management, including how electronic material can be manipulated, preserved and distributed.

As elucidated by Pace, the debate on both technological and business standards is more complex than a mere examination of specific platforms and licensing arrangements, and involves “issues of fair use, digital rights management, preservation, and perpetual ownership” (2005, 32). Coyle also considers the business and market context in which e-book standards are evolving, and argues that “there is such unpredictability in this market that even the players themselves may not have a clear idea of what will result in a successful product” (2001, 316). The literature illustrates the unstable nature of the current market, which is reflected both by the lack of clearly defined standards as well as in the numerous and divergent licensing arrangements for e-book content.

Issues of Access and Management

E-book licensing models can be grouped into several broad categories, including print, database and Open Access licensing arrangements. As defined by Rice, the print model treats the e-book as a print book; meaning only one user at a time may access the content of the e-book (2006, 28). Should the library wish to increase the availability of the work, they must purchase additional copies or subscriptions to the work. Examples of print model vendors include Netlibrary and Libwise. Print model vendors tend to employ restrictive digital rights management technology, which may limit printing, copying, pasting and

saving of the e-book content. In part because of its inability to accommodate the electronic environment, the print model has already begun to wane. Conversely, the database model, employed by vendors such as Ebrary, Safari and Knovel, treats the content of e-books as comparable to a database. Content is licensed from the vendor and a subscription is required to access the material. Many database model vendors allow simultaneous access to e-book content. Finally, the Open Access model allows e-book content to be accessed freely, though there may be some restrictions on use. Rice notes that many Open Access vendors, including Project Gutenberg and the National Academy Press, do not encrypt their e-books with DRM technology (Ibid, 29). Ferguson provides an excellent summary of twelve of the most prominent e-book vendors and their collections, detailing the functionality of their platforms, their willingness to work with consortia and examples of their various pricing models (2006, 1-2).

The management of rights in the digital environment has implications for access of e-book content. While Davis and Lafferty argue that DRM is a “necessary component of content access and redistribution”, Albanese counters that technology used to restrict access, is “counterintuitive to librarians' desire to use technology to increase access.” (2002, 18; 2007, 23). While publishers seek to control access to their work as a means of preventing unlawful dissemination and copyright infringement, the protection of DRM technologies in licensing arrangements has serious implications for lawful access. For example, perceptually disabled researchers and students may find themselves at a disadvantage if vendors are reluctant to remove the DRM so the alternate formats might be created, despite the fact that this is permissible under both American and Canadian law.

Researchers and students may be unwilling to use material that restricts their ability to fully utilize and manipulate electronic content. Buczynski describes the development of e-Textbooks and explains their relative lack of success as a consequence of permitted usage limitations (2006, 169). Students, irritated by “limited access periods..., limited print capabilities..., tethering to a specific computer and file formats that require long downloading times”, and DRM technologies, are simply refusing to buy the electronic texts, thus reducing their ability to interact meaningfully with course material (Ibid, 174). Buczynski also notes the gap “between the business models employed by textbook publishers and student expectations for access” (2006, 174). While publishers are able to justify charging higher prices through providing online or electronic ‘extras’, such as lesson plans or tutorials, and argue they are responding to the demands of the market, if students remain unconvinced that the prices and usage limitations are “fair,” demand for e-Textbooks will remain low (Ibid, 171). The same is true for student use of library-licensed e-books. If the licensed material is difficult to access or has numerous usage restrictions, students are unlikely to fully utilize the material.

Rights, Values and Strategies for Negotiation

Discussion on rights and values has emerged in relation to e-books. Vendors must be made aware of and asked to respect library values and requirements, as well as the rights accorded to libraries under legislation, if e-book enterprises are to remain both economically viable and desirable. Algenio and Thompson-Young describe the conflict between libraries and publishers as one of values (2003, 114). Publishers seek to increase profits through product differentiation and protection of their intellectual property through licensing agreements and digital rights management technology. Libraries desire widespread access to electronic material through shared technological platforms and the full right to use copyrighted material for educational advancement within the limits prescribed by law. These conflicting sets of values have led to issues of power in the development of business models for e-books. Algenio and Thompson-Young note, “libraries’ purchasing power has not yet reached a critical mass,” and for this reason “publishers have the advantage to push certain prices and licensing terms” (2003, 119). Coyle supports this claim, and argues that the digital rights management technology used in e-books and protected through licenses has resulted in a situation where anything not explicitly permitted by the terms in the license is forbidden (2001, 321). This essentially gives rights holders the ability to ignore copyright law and has significant implications for access, scholarship and fair dealing.

