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e-Book Lending and the Future of Libraries

Introduction

Since the creation of e-books libraries have struggled with the practice of lending digital copies of books to their increasingly digitally inclined patrons. Complications have ranged from technological implementations (software and delivery issues), to outright refusal from publishers to sell copies of e-books to libraries, and outdated copyright laws that no longer protect a library's basic ability to lend media if it is in digital form.

To fully gain an understanding of the struggle between libraries and publishers in regard to e-book lending, it's important to know the major players and laws involved, as well as some history leading up to today's still-unresolved situation. First, we will examine each of the five major players and their wants, needs, challenges, and fears around e-book lending individually. Those five players are: 1.) Libraries 2.) Publishers 3.) Distributors 4.) Start-Ups and 5.) Government. Concurrently we will touch on those players' histories within the ongoing e-book lending saga. Following this analysis, we will postulate several plans for each of the current players to avoid 'extinction' and ways in which they might work together moving forward.

Part I: Libraries

At the crux of the issue is the public library system. Established to increase access to information for all members of the public and thusly contribute to a more informed and knowledgeable citizenry, libraries worry that they may suffer dwindling relevance should they not provide access to twenty-first century forms of information, such as e-books, and stay abreast of the ways in which the general public consumes media.

In Patrick Losinski's 2012 *Library Journal* article, "A Call for Vigilence on the Ebook Front", he writes:

> "Our users are being denied access to critical content, and the role of public libraries could change forever if this troubling trend is not reversed. We need to catapult user access to commercial content to the top of our digital strategy or preside over our declining purpose in society."

Librarians want to provide access to digital materials in an effort to remain relevant and useful in the twenty-first century, as more and more content becomes commonly distributed via digital methods.

In *Library Journal*'s 2011 survey report, "Ebooks the New Normal: EBook Penetration and Use in U.S. Public Libraries", 66% of public libraries reported a dramatic increase in e-book requests, and another 28% reported a slight increase. [1]

However, libraries' ability to cater to these demands has been severely curtailed by hesitant publishers, sluggish and unintuitive delivery technology, and a lack of laws in place to protect libraries' basic function of lending books, should those books happen to come in a digital format.

A number of libraries have joined forces with the "Readers First Initiative", which outlines libraries' struggle with e-books as follows:

> "Libraries have a responsibility to fight for the public and ensure that users have the same open, easy and free access to e-books that they have come to rely on with physical books. They face two major challenges. The first is that, unlike print books, publishers are not required to sell e-books to libraries -- and many do not. This is a complex and evolving issue. The second … is that the products currently offered by e-content distributors, the middlemen from whom libraries buy e-books, create a fragmented, disjointed and cumbersome user experience."[2]

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1 http://www.thedigitalshift.com/2011/10/ebooks/dramatic-growth-ljs-second-annual-ebook-survey/

2 http://readersfirst.org/

Up until earlier this year, several publishers outright refused to sell digital copies of their books to libraries. Even now, with all of the “Big Five” publishers selling to libraries in some form or another, each publishing house has devised its own terms of sale, ranging from HarperCollins’s “26 rentals” rule in which library e-books “expire” after a title has been checked out 26 times, to Random House’s e-book price hikes with prices for library books hovering around 3 times the standard list price. There exists no common terms of “sale” (though it is important to note the “sales” in question are actually leases or licensing agreements) among publishers, and no compelling reason or regulations to encourage them to jointly decide on a method that works best and would create a more efficient method for libraries and vendors to grow their digital collections moving forward. [3]

Libraries are also met with frustration from patrons, who find the process of borrowing an e-book unintuitive, cumbersome, and unnecessarily complicated by artificially imposed limitations on digital copies. As Janet Balas writes in her 2012 article, “Ebooks: Their Time Has Finally Come”:

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3 http://www.thedigitalshift.com/2012/02/ebooks/a-guide-to-publishers-in-the-library-ebook-market/

> "Library users do not care about the reasons for the limitations— most are savvy enough to know they are artificially imposed—they simply want easy access to the titles they wish to read"

These slow, clunky processes are not helped by the information "silo"-ing that happens as a result of libraries using third party vendors (primarily 3M's Cloud Library and OverDrive) to both deliver and lease e-book collections. A glance at the New York Public Library's e-books page shows numerous platforms for e-book lending – and no central search option. This means patrons have to first log into their library site, then sift through each platform individually to search for their desired book. And, upon finding a digital title (if it exists), patrons are often met with lengthy waitlists – a frustration for many who realize that, from a technical standpoint, such wait times are completely unnecessary in regard digital copies.

