Perspective

OCA and GLP 1: Ebooks, Etext, Libraries and the Commons

Questions

1. How many books has Project Gutenberg digitized and made available online?
2. Is the e-journal *Cites & Insights* available in HTML form?
3. Will the Online Content Alliance make ebooks freely available?
4. Will the Google Library Project (GLP) make ebooks freely available?
5. Is the in-copyright portion of GLP fair use?
6. Does GLP harm book sales?
7. Does GLP harm authors?
8. Will OCA and GLP replace online catalogs?
9. Will OCA and GLP weaken libraries?
10. Will OCA and GLP strengthen the commons?
11. Should librarians struggle to assure that OCA, GLP, and related efforts don't overlap?
12. Should (do) people read books from beginning to end?

Answers

1. None.
2. No.
3. Probably.
4. Sort of—but only with a forgiving definition of "ebooks."
5. Nobody knows—and nobody knows whether a court trial on this issue will be a very good or a very bad thing.
6. No.
7. No.
8. No.
9. No.
10. Yes.
11. No.
12. Yes and no.

This PERSPECTIVE is just that—my perspectives (and what I've gleaned from others) on what's going on with OCA and the Google Library Project (GLP) and implications for copyright, ebooks and etext, libraries and the commons. A separate essay considers some of what's been published (primarily on the web) about the two projects.

Inside This Issue

Expanding on Those Answers

1. Project Gutenberg does not digitize books and make them available. It digitizes the *texts* and makes those available online (and in CD/DVD collections). That's an important distinction, although it's one that gets confused when you talk about "ebooks." In Project Gutenberg's case, it's clear enough. The plain-ASCII files omit all typography and design, sometimes omitting even chapter headings. That's great in terms of low-bandwidth downloads and full-text manipulation, but it deals with e-text: The *text* of a book. (A true booklover would say that even making digitized pages available isn't making the book available, since the quality of paper and the binding are also involved. I'm taking a middle ground.)

2. The *text* of most essays in *Cites & Insights* since 2004, including all essays in recent is-

sues, is available in HTML form. But *Cites & Insights* isn't just text—it's also a deliberately designed print-oriented publication, using carefully chosen typefaces and typographic devices. The HTML essays include some of the typographic devices (titles, headings, block-indented quoted material, bullets, italicized and boldfaced text) but omit much of the design of the ejournal itself. In other words, "text in Berkeley Oldstyle Book set at 11 points on 13 point leading" is an integral part of what defines the ejournal—but not the text within the essays.

3. There are so many definitions of "ebook" that no definitive answer is possible here. OCA *does* plan to provide digital facsimiles of book pages, which taken together constitute one definition of an ebook (not just the etext for a book). That's why PDF will be at least one standard form of OCA availability: It's one way to preserve the design of a printed book. Offered as coherent downloads, I'd call OCA's offerings ebooks. It's also likely to offer PoD.

4. GLP allows on-screen reading of digital replicas of book pages, but does *not* allow coherent downloading of complete books. It also doesn't allow bookmarking (as far as I can tell)—if you read pages 1-30 of a GLP "book" in one session, you'll have to go through those pages again in the next session to get to page 31. It takes a broad definition of "ebook" to include what GLP provides—but that could change. It's more booklike than Project Gutenberg (in the sense that typographic integrity is maintained), but it's less "ebookish" since you can't download the book or mark your place. Karen Coyle has suggested that GLP is "creating a lot of automated concordances to print books," and that's partly true—except that the concordances are bundled into one huge metaconcordance, and for copyright books GLP only shows the first three occurrences of a word or word combination, unlike a proper concordance.

5. In my opinion, it should be—even though I've also said in the past that it probably isn't. Not because Google will be "making in-copyright books available online"—the project is quite clear about *not* doing that, and I

can't for the life of me turn three paragraphs of a book into a portion that would violate *any* definition of fair use. The problem is the complete cache that lies behind the full-text indexing and provision of those three snippets: That's a copy by most current definitions and some authors and publishers claim it's copyright infringement. I'd like to believe that I'm wrong in my earlier opinion, and lots of people who know more about copyright than I do seem convinced that it is fair use. The problem with a court trial is that it could either expand the explicit realm of fair use (ideally shifting owner's control toward digital *distribution*, eliminating cached copies as potential infringements), or it could help undermine digital fair use by finding for the publishers and authors. On balance, I hope the court case goes forward—but I'll be surprised if it does.

6. GLP will *not* make in-copyright books available for free, and as currently described won't make it easy to read most public-domain books for free. By encouraging discovery for relatively obscure works, Google Print should *increase* book sales, giving a little more visibility to non-bestsellers (the "long tail" if you need *Wired*-inspired jargon for longstanding phenomena).

7. How could it harm authors to make their works more visible? Well, OK, it might harm *some* authors—those whose writing or thinking is so bad that three paragraphs turn off potential buyers and those whose works are clearly inferior to lesser-known books that GLP makes visible. The claim that GLP hurts authors or publishers because it deprives them of some theoretical market for making their books full-text indexed online or leasing the books so someone else can do it is, I believe, implausible.

8. I believe that the visibility of the first chunk of *Google Book Search* is starting to clarify this situation. Full-text searching of book-length text just isn't the same as good cataloging, quite apart from the fact that OCA and *Google Book Search* won't usually provide instant access to local availability or combine circulation with cataloging data. Not that full-

text book searching isn't valuable; it is, but its role is complementary to that of online catalogs. The projects might hasten the improvement of bad OPACs; that's not a bad thing.

9. I believe OCA and Google Book Search (formerly Google Print) will both *strengthen* libraries by making works more visible, particularly with links to library catalogs and metacatalogs for local holdings. Even with OCA's full-download capabilities, most users are likely to prefer a print copy for those texts that they wish to read at length. Forward-looking libraries will be working to provide links between OCA, Google Book Search and their own services; some already are.

10. OCA should definitely strengthen the commons by making substantial quantities of public-domain material *available*—and, as currently planned, by helping to define the public domain itself by identifying post-1923 books with lapsed copyright. As for GLP, it really depends on how the project progresses and the extent to which Google decides to cooperate and interoperate with OCA, Project Gutenberg, and other digitization and etext projects. At the very least, GLP will make pages from public domain works available, which strengthens the commons (although not as much as the open approach of OCA).

11. Chances are GLP will digitize the same "book" (that is, same edition of a given title) more than once if it succeeds in its overall plan. Since OCA isn't one digitizing plan but an umbrella for a range of related initiatives, it's even more likely that the same edition will be scanned more than once, particularly when you combine OCA, GLP and other projects. If the digitization really is non-destructive, fast, and cheap, that may not matter. The costs (in time and money) of attempting to coordinate all such projects in order to prevent redundant scanning may be higher than the costs of redundant scanning and storage. As for semi-redundant scanning—that is, scanning more than one edition of a title or more than one manifestation of a work—it's not at all clear that avoiding such semi-redundancy is desirable, even if feasible. Lightweight methods aren't necessarily the most desirable for every project; for a loose network of low-cost book digitization projects, however, keeping the bureaucratic overhead light may be essential.

12. Yes: The vast majority of fictional works are, I believe, read through—and that's certainly how they're intended to be read. Yes: A high percentage of *narrative* nonfiction books, including both scholarly monographs and more popular works, are designed to build a case and are best suited to through-reading—and, I'll suggest, *are* read through from beginning to end by most readers in most circumstances. No: Lots of books aren't designed for through-reading, and in many cases a reader can effectively use a portion of a book that is designed for through-reading while ignoring the rest. (Alane at *It's all good* assaults Michael Gorman's statement, "The point of a scholarly text is that they are written to be read sequentially from beginning to end, making an argument and engaging you in dialogue," in a November 16 post, calling it "arrant nonsense" and citing a 1985 survey as evidence to the contrary. While I agree that Gorman overgeneralized—*some* scholarly texts are written to be read through—the headline on the post also overgeneralizes: "How people use books." I believe that 60% of a sample group consisting of 69% hard scientists responded to a question about how "you use a volume from the library these days" by saying they read 10% or less. Since "volume" and "scholarly monograph" aren't at all the same thing, and since hard scientists have largely abandoned monographs for journal articles (I believe), this finding has little to do with Gorman's assertion. In any case, how texts are *intended* to be read and how they *are* used aren't necessarily the same thing. "Real people interact with real texts" in many ways—almost any generalization is likely to be false, certainly including Gorman's.)

The Ebook-Etext Confusion

I can hear voices already: "Why should an ebook maintain the typography and pagination of a print book? Why shouldn't it be a different experience?"

It is a bit presumptuous of me to define "ebook" so as to exclude booklength etext with none of the

attributes that turn a text into a book. After all, I split "ebooks" into nine models five years ago ("Nine models, one name: Untangling the e-book muddle," *American Libraries* 31:8 (September 2000): 56-59): proprietary ebook devices, open ebooks, public-domain ebooks, circulating pseudobooks, "digital to physical" (PoD), "not quite a book" (brief etexts such as Stephen King's *Riding the bullet*), e-vanity/self-publishing, ebooks before the web, and "extended books" (systems that provide extensions beyond book capabilities). If anything, the situation has become more confused since then.

Here's how Karen Coyle put it:

It's debatable whether you can call [Project Gutenberg]'s offerings "e-books." They are definitely e-texts, but they lack nearly all of the qualities that you would desire n a book, which is why use of their texts has not been as stunning as the hype around PG. PG texts lack:

-paging and page numbers

-any ability to navigate by page or chapter, or link from indexes, etc.

-the look and feel of a book, i.e. pleasant fonts

-the ability to have illustrations and figures

-the ability to have footnotes.

And, as she says, pagination *does* matter if you plan to cite passages, use a book for classroom discussion, etc. Given all that, I believe it's reasonable to call plain-ASCII transcriptions of book-length materials "etexts" rather than "ebooks."

Sure, an ebook can and in some cases *should* be a different experience from a print book, but that experience should still involve elements that make a book something more than text. Breaking away from the print paradigm requires thought, not just transcription. This isn't to call PG texts useless, but they're something short of ebooks.

So, I believe, are GLP public domain offerings, at least as currently planned. They're closer in some ways, but further away in others. Again, *that could change*—if Google decides that it's in Google's interest to provide a mechanism for bundling the set of page images that makes up a book and downloading it to a device that can treat it as a coherent ebook. Again, this doesn't make GLP and Google Book Search useless or even less than potentially spectacular—but it also doesn't necessarily make them into ebook factories. Nor is that what they're intended to be, if you believe Google itself: They're ways to *find* books more than they are ways to *read* books online. (Thus the

name change—between the time these essays were first written and the time they appeared!)

E-ink and E-paper

Recent *Cites & Insights* pieces have featured discussion of e-ink and e-paper, and my doubts about both. Perhaps I should clarify my feelings in the context of ebooks and libraries.

I *want* to see an e-ink/e-paper that works for something other than yet more ways to sell stuff: Something that would allow a print-like reading experience and avoid some of the pitfalls of dedicated ebook devices and reading ebooks on computers. I want to see that for at least three reasons:

➤ Many "ebooks" serve their purposes *better* than print equivalents. Setting aside archival issues, it makes more sense to offer such things—fast-changing reference works, volumes of material where only a few pages needs to be read at any time, textbooks (in most cases), and more—as ebooks with the readability of print books. That should be a multibillion-dollar market, if it's handled right, and could serve to replace print where print performs worst.

➤ Some readers have good reasons to prefer some form of digital reading device over current magazines and books, for example those who need capabilities that *good* epaper devices might provide (expandable type, for example). Some others may be so dedicated to all things digital that they prefer to use a digital reading device, or really want to carry "a thousand books at once" (which may also mean that their device has $7,000 to $20,000 of documents on it…)

➤ Personally, I believe ebooks as wholesale replacements for print books and magazines are a solution to a nonexistent problem, now and in the medium-term future. I believe most people in most generations (including the supposed mutant kids) will prefer to read most narrative booklength texts and most magazines in print form. But if I'm wrong (which is certainly possible!), I'd like people to have the best possible digital reading experience—and good e-ink/e-paper might offer that experience.

Ebooks, Etext, E-ink, E-paper and Public Libraries

Do I believe any of this endangers libraries? Only in two nightmare scenarios, where publishers decide to shift all publication to locked-down ebook forms with truly draconian DRM—or, worse, where digital publications are made available entirely on rental "pay per read" basis.

