

Digital Books in Libraries: Moving Towards a Sustainable & Equitable System of Access to Information

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Authors Note

This research was conducted by two MLIS students who are beginning their careers in the LIS profession. This research was conducted primarily for a graduation requirement and to better understand a contemporary contentious issue. The researchers fulfilled their graduation requirements since authoring this paper and have received their MLIS degrees. Both researchers will accept any feedback from the interview participants and from all readers of this paper.

Abstract

Over the past ten years, tensions have grown between libraries and the publishing industry as digital books have become more popular and as digital book costs have risen. As library workers, the researchers of this paper are motivated by the core mission of libraries to provide access to information, which is threatened by current licensing models. The researchers assessed the current practices and power imbalances of digital book licensing through interviews with 40 stakeholders. This research suggests that legislation is one of many possible strategies to achieve a sustainable and equitable system of access to information for future generations.

Digital Books in Libraries: Moving Towards a Sustainable & Equitable System of Access to Information

In September 2021, research team member Megan Rosenfeld had the opportunity to virtually attend Miami University's Libraries Copyright Conference. One of the speakers at this event was Kyle K. Courtney, Copyright Advisor at Harvard University, who presented "Rent NOT to Own: Copyright, Licensing, & the eBook Revolution" (Courtney, 2021). In the lecture, Courtney summarized American copyright law as it relates to libraries and the differences between purchasing and licensing literary products. He explained that contemporary eBook licensing procedures have negative, long-term financial impact on libraries (Courtney, 2021). He also discussed Maryland's eBook licensing law, House Bill 518/(SB432) the first of many subsequent state ebook laws that aimed to improve digital book licensing practices. Due to their mutual interest in the intersection of copyright and libraries, Rosenfeld and Erin Andreassi decided to investigate the current concerns of stakeholders who are directly impacted by digital book licensing practices, and to see what could be done to improve licensing practices in Washington State. Their initial research questions were:

RQ1: How can current digital book licensing practices be amended to create a true balance of power between libraries, authors, and publishers?

RQ2: Based on RQ1, is digital book legislation necessary for Washington State? If so, what type of legislation is needed?

As the researchers conducted interviews with key stakeholders, their first research question evolved into the following:

RQ1: How can writers, publishers, and librarians collaborate to develop a sustainable and equitable system of access to information?

While the researchers initially aimed to find some level of consensus amongst their interviewees, they soon realized that there is no clear consensus on this issue, given the complicated nature of many interconnected topics. Carmi Parker, the ILS Director at the Whatcom County Library System, stated:

I wouldn't recommend attempting consensus. Which means ... if the goal isn't consensus, but just to gather feedback, you know, and to take some of it and not the rest, then that means that you have to be guided by something other than accepting ... and integrating everyone's feedback.

With this under advisement, the research revealed that in addition to legislation, there are many possible avenues to level the playing field of digital book licensing.

NOTE: The researchers use the term “digital books” to include all types of books that are in electronic format, including audiobooks. The term “eBooks” often excludes audiobooks. The term “electronic literary product” is used in eBook legislation to refer to all types of digital books. However, this paper and various other publications tend to refer to the state bills that aim to regulate licenses for “electronic literary products” as “eBook Laws.”

Background

Maryland's eBook Law, House Bill 518, required that publishers offer to license electronic literary products to libraries on “reasonable terms” and at the same that they are offered to the public. This law passed in March of 2021, and went into effect in January 2022 (Albanese, 2022 February). However, the Association of American Publishers filed a lawsuit in December of 2021 and a preliminary injunction was granted in February of 2022 on the basis that the law was preempted by federal copyright law (Albanese, 2022 February). Maryland decided not to fight this injunction in April, (Albanese, 2022 April) and the court ruling was finalized in June 2022 (Albanese, 2022 June). The bill was created after ten years of growing tension between public libraries and the trade book publishing industry. During that time, digital books have become more popular amongst consumers and library patrons, and librarians have perceived the licensing contracts that they sign with publishers to be unreasonable, citing both cost and unfair licensing models. This tension escalated when libraries boycotted Macmillan after the publisher established an eight-week embargo for newly released eBooks (Albanese,

2020). The embargo caused many libraries to re-evaluate their relationships with publishers. Though the embargo ended in March of 2020, the concerns of library leaders persisted (Albanese, 2020).