To counteract these threats to library values, librarians must develop strategies when negotiating with vendors and publishers. While Pace supposes “[it is] far too late to cut off the strings that come attached to e-books,” it is not “beyond us to be careful about which strings we choose” (2005, 32). Librarians cannot expect publishers to come to the table with terms that meet all library requirements. It is instead up to librarians to “strike and reword at will” (Algenio and Thompson-Young: 2003, 119). Algenio and Thompson-Young recommend that each party take time at the beginning of the negotiation process to explicitly state which issues are important to them. This way, even if the issues are not included in the license itself, each side has a clear idea of the values underlying the negotiations. Issues that should be addressed in the absence of specific clauses include “standards, technology access, authorized users, subscription models, withdrawn material, statistics, selection/deselection, company solvency, archiving/preservation, continued access, and planned content obsolescence” (Ibid, 121). Wicht provides a useful list of questions to ask vendors, and suggests libraries inquire about the technology utilized, the material itself and also how users are able to access, print and copy content (2006, 16). Algenio and Thompson-Young and Brennan Croft both recommend using model licenses as a ‘checklist’ to evaluate acceptable and unacceptable clauses in vendor licenses (2003, 120; 2001, 168). The use of model licenses may help to stabilize and streamline e-book business models, benefiting both rights owners and user groups. The foundation for e-book business models is currently being built. Now is the time for librarians to ensure that these models properly accommodate library values, requirements and needs.

Review of e-book licenses and comparison with print

License	ILL restrictions	ILL based on US Law	Reserves and Multiple Classroom copies	Digital Rights Management	Disabled users	Expiration of copyright or period of exclusivity
<i>Print Books</i>	<i>None</i>		<i>No restriction Limited by number of physical copies</i>	<i>Copyright Act applies</i>	<i>Can create alternate formats (if not commercially available)</i>	<i>Copyright Act applies</i>
OCUL Model License	3.11 ILL allowed.		1.3, 1.4. Classroom and ereserves allowed. 3.6 May incorporate a reasonable portion in a coursepack.	9.5, 9.6.		
E-Book Publisher A	5.2. Within limits of copyright act for fair dealing.	Specifically referred to Canadian copyright. .	5.3 No course packs. Copies cannot be used for reserve butPURLs are allowed	No tampering of the DRM 6.1.2 of Schedule A.		
E-Book Publisher B	(Addenda only was supplied – no comparison possible)					
E-Book Publisher C	1.1h. Allows ILL through secure electronic transmission as demonstrated via Ariel and Prospero.	1.1h License must be in compliance with s108 of US Copyright. Specifically mentions the CONTU Guidelines		1.3 (g) may not reverse engineer, etc.		
E-Book Publisher D	16. Doesn't allow electronic transmission. ILL must be mail or fax.		1.4 allows course packs and ereserves.	1.4 doesn't allow reverse engineering.		
E-Book Publisher E	7. ILL not permitted.		7. Coursepacks or course reserve not allowed.			
E-Book Publisher F						6. Period of exclusivity before material can be distributed to non-authorized users.
E-Book Publisher G	ILL allowed.	Specific reference to s108 of US Copyright.				
E-Book Publisher H			5. Course pack and ereserve allowed.	6. Not allowed to alter or abridge the database.	5. Audio and Braille allowed	
E-Book Publisher I	ILL allowed.	Specific reference to s108 of US Copyright and CONTU guidelines.	5. Links can be made for ereserve and course websites. Multiple copies for classroom use with Gutenberg copyright notice.			

Differences between access and use of print books and e-books and the impact on scholarship

A small sample of e-book licenses currently in place in Canadian research libraries was reviewed to compare activities permitted under e-book licenses and activities permitted under the *Copyright Act* without permission or payment of royalties to the rights holder. The Act provides users' rights under fair dealing and a number of exceptions. Examples include providing for interlibrary loans and provisions on access to the perceptually disabled.