Either of those scenarios has the potential to wreck public libraries in their role as the commons of shared resources. That wouldn't necessarily doom libraries, but it would eliminate what I consider to be their *most* essential role, one of the few that can't be replicated readily by other public agencies.

I don't believe that will happen—partly because I don't believe the nightmare DRM scenarios are likely, and don't believe wholesale conversion to e-reading is likely in my lifetime or yours. Actually, I believe the Sony BMG scandal (see elsewhere) may help alert the public to the general problem of DRM. That's a good thing—but one effect that some digiphiles may consider undesirable is that it's likely to lessen publisher interest in converting to ebooks.

Following Up
Mea Culpa

First, a correction—but this isn't the mea culpa. Those who downloaded the Mid-Fall issue on the first day may have received an incorrect URL for Jeremy Frumkin's *The digital librarian*. The correct url is http://digitallibrarian.org. The whole issue now has the correct URL. The HTML separate for "Library futures, media futures" has explicit links to two posts from that blog that I quote from and comment on. Those two posts are at http://digitallibrarian.org/?p=92 ("5 years?") and http://digitallibrarian.org/?p=95 ("Follow-up on 5 years") respectively.

Mea Culpa: Analogies, Gatekeepers and Blogging

After that NET MEDIA PERSPECTIVE appeared (*C&I* 5:12, November 2005), two of the people whose thoughts contributed to the essay had more to say about it in posts on their own blogs (*Civilities* and *Infothought*) and in email. I questioned the existence of gatekeepers within net media—whether so-called A-list bloggers control the topics being discussed within the blogosphere. I *specifically* doubted that such superior voices exist in the biblioblogosphere, our little corner of the blogging universe.

Jon Garfunkel (*Civilities*, civilities.net) posted "The new gatekeepers: The corrections" on October 17. He clarifies three items covered in my critiques:

➢ Garfunkel admits that "Garfunkel's hypothesis" ("People who blog have a much greater tendency to pass along incomplete quick impressions than balanced analyses written later, by a ratio of greater than seven to one") is weak and one datapoint he used (the Wendy's chili incident) is particularly weak. He rewords the hypothesis: "[P]eople are stubborn to let go of first impressions, and…the blogosphere as it is architected today does not work to counter mistaken first impressions." I agree with Garfunkel's reworded hypothesis—it's true (in my experience) and unfortunate.

➢ I took exception to Garfunkel's description of the role of the "new gatekeepers": "The new gatekeepers do so by manipulating information cascades." The refined version: "Manipulating is too strong a word. What I meant was: If we fear that the old gatekeepers can be restricting information, then we should also have reason to fear that the new gatekeepers can be amplifying selective information." There's a difference between "amplifying" and "manipulating"—and again, I agree with the refined version. I've seen enough cases even within the biblioblogosphere to recognize that those with established voices *can* amplify ideas and information more effectively than other bloggers.

➢ Garfunkel wrote, "The system rewards good writers and editors, who now are getting introduced to the better writers." I opined that this was a good thing—that good writing and editing *should* be rewarded. He now says that was "the opposite point of what I wanted to make." His point was "the system rewards the stars." That is a different point, and it's hard to argue against. Net media and the blogosphere haven't undermined the deep truth of the lyric, "Them that's got shall get."

In case it isn't obvious, I regard Garfunkel's work at *Civilities* as interesting and important. Otherwise, I would not spend so much time critiquing it.

Seth Finkelstein (*Infothought*, sethf.com/infothought/blog/) posted "Cites & Insights November 2005" on October 14, pointing out cases in which yes/no decisions within net media keep people from being widely heard who *should* be widely heard—just as similar decisions keep voices out of traditional media. (I'm phrasing this badly; go read his post.) He emailed me questioning my A-list skepticism:

> [T]he word "controlling" might be a little misleading, in that of course it's not absolute—but that shouldn't be used to deny an effect…Every group has its influential leaders, who can often (not always, but often) make an issue prominent or marginalize it. Why should library issues be an exception?

After another exchange, Seth did a terrible thing: He convinced me I was wrong. Discussing an example he raised (the rumor that ACLU was mounting an "as-applied" challenge to CIPA in Rhode Island) I noted the likely source of the rumor, one of three or four library bloggers who have much larger readership than the rest of us. I noted that this blogger "doesn't set the tone of most biblioblogosphere conversations; neither does [another of that group]. In a lot of areas, I have as much 'power' as they do—but certainly not primarily from *Walt at Random*."

I was denying the significance of the A-list as gatekeepers by pointing out that I'm not part of the library A-list but nonetheless pretty good at making my voice heard. To which Seth responded, "Of course not ('primarily from Walt at Random'). You're a well-known writer and columnist in the field… That's the source of your power. Similarly, there are blogs that are very highly ranked generally because of the author's 'rock star' status, not particularly because of what he or she writes on the blog. Some people have influential and/or widely-read blogs *because* they are (local) celebrities, and some people are (local) celebrities *because* they have influential and/or widely-read blogs. Cause and effect varies."

I finally realized that I'm not in a position to deny the possibility that there are gatekeepers (of a sort) in the biblioblogosphere—because I also have an established voice. As I said in a reply, once this sunk in to my thick skull, "For a 'gatekeeper' to deny the existence of gatekeepers isn't quite oxymoronic, but…" Indeed, as Finkelstein responded, such denial is "standard blog evangelism."

I'm hardly a blog evangelist, but otherwise the shoe fits pretty well. Thus this mea culpa. I failed to think through the process by which I denied the existence of "controlling" or amplifying voices within the biblioblogosphere. I knew I couldn't legitimately deny that existence if I was one of the amplifying voices. I *wrongly* assumed that I was not one of those voices simply on the basis that my blog is young, doesn't have very much readership, and doesn't usually address library issues directly.

Once you see *Walt at random* as part of "Walt's voice," which is also carried in *Cites & Insights*, the print columns I still do, the cumulative effect of the articles, columns, speeches and books I've done in the past, and my participation in lists, *LISNews*, and the like…well, the denial looks a little silly.

I continue to believe that it's easier for new voices to become major voices in the library field and the biblioblogosphere than it is in many other fields. But I'm the wrong person to make that claim: After all, I've been working on it for two decades. Mea culpa.

Other notes

Mark Lindner of *…the thoughts are broken…* has an October 16 post about the same essay. Lindner considers two of my questions: Do you believe the most widely read library bloggers act as gatekeepers? Do you really want to know what some array of strangers concluded about an article—or do you want to be guided by a handful of "trusted strangers"?

His answer to the second is straightforward: "I would much prefer the latter. I want to know what people with whom I have some context, and possibly some contact, think and value. I could care less what the hoi polloi think…" The first one's tougher and his long, thoughtful answer deserves to be read in context and in full. Briefly, he's finding he gets more out of the folks who *aren't* read as widely—and that he's not interested in short posts that link to other items and don't say much on their own—but that's just a bit of what he has to say, all of it **worth reading**.

Angel, *The Gypsy librarian*, posted "On gatekeeping and other questions" on October 17, a post inspired by Lindner's post. He also likes blogs that say something and notes that some "widely read" blogs in most fields become "link collections." He offers a couple of thoughts worth quoting (in a post **worth reading** on its own): "It is the ability to roam and wander as one pleases that makes blogging what it is. Expectations, like bets, are off. Having said that, what I will say next may sound quaint, old fashioned, or even

idealistic… If you have a gift, a power, an ability, you should make the best use of it…"

I'm always pleased and surprised when my essays inspire other essays. Lindner and Angel both took the discussion in interesting directions that gave me new food for thought. I'm grateful.

Other Items

Fiona Bradley (*explodedlibrary*) noted my notes on her comments on the "investigation" of the biblioblogosphere (yes, it's a "tongue-twister of a term," but I think we're stuck with it) in a September 7 post. The more I think about it, I *don't* call her response to the survey negative. Carefully critical, but not negative. She correctly says my informal study was flawed and offers the compliment that it was "a very good, albeit flawed…first step" in the direction of study and analysis of library blogging. Her final paragraph, which I'll keep in mind when I do the next round:

> I think that both objective and subjective measures have their uses, but personally (not professionally), I am more interested in the subjective and tend to be skeptical of numbers. If other people prefer more objective bibliometric measures, I can understand that. I just hope that they are aware (as I think Walt is) that most objective measures usually contain subjective elements as well.

I do find quantifiable measures to be interesting (and I don't choose to offer my subjective evaluation of a bunch of library blogs; I get in enough trouble as is!). The *selection* of such measures is inherently subjective. The first time around, I was careful to state exactly what measures I was using. Next time, I'll do that again and possibly offer some rationale as to my choice of measures (and the shortcuts needed to make the investigation feasible).

Several people based blog entries on "Library futures, media futures." Alane at *It's all good* offers notes on Jerry Kline's speech at the Charleston Conference (which I missed this year, sadly), in which he suggests that libraries need to buy more physical books—libraries get more credit for books on the shelf than they do for digital resources. (That's a third-hand paraphrase; as Dorothea would say, "caveat lector.") She notes of my piece: "This sentence sums up the long piece for me: 'I don't believe *our* future (the future of anyone reading this essay in 2005) is solely digital and I don't see any evidence to support such a massive change.'" If you note the key word "solely," I see no reason to weaken that statement.

Dorothea Salo questions my support for the "book brand" in a November 2 *Caveat lector* post. I mention that most public library surveys show people want books. She wants followup questions "interrogating the importance of books in the respondents' lives." There's more to the post but I have to grump about her comment, "Until we know, I wouldn't stand pat on the book brand." I explicitly say the book brand is "a great basis to *build* on"—not something to "stand pat on." Of course public libraries should embellish their brand: the great third place, a source of trusted information, a commons for licensed digital resources, and so on. But "What's wrong with *starting* from a basis of 'the place where you can borrow books for free'?" (Salo thinks that a lot of those who want libraries to have books don't actually use books much; I have to say that my anecdotal experience in my own public library and others I've visited says lots of people use lots of books—enough so that most library referenda still pass.)

Finally, Luke Rosenberger poked at the Kaiser Family Foundation "Generation M" study in a November 14 post at *lbr.library-blogs*. He found some carelessness in the questions asked, leading him to wonder whether all the reported reading is *print* reading. Is it likely that young people (ages 8-18) interpret "Reading for fun (books, magazines, etc.)" as meaning something other than print reading, particularly given other choices such as "visiting websites" and "other computer activities"? If I was reading an article online that originally appeared in a magazine or newspaper, I'd regard that as "visiting a website" or some "other computer activity," not as "reading for fun (books, magazines, etc.)" but of course I'm a long way from ages 8-18. Go read Rosenberger's thoughtful post; maybe he's right.

©3 Perspective: Balancing Rights
Sony BMG: DRM Gone Bad

We've seen it in Europe: What would be called fair-use rights in the U.S. being chipped away as record companies introduce copy-protected pseudo-CDs, a few here, a few there, and get away with it. Maybe ripping isn't as big a deal overseas. Maybe something else is going on. When companies tried pseudo-CDs in the U.S., they generally got burned—bad publicity

for playing failures followed by withdrawal from the market. But they keep on trying.

This is the sad story of a formerly first-rate company gone bad, at least in part. Sony, a premier home electronics and personal computing company (and the victorious defendant in the Betamax case!) that *should* be in the forefront of protecting consumer entertainment interests, is also the cocreator of the Compact Disc. By definition (the "Red Book," the licensed technical specification for pressed CD Audio Discs), a CD does not include copy protection. But Sony has also become part of Big Media, thanks to its purchase of Columbia Records, Columbia TriStar studios, MGM, and other movie and sound recording publishers—and with the merger of Sony's sound recording division with BMG's sound recording division to form Sony BMG, second biggest record publisher in the world.

The Big Media side of Sony seems to be in the ascendant these days. The result: Sony BMG started releasing music discs that *aren't* CDs: PseudoCDs that "protect" music from "excessive" copying. There are several ways to do that, all of them problematic. Sony managed to come up with a way that's *truly* unfortunate: Auto-installing software that bears more than a passing resemblance to spyware and that has already been used by crackers to sneak other malware onto personal computers.

This piece is a once-over-lightly noting some of the low points in this unfortunate story. Edward Felten's *Freedom to tinker* blog (www.freedom-to-tinker.com) may be your best source for detailed information on the story as it's progressed to date (and as it develops from here). Here's my quick advice for librarians and anyone else reading this:

➢ Don't buy any Sony BMG disc that says anything about copy protection or that doesn't have the Compact Disc Digital Audio logo.