This conflict peaked during the height of the COVID-19 pandemic as buildings shut down and digital books again rose in popularity. Concerns that surfaced during the Macmillan embargo were exacerbated due to the need for digital materials, resulting in Maryland's eBook law. Despite the disappointment in Maryland, several other states have pursued eBook bills, including New York, Massachusetts, Rhode Island, Tennessee, Missouri, Illinois, and Connecticut (Minow, 2022). New York's eBook bill nearly passed with bipartisan support, but was vetoed by Governor Hochul shortly before Maryland's eBook bill received a preliminary injunction, further complicating and adding to this growing tension between libraries and publishers (Albanese, 2021 December). One of the researchers' initial motivators that continues to guide this research is the core mission of libraries to provide access to information, which is potentially threatened by current licensing models. This motivation is shared by Courtney, who first introduced the researchers to these issues through his lecture that Rosenfeld attended and who the researchers were able to interview for this project. During this interview, Courtney stated, "this core mission of providing access to materials is slowly being removed by this fundamental movement into licensing only, which then threatens the rest of the library mission as well." This political landscape and concerns from libraries about access to digital books laid the foundation for this research.

Research Process

Before initiating the interviews, the researchers received confirmation from the University of Washington's Institutional Review Board (IRB) that they did not need to complete an IRB application. The researchers reached out to over 60 individuals that were identified as key stakeholders in this space through Cindy Aden, the sponsor of this research, and as

recommended by people that they interviewed. They were able to speak with 40 stakeholders over 11 weeks between January and March 2022. A full list of the interviewees is available in Appendix A, with each interviewee listed according to the consent form that they signed for this project. Each interviewee was assigned to a stakeholder group, and several people belonged to multiple groups, as shown in Table 1. Each stakeholder group is defined in Table 2.

Stakeholder Group	Number of Interview Participants in Group
Digital Access Advocates	7
Library Directors/Leaders (United States)	7
International Library Leaders	4
Library Industry Professionals	4
Copyright Experts	5
Authors	5
Agents	1
Publishers	2
The Moderator/Mediators	2
WA State Library partners	4
Policy Experts	3
Academic Librarians	6

Table 1: stakeholder groups and number of interview participants in group

Stakeholder Group	Definition of Stakeholder Group
Digital Access Advocates	Individuals who are actively involved in advocacy efforts to remove barriers to digital information. These individuals are all leaders in their professional communities.
Library Directors/Leaders (United States)	Individuals who were library directors of public libraries or library associations in the United States at the time of the interview.
International Library Leaders	Individuals who are currently library directors of public libraries or library associations outside of the United States. The individuals who participated in these interviews were all based in Germany, Ireland, and the U.K.
Library Industry Professionals	Individuals who work with vendors within the digital book industry.
Copyright Experts	Legal experts who work within the realm of copyright law - all but one of these experts work within the United States.
Authors	Published writers of fiction within the United States. All but one of these authors are published by a Big Five publisher; one author is self-published.
Agents	An agent of a New York Times Best-Selling author, published by a Big Five publisher.
Publishers	Individuals who work within the publishing industry, including a large publisher and a collection of smaller publishers.
The Moderator/Mediators	Individuals who have holistic understandings of current digital book licensing issues because they work alongside library leaders, publishers, and other stakeholders. They have held “mediator” or “moderator” roles in this space.
WA State Library partners	Individuals who work with the Washington State library, including lobbyists.
Policy Experts	Individuals who work as policy advisors in Washington D.C.
Academic Librarians	Individuals who work in Academic Libraries and Academic Institutions.

Table 2: stakeholder groups and their definitions

The interviews were all held on Zoom, except for one that was conducted in person, and they were structured to be between 30 and 60 minutes long. The researchers utilized the transcripts that were automatically generated by Zoom, and they edited them for accuracy by watching the interview recordings. Interview questions were structured to allow the interviewees to summarize their career, provide their view of the overarching issues, and address the digital book laws and other possible solutions. Questions for each interviewee evolved over weeks of research and varied to best understand the person’s viewpoint within the digital book publishing and lending ecosystem.

Preliminary Findings

The interviews were coded using qualitative analysis software, Atlas.ti, based on topics of discussion, and 109 topics were coded. According to Figure 1, some of the topics that appeared most frequently include licensing models, state legislation, copyright, library budgets, Amazon and its impact on the industry, ownership in the digital realm, pricing, and data or the lack thereof.

