Intellectual Freedom and Academic Libraries: New Challenges

By J. Douglas Archer

All libraries strive to provide a connection for their users to the accumulated information, knowledge, and wisdom of humankind. Most libraries, regardless of their size, contribute to the preservation of that accumulated wealth. This ranges from the largest collections with their corners of esoterica to the smallest public library's holdings of local history. Academic research libraries in particular, along with the great urban research libraries and national libraries, affirm preservation as a core value central to their being. This has been the case since their founding in the Middle Ages. [Note: for simplicity's sake "book" will be used throughout this essay to refer to all texts including books, documents, pamphlets, periodicals, etc. Exceptions will be noted when appropriate.]

A revolution is underway. While books will continue to exist in print on papyri, vellum, paper, and microfilm into the far distant future, new works are being "born digital." It is likely that in only a short period of time most if not all new information will become available only in digital form. Librarians are facing a revolution as great, if not greater, than that ushered in by the printing press. Information, knowledge, and wisdom will cease to be fixed in a tangible form. It will come into being as electrons in motion.

Of course, librarians have recognized for several decades that the information environment was in flux. Saying that this is a revolutionary age is a cliché. The library world has generally (with a bit of foot dragging and a few wails of anguish from a minority) welcomed changes such as the digitization of catalogs, the arrival of desk top access to serials, and the growth of the Internet -- albeit at considerable cost. On the whole this has been an incredibly positive development. The ability of citizens to contribute to public discourse has been widely democratized and access to information has been enhanced and expanded, thanks in large part, to libraries providing free access to the Internet to their primary communities and to the general public.

This is only the most obvious result of digitization and the arrival of the Internet. An even greater change is underway and its implications are only beginning to be realized. Until recently, at least since Guttenberg's invention of moveable type, the major players in the information industry have had relatively clear and distinct roles. Writers created; publishers published; printers printed; vendors distributed; retailers sold; readers bought and read; and lastly, libraries collected, made available to the public, and preserved for posterity. While great changes have occurred within those various segments of the book world over the centuries and some of these roles have at time been combined, these relationships have remained fairly stable.

Until recently, once a book was purchased, physical copies were no longer the concern of authors, publishers, or booksellers – with the exceptions of copyright violations and royalties. Operating under the principle of "first sale," once an item was purchased, one could do anything one liked with it – except duplicate it. The item belonged to the buyer. No one could alter it without the permission of the owner. If errors were detected or new information became available, new editions or an errata sheet were the only effective alternatives for

making changes in the published text. Of course, in extremely rare cases, at least in the United States, a publisher might be obligated to recall and pulp a published work. But even then copies tended to survive. The historical record, the creative art, the original text -- however erroneous or libelous -- remained intact for later study and analysis. Censorship, whether by government or by other authorities, was extremely difficult.

Today, two related changes threaten this arrangement, the shift in original production of texts from print to digital format and the change in the role of libraries from purchaser to licensee. Content is created in digital (read "fluid") form and, in an increasing number of cases, libraries no longer actually buy books, they merely purchase licensed access to digital content. Leasing schemes have been around for a long time but, until recently, have not been a major model for publishers. Publishers were quite happy to be rid of any responsibility for the physical item after its sale since an overflowing warehouse was not generally considered a good thing.

When libraries lease access to content from publishers or vendors, libraries no longer own and, therefore, no longer control access to that content and its preservation. Until now, the library served as a primary guarantor or preserver of the cultural patrimony. In the new digital age, by selling access rights rather than content, publishers are becoming de facto custodians of that content – whether they have thought through the implications or not. One consequence of this shift from sale of content to licensing access to content is that publishers will be free to alter content at will if they so choose -- and if they hold copyright. In the paper world, such alteration was cost prohibitive. In the digital future the fact that content may exist only in digital format makes such alteration relatively easy and cheap.

Hints as to what might be coming have popped up many times over the last two decades as journals and newspapers have gone digital. Most librarians have experienced the instability of aggregator packages in which journal access is here today and gone tomorrow (Quint, 2010). If one reads the license agreements, this is usually well within the rights of the vendor as publishers jockey for enhanced profits for their journals in an ever shifting market. This inherent fluidity is a major problem in guaranteeing continued access to journal content for individual institutions. However, it does not necessarily threaten the historical record as journal content usually remains unaltered though its location shifts.

Institutional concerns for journal content preservation are being addressed by several means. One is the loading of back issues of serials into multiple, more or less, permanent storage sites via contractual arrangements such as LOCKSS (lots of copies keep stuff safe). Another is self-sustaining projects such as JSTOR and Project Muse that contractually guarantee access to back runs of journals.