➢ The same advice goes for other publishers: If a "CD" is copy protected, don't buy it.

➢ You could consider whether you want to buy *any* Sony BMG discs at this point. I won't suggest boycotting all Sony products and entertainment; that's hard to do and may be pointless.

➢ If you *must* buy such discs for your library, it wouldn't hurt to add a note to the cataloging record (and maybe a sticker on the case) noting that the disc may not play on all devices and could pose a security threat if used on personal computers.

➢ If you must *use* such discs on a PC (of any sort), first turn off autoplay/autorun. Holding down the shift key as you insert the CD should do the trick. You can install the TweakUI portion of Windows PowerToys on the XP install CD; start TweakUI; expand MyComputer; expand AutoPlay; select Drives; then turn off the checkbox next to each drive that you don't want to use AutoPlay/AutoRun.

➢ Keep your antivirus and spyware programs up to date. The big commercial vendors dropped the ball on the Sony BMG situation, apparently because when a big company produces malware it isn't really malware—but that's likely to change.

➢ Consider whether your library should be part of the class action suits against Sony BMG.

Early Pieces

As usual, this is chronological. *Freedom to tinker* appears so often that I'll just note "FTT" and a date. The situation isn't that recent, as noted at FTT June 15, "DRM and 'casual piracy.'" Ed Felten cites a May 31 Reuters story discussing the new "technology solutions" Sony BMG was testing "that bar consumers from making additional copies of burned CD-R discs." Thomas Hesse of Sony BMG used the term "casual piracy, the schoolyard piracy" and said two-thirds of all "piracy" comes from ripping and burning CDs. Even that early, there were known problems: "Secure burning" meant you couldn't put Sony BMG tracks on an iPod.

Felten also noted a San Jose *Mercury News* story about "casual piracy," referring to "those who copy music CDs for their friends," and expressed his surprise that the *Mercury News* "has accepted the record labels' terminology in this matter." Here's Felten's take, with which I mostly agree:

> Piracy refers to making unauthorized reproductions of digital media for financial gain—or, stretching the term, for indiscriminate distribution. It is *not* piracy—"casual" or otherwise—when you buy music and make a few copies for close friends.

It may or may not be right—but it's not piracy. As Jessica Litman points out (cited by Felten), Section 1008 of the copyright statute provides that consumers may make *non-commercial* copies of recorded music without liability. When you make a copy to give to a

friend, that's a non-commercial copy. If it's not illegal, how can it be piracy?

Section 1008 is part of the Audio Home Recording Act—the agreement that adds royalties to the cost of audio-rated digital recording blanks and all digital audio recording devices, in return for explicitly legalizing home recording. Here's the text:

> No action may be brought under this title alleging infringement of copyright based on the manufacture, importation, or distribution of a digital audio recording device, a digital audio recording medium, an analog recording device, or an analog recording medium, or based on the noncommercial use by a consumer of such a device or medium for making digital musical recordings or analog musical recordings.

You didn't know about AHRA? It was one of the rare attempts to explicitly balance the rights of creators and users. AHRA adds a 2% royalty to the price of a digital audio recording device and a 3% royalty to the price of digital audio recording media for home use. AHRA also requires the Serial Content Management System, which in theory means you can't make an audio CD-R *from* an audio CD-R. The consumer side of this is simple: It's not infringement to make non-commercial copies of owned audio CDs.

While not directly related to Sony BMG, an October 20 FTT post was also interesting—Felten cited Walt Mossberg of the *Wall Street Journal*, whose column that day called for a *boycott* of "products like copy-protected CDs that overly limit usage and treat everyone like a criminal." That's right: Mossberg, nobody's radical, appearing in the *Wall Street Journal*, recommended a boycott. Mossberg distinguished between "copying a song to give to [your] brother" and "serious pirates—people who upload massive quantities of music and videos to so-called file-sharing sites, or factories in China that churn out millions of pirate CDs and DVDs." Mossberg also missed a beat:

> I believe Congress should rewrite the copyright laws to carve out a broad exemption for personal, noncommercial use by consumers, including sharing small numbers of copies among families.

For audio, at least, just such an exemption exists: Section 1008, cited above.

In the Heat of November*

November 1, 2005, *Freedom to tinker*: "CD DRM makes computers less secure." This post lays out the story, as researched by Mark Russinovich of Sysinternal. Sony BMG has been using XCP2, a copy protection system from First4Internet. The first time an XCP-protected CD is inserted in a Windows system, Windows Autorun launches an installer which copies a chunk of software onto the computer. "From then on, if the user attempts to copy or rip a protected CD, the software replaces the music with static." Or, if things work properly, it will let you copy a DRM-wrapped *version* of the music to the PC—but that version can only be used three times on CD-Rs.

As Felten notes, the copy protection is clumsy—disabling autorun should stop it. "Or [you] can remove the software once it's been installed, as was easily accomplished with the earlier SunnComm technology." Here's the rub: "Now, it seems, the latest innovation in CD copy protection involve[s] making the protection software harder to uninstall." XCP2 uses malware (malicious software) techniques to do this—namely a "second component" that cloaks the existence of the first, even from administrators. That's automatically bad: An administrator should always be able to see exactly what's installed and what's running. "What kind of software would want to hide from system administrators? Viruses, spyware, and rootkits (malicious programs that surreptitiously hand over control of the computer to a remote intruder)." Rootkits are particularly nasty—and sure enough, XCP2 uses a rootkit.

So what? So this:

> Once the driver is installed, there's no security mechanism in place to ensure that only the XCP2 software can use it. That means *any application* can make itself virtually invisible to standard Windows administration tools…

The next day, *Wired News* had a story, "The cover-up is the crime." It refers to a "cacophony of criticism" over Russinovich's revelation and notes, "We think the company is getting off easy." The story calls a rootkit "a particularly insidious type of Trojan horse" (it tells portions of the OS to lie). It notes that Sony said it would issue a patch so antivirus software could undo the cloaking. But *Wired* holds that "the harm of the Sony DRM scheme is not that it enables evildoers, but that Sony itself did evil… By deliberately corrupting the most basic functionality of their customers' computers, Sony broke the rules of fair play and crossed a bright line separating legitimate software from computer trespass."

That day's (November 2) FTT post notes that First4Internet denied there was really a problem—and noted that its team worked closely with antivirus

companies such as Symantec. Worse, the company was moving "to new ways of cloaking files on a hard drive"—which means a *different* rootkit method. As Felton notes, "The problem is not that they used a particular rootkit method. The problem is that they used rootkit methods at all. Switching to a new rootkit method will, if anything, make the problem worse." First4Internet also claimed "we haven't had any comments about malware at all"—which Felten says is simply false. Felten suggests a four-step path "if SonyBMG wants to start recovering consumer trust":

➢ Admit that there is a problem.
➢ Modify product packaging, company websites, and EULA language to disclose what the software actually does.
➢ Release a patch or uninstaller.
➢ Make clear that the companies support and permit research into the security implications of their products.

He goes on to note, "We don't know yet whether the…software causes even more security or privacy problems for users" and *any* attempt to copy-protect CDs will face similar problems.

The next day, the companies released a software update claimed to "remove the cloaking technology"—but it also adds new stuff. The companies continued to assert that the original rootkit "does not compromise security," leading Ed Felten to distrust their new assurances.

A week later, the first virus was discovered that used the Sony BMG software to hide itself. At that point, at least one public library had had enough: The Ann Arbor District Library said it wasn't buying Sony BMG copy-protected CDs for the foreseeable future. (Reported by Jenny Levine, *The shifted librarian*.) FTT November 11 offers a "SonyBMG DRM customer survival kit"—instructions for seeing whether you have the rootkit, disabling the rootkit (but not the anti-copying software), removing the DRM software entirely (which requires trusting Sony BMG), and moving songs from copy-protected CDs onto iPods (or anywhere else). It's a detailed post that you should read for yourself—but the final section is amusing, given that Felten quotes Sony BMG's instructions verbatim. Basically, those instructions tell you how to eliminate DRM in any digital music that *can* be burned to an audio CD. Once you burn the music to an audio CD, you can rip it to MP3 or iTunes or anywhere: There's no longer any copy protection. Felten:

You read that correctly—SonyBMG, which is willing to surreptitiously install a rootkit on your computer in the name of retarding copying of their music, will send, to anyone who asks, detailed instructions for making an unprotected copy of that same music.

J. Alex Halderman posted a lengthy essay on FTT, November 12, 2005: "Sony shipping spyware from SunnComm, too." Sony BMG uses SunnComm's MediaMax on other CDs; while it doesn't use a rootkit, "it does behave in several ways that are characteristic of spyware." It installs without meaningful consent or notification—including installing "around a dozen files" *before* offering you a license agreement, launching one of them even if you decline the agreement. The MediaMax-"protected" discs don't include a proper uninstaller (some don't include an uninstaller at all). The software "transmits information about you to SunnComm without notification or consent."

Then things got worse. FTT, November 15, 2005: "Sony's web-based uninstaller opens a big security hole; Sony to recall discs." A Finnish researcher, "Muzzy," noticed that the web-based uninstaller offered by Sony as a way to remove the XCP software has opens a "far greater security risk than even the original Sony rootkit." The flaw "allows any web page you visit to download, install, and run any code it likes on your computer. Any web page can seize control of your computer; then it can do anything it likes." (Sony BMG had by now recalled the pseudo-CDs and was offering to replace them for free.)

That seems bizarre—but apparently true. When you fill out Sony's request form for the uninstaller, it downloads and installs an ActiveX control from First4Internet called CodeSupport. CodeSupport stays on your system—and it's marked "safe for scripting," so any web page can use it. CodeSupport doesn't verify the source of code that it downloads. (Read the post for the gory details.) The result? You've uninstalled XCP2—and, if you use Internet Explorer, semi-permanently made your system even more vulnerable. Late on November 15, Sony suspended distribution of the flawed system.

A November 16 FTT post, "Immunize yourself against Sony's dangerous uninstaller," offers a link to a tool to disable CodeSupport (and prevent it from being reinstalled). Sony modified the uninstall process so that it doesn't use CodeSupport—but left CodeSupport on the website.

On November 17, FTT was back to SunnComm MediaMax. SunnComm also offers an uninstaller if

you pester them long enough—and that uninstaller *also* "opens up a major security hole" similar to the other one." According to J. Alex Halderman, "I have verified that it is possible for a malicious web site to use the SunnComm hole to take control of PCs where the uninstaller has been used." He says it's even easier than with CodeSupport.

Wired News has another story (by Bruce Schneier) on November 17: "Real story of the rogue rootkit." He calls it a "David and Goliath story of the tech blogs defeating a mega-corporation." He calls this "a tale of extreme hubris" and "incompetence." He notes that the rootkit itself might even infringe on copyright, since it seems to include an open-source MP3 encoder in violation of that encoder's license agreement. Class-action lawsuits are underway in California and elsewhere. "While Sony could be prosecuted under U.S. cybercrime law, no one thinks it will be." In addition to Schneier's obligatory Windows-bashing, he discusses the "collusion between big media companies who try to control what we do on our computers and computer-security companies who are supposed to be protecting us." This is an excellent point, given that more than half a million PCs may have been infected with the Sony rootkit: McAfee and Symantec just weren't there.

Other interesting themes are still developing—for example, XCP's copyright infringement—but I'll close for now by noting a November 17 *Copyfight* post, "Boiling frogs with Sony's rootkit." Wendy Seltzer compares Big Media's DRM strategy to the old story about how to boil a frog: Put it in a pan of cold water and gradually turn up the heat. Thus, Apple iTunes had "modest" DRM restrictions—which became tougher, retroactively, on already-purchased tunes. If you accept iTunes limitations, "you might not notice as you lose the ability to do your own format-shifting." And so on, and so on.

Sony BMG "turned up the heat too fast with its rootkit." The result may be *good* for consuer rights—because us frogs are hot about it and jumping out of the pan. Consumer awareness is the only way to prevent spyware and viruses; it's also essential to discourage and control DRM, or at least excessive DRM. "The average fan…suddenly has a vivid example of how DRM takes your music—and your computer—away from you." Let's hope people pay attention.