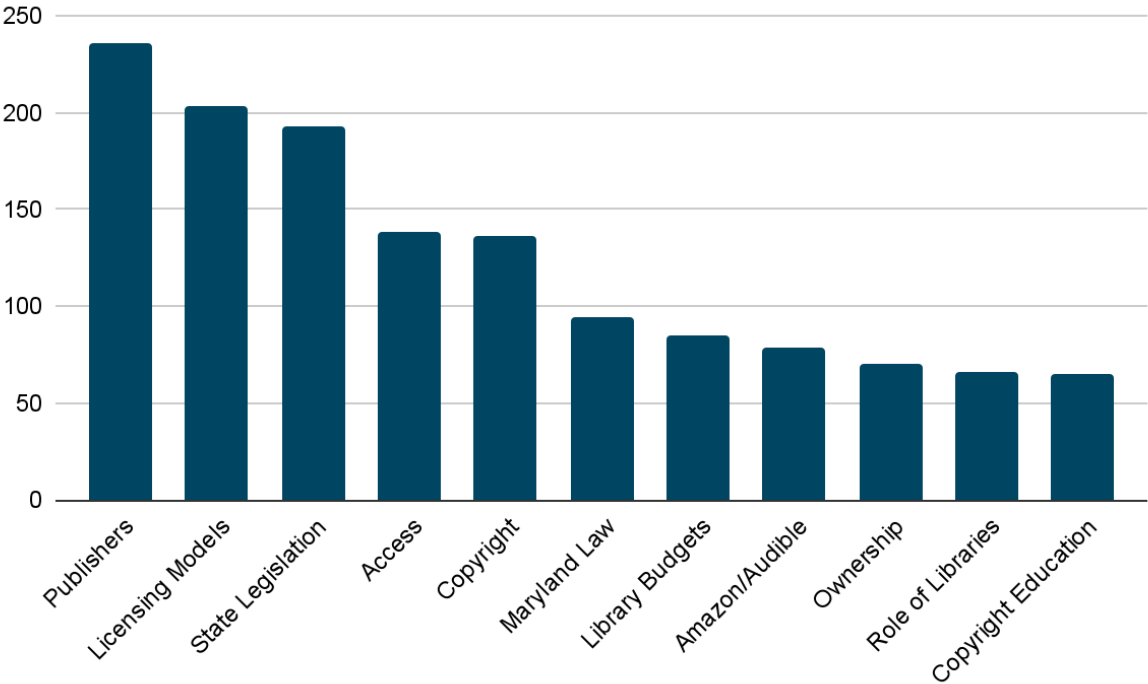


Figure 1: Most popular coded topics in Atlas.ti.

LIS Education

Numerous library leaders/directors, academic librarians, and copyright experts who have their MLIS degrees have commented that topics related to copyright, licensing, and contracts are nearly absent in the MLIS curriculum. They perceive a growing need to implement these topics within the MLIS curriculum as libraries continue to acquire digital materials. Copyright experts also observe a growing interest amongst LIS professionals to learn about these topics, since they are often taught on the job instead of in the MLIS curriculum. Many acknowledged that LIS professionals do not all need the same level of expertise as those who are designated as Copyright/Scholarly Communications Librarians, but the general level of knowledge of LIS professionals is still subpar. One of the barriers mentioned to expanding the LIS curriculum to include topics on copyright, licensing and contracts is the fact that the LIS profession is already incredibly broad, thus it is difficult to decide which topics are relevant to all LIS students. However, the interest in copyright prevails. An expert from the University of Washington iSchool stated,

I think that there's definitely room for us to make room for a copyright class. Whenever you bring on something new, something else has to go out the door, so the question is always what is it? But the students have actually asked for a class in copyright, and we acknowledge that that likely needs to happen....I think there's more of a need now than probably ever to have a class that deals with copyright.

The need for change in LIS curriculum was expressed by LIS professionals in the United States, Ireland and the U.K. Stuart Hamilton, the Head of Libraries Development at Local Government Management Agency in Ireland, stated,

Isn't it interesting, that the piece of the profession where the most money is spent is the least taught in LIS education? I think something's gone really wrong somewhere, and my LIS education was very similar to yours. So that's not good, is it really? If that has not changed in like 20-odd years?

Additionally, gaps in copyright knowledge result in misunderstandings, inefficient conversations, and intimidation amongst LIS professionals. Sam Lohmann, an Information Access Librarian and member of the Pacific Northwest Copyright First Responders, stated the following:

I want our library community to feel empowered to address copyright issues and seek information when they need it and make decisions without needing to talk to their legal counsel for their institution necessarily, or feeling like they need to go get a second law degree or something to understand the copyright issues. I think I really want librarians to not be intimidated by copyright. And to feel empowered to set policy based on a nuanced understanding of copyright, without necessarily needing to rely on hard and fast case law or something like that. On the other hand, I think there are a lot of misunderstandings. And I think that our conversations about copyright would be more efficient if there was more of a shared vocabulary.

Ultimately, the LIS professionals that we spoke with want library workers to be more prepared to enter a profession in which it is increasingly important to grasp topics related to copyright, licensing and contracts.

The Societal Role of Public Libraries

The mission of public libraries, their role in society, and how those apply to digital books were important themes in the interviews. One of the recurring questions directed towards people familiar with the Library Values espoused by the American Library Association (ALA) was, “which ALA library values do you think are most relevant to digital book licensing issues?” The most common value mentioned was access to information, which remained a persistent theme in the conversations. As Jennie Rose Halperin, Executive Director at Library Futures, said in her response to this question, “access [to information] is obvious.” Many interviewees discussed the implications of access on other values, such as accessibility, equity, privacy, and the public good, but circled back to access. Alan Inouye, Public Policy and Government Relations Director for the ALA, noted:

It's kind of hard to pick some because I think most or all of those values are implicated in various ways. Maybe some of the ones which are the more salient are access, actually getting access to eBooks to digital materials, since publishers can actually decide not to provide access at all, right? So there could be zero access, so that's the most fundamental thing, that if you can't even get access at any price, then that kind of overrides everything else.