These access issues are not, however, the most challenging ones facing libraries as preservers of the cultural record and defenders of intellectual freedom. As early as 2002 Elsevier, already a major player in international journal production in the sciences, was discovered to have removed or altered the content of numerous journal articles which they published – after they had been available for some time through various databases (Foster, 2003). It's one thing to sell off access rights to a different vendor. It is quite another to alter the text itself. In the former case, the content remains available if somewhat elusive. In the other, the content itself has been made permanently unavailable.

Publishers argued they were merely correcting erroneous information. However, by removing or editing texts after the fact, the publishers removed the ability of others to learn from or analyze the source of those "errors."

This argument that "we're only correcting errors" keeps popping up with dismaying regularity. Those who make the argument apparently fail to see how the possibility of altered texts undermines the credibility and reliability of the historical record. This author

heard the same argument from a Google Books project manager during a webinar last year. The project manager seemed genuinely surprised (as if he hadn't thought of the implications) when challenged over Google's retention of the right to alter digital copy in the Google Books corpus to "correct errors" (Badger, 2010).

This is a radically new challenge to intellectual freedom. Until now the library community has organized itself in cooperation with authors, publishers, and booksellers to fight government censorship. It has relied upon the First Amendment's guarantees of free speech and a free press to oppose efforts to censor content. While the threat of government censorship remains, censorship in its more generic form from non-governmental sources such as publishers and vendors may become the greater threat. There are no constitutional provisions to protect content in such cases. Rights to content are reduced to contract law.

In the book *1984*, Winston Smith was employed by the Ministry of Truth to edit the news -- not the new news but the old news, the historical record. He sat at his desk excising unpopular people and views and substituting acceptable ones using scissors, paste, and a pneumatic tube to the Ministry's incinerators (Orwell, 1954). While extremely difficult to accomplish in a paper environment, Orwell made it seem frighteningly plausible. With the coming of the all digital age, such a scenario is becoming all too possible. Whether it is likely to occur will depend in large part on the actions of authors and publishers on the one hand and libraries, librarians, and the library profession on the other.

While the threat of government censorship remains ever present and requires continuous vigilance, the greatest threat to the integrity and availability of content may shift to publishers and vendors. In the past it was in the best interest of the publisher to see that published work became widely available – and remained available. First, it fit the self-understanding held by many in the industry that they were fundamentally serving the public good – of making new ideas, insights, knowledge, wisdom, and creative endeavors available to their readership. Second, it maximized their potential profit. Publishing involves significant investment in editing, printing, and marketing that would be wasted if a book were pulled from circulation. Therefore, for both idealistic and self-interested motives, it was best for publishers to defend their publications to the upmost.

With the advent of the born digital copy, the second motive for the defense of the text as published, self-interest in profit, could be significantly reduced. This in turn could open the way for alteration in digital text. If enough pressure were brought to bear upon a publisher, it might be in his or her best interest to do a "find and replace" on offensive text in order to make the "problem" go away. The recent republication of Mark Twain's *Huckleberry Finn* with the "N" word replaced throughout by "slave" is a good example of this capability if not intent (Schultz, 2011). Of course, in this case, the original remains available and the publisher certainly had the right to publish an altered edition of a work in the public domain.

Another issue related to the shift of libraries from owners to licensees of content is the loss of control over that content. Traditionally, once a library had purchased a book, it was free under the doctrine of "first sale" to loan that item as many times as it wished to whomever it wished until it became unusable. At that point the library had the option of replacing the item if it were still available for purchase or not. In the digital world, access rights can be limited in both time and number of uses.

In February 2011, HarperCollins attempted to do just that. It announced a change in its licensing agreements for electronic books that would have limited the number of uses for a set fee. Once the limit was reached, a new license (and payment) would be required. Needless to say a public furor developed and, after the dust settled, the proposal was withdrawn (Hadro, 2011).

In another widely publicized case, Amazon removed access (i.e., deleted the content from Kindles) to an edition of *1984* without prior notice to its customers. This came as shock because those customers had incorrectly assumed that they had actually purchased the book in question just as they would have if they had ordered a paper copy from Amazon. Not so; they had only purchased a license to access the content in question. One customer, a student who had added class notes to "his" book, and his professor sued. In light of the resulting negative publicity, Amazon settled out of court for a $150,000 donation to charity and a promise not to do it again except in certain cases and without advanced warning (Newman, 2009). To give Amazon its due, it removed the book because it discovered that it did not have the rights to sell electronic access to that particular edition of *1984.* (Please note the irony!) It was a wakeup call to readers everywhere. Just because someone purchases the right to download a book onto his or her e-reader, doesn't mean that he or she has purchased the content. He or she may only have purchased access rights.

