

**Public academic libraries and a regulated academy: Is there an opening for an  
entrepreneurial spirit?**

**Dr. Dennis M. Anderson and Monica G. Brooks**

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**ABSTRACT**

Librarians in public higher education are struggling with rapidly evolving innovations in technology that beget legal issues that often hinder their ability to use creative means for generating income. Additionally, the current context in which copyright is being scrutinized in environments previously able to withdraw behind fair use, forces everyone in the information business to be aware of litigation and lawsuit outcomes that may impact their areas. How are librarians able to implement entrepreneurial behaviors to fill in revenue gaps and/or general operating funds if forced to operate in the same environment the general public must operate when disseminating information?

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A relationship-- whether it be good or bad-- between the university and the legal establishment is not new by any means in the United States or other countries. Lawsuits of all types have emerged over the years as students, faculty, and even administrators have often found themselves on one or the other side of a contentious legal challenge. While libraries have not been immune to various kinds of legal situations over the years, the digital age has brought several new complex issues to the table as users become more sophisticated in their wide-ranging use and sometimes abuse, of text, video, and audio files. Librarians must be cognizant of current legislation in regard to copyright when considering the digitization of proprietary materials or the use of reserve items; they must stay abreast of legal decisions concerning privacy and the storage and use of patron records; and they must be aware of liability and safety concerns when it comes to the facilities they manage. Workshops, continuing education, and information provided through professional associations keep most librarians in touch with strategies to avoid problems and/or seek an appropriate remedy when faced with a lawsuit.

**The For-Profit Library**

While most librarians are poised to comply with Federal copyright laws, the USA Patriot Act, the Americans with Disabilities Act (ADA), and other established rules and regulations, new challenges emerge as library leaders attempt to compete with for-profit entities exercising an entrepreneurial spirit that is luring its patrons to a new information model known as the “for-profit library.”

Questia is probably known as the most aggressively marketed for-profit library in existence currently. Originally created to fulfill the research needs of users who are primarily enrolled in for-profit colleges and universities like the University of Phoenix or DeVry, it has also

found a market among high school students and the conventional undergraduate or graduate due to its fairly low price, ease-of-use, and accessibility. For only \$19.95 a month, users have 24/7 access to over 66,000 digital books and 1.4 million articles from reputable university presses and publishers of books, magazines, and journals. Using the standard subject-heading language of the Library of Congress Classification, materials are organized and accessible to most users who are literate and adept at using standard web-based search methods (Questia, 2006). While users do not interact with an information professional or librarian at any point during their information pursuit, the database service still manages to bring scholarly and peer-reviewed materials to the table when the typical user requires curriculum support for speeches, term papers, or book reviews. For a fee that costs no more than a large supreme pizza and pitcher of beer, this service can seem very attractive to internet savvy individuals who may not be wedded to the nostalgic notion of the library as a cozy and embracing place in which to gain knowledge. In a recent survey entitled, "Perceptions of Libraries and Information Resources," sponsored by the Online Computer Library Center (OCLC), 96% of the respondents indicated they did visit a library in the last year; however, the respondents also readily admit that library use had declined considerably within the last five years (OCLC, 2005).

### **Online Research Services**

For over two decades now, popular culture critics have predicted the eventual demise of the library as we know it due to the advent and proliferation of paperless electronic texts. Clearly, to stay competitive, academic libraries must become aggressive in providing user services through the internet if they have not done so already. Unfortunately, there is little profit to be gained with this model. Even when spending public funds to generate a web presence and provide trained faculty to field online reference queries, academic libraries are not permitted to charge for remote access to their resources. License agreements signed at the time of purchase disallow any kind of third-party brokering of their proprietary indexing or full text resources. Ultimately, the library does not own these materials. They are merely leasing them in the form of

annual subscription costs and fees associated with the delivery of the content owned by the publisher or content supplier. Because most libraries are not in the business of serving as a publishing entity or content creator, they do not have original content to sell or lease. Some do house journals published by their institutions and can broker subscriptions to them; however, the university press model is a time-consuming and costly endeavor. Many institutions that embark on this enterprise have the resources to form separate corporations or publishing concerns to handle all aspects of the business.