[*With a tip of the hat to the late great Phil Ochs]

OCA and GLP 2: Steps on the Digitization Road

Many voices have offered many opinions since the last time I discussed Google Print (and the Google Library Project) at any length (*Cites & Insights* 5:11, October 2005). Lawsuits have been filed. Scholars, lawyers and pundits have weighed in on the merits of the suits and the nature of fair use. Google ended its scanning moratorium and opened a chunk of Google Print for preliminary use—and a big, new, multipartner complementary project began, the Open Content Alliance (OCA). Finally, Google changed the misleading "Google Print" name to the much better "Google Book Search"—making it clear that the primary aim of the project is to help people *locate* books of interest, not *print* them (or, in most cases, read them online).

This essay notes some of the things that have been said since the last roundup, injecting commentary along the way. A separate PERSPECTIVE, "OCA and GLP 1: Ebooks, Etext, Libraries and the Commons," summarizes some of my thoughts on the possibilities and issues involved—including definitional issues such as the difference between making the *text* of a book available online and making the *book* (or at least its pages) available online.

I'll start with OCA even though it's the newer of the two; some commentaries address both OCA and Google Book Search. When commentaries refer to Google Library, I assume they mean the Google [Print] Library Project, GLP; when they refer to Google Print, I assume they mean what's now Google Book Search, which encompasses both the established publisher-based program and GLP.

Open Content Alliance

Posts and pieces about the Open Content Alliance began around October 2. By the end of October, the new coalition had several major partners, a range of comments, and what appears to be a bright future.

FAQ

The best description I've seen of OCA is embedded within the FAQ (www.opencontentalliance.org/faq.html). Here's quite a bit of it, leaving out most questions, with a couple of comments interjected:

The Open Content Alliance (OCA) represents the collaborative efforts of a group of cultural, technology, nonprofit, and governmental organizations from around the world that will help build a permanent archive of multilingual digitized text and multimedia content. The OCA was conceived by the Internet Archive and Yahoo! in early 2005 as a way to offer broad, public access to a rich panorama of world culture.

The OCA archive will contain globally sourced digital collections, including multimedia content, representing the creative output of humankind.

All content in the OCA archive will be available through the [OCA] website. In addition, Yahoo! will index all content stored by the OCA to make it available to the broadest set of Internet users. Finally, the OCA supports efforts by others to create and offer tools such as finding aids, catalogs, and indexes that will enhance the usability of the materials in the archive.

Worth noting: Yahoo! does *not* plan to be the sole source for web searching.

Contributors to the OCA include individuals or institutions who donate collections, services, facilities, tools, or funding to the OCA… The OCA will continue to solicit the participation of organizations from around the world.

The OCA will seed the archive with collections from the following organizations: European Archive, Internet Archive, National Archives (UK), O'Reilly Media, Prelinger Archives, University of California, University of Toronto.

An international effort from the start: European Archives, UK's National Archives and Toronto.

The OCA will encourage the greatest possible degree of access to and reuse of collections in the archive, while respecting the rights of content owners and contributors. Generally, textual material will be free to read, and in most cases, available for saving or printing using formats such as PDF. Contributors to the OCA will determine the appropriate level of access to their content…

"Formats such as PDF" is *not* the same as "only available in PDF."

Metadata for all content in the OCA will be freely exposed to the public through formats such as the Open Archives Initiative Protocol for Metadata Harvesting (OAI-PMH) and RSS.

The OCA is committed to respecting the copyrights of content owners…

Will copyrighted content be digitized or placed in the OCA archive without explicit permission from rights-holders?

No…[explained at some length]

The OCA is committed to working with all types of content providers to grow its archive. The OCA has been in discussions with major publishers and the organizations that represent them in order to explore legal, sustainable business models through which more copyrighted content can be made widely available…

There's the starting point: Something a *little* like GLP—but a lot different, with a broader range of partners, a commitment to openness (including open access where feasible) and interoperability, a strong archival bent, and—on the downside—no single massive source of funding. As Eli Edwards put it in the first blog post I encountered regarding OCA (at *Confessions of a mad librarian*, edwards.orcas.net/~misseli/blog/, October 2, 2005): "It is not as ambitious as the Google Print project, but it has the potential to be a very useful supplement, as well as a way to promote open standards and collaboration.

University of California press release

The California Digital Library issued a press release on October 3, "UC libraries partner with technology companies and non-profits to provide free public access to digitized books." The release notes that the Internet Archive will do the scanning "using a new technology that scans books at the cost of 10 cents per page"—contrasting that with the costs of scanning archival photographs and documents, which "typically begin at $20.00 per page."

The release quotes UC Santa Cruz literature professor Richard Terdiman on the virtues of having "public domain literary texts available online"—"This will be a wonderful boon to students and scholars, and a great service to the public." It also notes two other sponsors: Adobe and Hewlett Packard.

"The UC libraries will contribute books and resources in order to build a collection of out-of-copyright American literature that will include works by many great American authors." Contribute, in this context, means "lend for non-destructive scanning."

Ann Wolpert, ARL president, offers the final and longest quote:

"This is an exciting step in the ongoing development of open access solutions for citizens, students, scholars, and researchers worldwide… Working with the OCA, academic and research libraries can provide greater access to an untold wealth of high quality, high value materials, contribute expertise in developing reliable and authoritative collections, and help shape the structure of online services. Libraries, publishers, educational institutions, and others must collaborate around initiatives like the OCA to effectively serve their communities in the 21st century."

I was surprised to read that scanning archival documents still starts at $20 per page; perhaps I should

not have been. Details of how Internet Archive does high-quality non-destructive book scanning and OCR for $0.10 per page are starting to emerge; it's not and probably can't be a wholly automated operation.

While neither the FAQ nor this press release clarifies this point, "public domain" does *not* mean "published before 1923." A great many items published between 1923 and 1976 are in the public domain, but research is required to identify those items. My understanding is that the Internet Archive plans to carry out that research as needed.

In challenge to Google, Yahoo will scan books

That's the headline on an October 3 New York *Times* story by Katie Hafner. The competitive thrust may be necessary to make a newspaper story exciting, but I find it a bit unfortunate. OCA is and should be less and more than a "challenge to Google." Within the story, that's clear: books will be "accessible to any search engine, including Google's." An odd way to mount a challenge!

The story mentions "hundreds of thousands of books" and "specialized technical papers" as well as "historical works of fiction." Brewster Kahle snipes at Google, if indirectly: "Other projects talk about snippets. We don't talk about snippets. We talk about books." So, to be sure, does the Google Library Project for *public domain* books, the only kind OCA currently plans to scan. By the end of the article, Kahle's changed from sniping to recruiting: "The thing I want to have happen out of all this is have Google join in."

UC's contribution is cited as "as much as $500,000…in the first year" along with volumes to be scanned. The article estimates Yahoo!'s contribution as between $300,000 and $500,000 for the first year. HP and Adobe are contributing hardware and software.

Other items: OCA and OCA-Google comparisons

Most of these are second-hand, based on Peter Suber's excerpts in *Open access news* (www.earlham.edu/~peters/fos/).

Andrew Orlowski of *The Register* (October 4) claims the grievance of publishers and authors against Google is that it "has got stuff, if not for free, then at a bargain price" and quotes Seth Finkelstein's view that Google is trying to supplant publishers as the middleman between authors and readers. "So what at first looks like a copyright issue on closer examination is really a compensation issue. Just as we've seen with music. There is *no* copyright crisis." He says at some point "would-be gatekeepers such as Google and Ya-

hoo! will do the decent thing and pay for licenses to use the content…" I'm impressed that Orlowski knows better than most everyone else—"there is *no* copyright crisis"—and that he believes licenses should be required in order to index material.

A *Daily Californian* article (October 4) provides more detail on UC's selection: "the university's prized American literature collection…works written from the 1800s until the 1920s," all from UC's libraries (which taken as a whole represent the largest university library collection), all available for free download. If this includes portions of Berkeley's archival collections, it will be a groundbreaking contribution.

Preston Gralla gets it wrong in an October 5 piece at *Networking Pipeline*, "Yahoo gets book-scanning right…almost." His problems with the project?

> First is that the material will be made available in Adobe Acrobat format, rather than as text. Acrobat is a notoriously finicky format, and the Acrobat reader has probably crashed more computers than anything this side of Windows. It's big, it's ugly, and it's a resource hog. People should have the option of viewing in plain text. Second is that all the work in the archive, regardless of copyright, will be made fully available as Acrobat files, so it can be easily printed out. This is great for public domain works, but not so great for copyrighted works.

I refer you back to the FAQ. PDF (there is no "Acrobat format") is *one* format in which works will be made available—and it's by far the best established and most robust format in which to display actual book pages. Nothing in the FAQ says that works won't, at some point, also be offered as plain text. Gralla's slam at Adobe Reader (which Suber also finds to be an "annoying format") is over the top, but hey, he's a commentator. His second point is just wrong: OCA makes it *extremely* clear that copyright works won't be posted for full downloading without the express consent of the copyright holders.

Microsoft (via MSN) joined OCA in late October. According to an October 25 press release, MSN Search plans to launch MSN Book Search—and MSN committed to digitizing 150,000 books in 2006 (or Microsoft contributed $5 million for 2006 digitization, roughly the same thing). An October 25 story at *Search Engine Watch* says Microsoft is making separate deals with libraries and will contribute *some* scanned material to the OCA database.

An October 26 Reuters story says OCA has added "more than a dozen major libraries in North America, Britain and Europe." Lulu (called a "publisher of out-

of-print books," but I think of LuLu as a publish-on-demand service) is also working with OCA. Google and OCA are talking and it's probably only a matter of time before they find common ground.

Just to add a little heat to the light, Tim O'Reilly (whose O'Reilly Media is an early OCA member) grumped on his blog about Microsoft—saying the group was "being hijacked by Microsoft as a way of undermining Google" (according to an October 31 Seattle *Post-Intelligencer* story). When interviewed, O'Reilly backed down, saying "hijacking" was a little strong and that "it's good that Microsoft is participating in the group."

> Still, he said he considers it inaccurate to portray Google as the "bad guy" for its initiative and Microsoft as the "good guy" for joining the alliance. In reality, O'Reilly said, the fundamental aims of the alliance and Google aren't opposed.

I haven't seen many commentaries (other than those from AAP and other litigants) calling Google a "bad guy" or Microsoft a "good guy" in this case. Rick Prelinger of OCA and the Internet Archive said, "From the beginning, there was a hope that (Microsoft) would join" and said of its $5 million: "That doesn't seem like undermining to me."

A November 5 Washington *Post* story notes a Microsoft deal with the British Library that appears to be OCA-related: Scanning 100,000 books (25 million pages) and making them available on Microsoft's book search service next year. "Microsoft says that it will seek permission from publishers before scanning any books protected by copyright."

The November 9 *Wall Street Journal* has an article about the Internet Archive/OCA scanning project at the University of Toronto. I've only seen quoted portions of the article. "In the little more than a year since the group started scanning books, it has digitized just 2,800 books, at a cost of about $108,250."

RLG, my employer, announced on October 27 that it will be a contributor to and partner with OCA. RLG will supply bibliographic information from the RLG Union Catalog to aid in materials selection and description. The RLG Union Catalog includes records for more than 48 million titles in almost 400 languages. One detail in RLG's press release: Public domain books in the Open Library (OCA's current name for its online collection), which "can be downloaded, shared, and printed for free…can also be printed for a nominal fee by a third party, who will bind and mail the book to customers."

That's where it stands as of this writing. An ambitious plan with a wide (and growing) range of partners; not as ambitious as the Google Library Project (at least initially), but with a strong open access bent and considerable potential for growth. As with Google Book Search, even if it never achieves everything initially suggested, it should be beneficial. And as with Google Book Search, it seems *unlikely* to replace print libraries—and isn't intended to.

Google Book Search and Other Google Stuff

When last we left Google and what was then Google Print (including GLP), publishers had attacked Google and Google temporarily suspended the scanning project. Since then, there's been two lawsuits, resumption of scanning, the first substantial addition of GLP books to Google Book Search (and the new name)—and many commentaries.

There are *far* too many commentaries to note individually. Charles W. Bailey, Jr. has a good starter list: "The Google print controversy: A bibliography," www.escholarlypub.com/digitalkoans/2005/10/25/the-google-print-controversy-a-bibliography/

I've tried to point out interesting arguments, odd statements, and some of the people on various sides of various GLP-related issues. I'm not even *attempting* to provide citations; for those items not in Bailey's bibliography, web searching should get you there.