The answers to this question are important to the examination of solutions, so that advocates in this space can prioritize and highlight solutions that best support the core values of libraries.

Another common theme was the concern that the changing structure of library ownership of material will impede libraries' mission. In her interview, Jacqueline Breidlid of the German Library Association said:

... the main purpose of libraries is to allow for distribution of knowledge, information, and that's something that has to be the case, both in the physical and the digital sphere. And that's the main reason why we're doing this in the first place. It's not to harm anybody, it's because the purpose of libraries is to do that. And nobody has ever questioned that for physical books. For physical books, we have this lending right and compensation for authors and publishers for over 100 years now and that hasn't been questioned either.

Several other interviewees echoed this concern that there is a change in mentality with what librarians consider simply a change in format. One interviewee introduced a quote from John Bracken, the executive director of the Digital Public Library of America, to highlight that concern: "What a tragedy it would be if in a digital context, Americans and American library users have less access to knowledge and information than they did in the analog era" (McGill, 2021). In practice, library users are often confused as to why there are not unlimited copies of digital books. For example, one nine-year old library patron asked Rosenfeld at a King County Library branch why libraries have individual copies of eBooks when the internet can make unlimited copies.

Librarians also educate users about these topics, including copyright. Andrew Albanese, Senior Writer at Publishers Weekly and author of many of the articles cited in this paper, noted in his interview that, “librarians are creatures of copyright, they are serial upholders of copyright and defenders of copyright, they appreciate copyright, in fact they're the ones that teach us about copyright.” When discussing issues that are impacted by copyright, it is important to understand that libraries exist and react within the confines of the law, which has allowed physical items to be borrowed for well over a century.

One additional area that a few interviewees highlighted, particularly those from outside the United States, was that digital book licensing issues are primarily experienced with publishers in the English language publishing industry. Local and language-specific publishers are far less likely to propose licensing models that librarians would consider unfair. Interviewee Hamilton introduced this idea, stating:

...if you talk to my colleagues in Denmark, if you talk to my colleagues in other European countries through NAPLE, they just don't have the same issues, really, because they're dealing with national publishers. And Slovenian, Czech, Danish language books, and in some cases, particularly Denmark, you're actually able to have an adult conversation with a publisher and come to a good outcome. The problem we've got is the English language materials are controlled by, for the public libraries, the Big Five trade publishers, and then you know, you probably would have looked into who actually owns the Big Five trade publishers. So you can see that these are not organizations that really would give two hoots about libraries, to be honest with you. There's just far too much money and they just don't care.

Cathal McCauley, University Librarian at Maynooth University, reiterated this point in his interview, highlighting the problems with licensing terms:

Our smaller local publishers actually don't tend to be the worst offenders. Yes, they do, you know, obviously they seem to get price increases and so on, but they don't tend to be on the scale of the large international publishers and they also don't seem to have as many onerous terms attached. So I think you know, basically what we see here is from the large publishers, there is a global strategy, because you're hearing this from

countries around the world, you know, both in terms of their pricing and in terms of the ever typing terms and conditions, but they never say this explicitly, they never want to engage about that.

This distinction between local or small publishers and the Big Five publishers is important as licensing is discussed in relation to public libraries internationally. While the roles of libraries in many countries may stay the same, the economic systems in which they operate do not.

Pros and Cons of Legislative Approach to Licensing Issues

The topic that inspired this research, digital book legislation, is one potential solution, though there are reasons for and against taking that course of action. One challenge that many interviewees discussed was that using the phrase “reasonable terms” is too broad. Without a clear definition of the terminology and codified priorities in the language of the laws, such as is the case in Maryland, there is too much room for interpretation which causes confusion and potential conflicts with federal statutes. Executive Director of the Las Vegas - Clark County Library System, Kelvin Watson, highlighted the problem with the term, saying:

Reasonable is relative to whoever is making that, to whoever's bringing that up right. So I think that for passage of any, you know, I think there needs to be some more specifics, if possible, in the bill ... for it to pass and maybe even pass the muster of not going into a lawsuit.

Jeremy Johannesen, Executive Director at COSLA, put his concern with the term even more simply: “Reasonable to who?” The challenge then lies in defining what the bill is attempting to do, which may or may not be definable or legal.

Additionally, legislation that revolves around access to digital books is harder to implement in certain political and economic climates. The current push to ban books in many states indicates a formidable political landscape in which libraries may be confronted with an unsupportive voting populace. One interviewee noted that solutions which involve government grants could draw scrutiny from the public if content being purchased or otherwise supported by

the grant is authored by or contains characters with identities that have historically been censored in public libraries, most notably BIPOC and LGBTQ+ identities. This sentiment, added to the post-pandemic economic slump, may find voters and politicians less than enthusiastic about laws to affirm library collection building. Despite all this, the states that have introduced laws are seeing an incredible level of bipartisan support.