Only Douglas County libraries in Colorado have experimented with creating their own delivery system (using an Adobe content delivery product) and negotiating their own deals with publishers (usually smaller houses outside of the Big Five) to fully "own" e-book copies, hosting the data on their own servers and delivering to patrons via their Adobe system rather than going the traditional vendor route. [4]

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4 http://www.npr.org/2013/08/05/209114978/e-books-strain-relations-beween-libraries-publishing-houses

Part II: Publishers

It's easy to understand and sympathize with the hesitation coming from publishers. The threat of readers needing only to obtain a library card to receive books en masse for "free" would put publishers at risk of extinction. In order to continue to create book content at the levels expected of them, publishers need healthy revenues and a stable economic situation. In "E-Books in Libraries: a Briefing Document developed in preparation for a Workshop on E-Lending in Libraries" (a report produced in conjunction with Harvard University), HarperCollins VP Josh Marwell is quoted, summarizing the issue from a publisher's perspective:

> "We have serious concerns … selling e-books to libraries in perpetuity … would undermine the emerging e-book eco-system, hurt the growing e-book channel, place additional pressure on physical bookstores, and in the end lead to a decrease in book sales and royalties paid to authors."

So perhaps it is unsurprising that until recently, many major publishers flat-out refused to sell digital copies to libraries. However, even now, with all major publishers participating, their methods and lease terms insisted upon in e-book licensing agreements are varied and complex.

The American Library Association's "Transforming Libraries" website outlines where all five of the major publishing houses currently stand in regard to providing e-book access to libraries (as of October 2013). The current e-book marketplace for libraries is summarized as follows:

> "***Hachette*** announced on May 1, 2013, that it will immediately begin offering all of its e-book titles to libraries simultaneously with print editions and with unlimited single-user-at-a-time circulations. The initial price will be three times the highest-price edition then in print. One year after publication, the purchase price will drop to 1.5 times the highest-price print edition.
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> ***HarperCollins*** has always offered e-book titles to libraries. In February 2011, the company announced that new titles licensed from library e-book vendors would be able to circulate only 26 times before the license expires.
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> ***Macmillan*** announced on January 24, 2013, that a small group of its e-book titles would be available for the first time to libraries before the end of March 2013. Working with multiple distributors, Macmillan offers over 1,200 backlist e-books from its Minotaur Books mystery and crime fiction imprint. Once purchased by a library, the titles will be available to them to lend for two years or 52 lends, whichever comes first. In August 2013, the company added Entangled Publishing titles to its e-lending pilot. Among their most popular e-book titles still denied to U.S. libraries are: "Killing Kennedy" by Bill O'Reilly and Martin Dugard and "Wolf Hall" by Hilary Mantel.
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> ***Penguin Random House's*** models of working with libraries right now maintain pre-merger characteristics. Penguin's titles currently are available

to libraries with a one-year expiration date on e-books licensed to libraries, and library pricing is similar to what is offered to individual consumers. Like HarperCollins, Random House always offered its e-book titles to libraries. In March 2012, the company dramatically increased prices for libraries beyond what individual consumers pay. Random House offers perpetual licenses to libraries.