The Authors Guild Suit

This suit was filed September 20 as a class action suit with jury trial demanded. The complaint itself runs to 14 double-spaced pages. It claims that Google's reproduction "has infringed, and continues to infringe, the electronic rights of the copyright holders…" In the next paragraph, the suit makes a questionable factual assertion:

> 4. Google has announced plans to reproduce the Works for use on its website in order to attract visitors to its web site and generate advertising revenue thereby.

Google has explicitly said that only *snippets* of in-copyright books, no more than three of them, each containing no more than a paragraph, would be displayed. Calling up to three paragraphs of a book "reproduc[ing] the Work" is outlandish and appears to deny the existence of fair use. The same claim is repeated in the following paragraph.

After a page of claims, the suit identifies three named plaintiffs (Herbert Mitgang, Betty Miles and Daniel Hoffman), each of whom has at least one book

with registered copyright held at the University of Michigan (presumably chosen because it's one of two Google 5 libraries that has agreed to complete digitization). It then describes the Authors Guild and Google and asserts a class definition and allegations. Paragraph 34 is worth quoting in full:

> 34. Google's acts have caused, and unless restrained, will continue to cause damages and irreparable injury to the Named Plaintiffs and the Class through:
>
> a. continued copyright infringement of the Works and/or the effectuation of new and further infringements;
>
> b. depreciation in the value and ability to license and sell their Works;
>
> c. lost profits and/or opportunities; and
>
> d. damage to their goodwill and reputation.

I'm no lawyer, but it's hard to imagine how points b, c, and d could be demonstrated without showing that Google planned to show a lot more than three snippets from a copyright work—or inventing a new "licensing for indexing" revenue stream that authors have never had in the past.

Is GLP Fair Use?

My original non-lawyer's opinion was that GLP couldn't pass a fair use test since it involves making and retaining copies of entire copyright works for commercial gain—even though the copies themselves won't be visible to any Google user. Since then, I've concluded that I don't know what to think…

Even intellectual property lawyers can change sides. William Patry initially called the project "fantastic" but could "see no way for it to be considered fair use… what they have done so far is, in my opinion, already infringing." He revisits the situation later, analyzing based on market impact, and concludes that GLP *is* fair use. Jonathan Zittrain (Harvard Law) thinks it's a tossup (or at least that the outcome of a trial will be a tossup).

Yes—or at least probably

Timothy B. Lee of the Cato Institute says GLP has a strong case based on transformative use and the nearly-certain *positive* market impact. William Fisher (Harvard Law) and Jessica Litman (Wayne State Law) agree. Julie Hilden says yes based on market share but offers a note that seems to confuse justice and law: "But the point of copyright law isn't to protect against *copying*, it's to protect against *harm to the value of intellectual property*." (Actually, according to the Constitu-

tion, it's to promote progress in science and useful arts, but never mind.)

Susan Crawford offers a multipoint discussion and says:

> All computers do is copy. Copyright law has this idea of strict liability—no matter what your intent is, if you make a copy without authorization, you're an infringer. So computers are natural-born automatic infringers. Copyright law and computers are always running into conflict—we really need to rewrite copyright law. But even without rewriting copyright law, what Google plans to do is lawful.

She uses fair use as the basis for that claim. Her first sentence is unfortunate. As anyone who's ever used a spreadsheet or database, edited a photograph, spell-checked, or used Word stylesheets should know, computers do a whole lot more than copy—but it's true that most of what they do *involves* copying. (Sigh. In another later posting, she repeats this claim: "*All* computers do is make copies." [Emphasis added])

Lawrence Lessig's "Google sued" post asserts "Google's use is fair use" with little argument: "It would be in any case, but the total disaster of a property system that the Copyright Office has produced reinforces the conclusion that Google's use is fair use." Much as I admire Lessig, my reaction is "Huh?"

Eric Schmidt (Google's CEO) claims fair use in a *Wall Street Journal* piece. I find Google's full vision improbable and a bit too grandiose—"Imagine sitting at your computer and, in less than a second, searching the full text of every book every written"—but that's another issue. Schmidt says Google will *not* place ads on GLP result pages, weakening the "commercial gain" argument. I wonder about his refutation of the notion that "making a full copy of a given work, even just to index it, can never constitute fair use. If this were so, you wouldn't be able to record a TV show to watch it later or use a search engine that indexes billions of Web pages." Maybe, but the second part is stronger than the first. I'm impressed that "Google Print will allow [backlist titles] to live forever." Few corporations predict that they'll *always* be around—particularly corporations as young as Google.

Tim Lee has a charming article (**well worth reading**) at *Reason*, "What's so eminent about public domain?" He notes the efforts of copyright extremists to take advantage of the backlash against the Kelo decision (the recent eminent domain case). You get a newly-formed "Property Rights Alliance" talking about "recent Supreme Court decisions gutting physical and

intellectual property rights"—but, as Lee says, "there haven't been any recent Supreme Court decisions 'gutting' intellectual property rights." Quite the opposite, in *Grokster*, *Eldred v Ashcroft* and others. Apparently Authors Guild spokespeople are claiming that GLP "seizes private property" and making an analogy with eminent domain. Lee's note:

> Yet in reality, the excerpts of copyrighted books shown by the service would be far too short to be of use to anyone looking for a free copy. And under copyright law, the use of short excerpts has traditionally qualified as fair use. If the Authors' Guild prevails, it will leave copyright owners with much greater control over how their content is used than they have traditionally enjoyed in the pre-Internet world.

No—or probably not

David Donahue cites the Texaco case (*no* fair-use right for a private corporation to photocopy entire articles for its research staff) and Williams & Wilkins (fair-use right for a *nonprofit* library to do similar photocopying) and thinks Google falls in between. Eric Goldman says his heart finds GLP "great and therefore we should interpret copyright law in a way to permit it. Unfortunately, my head says that this is highly suspicious under most readings of copyright law."

Karen Christensen of Berkshire Publishing Group doesn't like GLP—and includes an odd attack on Berkshire's primary customer base:

> Librarians, unfortunately, don't understand the rights of the creators and producers of books. Most librarians do not understand the work and expense, the expertise and talent, involved in creating the publications they buy. And quite a few believe that information should be free…

Pat Schroeder and Bob Barr go beyond saying GLP isn't fair use. "Not only is Google trying to rewrite copyright law, it is also crushing creativity…. Google's position essentially amounts to a license to steal…"

Preston Gralla seems consistent in misreading or misunderstanding. A November 3 post at *Networking pipeline* titled "Google retreats in book scanning project" refers to Google's "plan to make available for free countless thousands of copyrighted books without the copyright holders' permissions." He notes Google is now "not showing the contents of copyrighted books." But that's not a retreat; it's been Google's *consistent* plan to show snippets of copyright works unless publishers explicitly agree to allow pages to be displayed. Gralla claims the Authors Guild and AAP suits are "no doubt…why no copyrighted books have

been made available today" and expresses Gralla's clear belief that Google should give up: "Here's hoping that Google is having second thoughts about the program, and will ultimately back down…"

ALPSP says no

ALPSP issued a formal statement stating its firm belief that "in cases where the works digitised are still in copyright, the law does not permit making a complete digital copy for [Google's] purposes." The group opposed Google's opt-out solution and advises its members "that if they are not sure about the program, they should exclude all their works for the time being." On the other hand, ALPSP *does* suggest publishers "protect both in- and out-of-copyright print and electronic works by placing them in the Google Print for Publishers program instead." One wonders how publishers protect out-of-copyright works; surely public domain means public domain? Peter Suber notes that this and an earlier ALPSP statement assert "an abstract property right without claiming injury." The second statement also threatens legal action. His note:

> If the ALPSP believes that the absence of publisher injury and the possibility of publisher gain needn't be mentioned because they are irrelevant to its case, then it is mistaken. Apart from their relevance to policy, they will be relevant to any court asked to decide whether the Google copying constitutes fair use under U.S. copyright law.

ALPSP takes the same dogged approach to GLP that it does to open access. Sally Morris (CEO of ALPSP) was quoted as commenting that endorsing GLP is to say "it's OK to break into my house because you're going to clean my kitchen," further noting: "Just because you do something that's not harmful or (is) beneficial doesn't make it legal."

Morris has firm principles. When interviewed by Danny Sullivan for *SearchDay*, she says Google should, in principle, *also* "seek opt-in permission before indexing freely available web pages." That attitude, if made law, could indeed lead to the shutdown of internet search engines.

Jonathan Band's analysis

Band, who "represents Internet companies and library associations with respect to intellectual property matters in Washington, D.C.," prepared what may be the most widely-referenced copyright analysis of GLP, "The Google Print Library Project: A copyright analysis." One version appears in *E-Commerce Law & Policy* 7:8 (August 2005); that version also appears in *ARL*

Bimonthly Report 242 (October 2005), www.arl.org/ newsltr/242/google.html. A related article with a different title ("The Authors Guild v. the Google Print Library Project") appears at *LLRX.com* (www.llrx.cm/ features/googleprint.htm), published October 15. His concise analysis is clearly written and **well worth reading** in its entirety.

Band notes the need to consider *exactly* what Google intends to do in each aspect of Google Book Search. As regards AAP's attack on Google (and the Authors Guild suit), Band asserts that both the full-text copy and the snippets shown in response to queries fall within fair use. Band relies on *Arriba Soft* as a precedent—a case in which the defendant compiled a database of images from web sites, showing thumbnails in response to queries and linking back to the original website from thumbnails. (One difference: Arriba Soft did not retain the full-size images after preparing thumbnails.) The court found for Arriba Soft, saying its use of a given photographer's images "was not highly exploitative," that the thumbnails served an entirely different purpose than the original images (making them transformative), and that the use benefits the public. "Everything the Ninth Circuit stated with respect to Arriba applies with equal force to the Print Library Project."

Band's analysis of Arriba Soft and comparison with GLP issues is detailed and fairly convincing. Certainly the market effect seems to favor GLP. Does any rational author or publisher *really* believe that increased findability will decrease their market? "It is hard to imagine how the Library Project could actually harm the market for certain books, given the limited amount of text a user will be able to view." Band also concludes that GLP is "similar to the everyday activities of Internet search engines" and explains the fair use analogies. Concluding (the *LLRX* version):

> The Google Print Library Project will make it easier than ever before for users to locate the wealth of information buried in books. By limiting the search results to a few sentences before and after the search term, the program will not diminish demand for books. To the contrary, it will often increase demand for copyrighted works by helping users identify them. Publishers and authors should embrace the Print Library Project rather than reject it.

Fred von Lohmann's analysis

Here's how Fred von Lohmann (EFF) sees Google's case for the four elements of fair use as it applies to the Authors Guild suit:

Nature of the Use: Favors Google. Although Google's use is commercial, it is highly transformative. Google is effectively scanning the books and turning them into the world's most advanced card catalog. That makes Google a whole lot more like [Arriba Soft](#) than [MP3.com](#).

Nature of the Works: Favors Neither Side. The books will be a mix of creative and factual, comprised of published works. The works cited in the complaint include "The Fiery Trial: A Life of Lincoln" (largely factual history) and "Just Think" (described elsewhere as: "pictures, poems, words, and sayings for the reader to ponder").

Amount and Substantiality of the Portion Used: Favors Google. Google appears to be copying only as much as necessary (if you are enabling full-text searching, you need the full text), and only tiny snippets are made publicly accessible. Once again, Google looks a lot more like Arriba Soft than MP3.com.

Effect of the Use on the Market: Favors Google. It is easy to see how Google Print can stimulate demand for books that otherwise would lay undiscovered in library stacks. On the other hand, it is hard to imagine how it could hurt the market for the books--getting a couple sentences surrounding a search term is unlikely to serve as a replacement for the book. Copyright owners may argue that they would prefer Google and other search engines pay them for the privilege of creating a search mechanism for their books. In other words, you've hurt my "licensing market" because I could have charged you. Let's hope the court recognizes that for the circular reasoning it is.

I believe von Lohmann's off base on the second point: biographies and other "factual" works are *also* protected by copyright unless they're *purely* listings of facts. As a library person, I could also do without "world's most advanced card catalog." Quite apart from being a bit like the world's best jet-powered buggy whip (how many card catalogs have you seen lately?), that description asserts that full-text search is inherently more "advanced" than cataloging, an assertion I disagree with. It's different and complementary.