How is it, then, Questia is able to provide such low-priced access when non-profit public college and university libraries are forced to pay considerably more to rent similar materials? Upon further investigation, it becomes apparent that Questia has shrewdly partnered with influential organizations in the internet realm. The most significant relationship is the one it enjoys with American Online (AOL). While users do pay a monthly premium, bundled services are more attractive to users who already subscribe to AOL and/or are willing to take advantage of a trial subscription period. A public university library would relish the thought of partnering with an entity like AOL; however, it is likely not permitted to do so because of the commercial aspect of the internet subscription service and its mammoth parent company, Time Warner. Most public institutions enjoy tax exempt status that provides monetary benefits but prohibits advertising strategies that promote any kind of service or commodity that is not university mission-related. Because AOL and Questia are commercial venues, a public academic library would not be permitted to contract with these groups in an effort to save or make money.

### **The Personal Touch**

What academic libraries do have going for them in regard to the formidable competition for information services is their strong commitment to customer service— an essential part of the professional librarians' ethical code and foundation. The literature reinforces the notion that librarians are often drawn to the vocation because it is a people-oriented job that allows them to gain great satisfaction from helping others by participating in the educational process. Questia

admits the users do not interact with a professional librarian at any time even though they do employ them behind the scenes to create indexes and search terms for the database and subject guides. The Net Generation and Millennial user may not require the use of the library the same way Baby Boomers might, but they may crave the one-on-one interaction that a professional can provide through an email transaction or live chat session using ubiquitous services such as MSN Messenger or AOL IM.

### **The Digital Library**

Creative libraries with vast resources have found ways to digitize their own collections. Gathering those materials in which the university is the sole copyright owner, librarians are creating optical character recognition (OCR) files and image scans of manuscripts, high-resolution archival image files, and unique genealogical documents for patron use and purchase. Following national standards, items in danger of disintegration or theft are being painstakingly digitized, housed, and stored in the hopes a researcher will happen upon their records and request specialized digital or print copies that can be sold. Some advertising and pre-packaged sales are possible; nevertheless, the market is very narrow. While this is an inventive means of entering the cost center model, most libraries have precious few collections of materials that appeal to wide audiences. Libraries with digital archive collections are discovering their primary mission should be for preservation and historic value and not that of consumerist purposes. The cost of digitizing, coding, and housing these materials is significant with the constant need to increase storage space and address long term formatting issues.

In spite of significant start-up costs, many institutions are building virtual museum or digital library collections. The next challenge is ensuring sole ownership of the material to avoid copyright infringement. When ultimate ownership is in question, libraries find themselves in an uncertain realm when deciding to digitize items they cannot trace back to a rightful owner. In prior iterations of copyright law, this scenario yields what is known as an orphan work. Researchers and authors who have experienced this problem when using images, photos,

printed works or illustrations for publications have hoped for an understanding of the importance of using primary works in their scholarship. In 2005, academic libraries reported spending upwards of \$50,000 over five years or more tracking down original owners and securing rights prior to digitizing full text items for online digital libraries. Even with this heroic effort, librarians at Cornell University revealed that they only succeeded in resolving 42% of the ownership questions for the hundreds of orphans in their library collection. Later that year, the US Copyright office held a series of hearings to determine the fate of orphan works. Scholars and librarians and groups such as the American Historical Association voiced support for an amenable resolution to this copyright dilemma in which libraries and museums could pay a monetary fee and only be bound for a period of five years if no author is found (Carlson, 2005). By the time ownership is sought and royalties are paid, the entrepreneurial spirit is quashed. More often than not, excessive resources are expended and little is gained by this exercise.

### **Googleize Your Library**

In 2005, the University of Michigan and four other major institutions partnered with the Google Library project in an effort to support the internet search engine's initiative to digitize all the printed works in the world. Under the fair use clause of the Title 17 Copyright Act, Google cited an interpretation of the transformative use of copyrighted works as it outlined its plan to make available a few lines of text within search results. The hope was that users would be enticed to obtain the book by borrowing them from local libraries or buying them from online booksellers such as Amazon.com. Google's title lists include library holdings by region and direct links to purchase information for users. While Michigan stated it would not profit from the project, records show that Google is compensating the library for the transport and handling of its books. Initially hailed as a "noble endeavor" for "the betterment of humankind," Michigan gave Google permission to scan every book on its shelves (Foster, 2005) while the other participants, Harvard, Stanford, Oxford, and the New York Public Library allowed partial access. Since its launch in 2005, Michigan has been challenged for its aggressive model and several lawsuits have been

filed against Google by authors and publishers who object to their works being scanned and included in Google's database without their permission. Currently the following lawsuits were filed in regard to the Google book project: the McGraw-Hill Companies, Inc., Pearson Education, Inc., Penguin Group (USA) Inc., Simon & Schuster, Inc., and John Wiley & Sons, Inc. v. Google, Inc. U.S.D.C. N.Y. 8881 (2005), and the Author's Guild, Associational Plaintiff, Herbert Mitgang, Betty Miles and Daniel Hoffman, Individually And On Behalf Of All Others Similarly Situated v. Google, Inc. U.S.D.C.N.Y. 8136 (2005). We are not legal experts and recognize that attorneys, publishers, and others are deeply involved in this issue; however, we also recognize the burden of responsibility is on the education community to stay abreast of changes in the law when pending lawsuits are decided.