A third challenge to legislation is a topic that came up repeatedly in interviews: the lack of robust data, or often any data, about digital book usage and users. Many participants believe that data would support the arguments that are being made from each stakeholder group, and some believe that added data to discussions between stakeholders would negate the need for legislation altogether. While groups such as the Book Industry Study Group and the Panorama Project from OverDrive are discussing compiling this data, a comprehensive data set would be important to arguments around legislation at a state, or ideally federal, level. This paper examines data more thoroughly in an upcoming section.

Despite these challenges, there are some advantages in taking a legislative approach to addressing digital book licensing issues. One of these advantages is the broad level of bipartisan support demonstrated in several states thus far that have started drafting digital book licensing bills. New York's bill passed unanimously in the New York Assembly and passed in the New York Senate 62-1, before it was vetoed by the state's governor (Albanese, 2021 December). Maryland's bill passed unanimously in both the House of Delegates and the State Senate before it passed into law without the signature of the state's governor (Albanese, 2021 June). As of May 20, 2022, Rhode Island has advanced its own bill with unanimous support from the Rhode Island Senate's education committee, despite the ruling issued against Maryland's law (Albanese, 2022 May). The key change between Rhode Island's bill is that a digital book license "that limits the rights of a library or school under the U.S. Copyright Act shall not be enforceable," which will perhaps evade another preliminary injunction (Albanese, 2022 May).

Additionally, since public libraries are funded by taxpayer dollars, legislation can help assure the public that they are getting what they are paying for through their taxes as a matter of consumer protection. An expert from the King County Library System stated that as LIS professionals,

It's our job, also, to put a little pressure on our legislators to let them know, hey your constituents aren't able to get this product. People who voted for you up at North Bend can't get this product, because we have a publisher in New York that decided we're not going to sell you to the library. Or we're going to jack up the price so high you're only going to be able to buy one.

It is also possible that the passage of state law could help positively reframe the conversations between LIS professionals and publishers in the long-run. An expert from St. Mary's County Library stated the following regarding the communication between libraries and publishers:

This is not a threat to your copyright, this is not an anti publisher bill but we'd like to get your attention, please, because we've asked to have conversations, we've asked to talk to you about the prices, and you, you just don't, it's silence. So this bill just sets up a framework for libraries and publishers to talk and come to something that they might mutually agree is reasonable.

The aforementioned benefits and drawbacks of taking a legislative approach to addressing digital book licensing issues illustrate the need to consider legislative approaches within the larger framework of establishing a sustainable and equitable system of access to information. If stakeholders choose to take a legislative approach, they must choose to consider the relationships that they want to establish with publishers, legislators, and authors in the long-term. While several interviewees whole-heartedly support digital book legislation, many expressed concerns about choosing only that solution, instead encouraging consideration of other possible solutions such as roundtable discussions supported by data.

Lack of Data

The lack of industry knowledge is another theme that was often put forward by interviewees, who highlighted a need for data in order to increase knowledge. For example, our interviewees addressed the belief held amongst some publishing professionals that library lends equate to lost sales, despite the lack of evidence. Around the time that MacMillan established their two-month embargo on newly released digital books in public libraries, an expert from Jefferson County Rural Library District conducted a survey amongst the county's public library patrons in order to obtain data on their lending habits. This expert stated,

MacMillan claimed that there were specific behaviors that patrons were participating in....So MacMillan claimed the reason for the embargo is that they felt that...people would be more likely to purchase (eBooks) if they had to wait for them for the library, so that was a claim that was not supported at all in any prior research. And in doing the survey that we did, it wasn't supported at all in current research in 2019 either. The majority of people who use eBooks that responded to the survey said that they would wait an indefinite amount of time for the eBook that they wanted.

Our interviewees also acknowledged that there is no data that proves which digital book users are most affected by restrictions in digital book access. The assumption is that restrictions on digital book access will disproportionately affect users who are elderly, disabled, and low-income, due to inabilities to read print books or financial ability to license their own copies of digital books. However, there is no data to understand the extent to which these communities are affected by current licensing practices. One of the main barriers to obtaining such data is that privacy is one of the main values espoused by the ALA that LIS professionals strive to uphold on behalf of their patrons. Jonathan Band, a copyright lawyer for the ALA, stated the following:

There seems to be virtually no statistics or no systematic research on who's using these eBooks. Who's checking them out? And this whole point, the whole basic notion that eBooks are good for people with disabilities and the people who can't get to the library, it's intuitively obvious that there's no research on that. And now part of it might be that

again, libraries are protecting the confidentiality of their users, so they don't know when someone checks out an ebook, they don't know whether that person is disabled or elderly or you know yada yada yada. But there's got to be a way to unpack that and to get more information about that.