These users' rights exist under the *Copyright Act* and can be modified by contractual agreement. A licensing agreement between a library and a publisher is a contract. Contract law and copyright law exist side by side. When a library enters into an agreement with a publisher to give up its users' rights, the contract takes precedence over the *Copyright Act*. For example, if a library and a publisher agree in a contract that fair dealing will not apply to activities that are specified in the contract, then the contract's provisions prevail regardless of what the *Copyright Act* provides.

Licensing agreements are an important part of library practice. Libraries must be careful about the restrictions they agree to when they sign these agreements. It is quite possible for a library to enter into a licensing agreement that restricts its users' rights under the *Copyright Act*.

If a library does agree to restrictions in a licensing agreement, it must abide by the terms to which it agreed. If it does not do so, the library risks being sued for breach of contract. As a matter of good legal and institutional practice, a library must honour the terms and conditions of an agreement it has signed with a publisher.

The small sample of e-book licenses currently in place in Canadian research libraries reviewed in the preparation of this report did reveal that there are restrictions agreed to in some current e-book licenses that negate users' rights or the use of the exceptions provided under *Copyright Act*. To address the relationship between a contract/license and the Copyright Act, some licenses include wording such as the following:

Nothing in this Agreement shall in any way limit the ability of the Licensee to engage in or conduct any activity that would not constitute an infringement under Canadian copyright laws, in respect of a copyrighted work.

Interlibrary Loan

Under section 30.2 of the Copyright Act, libraries, archives and museums and their staff are allowed to act on behalf of their users in fair dealing. In the CCH judgment¹, the Supreme Court of Canada clarifies this further and in paragraph 49 states that libraries can act directly

¹ <http://csc.lexum.umontreal.ca/en/2004/2004scc13/2004scc13.html>

for their users under section 29 of the Act (fair dealing) without using section 30.2 (library, archive and museum exception). Interlibrary loan (ILL) and photocopying services that libraries have traditionally offered for copyrighted materials are allowed under the Act.

Licenses vary considerably in their response to interlibrary loan. Some licenses do not mention interlibrary loan at all. Licenses with clear language state that interlibrary loan is allowed or a library or individual *may copy and print portions of the materials ... to the extent permitted under Canadian law pursuant to the doctrine of fair dealing*. Others restrict ILL to mail or fax and others completely ban ILL. This range of provisions has led to confusion among interlibrary loan departments. Some interlibrary loan departments will refuse interlibrary loan from any e-resources for fear of violating contract provisions. In other cases, ILL departments may be providing interlibrary loans despite the fact that a license provision might not allow for ILL.

Jurisdictional Conflicts

Interlibrary loan provisions illustrate jurisdictional conflicts. Canadian law governs CARL Libraries, however, many licenses have provisions stating that US copyright law governs all transactions. To quote from one license:

...copies must be made in compliance with Section 108 of the Copyright Act of the US and with guidelines developed by the National Commission on New Technological Uses of Copyrighted Works (CONTU Guidelines)...

In comparing section 108 of US law with sections 30.1 and 30.2 of the Canadian Copyright Act, many similarities in the rights of libraries in both countries are evident. There are also differences. If one looks at S. 108(g)(2) of US copyright, US libraries are prohibited from interlibrary loan that provides a substitute for subscription to or purchase of a copyrighted work:

Provided, That nothing in this clause prevents a library or archives from participating in interlibrary arrangements that do not have, as their purpose or effect, that the library or archives receiving such copies or phonorecords for distribution does so in such aggregate quantities as to substitute for a subscription to or purchase of such work.

The CONTU Guidelines were drawn up in the 1970's to provide guidance to US libraries on how to comply with S. 108(g)(2) and many US librarians consider the guidelines as binding as copyright law. Essentially, a borrowing library is to limit requests to no more than five articles from the most recent five years of a specific journal. A request for a sixth article would constitute a violation of the CONTU Guidelines. To avoid violating the CONTU Guidelines the library would pay copyright royalties after the 5th article is requested or subscribe to the journal. There are onerous record-keeping requirements in conjunction with the CONTU Guidelines. CONTU Guidelines are an American construct and Canadian interlibrary loan departments are not set up to comply with their requirements. The risk to

Canadian libraries, in agreeing to conditions to which they cannot comply, such as the CONTU Guidelines, is untested but illustrates the necessity of operating under Canadian laws.

E-book Usage: Reserves, Multiple Copies and Persistent URLs

Licenses vary from allowing course packs and/or e-reserves to not allowing them. A few licenses explicitly allow persistent URLs² while most licenses in the sample ignored them.