After almost a year, Google has revised the project and changed the focus and name of the project a few times (Future of the Book, 2005). Now known as a "publisher scanning project" named Google Book Search, the project has lost some of its momentum as lawsuits are pending and librarians grow antsy (Jardin, 2005). After several months of rumors, the library community has become more interested in the recent launch of OCLC's Open WorldCat (O'Neill, 2004). A database similar to Google's towering effort with one big difference-- WorldCat is already a trusted and established tool among librarians that adheres to international metadata standards and is more comprehensive in scope. Possessing records from nearly every academic and public library in the United States and over 80 countries, Open WorldCat is now accessible to the general public from popular internet search engines such as Google. This service is not in full text but serves a similar purpose to Google's concept. To comply with copyright, Google could not disseminate items that were not already in the public domain and most librarians know that massive internet clearinghouses of public works already exist (Project Bartleby). If Google's service is providing library holdings and purchase information for current works, then clearly, OCLC can provide similar data without the burden of scanning millions of pages of titles it cannot legally release to the public. Possessing one of the most comprehensive book catalogs in the world, OCLC's database already provides library holdings and cataloging metadata to information

seekers by region in an effort to promote the value of libraries to users who do not normally seek them as primary research support (OCLC, 2006). In the late 1960's, OCLC was the first library network to utilize a rudimentary form of the internet to connect libraries to each other for cataloging and interlibrary loan purposes worldwide. Now completely web-based and even linked to the popular Yahoo toolbar, Open WorldCat, an established online librarian's tool since 1967, has stolen some of Google's thunder.

In spite of these exciting advances in the sharing of library holdings from the World Wide Web, the university library does not gain monetarily. Both Open World Cat and Google Book Search are accessible to anyone with an internet connection without a library's intercession.

### **Successful Models**

The news is not all bad for the librarian's entrepreneurial spirit. There are some successful models in which public and private academic institutions have taken advantage of unique collections or services to meet demands in their areas or markets.

In 1989, Wheeling Jesuit University, a private institution located in Wheeling, WV, was successful in establishing an innovative approach to providing research and patent services to researchers, Fortune 500 companies, other universities, and small businesses by creating the National Technology Transfer Center (NTTC) with some financial help from Congress. The center consists of an office with a small library that is also part of a Federal program that supports NASA and high-technology research. For a competitive fee, consumers can contract with the NTTC to obtain documents and data pertinent to their needs (NTTC, 2006). The center has flourished; however, in recent years, the NASA grant funding has waned and the university itself has fallen on difficult economic times. Use has also declined as consumers become information savvy by fulfilling some of their own needs through the internet and local libraries. Since 2004, positions have been eliminated and concerns for future layoffs loom but the NTTC continues to fulfill a critical need in the area. It is not generating significant income but does enough business to justify its existence as a part of the university's educational mission.

When a public institution owns original content that may be attractive to consumers, they have something that they can market to external college or university entities. In the late 1970s, Marshall University's Special Collections library was given the complete video archives from the local television station with the stipulation that it would provide video on demand to the local station for free when needed. As a part of the gift, the station relinquished ownership rights to the library and granted them the ability to redistribute video as it saw fit. Even though Marshall is a public institution, because they were given sole ownership rights, the library has the ability to sell this content in any form at competitive rates.

As digital equipment became more affordable in recent years, the Special Collections department began to retrieve clips from their collection of more noteworthy events such as the aftermath of the 1970 plane crash of the MU football team and the flood damage footage from the Buffalo Creek mining disaster two years later. By adding these records to the online library catalog, users from all over the world gain access to short videos of these and other local events. On occasion, documentary producers, television stations or interested parties request the purchase of video clips ranging from a few seconds to several hours of footage. A two minute excerpt can bring in close to \$3,000 in revenue. Deduct staff time, annual storage and back-up costs, and supplies to create and edit studio quality video, profit is reduced to a few hundred dollars. Nevertheless, the collection is unique and has local and national appeal. With the upcoming, Warner Brothers "We are Marshall" movie scheduled for national release in December 2006, the library anticipates a rise in requests and potential revenues.