Our interviewees also addressed the lack of data regarding how often public libraries have to replace physical books due to books being lost or damaged, and whether these replacement rates vary based on genre and popularity of different types of books. This data is particularly important for publishing professionals as they strive to create licensing models that they believe most accurately reflect a digital equivalent to the way in which physical books are purchased and repurchased in libraries.

Some of our interviewees mentioned that OverDrive, as the main vendor used between libraries and publishers, holds key data from both industries, and thus should be involved in these conversations. Amazon, another company dominating the digital book industry, also holds a lot of data that it does not share except in specific negotiations. For example, Amazon has data on what digital book readers see and how far they get through a book - a practice that certainly results in a lot of data, but also a practice that infringes on readers' privacy. Both OverDrive and Amazon are major platforms for library digital book lending, and hold a majority of library contracts for materials. If these two organizations are not able to share library-approved data that is collected regarding users' borrowing habits, or if they refuse to, the other branches of the industry are left in the dark without the ability to back up claims with current and relevant data.

Publishing professionals also look at Amazon's book prices as data to determine their own pricing practices. One of our interviewees noted that consumers' expectations for what book prices should be are historically low because they are now accustomed to Amazon's low prices for books, which thereby negatively impacts the publishing industry:

We do a lot of like pricing recommendations, based on what we see and it's a lot of comparison, right. What are other books in the same space doing? What are they selling for? And a lot of the time, we're going to one site to do those comparisons. So that's where I think a lot of it, a lot of it has come down to it, at least in recent history, has come down to the way that consumers, that readers, have been conditioned and what price points to expect.

Although the researchers invited representatives from OverDrive and Amazon to participate in this research, they were unable to interview anyone. Data generated by these two organizations, publishing houses, and libraries themselves are necessary to create solutions that best serve all stakeholders.

Author Compensation

The interviewees from the publishing, agent and author groups highlighted the importance of authors being compensated for their work. There is a misconception about librarians and readers not being supportive of authors being paid for their work, much like the incorrect concept of the lost sale discussed above. Author Martha Brockenbrough explained that the cost of a book is not equatable to the labor performed, saying:

I do know that if I go try and buy a blank notebook, a hardback notebook, it costs about as much as a hardback book that's full of a story that an author worked on for years, and that they designed with a designer, and hired someone to illustrate the cover, and it was edited, and there's this whole team. And so books are incredibly cheap for what they are.

Authors also agreed that libraries are their partners in sharing their work with readers. They worry, however, that lower costs would result in lower compensation. The concern of the balance in the industry was voiced by author and former librarian, Tessa Dare:

I do understand the tension between publishers wanting to make money on a book that's being lent electronically and feeling nervous about whether they will have the same return as they would with a print book—because the eBook, by its nature, does not deteriorate the same way that a paperback does. So publishers have

decided to make it artificially deteriorate, which I don't personally like, but I do understand that they're trying to strike a balance. I didn't know there were publishers that are simply refusing to sell books to libraries, which seems to me anti-free market and worthy of legal scrutiny.

Brockenbrough also spoke to this idea, saying "I'm very resistant to the characterization as either publishers as being greedy, or as librarians as being demanding. I think that those who would starve public entities are the ones enjoying the conflict between these two groups." Many interviewees saw larger issues with the industry than just pricing and licensing models.

Overall, our authors identified the book publishing, licensing and lending industry as an intellectual ecology undergoing a sustainability crisis. When the rights of stakeholders within that system are imbalanced, the entire ecosystem fails. Author Cory Doctorow, Science Fiction Writer and Digital Rights Activist, illustrated this best:

For so long as all you're fighting about is owls you will lose, but once you're fighting about ecology then you can win. And for so long as all you're fighting about is libraries, you will lose, but once you're fighting about pluralism, fairness...once we recognize that, then we can have a real victory, structural victory across the board.

Brockenbrough echoed this sentiment, adding:

Yes, we can have negotiation between publishers and libraries, but that to me, is a scenario where underfunded human beings are fighting over scraps when we actually are a very wealthy nation and could perhaps, you know, what if per capita, libraries had to generate X amount of dollars per citizen they serve. ... I mean we have the per student federal funding. Is there the equivalent in library systems? And I don't know, but the one thing I do know is that nobody is getting rich by overcharging for eBooks.

Authors truly feel that they are partners with libraries. As Julia Quinn, bestselling author of the Bridgerton series, said "I try to support libraries in every way that I can." The problems within digital book lending are greater and more systematic than simply the licensing options that are currently available.

Recommendations

Recommendations for LIS Education

The researchers strongly recommend that LIS programs implement copyright, licensing, and contracts into their curriculum. More research is needed to determine what specific subject matter should be included in this curriculum in order to best prepare future LIS professionals to understand these topics in various industries. The researchers recommend that LIS professionals with legal backgrounds, iSchool leaders, and MLIS students should collaborate to create this curriculum together.