Simon & Schuster announced on April 15, 2013, that it would begin a one-year pilot with New York Public Library, Brooklyn Public Library and Queens Public Library. Simon & Schuster is providing access to all of its titles for one year, using 3M as the distributor for New York and Brooklyn and Baker & Taylor for Queens. Among their most popular e-book titles denied to most U.S. libraries are: "Bruce" by Peter Ames Carlin and "Team of Rivals" by Doris Kearns Goodwin."[5] (American Library Association, Transforming Libraries)"[2]

Part III: Distributors & Technology Issues

Currently, most e-lending at libraries is actually done through one of two major distributor platforms (3M's Cloud Library, or OverDrive). These distributors serve

5 http://www.ala.org/transforminglibraries/frequently-asked-questions-e-books-us-libraries

as middle-men vendors, negotiating deals with publishing houses and then selling packages of e-books along with their distribution platform to libraries.

In the Losinski piece, he notes: "It's remarkable that members of the public who do download ebooks from public libraries tolerate the clunkiness and complexity of our ebook downloading process. That tolerance is bound to wear thin as commercial lending options emerge as real competition to public libraries."

A visit to the New York Public Library's webpage for e-book lending illustrates this perfectly. The page brings you to several silos of e-book content – all hosted and distributed through different platforms. There's OverDrive, 3M, and no less than three additional options for children's e-book content (TumbleBookCloud, TumbleBookCloud Jr., and BookFlix). No one search exists to search through each of these silo-ed delivery methods, so a patron must visit each vendor page individually to search for a title. Once a title is located, a patron very often is met with a waiting list for the title – a frustrating extra hurdle, considering that it is clearly an artificial limitation, given the nature of digital materials.

Notably, despite the Kindle's prevalence as a favored e-reader device, only OverDrive has inked a deal with Amazon to provide e-books to patrons' Kindles via the public library system. And, even so, the wireless delivery and ease of downloading books that most Kindle users expect when loading a new title onto their device is missing via

OverDrive's delivery method; instead users must take multiple steps to download the text onto their computer, then break out power cords and transfer the title to their device manually – an amount of effort unexpected and tedious in today's wireless culture.

Part IV: New Commercial Entrants & Start-Ups

As mentioned in the Losinski article quoted above, commercial lending options have begun to emerge as competition to public libraries. Due to the complicated and tedious nature of existing distributor platforms, there is considerable opportunity for innovators in the digital start-up realm to create beautiful, seamless platforms that provide a more user-friendly option – for a price.

These subscription-based services, which often bill themselves as "Netflix for books", offer elegant user interfaces and wireless delivery of e-books to consumers who pay a monthly price for unlimited, unencumbered access to the services' collections of books. They include: Oyster ($9.95/month), Scribd ($8.99/month), eReatah (options starting at $14.99/month), and Amazon's Kindle Lending Library, which is included with Amazon Prime Memberships ($79/year). [6]

As it stands now, the convenience factor is comparatively very high when using these commercial lending platforms vs. a traditional library's delivery platform.

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6 http://techcrunch.com/2013/11/06/startups-pitching-a-netflix-for-e-books-may-be-a-tough-sell/

These services stand to gain considerable market share of more affluent readers who don't mind spending a few dollars a month for convenience and ease of use, pulling them away from public libraries, who depend on their large patron base to stay relevant and provide services also for less wealthy patrons who may rely on the free aspect of libraries to obtain their information and not have the resources to subscribe to a paid service.

As an additional bonus, these subscription services often incorporate social media aspects, allowing readers to rate and comment on books and connect with each other in an online community.

Part V: The Law

In copyright law, the "first sale doctrine" provides a basis for many practices commonly taken for granted in our everyday lives – lending and re-selling books and other media – by effectively limiting copyright control to the period of time before a first sale of the item is made.[7] Specifically, it states:

> "…the owner of a particular copy or phonorecord lawfully made under this title, or any person authorized by such owner, is entitled, without the authority of the copyright owner, to sell or otherwise dispose of the possession of that copy or phonorecord."