Siva Vaidhyanathan disagrees with von Lohmann for other reasons, as noted in a September 21 post at Sivacracy.net:

> Fred has oversimplified this terribly.

> He does not consider the fact that the copying in question is complete and total--100 percent of the work. The authors care about the first complete copy, not how it is later presented in commercial form.

> He does not consider that the "nature of the work" is set by the most protected works, not the least. For each suit, there is a particular nature of the work. Novelists and poets are among those suing. That's where the test will be.

Lastly, he mistakenly forgets the most powerful and troublesome word in the fourth factor: "potential." The issue is the effect on the "potential" markets, not the established markets. Because a market exists (and a greater potential market lurks) for licensed digital images of published books, the library project is about that market (see Amazon and Google Print) rather than the market for the physical book.

Vaidhyanathan would rather be on von Lohmann's side (as he notes), but I question that final paragraph. GLP won't offer digital images of copyright books. Authors may or may not have anything to gain from "licensed digital images of published books," depending on their book contracts, and so far there's really not an established market of any size. In any case, wouldn't full-text searchability inherently *increase* the market for digital images, if that's what people want?

Should Authors and Publishers be Suing Google?

Xeni Jardin says no, in a September 25 article in the Los Angeles *Times*: "You authors are saps to resist Googling." Jardin's another one who calls the outcome of GLP a "digital card catalog" (do lawyers and writers live in a time warp?). She notes the distinction with the war on file sharing: "Google isn't pirating books. They're giving away previews." Internet history has shown that "any product that is more easily found online can be more easily sold." She notes that the Authors Guild squabbled with Amazon over its "look inside" feature as well. She goes on to suggest that such "paranoid myopia" could lead to a total shutdown of search engines: "What's the difference, after all, between a copyrighted Web page and a copyrighted book?" (Seth Finkelstein's answered that one: Web pages are freely available for anybody to read and download; books aren't.)

Lawrence Solum (University of San Diego Law) also says no and objects to class-action certification: "That class [copyright-holders for books in Michigan's library] includes many authors who would be injured if the plaintiffs were to prevail—including, for example, me!" Solum (a prolific writer) knows he'll benefit from wider dissemination of his works. Jack Balkin (Yale Law) feels the same way: "As an author who is always trying to get people interested in my books…I have to agree…the Author's Guild suit against Google is counterproductive and just plain silly." Peter Suber also notes that he's one who falls into the class and doesn't want to be included—*unless* Google prefers to

fight a class-action suit. Put me in the same category: Michigan owns several of my books, to which I hold copyright, and I believe a successful suit will harm me indirectly if not directly.

While Peter Suber admits to seeing plausible cases that GLP infringes copyright, "I haven't yet seen a plausible case that the authors or publishers will be injured." He believes that Authors Guild may be looking for a cut of Google's ad revenue: "If so, then…we're watching a shakedown."

Tim Wu (University of Virginia Law) wrote "Leggo my ego: GooglePrint and the other culture war" at *Salon* (October 17). I guess "GooglePrint" is *Salon*'s neologism; Wu doesn't leave out the space consistently. He thinks sensible authors should favor GLP as part of "the exposure culture," in which "getting noticed is everything. "The big sin in exposure culture is not copying, but instead, failure to properly attribute authorship." He makes the point that authors really can't reconcile a desire for exposure with total authorial control and makes an analogy between indexes and maps. "[B]ooks, as a medium, face competition. If books are too hard to find relative to other media, all authors of books lose out, and authors of searchable media like the Web, win." Well, maybe…

You could think of OCA as "competing" with GLP, and OCA has deliberately avoided any copyright questions—but Brewster Kahle calls AAP's suit "counterproductive" and notes that it "could get really messy in a way that will damage progress."

Nick Taylor (president of the Authors Guild) thinks it's necessary to sue—because otherwise Google is getting rich at the expense of authors. He goes on, "It's been tradition in this country to believe in property rights. When did we decide that socialism was the way to run the Internet?" Going from talking about Google having cofounders "ranking among the 20 richest people in the world" to cries of "socialism" for a Google project: Now *there's* a creative leap that marks a true Author, as opposed to a hack like me. He brings in "people who cry that information wants to be free" a bit later. Peter Suber comments that Taylor is "as clueless as I feared"—and that's a fair comment.

You know where Fred von Lohmann stands—but maybe not his analysis of economic harm.

> [W]ith the Google Print situation, it's a completely one-sided debate. Google is right, and the publishers have no argument. What's their argument that this harms the value of their books? They don't have one. Google helps you find books, and if you want to read it, you have to

buy the book. So how can that hurt them? (From a November 9 *Salon* article by Farhad Manjoo, which Peter Suber calls "the most detailed and careful article I've seen on the controversy over Google Library.")

Playing devil's advocate (reluctantly, because I *do* agree with von Lohmann in this case): To the extent that Google shows library links as well as purchase links for GLP books, it encourages use of libraries—which some publishers could see as harming sales. But boy, is that a stretch…unless they're planning to attack the First Sale doctrine next.

Should Google Settle?

Some commentators believe Google should settle (by ceasing the copyright portion of GLP or agreeing to some form of license) either because they're convinced Google's in the wrong or because they're afraid courts might make fair use matters even worse. Others believe Google should fight the suits, including some who feel that way even if Google's likely to lose.

No; it should fight the suits

Timothy Lee (Cato Institute): "Given the tremendous benefit Google Print would bring to library users everywhere, Google should stick to its guns. The rest of us should demand that publishers not stand in the way." Michael Madison looks to Google as a "public domain proxy" and thinks Google should fight the case—even though "I'm not convinced that Google is in the right." He makes a good point: If nobody ever litigates fair-use cases, what's left of fair use?

The group weblog *Conglomerate*:

> Should Google fight the case? Absolutely. From a litigator's and trial lawyer's point of view, this is a case worth fighting… It isn't very often when a fair use argument gets raised by a big-time, well-financed corporate entity.

Wired News shows its professionalism in "Let Google copy!" (September 22) when it calls the Authors Guild of America the "Writers Guild of America" in the lead sentence. Here's the somewhat utopian stance on the likely outcome: "The courts should take this opportunity to loosen unnecessary restrictions that are limiting innovation with no clear benefit to the public or rights holders." The final paragraph, on what should happen if courts fail to distinguish whole-work copying for the purposes of index creation as being non-infringing: "If courts refuse to recognize this distinction, Congress should authorize a limited compulsory license to allow unilateral digitization of works for inclusion in a commercial database, provided, of course, that the database doesn't strip con-

tent creators of their ability to profit from their efforts." But once it's a license, *licensing fees* are at issue and fair use is out the window.

Derek Slater says, "When I look at the Google Print case, I say 'game on'—I see a chance for a legitimate defendant to take a real shot at making some good law. There's broad and even unexpected support for what Google's doing."

Lawrence Lessig hopes Google doesn't settle:

> A rich and rational (and publicly traded) company may be tempted to compromise—to pay for the "right" that it and others should get for free, just to avoid the insane cost of defending that right. Such a company is driven to do what's best for its shareholders. But if Google gives in, the loss to the Internet will be far more than the amount it will pay publishers. It will be a bad compromise for everyone working to make the Internet more useful—and for everyone who will ultimately use it.

Yes—or at least the suits are dangerous

Siva Vaidhyanathan thinks it's the wrong fight: "It's not just Google bettng the company. It's Google gambling with all of our rights under copyright—both as copyright producers and users."

Peter Suber notes that the merits of GLP's case for fair use are important to settle. "But I admit that I'm not very comfortable having any important copyright question settled in today's legal climate of piracy hysteria and maximalist protection." He notes that Google's wealth is a wildcard: It enables Google to defend itself—but it makes Google an extremely attractive target for a class action suit.

The Second Suit

The American Association of Publishers (AAP) announced this suit on October 19. While the suit has five plaintiffs (McGraw-Hill, Pearson Education, Penguin, Simon & Schuster and John Wiley & Sons), it's "coordinated and funded by AAP." Pat Schroeder's take in the press release announcing the suit: "[T]he bottom line is that under its current plan Google is seeking to make millions of dollars by freeloading on the talent and property of authors and publishers." (In later commentaries, Schroeder has a remarkable incuriosity when it comes to facts. She says, "The creators and owners of these copyrighted works will not be compensated, nor has Google defined what a 'snippet' is: a paragraph? A page? A chapter? A whole book?" For anyone willing to take the effort of clicking on "About Google Print" on the Google Print home page, the answer's clear: Less than a paragraph.)

AAP told Google it should use ISBNs to "identify works under copyright and secure permission from publishers and authors to scan these works." That does nothing for works published between 1923 and 1966, of course, and the PR explanation glosses over two inconvenient facts: The ISBN links to the publisher *at time of publication*, which may since have merged, changed names, or folded—and publishers don't always control copyright.

The suit itself, filed in U.S. District Court for the Southern District of New York, appears deceptively long. It's really 14 double-spaced pages (plus a cover page), with many more pages listing copyright titles published by the five plaintiffs and known to be held in the University of Michigan Libraries (along with three Google illustrations that undercut some of the claims, since they show the tiny displayed snippets of copyright books).

> Publishers bring this action to prevent the continuing, irreparable and imminent harm that Publishers are suffering, will continue to suffer and expect to suffer due to Google's willful infringement, to further its own commercial purposes, of the exclusive rights of copyright that Publishers enjoy in various books housed in, among others, the collection of the University Library of the University of Michigan in Ann Arbor, Michigan ("Michigan").

That's the second paragraph in "Nature of the action." The fourth paragraph provides AAP's assertion of Google's motive: "All of these steps [in GLP] are taken by Google for the purpose of increasing the number of visitors to the google.com website and, in turn, Google's already substantial advertising revenue." But Google doesn't run ads on its home page and says it won't show ads on GLP pages.

Later, we learn that GLP "completely ignores [publishers'] rights," which is simply false (else GLP would show pages from all books) and get interesting language on GLP: "When Google makes still other digital copies available to the public for *what it touts as research purposes*, it does so in order to increase user traffic to its site, which then enables it to increase the price it charges to advertisers." [Emphasis added] Quite apart from the questionable nature of the last clause, GLP will not make "other digital copies available to the public" (unless AAP seriously claims that the snippets constitute infringement).

There's a lot of text describing the five publishers and Google, including one paragraph that appears to dismiss fair use and other restrictions on copyright:

> It has long been the case that, due to the exclusive rights enjoyed by Publishers under the Copyright Act, both for-profit and non-profit entities provide royalties or other considerations to Publishers in exchange for permission to copy, even in part, Publishers' copyrighted books.

A bit later, we learn that Google is "one of the world's largest media companies"—in a context that makes it appear that AAP equates "media company" and "ad delivery mechanism." That's odd, given how few books (currently) deliver ads.

As the suit goes into detail about GLP, we are informed once again that each copyright work listed in the exhibits is "at imminent risk of being copied in its entirety and made available for search, retrieval and display, without permission"—never mind that you *can't* search a single book by itself or that "display" consists of no more than three paragraphs, each surrounding an occurrence of a word or term. The suit dismisses any analogy with indexing and caching web pages, partly because "books in libraries can be researched in a variety of ways without unauthorized copying. There is, therefore, no 'need,' as Google would have it, to scan copyrighted books." **Read that carefully:** It appears to say that the existence of online catalogs negates any usefulness of full-text indexing.

Consider the first sentence of paragraph 31:

> There is no principled distinction between the Google Print Program for Publishers and the Google Library Program, with respect to the types of works that are copied, the digital technology used to copy and store the books, the amount of a book that is copied by Google and the public accessibility and display of the copied works.

The idea that the "pages around your text" display of a Google Publishers Project text is no different than the "snippets" display of a copyright GLP work is, in my opinion, ludicrous.

That "displaying copies of" claim appears again in paragraph 38. Paragraph 40 repeats the claim that GLP "has greatly and irreparably damaged Publishers…" The "prayer for relief" shows AAP's attitude regarding fair use: It asks for a permanent injunction to keep Google from "in any manner, reproducing, publicly distributing and/or publicly displaying all *or any part of* any Publisher's copyrighted works…"

Once I saw the first claim of irreparable harm, I read the suit carefully for any claim of *actual* economic harm. The closest I see is paragraph 35:

> Google's continuing and future infringements are likely to usurp Publishers' present and future business rela-

tionships and opportunities for the digital copying, archiving, searching and public display of their works. The Google Library Project, and similar unrestricted and widespread conduct of the sort engaged in by Google, whether by Google or others, will result in a substantially adverse impact on the potential market for Publishers' books.