### **Portals, Pods, and Personals**

Another model that may solidify the library's niche in the competitive information realm is the rapid expansion of the portal. Campus Pipeline and other software companies have seized the market and adapted push technology and data mining to generate personalized web environments for the savvy user. With a keen understanding of how users surf the internet and seek information, portals can use basic web elements to give users what they want and anticipate

needs while allowing for user customization. Several institutions have purchased portal packages for their libraries or generated them in-house to provide event schedules, overdue book alerts, new book lists, and subject or discipline-specific table of contents services or blog bursts. Users can also plug in local zip codes to view daily weather and news reports from the library portal. Universities with extensive online course programs are also tying campus portals to enterprise systems so students can see registration blocks, parking tickets, when assignments are due and participate in discussions or emails from classmates. Authentication software ensures compliance with database license agreements and a university use and abuse policy ensures that all users are aware of the legal conditions they must comply with when using state equipment and internet services. The policy does not completely release an institution from legal liability but does reinforce the university policy which serves as a deterrent for those students who might be tempted to delve into illegal activity. So far, the university has not been held liable as it does attempt to inform students and maintain authentication records. As long as students log into the portal when they need to write a paper or prepare for class, the computing and library staff can direct and assist them with their information or technical needs.

Pod culture is rapidly sweeping the country. Instead of listening labs for music majors that are hard to maintain and occupy valuable space, students check out Apple Ipods containing all required music appreciation audio files along with course lecture notes and texts. Some libraries are even investing in their own RSS (Really Simple Syndication) podcast feeds for the portal that provide the audio version of lecture notes streamed through voice recognition software from classes that are video-taped, prepared for distance education or satellite TV distribution. With instructor permission and participation, this option enhances the adult learning experience and/or provides an alternate learning method for the multi-tasking multimedia Millennial student. Copyright issues are still pending but so far, proper licenses, codec encryption and digital rights management software are added to the units to ensure some element of protection. So far our research has revealed that while no legal actions have been taken in regard to copyrighted

content downloaded to Ipods and other audio storage units; there are serious ramifications if copy protection is not present, removed, or violated. We do anticipate legal action in the near future.

Internet hosting sites such as Face Book, Yahoo Personals, and My Space, have been in the news recently for two reasons: child abuse or abduction and the negative impact on internet bandwidth. While the former is a serious and sad use of the technology, the latter must be addressed by universities if they are to participate in social and personal aspects of a student's life on campus. Millennials use the internet as an extension of their lives. Where the typical college student may have rushed a fraternity or played intramural sports, today chatting, dating, and linking to friends' web images are integral to the typical student's social existence. Librarians discover quickly that a typical work day may include two or three queries from students needing assistance in attaching an image to their personal ad in E-Harmony or sending an animated wink or nudge file to their chat buddy. To stay abreast of these trends, the library staff must at least try out new technologies even if they seem frivolous.

These current trends will likely not yield significant return in the library's initial investment; however, participating ensures that the library will continue to be a part of the university community's application of technology to educational and personal needs.

### **Predictions**

In 2001, James G. Neal, formerly of Johns Hopkins and currently University Librarian at Columbia, predicted that libraries would be forced to become the creators, publishers, and aggregators of scholarly information to maintain a competitive edge within the rapidly changing technological environment (Neal, 2001). He stated that obstacles would include "an organizational lack of interest, poor project management," and "insufficient time" or "resources" among others (p. 5). He did anticipate that "rights management" would become an issue; however, did not predict accurately that the significant legal challenges public academic libraries face would hinder the entrepreneurial spirit more than just the challenges of low support or initiative. At the time of this article's publication, Neal reported that his library at Johns Hopkins

had the ability to generate revenue by selling software packages that use JHU archival images, could provide preservation and instructional services to external entities, and was poised to supply the business community with technological consulting services and labs (p. 11).

Neal cited several attractive cost center models underway at JHU that some public institutions may be able to mirror; however, the majority would not have the start-up funding or legal freedom to do so. Distance learning now includes online learning. Publishers and content suppliers have stayed ahead of the trends and the provision of library research services to these students is not cheap and requires an annual cost commitment for increased storage, bandwidth, and software. Unless a library can successfully work around some of the legal and financial quagmires cited above, it is not likely the average college or university library can yield significant financial results from these models. It is more realistic to see institutions take advantage of existing resources on a smaller scale similar to for-profit examples provided. When forming a cost center is challenged at every turn, how can college and university librarians truly become entrepreneurs? As new technologies emerge, there will undoubtedly be new legal challenges as information access and mediums evolve to meet consumer needs.

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