[7] http://www.mhpbooks.com/the-question-of-first-sale-doctrine-and-ebooks/

The importance of this seemingly small section of copyright law is explained by the American Library Association as thus: "Quite simply, first sale is what allows libraries to do what we do – lend books and materials to our patrons, the public."[8]

However, in the case of e-books, this cornerstone legislation rarely applies. Digital copies of books are almost always licensed or leased to libraries, not sold outright. In the terms of these leasing agreements, numerous restrictions exist to limit the use of digital copies, and the law that previously protected the libraries' activities when dealing with physical books offers no help in the matter. [9]

Of course, given the easily replicable nature of digital works, the ability to freely re-sell and lend e-books may have catastrophic implications for the publishing industry. While, clearly, the current system won't work as-is in the lending of e-books, it seems that some form of public policy should be developed that can both preserve the economic viability of the publishing industry and provide for access to information via libraries for the general public.

To that end, organizations like the DPLA (Digital Public Library of America, a non-profit organization) are working diligently as an advocate for public access to digital information. Its mission statement reads: "The DPLA works, along with

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[8] http://www.ala.org/advocacy/copyright/firstsale

[9] http://www.thedigitalshift.com/2013/03/copyright/why-we-miss-the-first-sale-doctrine-in-digital-libraries/

like-minded organizations and individuals, to ensure that this critical, open intellectual landscape remains vibrant and broad in the face of increasingly restrictive digital options. The DPLA seeks to multiply openly accessible materials to strengthen the public option that libraries represent in their communities." (The organization has also created a portal that links individuals to information found in public digital collections across the web, and an open API that encourages developers to make applications that utilizes this wealth of existing public digital media.)[10]

Though no new laws have been enacted just yet that serve in a similar capacity as the first sale doctrine, this could clearly serve as an integral component in finding a solution to the e-book lending problem.

Part VI: Suggestions

Only time will tell how this all pans out – though in an ideal world, all of the major players involved here could conceivably co-exist profitably.

One such model could be conceived of in this manner:

Libraries & The Law: Libraries should lobby for copyright law changes that ensure they have the right to provide some form of access to digital materials. However, this cannot simply be a replicate of the existing "first law doctrine", since that may

[10] http://dp.la/info/

harm publishing companies to an irreparable degree. Instead, they should seek a mix of public policy that demands publishers offer libraries some degree of access to digital titles that are offered commercially and pushes for publishers to decide on a standardized file format and licensing terms that will simplify the process of growing an e-book collection in public libraries. The law could build in windowing opportunities that allow publishers a chance for some additional revenue by allowing a limited period of time directly after publishing a book before it will be available to libraries (similar to the method used in the movie industry, wherein films are released first in theaters before being available on DVD or for rent).

Distributors: To simplify and streamline the process of obtaining books, libraries should request that publishers sell directly to them as individual institutions or through consortia as is sometimes done with physical book buying for library systems, rather than selling to distributors who will re-sell to the libraries. Instead, distributors should refashion themselves as primarily software designers who can load books (in this scenario those e-books will, by law, be required to be in a standard format to allow for this precise arrangement) from any publishing house that has an agreement with its library client. This will dispose of the "silos" and frustration of having multiple platforms in use at one library system. If distributors refashion themselves as software/platforms only without the added task of selling e-book content, libraries will be free to simply choose the platform that suits them best, and then load content from *any* publisher that they have purchased from onto the platform of their choice.

Publishers: In negotiating licensing terms with libraries, publishers should push for windowing opportunities as outlined above in exchange for access to all e-books that are available commercially for purchase. Additionally, to fight against the "get one library card and never buy a book again" concern mentioned by Macmillan president Brian Napack in the Harvard study, publishers should negotiate for a standard limiting method on public e-book lending that will both ease the process for libraries who won't have many different licensing styles to keep track of, but will still provide a degree of protection for publishers.

Rather than imposing more artificial-seeming restrictions such as the "one user at a time per book" method that most libraries employ now, publishers should seek out a limit that makes more sense to and is more convenient for library patrons, such as "one book at a time per user", in which library patrons may have one digital title checked out at a time – a restriction that is familiar to consumers of digital media, who already accept such terms while lending movies through Netflix, for example, which only allows a user to watch one film at a time.

Start-Ups: Start-ups can continue to exist for those who want unfettered and unlimited access to books at a monthly price, with no limitations of how many can be checked out at once, and who also value the social community aspect of such services.

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