Faculty want their students to read the same material for classroom discussions. Typically in the paper environment and until recently, libraries have relied on the Access Copyright or the Copibec license (in Quebec) for multiple classroom copies, course packs and multiple copies of photocopies of reserve readings. In the digital environment, the Access Copyright and Copibec licenses do not apply since they are reprographic licenses (dealing only with print copies) As well, since the CCH decision, educators have argued that multiple copies in an educational setting are covered under fair dealing. This point is made in CMEC's Statement of Case in hearings before the Copyright Board of Canada:

In the digital environment, faculty expect the same or better access as in the print world and have difficulty understanding the differences in licenses let alone the differences between what is permissible under the Access Copyright Agreement and licenses negotiated for digital materials.

Digital Rights Management

A major difference between e-books and e-journals is that most e-book distributors protect their e-books with DRM (Digital Rights Management). For example, with Ebrary, users can only print five pages of an Ebrary book at one time. With other e-books, the DRM makes it difficult to copy more than one page of a text at one time. In the print environment, copying a reasonable number of pages is permitted. While e-journal aggregators monitor for things like systematic downloads, it is normally quite simple for users to print off or save an entire journal article. E-books differ significantly from both the e-journal and print experience of most users.

All licenses in the e-book review had general or specific references against tampering with the DRM. Legal copying under fair dealing, preservation, interlibrary loan, and alternate formats for the perceptually disabled are user rights inhibited by DRM. It is important to note that while circumventing DRM would be a violation of such a license, it is not a violation of Canada's copyright law.

² A persistent URL or PURL is short for *persistent URL*, a type of URL that acts as an intermediary for a real URL of a Web resource. When you enter a PURL in a browser the browser sends the page request to a PURL server which then returns the real URL of the page. PURLs are *persistent* because once a PURL is established, it never needs to change. The real address of the web page may change but the PURL remains the same.
<http://www.webopedia.com/TERM/P/PURL.html> accessed January 10, 2008

Under section 30.1 of the Copyright Act, libraries, archives and museums may make an entire copy of a copyrighted work for the purposes of preservation and maintenance of the collection. The circumstances under which a library can copy an entire work for preservation are narrowly proscribed, but it is nonetheless a valuable library right. This right is particularly useful when an original work is in an obsolete format. For example, the University of Calgary Library recently migrated part of its collection of Beta format VCR cassettes, which are now obsolete, onto DVDs. If an e-book format becomes obsolete, will a library have the opportunity to migrate the e-book to a new format? Or will DRM provisions in a license prevent the library from exercising its right under the Act to make preservation copies?

Similarly, under section 32 of the Act, a person with a perceptual disability or a non-profit organization acting on behalf of that person can make a copy in an alternate format that the person can use. Again, in the e-book environment there are restrictions as to when this right can be exercised. One of the sample licenses allowed this:

Neither the licensee nor any authorized User may, without the Publisher's prior written consent alter, abridge, adapt or modify the Database, except to the extent necessary to make them perceptible on a computer screen or as otherwise permitted in this license to Authorized Users.

The other licenses do not mention provisions for alternate formats for the perceptually disabled.

As DRM interferes with the ability to make a legal copy of a chapter of a book, DRM also interferes with the ability to make a legal copy of that chapter for interlibrary loan.

DRM also has implications at the expiry of the copyright term. Once copyright has expired, there are no limits on copying the work. Does DRM expire with copyright or do the license provisions extend onward? Only one of the licenses addressed the expiry of rights.

Many research libraries have undertaken massive, collaborative digitization projects of works in the public domain. Frequently, the licenses for these works have a period of exclusivity that restricts the e-book copies to use by the licensed organization and its authorized users. These provisions may be reasonable given that otherwise many of these works would be unavailable digitally. That said, guidelines regarding reasonable periods of exclusivity would help libraries decide whether license terms for public domain materials are acceptable.

Digital Rights Management places limits on activities that are allowed by the Copyright Act. Ideally, e-books would have no DRM. E-book vendors should be encouraged to follow the e-journal practice of not restricting use or access with DRM, but to monitor for systematic downloads. When e-books are protected by DRM, the license needs to allow for library circumvention of the DRM for non-infringing purposes under the following circumstances:

- the exercise of users' rights, including fair dealing under the Copyright Act;

- the ability to create formats of e-books for persons with perceptually disabilities;
- the preservation of e-books including the ability to migrate them to another format if necessary;
- at the expiry of DRM license provisions when the copyright expires or after a reasonable period of exclusivity for a digital work that is in the public domain.