That's it. AAP is claiming that making book text searchable and showing a sentence or two around searched words, together with information about the book so that an interested party can borrow or purchase it, "will result in a substantially adverse impact on the potential market for Publishers' books." You have to wonder why AAP members have cooperated in the Google Publishers' Program if enhanced exposure is such a terrible thing. Pat Schroeder may claim that Google's opt-out provisions turn copyright law on its head—but this claim turns reality on its head. More exposure yields fewer sales: What a notion!

GLP and Libraries

Richard Leiter gets it right in an October 18 post at *The life of books*, after clarifying the aims of Google Book Search: "[L]ibrarians need to be prepared for a renaissance; free online services like this will mean better access to libraries and greater demand for books. Not only will libraries' collections grow, but our numbers of patrons will too."

Thom Hickey also gets it right in a November 15 post at *Outgoing*, "Impact of Google print." "Here's my prediction: seeing the page images online will result in more requests for the physical object, not less." He thinks there may also be more use of "equivalent items" (that is, other manifestations of the same work) at other libraries. I'd guess that's also likely.

I *do* wonder about one statement in Hickey's post: "More people will look at a particular page online than will ever look at that physical page in all the copies in all the libraries in the world. That's clear…" Is it really? If GLP manages to digitize and make available all of the public-domain books in the five participating libraries, that's roughly 6.5 million books (see the article at the end of this essay). At an average of 250 pages each, that's 1.6 billion pages. I think it's hard to make the case that Google Book Search usage will be so high and have searches so varied that *any given page* will be viewed more via Google Book Search than it has ever been in the sum of all its physical copies in all the libraries in the world. (Take one of the interior pages from, say, a best-selling pre-1924 edition of *Al-*

ice in Wonderland.) I doubt that we'll ever know: That's the kind of argument that's nearly impossible to settle.

Some observers have looked for mass digitization and online book availability to *replace* physical libraries, either as an undesirable or desirable aim. That hasn't changed, and those observers tend to be the ones who miss what GLP is actually doing (and how unlikely it is that many people will read full books onscreen as page images). You've probably heard the names before. Realistically, I can see no way that GLP can be used as an argument against continued use of library collections of print books.

Barbara Fister posed the libraries-and-GLP question in a strikingly different way at *ACRLog* on October 20: "I can't help wondering—if lending libraries were invented today, would publishers lobby to delete the 'first sale' doctrine from copyright law, arguing it enables a harmful form of organized piracy?"

Ben Vershbow may be reacting too soon in his November 3 *if:book* post, "google print's not-so-public domain," where he complains that the initial showing of books doesn't amount to much other than snippets. "The idea of a text being in the public domain really doesn't amount to much if you're only talking about antique manuscripts, and these are the only books that they've made fully accessible… This is not an online library. It's a marketing program. Google Print will undoubtedly have its uses, but we shouldn't confuse it with a library." If GLP succeeds, it will be far more than a "marketing program"—but Google *itself* has been clear that it's not out to replace libraries, so Vershbow's right in that last sentence. (Vershbow says Google's been getting "a lot of bad press for its supposedly cavalier attitude toward copyright"; given the balance of what I've seen, Vershbow must read different sources than I do.)

One comment on a Lessig post is unfortunate as an example, but there it is: Dan Jacobsen, a college student, says that GLP's availability has caused him to order four books from nearby universities that he found on Google Print. "I have never before used the school library for research material, and were it not for Google Print, I would never have found these books." It's sad that a college student seems proud of never using the library for research material.

Other Google Matters

Siva Vaidhyanathan would prefer to see libraries themselves carrying out mass scanning projects. As

heard in "On the Media," he says this about "outsourcing" digitization to Google: "Their technology is proprietary. Their algorithms for search are completely secret. We don't actually know what's going to generate a certain list of results. *They don't work for us.*" Seth Finkelstein quoted this passage in an October 17 *Infothought* post, adding:

> Again—"They don't work for us." Whatever their cool geek-dream origin (and I share the fantasy!), Google is now a very large corporation, accountable only [to] the shareholders. It may seem overly critical to emphasize it, but that's reality.

Here's a truly strange one, caught by Peter Suber: a press release from the National Consumer League attacking GLP not only for "threats to the principle of copyrights" but also "cultural selectivity, exclusion, and censorship." Why? Because "any database which represents itself as being a 'full' or 'complete' record of American culture…must, in fact, be complete"—and Google might be forced to be incomplete. "To the extent that Google finds itself drawing lines for inclusion or exclusion based even indirectly on content…it makes itself a censor of our history and culture." But when did Google say that GLP would create a "full or complete record of American culture"? And on what basis can incompleteness (as Suber notes, none of the Google 5 libraries has a "complete record of American culture") be used as the basis for *condemning* the project? Suber: "The NCL objection not only starts from a false premise, but would abort any project that cannot reach completeness in one step." I concur with Suber that NCL seems to be saying no literature should be easy to access until all of it is. This condemnation—which went to the Senate and House—also seems wildly out of character with NCI's history.

Longer Article

Lavoie, Brian, Lynn Sillipigni Connaway and Lorcan Dempsey, "Anatomy of aggregate collections: The example of Google Print for Libraries," *D-Lib Magazine* 11:9 (September 2005). www.dlib.org/dlib/september05/lavoie/09lavoie.html

After discussing the (possibly changing) role of books in libraries and the desirability of inter-institutional projects, the article considers the Google 5 collections in terms of coverage, language, copyright, works, and convergence. The paper is interesting not only for its direct answers but also its secondary objective, "to lay some groundwork for a general set of questions that could be used to explore the implications of any mass digitization initiative."

Some of the findings:

➢ As of January 2005, WorldCat includes some 32 million records for books among its 55 million records; books thus represent slightly less than 60% of the database.

➢ The Google 5 have more than 18 million book holdings (in WorldCat) in all. If there was no overlap, that could represent 57% of the print book total. Including overlap, the Google 5 appear to hold 33% of the book titles in WorldCat—10.5 million. Of that 10.5 million total, 61% are reported from only one Google 5 library; 20% show up in two; 10% in three; 6% in four; and 3% (0.4 million) in all five. You can expect that universal digitization of all five libraries would result in about 40% redundancy—redundancy at the edition level, not the works level. (If you're digitizing *books*, the edition level is an appropriate measure, in my opinion; if you only care about *text*, then the works level might be more appropriate.) That 61% figure is fairly startling: At least among these five large institutions, research library collections are far more diverse than you might expect.

➢ Unsurprisingly, multiple holdings show up more frequently among newer publications. For example, 74% of books published between 1801 and 1825 are uniquely held by one of the five, while only 55% of those published between 1951 and 1975 are unique (the same rate holds for 1976-1985). But then, 55% is still a high level of uniqueness.

➢ Also unsurprising: English language books *don't* make up the majority of titles in the Google 5 collections, but it's close (49%).

➢ Many people *were* surprised by the raw copyright finding: Roughly half of the combined Google 5 collections were published after 1974, thus definitely under copyright unless published by government agencies or otherwise explicitly placed in the public domain. Only about 20% of the collections were published prior to 1923 and can be presumed in the public domain. The cutoff date for clear copyright protection is 1963; the actual percentage of public domain works (omitting

government publications) is somewhere between 20% and 37%. Noting a claim elsewhere that only 7% of possible renewals actually took place, the figure might be closer to 36%—that is, 20% plus 93% of 17%.

➤ For those more interested in unique works than unique books, OCLC's algorithm for "FRBRizing" records yields 26.1 million works out of the 32 million book titles—and 9.1 million of these (35%) have at least one manifestation in a Google 5 library. (As noted in a footnote, even those who don't care about typography wouldn't want a pure "works" focus, since a French translation of *Macbeth* is considered the same work as the original English version; "expressions" would be a better target. I'd argue that, particularly for out-of-copyright materials where pages can be viewed and PoD could be provided, the title is in fact the best target.)

➤ Some analysis of "convergence" says you'd need to digitize *many* library collections to achieve a "complete" digital database: For example, adding five more institutions holding eight million titles would only add 1.8 million new titles to those in Google 5.

Well worth reading, both for the direct study and for its consideration of implications for other multi-institutional projects.

Offtopic Perspective
SciFi Classics 50 Movie Pack, Part 1

Some of us make a distinction between science fiction and scifi. These are definitely scifi, when they're even that (quite a few don't qualify), but that's what you expect at 50 movies for $26, all of them out of copyright or available royalty-free. Some of these movies are the sort that *Mystery Science Theater 3000* immortalized. Some aren't good enough for that treatment.

A different standard is needed than I applied to the first two megapacks. I'm not looking for classics. I'm looking for entertaining stuff, sometimes entertaining because of its earnest mediocrity or intentional badness—something to keep me on the treadmill.

As usual, if there's a second timing in square brackets, it's because the TreeLine version was at least one minute shorter (or longer) than the time shown at imdb. Assume sound and a VHS-quality print with minor damage unless otherwise noted.

Disc 1

The Incredible Petrified World, 1957, b&w, Jerry Warren (dir.), John Carradine, Phyllis Coates, Lloyd Nelson (in a minor role). 1:10 [1:03]

I suppose the diving bell (how could man ever hope to penetrate the depths of the ocean?) might count as scifi Diving bell on its first deep-sea dive breaks loose, four inhabitants presumed crushed at the bottom of the sea (or something), but they see light, and swim up to…caverns, which have plenty of food and fresh water and air. Eventually, they meet a crazy old man who's been trapped there—under a volcano—for 14 years. After spending most of the movie walking up and down sections of Colossal Caverns in Tucson, where this was filmed, they manage to get rescued by a rival diving bell. Losing seven minutes probably helps, but the flick is still awfully slow moving. The mediocre print does the film justice. $1 as a curiosity.

Queen of the Amazons, 1947, b&w, Edward Finney (dir.), Robert Lowery, Patricia Morison. 1:01 [1:00]

The Amazons, in this case, are in Africa, and consist of a bunch of beautiful white women whose parents survived a shipwreck a couple of decades before—and who are in cahoots with an ivory smuggler (but only too happy to help get him killed). They're discovered by an expedition put together by a woman whose fiancé disappeared (on an expedition that started in India and wound up in Africa). After thrills, chills, locusts and lions, they discover that the fiancé is quite happy to stay with the Queen of the Amazons—which works out, since the woman hunting him has fallen for her guide. Oh, never mind. Cheap fun, and not terrible, although also not scifi by any stretch of the imagination. The print's not perfect. Neither is the movie. $1.50.

The Robot Monster, 1953, b&w, Phil Tucker (dir.), George Nader, Claudia Barrett. 1:06 [1:02]

According to IMDB, this movie was "so universally scorned and derided by reviewers" that the director couldn't get any more film work. He attempted suicide by shooting himself—and missed. It was originally in 3D, which might be why reviewers even bothered to deride it. The title (probably really dramatic in 3D!) appears over a montage of cheesy scifi and horror comics or magazines—not the good stuff (*Astounding*, for example). The early going makes no sense: First there are dinosaurs, then a kid's chatting with some archaeologists—maybe unearthing dinosaur remains?—then, suddenly, we have a group of six people who are apparently the only people alive on earth (or maybe there are two others), thanks to Ro-man, a fearsome—well, slow-moving gorilla with a fishtank on his head, but he's wiped out almost everyone to make way for the

Ro-people (or robots, or whatever). He's flummoxed by these six, although he manages to kill off two or three of them during this flick, before Ro-man's superior on some other world decides to finish the job with dinosaurs and earthquakes. It's all resolved when it turns out to be (work with me here!) A Bad Dream after the kid fell and hit his head: He winds up talking to the archaeologists. I couldn't make this stuff up on a bet. At least it is scifi, at its worst. The TreeLine blurb gets the plot completely wrong, possibly because nobody would sit through the whole thing. Somehow, a gorilla suit and fishtank helmet never became the standard image of a robot; I can't imagine why. The most remarkable thing about this movie comes at the end of the credits: Music composed and directed by Elmer Bernstein. Really? $1, again as a curiosity.