While being suitably appalled by the potential implications for libraries and their reading publics of these various events, it must be admitted that 1) HarperCollins and Amazon were perfectly within their constitutional rights in proposing a new leasing model in one case and pulling a book for which they didn't have the rights to distribute in the other and 2) that publishers in general are being hard pressed in the changing digital environment to find ways to continue making a reasonable profit. Nevertheless, the potential threat to libraries is real. Will publishers remain steadfast defenders of the first amendment's press protection in the new all-digital environment? Will they continue to view libraries as friends and allies or at worst friendly rivals for the reading public?

In addition to these threats, there is the inherent insecurity of digital content. All users of the Internet have experienced the "here today, gone tomorrow" nature of websites. Website owners, particularly political candidates, are notorious for cleaning up their mistakes quickly. The "did I see it, or did I not" / "did she say it, or did she not" quandary is not limited to intentional alteration of content by its owners. Hacking and other unauthorized alteration is a constant threat. The media is filled with stories of the latest digital break-in – involving personal and corporate records. All of these activities were next to impossible in a world of printed publication.

New systems and accompanying guarantees will need to be developed to insure the integrity and reliability of digital content. Tracking changes in text as does Wikipedia is one approach. Authentication protocols are another. They have already been developed for U.S. government documents so that citizens and government officials alike can rely on official documents accessed via the Web (Authentication, 2011). Such protocols will need to be applied to the commercial world if trust is to be maintained in the "written" word.

Concerns such as these lead naturally and inexorably to another classic concern of libraries, patron privacy and confidentiality of their records. In order to guarantee that users are not overstepping licensing agreements, many vendors now require readers to set up personal accounts as a precondition for access to books licensed by a library for the use of its community. These reader records are then maintained by a third party on their own servers or in "the cloud." Since the privacy of library reader records are contingent upon the maintenance of a "reasonable expectation of privacy" (the assumption that libraries protect readers' privacy and the confidentiality of their records), providing personal information to a third party may compromise that expectation and consequently may eliminate the legal protections a reader might otherwise have enjoyed (Surveillance, 2011).

At this time the library profession certainly doesn't have all the answers to the questions posed by this shift from paper to digital publication. In fact, it doesn't even have all of the questions. And it knows it. In partial

response, the American Library Association recently established a Digital Content and Libraries Working Group to continuously monitor digital developments and recommend appropriate responses. In addition, it is in regular conversation with representatives of the publishing industry in hopes of ameliorating the most problematic aspects of this coming revolution. Hold on to your seats; the only thing of which we can be certain is change – radical change.

REFERENCES

Authentication.(n.d.). In gpoaccess.gov. Retrieved from http://www.gpo.gov/authentication/index.htm.

Badger, B. (2010, February 10). Google book settlement webinar.

Foster, A. L. (2003). Elsevier's vanishing act. *Chronicle of Higher Education*, 49 (18), 27-8. Retrieved from Academic Search Premier (ESBCOHost).

Hadro, J. (2011, February 25). HarperCollins puts 26 loan cap on ebook circulations. *Library Journal***.** Retrieved from http://www.libraryjournal.com/lj_home/889452-264/harpercollins_puts_26_loan_cap.html.csp

Newman, J. (2009, October 1). Amazon settles Kindle "1984" lawsuit." *PCWorld*. Retrieved from http://www.pcworld.com/article/172953/amazon_settles_kindle_1984_lawsuit.html

Orwell, G. (1954). *Nineteen Eighty-Four a novel*. London: Secker & Warburg, 41-43.

Quint, B. (2010). Rats!! *Searcher,* 18(2), 4-6. Retrieved from Academic Search Premier (EBSCOHost).

Schultz, M. (2011, January 3). Upcoming NewSouth 'Huck Finn' eliminates the 'N' word. *Publishers Weekly*. Retrieved from http://www.publishersweekly.com/pw/by-topic/industry-news/publisher-news/article/45645-upcoming-newsouth-huck-finn-eliminates-the-n-word.html.

Surveillance self-defense: Reasonable expectation of privacy. (2011). In eff.org. Retrieved from https://ssd.eff.org/your-computer/govt/privacy [See section, "Records stored by others."]

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