Impact of E-books on Scholarship

The research library's role is to collect, organize and preserve works of scholarship. E-Book collections are in the early stages of development and the terms and conditions of their purchase will determine their impact. As noted in the literature review, there is little information or analysis available yet on the impact of e-books on scholarship. The impact on scholarship would arise from the inability to print selected texts for further study and comparison with other texts, inability to lend material to scholars off-site, and the lack of access for perceptually disabled users to research materials. The literature does show that ease of access and ease of use will determine the success of e-books in the academic environment (Buczynski 2006, 174).

Outline of the issues of access and use of e- books in Research Libraries including recommendations for the CARL Copyright Committee

Although there is a plethora of literature available on e-books and the development of e-book standards, significant gaps in the discourse remain. There is little discussion of the impact of restrictive licensing agreements on faculty or student use of e-book material. Analysis of the threat to libraries' ability to archive this type of licensed material also has yet to be fully considered. For the purpose of this study, however, it is significant that documentation on e-book licensing in academic libraries in Canada is virtually nonexistent. Although many Canadian academic libraries house extensive e-book collections, thorough analysis of the impact of e-book licensing agreements on access has yet to be undertaken. The CARL Task Group on E-Books hopes to initiate the discourse by exploring the issues of access as they differ between print books and e-books in light of the licensing agreements CARL libraries have with various licensing agencies and publishers, and also through examining the potential stress of restrictive licenses on scholarship and the scholarly communication process.

From the literature review and the e-book comparison with print, it is clear that research libraries need to take a leadership role and determine the best strategies for e-book negotiations to ensure favourable access conditions for the future. Given the success with e-journals, a statement of principles followed by the creation of a model license would again position Canadian research libraries in the vanguard of access to digital scholarly resources.

The Task Group on E-Books recommends that the CARL Copyright Committee either create or endorse a statement of principles for the licensing e-books and use the principles to

inform the creation of a model license. A number of organizations have approved licensing principles, amongst them

Canadian National Site Licensing Project – Principles for Licensing Electronic Resources (2000): <http://researchknowledge.ca/en/about/documents/LicensingPrinciples.pdf>

AALL(American Association of Law Libraries) (2004):

<http://www.aallnet.org/committee/reports/LicensingPrinciplesElecResources.pdf>

ARL (1997): <http://www.arl.org/sc/licensing/licprinciples.shtml>

IFLA (2001): <http://www.ifla.org/V/ebpb/copy.htm>

MIT Libraries (1997):

http://libstaff.mit.edu/colserv/digital/licensing/principles_licensing.html

The principles must include, at a minimum:

1. a guarantee of user rights as permitted under Canadian copyright law;
2. no digital rights management, or limited DRM with circumvention permitted to exercise non-infringing user rights under the Act;
3. the governing law must be Canadian;
4. the ability to audit for price comparison (limited confidentiality/nondisclosure clause);
5. detailed user information and analysis to gauge impact on scholarship;
6. removal of content clause; and
7. permanent copy provisions.

The Task Group on E-books recommends that a model license for e-books be created jointly with appropriate Canadian partners to ensure uniformity in contract terms.

At the time of writing, there is a sense of immediate need among research libraries for a Canadian model license, based on Canadian law and copyright jurisprudence to effectively and authoritatively negotiate e-book licenses for the benefit of the academic community.

Owing to the size and complexity of academic libraries, library negotiators need to ensure all licenses replicate the same terms. Without this condition, library staff will tend to apply the most restrictive terms to all digital content. (Rights management software will not resolve this issue because the interpretation and implementation of legal doctrines such as fair dealing and other exceptions require a more nuanced control than is available through technological prohibitions.)

Conclusion

There is a danger that research libraries are adding e-books to their collections using agreements that significantly reduce users' rights. There is some urgency to improve this situation before it becomes a de facto standard. The Task Group on E-Books makes two recommendations to the CARL Copyright Committee: to create or endorse a statement of principles for licensing e-books, and to create a model license for Canadian research libraries.

Works Consulted

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