The researchers also recommend that Information Schools should partner with other university departments to discuss digital intellectual property issues to create a sustainable and equitable system of access to arts and information. Doctorow advised:

You should start an electronic frontiers alliance affinity chapter and invite Computer Science students and teachers and profs into it and researchers, and build a working group that works on, you know, human rights and the digital realm cross sectorally. And bring in the sociologists, and the anthropologists, and the Computer Science department, and the engineers, and everyone who cares about this stuff. Such an opportunity, you know and you'll be better library workers for it....You'll actually make progress right, because you'll find solidarity and coalition, and you'll realize that the issues that plague libraries plague all these other fields as well.

LIS programs need to recognize that the changing landscape of librarianship is cross-disciplinary, and should therefore include more work within technical and legal departments to adequately prepare students for their careers.

Recommendations for Library Leaders

Library leaders can also work to improve the issues identified in this research. Most importantly, the employees who work as frontline staff should be encouraged, if not required, to

learn about copyright and licensing. These topics and their related issues can seem scary for those who are unfamiliar with the laws. Inouye stated:

Most librarians are not trained or educated in copyright or licensing matters. So, the ones who get into licensing do it because they, you know, they have to for their job, if they go into acquisitions [or] whatever, and now there [are] all these licensing agreements, and I have to learn about this. But even then, that's probably more on a practical level, what is, what are the terms and how much does it cost, and how do I manage it, as opposed to a more policy level kind of discussion.

This is something that can be changed, particularly given the legal implications and monetary commitments that copyright and licensing entail. Library directors and other leaders should consider offering training about copyright law, or partner with others, such as Copyright First Responders, to provide training to staff (Copyright First Responders, 2021).

Additionally, libraries need to find a sustainable and equitable way to gather data about digital book users and their habits without infringing on user privacy. A recent survey that was conducted by the Jefferson County Rural Library District is a great example of one way to acquire this information. Leaders need to find additional ways to anonymize and aggregate data that is collected for digital book checkouts in connection with library cards to best illustrate the realities of digital book lending and reading for conversations about licensing.

Library leaders need to work together as a cohesive group regardless of library type to encourage change that supports everyone. Both within the library sphere and also as a part of the publishing, licensing, and lending industry, library leaders have influence on the changes that are made. Within this ecosystem, leaders must keep in mind the needs of authors, publishers, library users, and frontline employees.

Recommendations for Publishers

Like library leaders, publishers can also improve the current situation regarding digital book licensing practices. One of the biggest complaints that library advocates make is that the

creation of pricing is an opaque process. Librarians are knowledge-based creatures; if publishers are more transparent about their pricing structure, librarians are less likely to believe that current pricing practices are unfair. If the current practices are fair, more transparency would allow publishers to defend their models by sharing how these prices are determined. A hindrance to this discussion is the reliance on vendors by both publishers and libraries for a clear understanding of the process and opinions surrounding that. A publishing professional who was interviewed was unaware that there were concerns from libraries, likely because there is less direct contact between the two entities.

Additionally, there is a disconnect in beliefs between publishers, authors, and libraries regarding compensation. It is important for publishers to understand that librarians want to support authors and want them to be compensated fairly for their work. The partnership between libraries and authors is not always considered in publishers' discussions of libraries. Data that proves that library lends constitute "lost sales" has not been presented, and has actually been debunked in studies done by libraries in their communities. Understanding that this is a misconception, publishers should encourage working with libraries to create data to better understand the financial relationship between these two industries.

Recommendations for a Washington State eBook Law

While this research began as an investigation into what would need to be codified in a Washington State eBook law, the results did not convince the researchers of the imperative to bring a law to the state legislature. However, if a law is to be written and presented, several elements would be necessary. First, the language of "reasonable terms" from the Maryland law would need to be changed or fully defined. As the expert from the Jefferson County Library District noted, "defining reasonable and being platform agnostic [is] going to be critical for a lot of us that want to use [the law]." That interviewee also stated that "reasonable could be financial, but it could also be [the] platform."

If there were a state law, it would still have to create a sustainable and equitable balance of rights. The researchers recommend looking into a Public Lending Rights and Consumer Protection combination to be included into the state law. Public Lending Rights compensate authors for every library lend, and they are implemented in over 30 countries, including Canada (“About: Program Overview”). More research is needed to understand how Public Lending Rights are implemented in these countries and to understand how and if Public Lending Rights could be implemented in Washington State.

The researchers also recommend that a digital book law should include accessibility standards for digital materials, given that accessibility is a key value behind the creation of the eBook bills. Stakeholders should also be aware of how eBook laws will affect other industries in the long-term. Interviewees often compared the copyright issues that are inherent to digital book licensing issues to other contentious issues within the Hollywood and Music streaming industries. Both industries are tracking the progress of these eBook bills because they know that they will be impacted in the long-term. It is imperative to understand the broader landscape and how laws in other states are being received prior to drafting legislation.

