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Toward Information Equity Among Academic Libraries: Sharing E-books in the Manner of Print (Lightning Talk)

Abstract

For two decades, publishers and vendors have used e-book licenses to back academic libraries into a corner. These rightsholders and intermediaries lease rather than sell content, and they dictate what constitutes permitted downstream usages. Libraries have historically used interlibrary loans to fill gaps in collections, but publishers and vendors unilaterally claim that interlibrary loans of entire e-books infringe on their exclusive rights. As a result, libraries at small and mid-sized colleges and universities are constrained to providing patrons access only to e-books that fall within the limits of modest collections budgets. Grounded on the premise that e-book interlibrary loans are needed to advance and protect information equity in higher education, this presentation invites interdisciplinary discussions and collaboration with respect to the future of resource sharing in academic libraries.

1. Introduction

Monograph collections in academic libraries are developed and managed to support teaching, learning, and research needs. Notwithstanding the breadth of collections curated in both print and digital formats, no library exists – regardless of its prestige or the size of its budget – that can acquire everything. Interlibrary loans are a long-established practice used to fulfill patron needs that are unmet by local collections. Despite the success of regional and national resource sharing networks for e-journal articles as well as books in print, the burgeoning acceptance of e-books over the past twenty years has presented unique challenges to interlibrary loan efforts (Frederiksen et al. 2011; Horava 2009; Machovec 2013; Percy 2013; Walters 2013; Walters 2014; Wicht 2011; Zhu 2018). In order to advance and protect information equity in higher education, librarians must champion the right to share the entirety of both purchased and licensed e-books through interlibrary loan workflows and technologies.

2. Theoretical Framework

The conceptual lens through which this issue in higher education is scrutinized owes much to William Fielding Ogburn's century-old "cultural lag" theory. According to Ogburn (1964), "lag occurs when one of two parts of culture which are correlated changes before or in greater degree than the other part does" (86). The independent variable in this scenario includes not only e-books, but also the digital technology to store and access them: networked library discovery, retrieval, and resource sharing systems. The adaptive culture is not limited to interlibrary loan practices, but it also encompasses relevant legal principles as well as e-book publisher and vendor licensing norms. Cultural lag theory is apropos to guide interdisciplinary investigations

into e-book interlibrary loans for the reason that Ogburn (1947) chose emerging publishing technologies to demonstrate derivative effects in teaching, learning, and research cultures.

3. Fair Dealing Exceptions

Since exceptions to copyright are crucial to lawful reproduction in libraries, and since the need exists to digitally reproduce e-books to circulate them (Chiarizio 2013; Müller 2012), fair dealing is central to discussions of e-book interlibrary loans. From the outset, librarians and legal counsel ought to collaboratively perform fair dealing analyses as expounded in *CCH Canadian Ltd. v. Law Society of Upper Canada* (2004). In particular, librarians must consider factors of the analytical framework such as the purpose, character, amount, and effect of the dealing. These analyses aim to uphold the dual nature of copyright that is described in *Théberge v. Galerie d'Art du Petit Champlain Inc.* (2002), namely, that copyright not only recognizes the rights of creators, but that it addresses the limitations of those rights. Digital reproductions of entire e-books for the purpose of interlibrary loans may be deemed fair if technological controls were employed to maintain balance between user rights and the exclusive rights of copyright holders. Explicitly, access to e-book titles would be suppressed if the number of concurrent users exceeded either licensed allowances or equivalent owned to loaned ratios, and furthermore, networked interlibrary resource sharing or access systems could impose rights management protocols to ensure that neither borrowing libraries nor patrons themselves could share, store, copy, or print loaned e-books beyond allowed thresholds.

4. Library, Archive, and Museum Exceptions

According to the *Copyright Act* (1985), it is not an infringement for libraries, archives, or museums to make singular copies of articles published in scholarly, scientific, or technical periodicals if reproductions are made to fulfill the research or private study needs of patrons. These cultural institutions are also permitted to share copies of articles with patrons of other libraries via print or digital document delivery methods as long as specific conditions and limitations are delineated by way of accompanying notifications. Librarians and legal counsel ought to investigate the extent to which library, archive, and museum exceptions may permit interlibrary loans of entire e-books if satisfactory digital controls to safeguard copyright holder interests were implemented. Notwithstanding the onerous effort required to revise statutes, an amendment to include e-books among existing copyright exceptions seems plausible in order to advance and protect information equity in higher education.

5. Public Lending Right

In addition to re-examining relevant copyright principles in light of recent and emerging networked discovery, retrieval, and resource sharing systems, it may bear merit to explore initiatives that remunerate authors for works that are made available through library collections. Much like print titles, e-books qualify for inclusion in public lending right programs in Canada. Even though payments to authors are seen by some as symbolic gestures rather than veritable measures of compensation (Matulionyte 2017; Schroeder 2021), for the sake of mollifying copyright holders if not harmonizing vital relations, could aspects of public lending right programs be refined and applied to e-book interlibrary loans among academic libraries?

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