Gaps and Future Research

The researchers recognize that there are gaps in their work. First, interview requests were least successful with publishing employees, large or small. The researchers were also unable to interview anyone at OverDrive or Amazon; both of these organizations were implicated as causing some of the issues that may be exacerbating the digital book licensing complaints. A few people declined to speak or answer specific questions due to ongoing lawsuits related to digital book licensing, including Controlled Digital Lending, or Maryland’s eBook law. An additional gap, highlighted by interviewees, is that researchers were unable to include the digital book users in this study, which would inform how possible licensing solutions would impact libraries’ intended audience. While both team members had an academic

background in copyright, the limited time frame required that the research focus on the interviews themselves. As a result, there was not a comprehensive literature review done on copyright, licensing, digital access, and other related topics.

The researchers will continue to analyze the transcripts and they plan on sharing their findings and recommendations with the wider communities invested in this issue. There are many areas for future research that were identified through this project. The gaps identified above represent future work for these researchers, or potentially other students. First, work is needed to determine how to best include topics on copyright, licensing, and contracts in LIS education. Future research is also needed to study which demographics of readers are most impacted by access to digital books, either through acquiring already existing data or through original research to create this data. Finally, facilitation of productive discussion amongst stakeholders is needed to implement potential solutions.

Conclusion

Throughout this process, the interviewees highlighted the increasing number of issues for libraries in transitioning to digital collections, including costs, contract limitations, and communication between industry partners. Libraries play a key role in providing access to information, so solving digital book licensing problems is crucial. As author Martha Brockenbrough said in her interview:

If we want to have justice and if we want to have an educated populace, ... I don't see how we do it without books. I don't see how we do it without libraries, and I don't see how we do it without schools ... We're the allies for each other, and the solution is to issue a vast and unignorable rallying cry toward the investment in intellectual infrastructure.

Whether through roundtable discussions or new legislation, change must be made to ensure sustainable and equitable access to information for future generations.

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Appendix A: List of Interviewees

- Andrew Albanese: Senior Writer at Publishers Weekly
- Jonathan Band: Copyright lawyer for the ALA
- Michael Blackwell: Director at St. Mary's County Library
- Mallori Bontrager: Digital Services Manager at the Independent Publishers Group
- Jacqueline Breidlid: Office for Political Communications with the German Library Association
- Martha Brockenbrough: Washington-based author of children's and adult books and Faculty at the Vermont College of Fine Arts
- Mike Buschman: Library Development Manager and LSTA Coordinator at Washington State Library
- Kyle Courtney: Copyright Advisor at Harvard University
- Tessa Dare: Romance Author and Former Librarian
- Mitchell Davis: Senior Director and founder of BiblioLabs, a division of LYRASIS
- Cory Doctorow: Science Fiction Writer and Digital Rights Activist
- Chris Freeland: Director of Open Libraries at the Internet Archive
- Jennie Rose Halperin: Executive Director at Library Futures
- Stuart Hamilton: Head of Libraries Development at Local Government Management Agency (Ireland)
- Alan Inouye: Public Policy and Government Relations Director for the ALA
- Jeremy Johannesen: Executive Director at COSLA and previous Executive Director of the New York Library Association
- Sam Lohmann: Reference Coordinator and Information Access Librarian and member of the PNW Copyright First Responders
- Micah May: Digital Public Library of America
- Cathal McCauley: University Librarian at Maynooth University
- Abby Moore: Lobbyist for the Public Libraries of Washington
- Brian O'Leary: Executive Director for the Book Industry Study Group
- Carmi Parker: ILS Director at the Whatcom County Library System
- Julia Quinn: Romance Author of Bridgerton Series
- Penny Reid: Self-published Romance Author and Founder of Smartypants Romance
- Lisa Rosenblum: Executive Director at the King County Library System

- Carla Wale: Director, MLIS Law Librarianship Program and Interim Associate Dean of Gallagher Law Library & Information Systems at the University of Washington
- Kelvin Watson: Executive Director of the Las Vegas - Clark County Library System
- Ben White: Chair of LIBER's Copyright and Legal Matters Working Group and PhD researcher at Bournemouth University in the Center for Intellectual Property Policy and Management
- Congressional Aide
- Staff from the Senate Help Committee
- Unnamed Publishing Employee
- Expert from #ebooksos & the University of Gloucestershire
- Expert from The Axelrod Agency
- Expert from Jefferson County Rural Library District
- Expert from Lobbyist for the Washington Library Association
- Expert from LYRASIS
- Expert from N. C. Live
- Expert from University of Washington
- Expert from University of Washington iSchool
- Expert from Washington State Library