She Gods of Shark Reef, 1958, color, Roger Corman (dir.), Bill Cord, Don Durant, Lisa Montell, Carol Lindsay. 1:03

Another Corman "I'm on location anyway, let's make another movie"—filmed in Hawaii (Kauai) as he was making *Naked Paradise*, then released as part of a prepackaged double feature. It's not scifi by any stretch of the imagination. It is in color, sort of, with short Hawaiian outfits for the beautiful women (and only women are allowed on this island paradise, where all is provided by "the company" in return for pearls) and even shorter outfits for the two men on the run. Who are greeted when they wash up at the island by being told no guests are allowed—then escorted to the nicely furnished guesthouse. Just enough plot, most of it as sensible as that incident, to make it through the hour. Not enough skill to make the movie worth watching. Either the print's not good enough to make the scenery worthwhile, or it was filmed badly. Not worth a dime.

The Amazing Transparent Man, 1960, b&w, Edgar G. Ulmer (dir.), Marguerite Chapman, Douglas Kennedy, James Griffith. 0:57

More IMDB trivia: Filmed back-to-back with *Beyond the Time Barrier* with a *combined* shooting schedule of two weeks. All things considered, this isn't awful. Mediocre but not awful. They came up with a new way to get rid of the mad scientist's lab in a remote house (or, in this case, the scientist forced to work for a mad ex-military man who wants to create an army of invisible soldiers to sell to the highest bidder, and who keeps the scientist in tow by locking his daughter away): Since the transparency process relies on radioactive materials (and reduces the lifespan of its subjects to, oh, two or three weeks from first invisibility), the lab disappears in a mushroom cloud shortly before the end of the movie. $1.

The Atomic Brain, 1964, b&w, Joseph V. Mascelli (dir.), Frank Gerstle, Erika Peters, Bradford Dillman. Original title *Monstrosity*. 1:04.

I can't resist: IMDB sez, "If you like this title, we also recommend *The Brain that Wouldn't Die*." The difference between the two is that I was willing to watch this all the way through, maybe because it's less competent as a horror movie. This time, exotic radioactive materials are used to make brain transplants possible, funded by an evil old woman who wants to put her brain in a beautiful young body. By far the best acting is the third-most-beautiful woman (three maids are hired, all with no relatives, you know the drill) after a cat's brain has been transplanted into her skull: A truly feline performance. The narration (Bradford Dillman) seems to suggest that this sort of thing is going on in all sorts of labs run by mad scientists. Also not terrible, but close to it. $1.

After this lot, I'm certain that my decision to interleave SciFi and TV-Movies was the right one, for sanity's sake if no other reason! Things get better.

Disc 2

Horrors of Spider Island, 1960, b&w, Fritz Böttger (dir.), Harald Maresch, Helga Franck, others you've never heard of. Original title *Ein Toter hing im Netz* ("A corpse hangs in the web"); also released in the U.S. as *Body in the Web*, *Girls of Spider Island*, *It's Hot in Paradise*, *The Spider's Web*. 1:29 (or 1:21 or 1:17). [1:14]

The IMDB trivia notes reveal a lot: This was originally released in the U.S. as an "Adults-only" movie, then trimmed of nude scenes for this version. It might make more sense with full nudity. A bunch of women are interviewed (which mostly involves showing off their legs) to join a dance troupe headed for Singapore. The plane crashes. After a few raft scenes, the women (and one man) make it to an island where they find a cabin with, gasp, a man suspended in the middle of a huge spider's net. The man (not the already-dead one) gets bitten by a radioactive spider and turns into a furry-headed claw-handed monster—while the women run around in what's left of their clothes. Two men arrive to help the uranium prospector (the dead guy), radio their ship to come back for the women, a couple of people die, and there's lots of dancing. All accompanied by mild jazz/pop, much of it with a lag between sight and sound. A mess, but an amusing mess. $0.50.

The Wasp Woman, 1960, b&w, Roger Corman (dir.), Susan Cabot, Anthony Eisley. 1:13.

Not bad. An eccentric scientist who's supposed to be extracting royal jelly from bees thinks he can do better by extracting wasp jelly. The woman who founded a cosmetics company and always used her face on the products laments lower sales because she's getting older. The scientist believes he can reverse the aging process with the wasp jelly. So he does—but she takes too much of it (without the mad scientist's knowledge) and, after losing half her apparent age, starts turning into "wasp woman" every so often, killing and eating some of her staff. You can see how Corman managed to do this on the cheap:

The wasp-woman makeup is effective, but her appearances on screen add up to two or three minutes and were probably all filmed in one day. Not a masterpiece, but a coherent story and competent Corman flick. Decent print and sound. $1.50

Voyage to the Prehistoric Planet, 1965, color, Curtis Harrington (dir.), Basil Rathbone, Faith Domergue. 1:18 [1:13]

A surprisingly good B scifi flick for its time, particularly given that much (most?) of the footage is Russian (obvious from a couple of brand names, but the lack of coherence between the spoken dialogue and lip movements in most scenes also makes one suspicious). Turns out this movie and the other one on Side B of Disc 2 are Roger Corman productions consisting of new American footage (the scenes with Basil Rathbone and, separately, Faith Domergue, almost always alone or with one other actor in a "space station" or "space ship" set) intercut with footage from a well-made Russian SF movie, *Planeta Bur*. Generally good print, decent sound. In a way, this is sad: The movie's set in 2020, by which time we will have, of course, explored and colonized the moon and were ready to explore Venus with manned spacecraft. Or not. $1.50

Voyage to the Planet of Prehistoric Women, 1968, color, Peter Bogdanovich (dir.), Mamie Van Doren. 1:18 [1:19]

Another Russian-American hybrid: New scenes of Mamie Van Doren and a bunch of others filmed by Bogdanovich blended with footage from the same *Planeta Bur* (provided by Roger Corman). *Do not watch this picture within a week of watching* Voyage to the Prehistoric Planet—*unless you want to thrill at Roger Corman's sheer gall.* Not only is most of the movie the same Russian footage as in the other flick, the dubbed dialog is the same—which leads to a bizarre note that the command center for the Venus voyage was called "Marsha," to cover for the earlier movie's dialog between landed astronauts and Faith Domergue (Marsha) still out in space. Bogdanovich provides voice-over narration for this reconfigured version. The nine women in the new scenes, all in seashell tops and full-length pants, never speak. Their dialog is "telepathic" voice-overs. They don't act much either, mostly providing a few minutes' footage to make this a different movie. (They don't provide much in the way of eye candy either, to tell the truth. They're just there.) The color generally seems washed out; otherwise, the print varies from very good to damaged. There's more of the original footage this time, including grand shots of space ships taking off (with a very obvious single red star on the rocket fins) and refueling at a space station (where, wondrously, the Cyrillic lettering on the ships in moving shots turns into unlikely English-language names such as "Typhoon," just what you'd call an exploration ship). Good enough if you haven't seen the 1965 version; otherwise, I'd pass. $1.

Corman scores: Even with the single movie recut and padded into two different releases, this is an enjoyable foursome. I wonder if *Planeta Bur* would be worth watching on its own (with subtitles)?

Disc 3

There's a programming problem on side two of this disc—one that should become obvious as you read the mini-reviews. Other than that, this group is interesting: two good black-and-white movies, two mediocre color flicks, two with explicit science aspects, two "scifi" only in the broadest definition. I believe one or two of these appeared on *Mystery Science Theatre 3000*. What more could you ask?

Kong Island, 1968, color, Roberto Mauri (dir.), Brad Harris, Esmeralda Barros, Aldo Cecconi. 1:32 [1:24]

The original title is *Eva, la Venere selvaggia* and this was made in Italy. The sleeve title (and the way it was promoted in the U.S.) is *King of Kong Island*. The sleeve description is also pretty far off, as it involves a "descendant of King Kong." Mad scientists implanting control devices into gorillas to create an unstoppable army; group goes hunting for a fabled sacred monkey, who turns out to be an "ape girl" (always topless, with hair that stays strategically in place); way too much plot ensues. Not great, not terrible. The "Italian disco" music (as an IMDB review puts it) is, well, interesting for this movie. Unfortunately, either the print or the digitizing stinks: soft colors, fuzzy images. $1.

Bride of the Gorilla, 1951, b&w, Curt Siodmak (dir.), Raymond Burr, Barbara Payton, Lon Chaney, Jr. 1:10 [1:05]

Raymond Burr plays the foreman of a jungle plantation who doesn't exactly kill the owner but causes his death, then marries his beautiful widow. A crone servant places a curse on him (by sneaking him drinks laced with hallucinogens, as far as I can see) that causes him to run into the jungle believing he's turned into a monster gorilla. Filmed cleverly: You never really know whether Burr *is* turning into a monster or just *believes* he is. Things end badly. The IMDB review is savage; I thought it was a modest little psychological thriller, with (an obviously much younger) Burr doing a great job as a heavy. Siodmak, a fine writer, also wrote the script. Decent print with some gaps. $1.

Attack of the Monsters, 1969, color, Noriaki Yuasa (dir.), Christopher Murphy. 1:22 [1:20]

The original title here is *Gamera tai daiakuju Giron*, and that may tell you a lot about the film: **Gamera**! The plot is—well, there's a lot of it. After a Japanese scientist explains why there can't be life anywhere else in the Solar System, three kids spot a flying saucer. Two of them get in and it takes off—flying them off to counter-Earth, a planet in the same orbit but on the other side of the

Sun. Gamera, who at this point is "the good monster turtle who loves kids and defends Japan from bad monsters," comes along part way, partly in his flying-saucer mode. The kids are convinced that people on this other planet must be very advanced, with no wars or accidents ("accidents" may be an odd translation), but they're wrong. All that's left are two women who want to eat the kids' brains so they can return to Earth with all the knowledge they need to pass as humans. (I *said* there was a lot of plot.) Counter-earth suffers from a few monsters of its own, with the Ginsu Monster acting as a defender for the evil women. (His name's Guiron, but his power is that his nose is a huge knife, and he attacks by whacking at things just like a big Ginsu Knife.) Gamera, of course, saves the day. The scientists and cops, who *cannot accept the possibility* of a flying saucer (small enough for Gamera to carry it back to Earth in his mouth), find Gamera's appearance entirely normal. The problem here is that Gamera is a Good Guy in this movie, as opposed to… Decent print, and apparently 1:20 is the full U.S. release time. $1.

Gammera the Invincible, 1966, b&w, Sandy Howard (dir. for U.S. portion), Brian Donlevy, Albert Dekker, Diane Findlay. 1:26.

Two "m"s or one? IMDB says two (for *this* movie), the sleeve says one. This comes off as a U.S.-Japanese coproduction, but apparently is one of the more elaborate cases of adding U.S. footage to an existing Japanese monster flick, presumably *Daikaiju Gamera*, the first in the series (1965), changing the plot as needed. Smoother than most such cases, but I do wonder about the Japanese ambassador who, alone among the dubbed voices, has an absurdly extreme case of "sounding rike some berieve Asians rearry talk."

Gamera/Gammera is no hero in this flick, in which the jet-propelled/fire-breathing/fire-eating turtle emerges from 200 million years' hibernation under the ice when U.S. jets shoot down a Russian jet over Alaskan airspace that's carrying a 4 megaton atomic bomb (which goes off immediately upon impact when the plane's shot down, presumably triggered by being shaken up badly…) Gamera cuts a swath of destruction through Japan, saves one kid's life (from destruction the turtle caused), and winds up shot off to Mars in a rocket. What happens between this flick and the first on the side? Well, the movies aren't good enough for me to bother finding out…but this one's a little better than I expected. Very good print. $1.50.

Disc 4

This disc combines one of the strangest "scifi" pictures I've ever seen, a typical cheaply-done B-grade flick, and two films derived from the 1954 syndicated TV series *Rocky Jones, Space Ranger*, which—according to the sleeve—"was cancelled after a single season because the costly special effects made it unprofitable."

Three films have characters named "Winky"—reason enough to group them on the disc. In all four films, the people on other planets speak English—in the first case, because they watch Earth TV, in the second because it's convenient, and in the others with a "but it's so foreign" overlay and no really good explanation. (In the fourth, people on one planet that can't possibly support human life also speak their own language.) I believe one or two of these were on MST3K. The first is on IMDB's "100 worst movies" list.

Santa Claus Conquers the Martians, 1964, color, Nicholas Webster (dir.), John Call, Leonard Hicks, Pia Zadora. 1:21

The print is good—good color, decent VHS-quality appearance, good sound, very little damage. Now, about the picture… Martian kids are unhappy because they're treated like grownups from birth, so a group of leaders goes to Earth to kidnap Santa Claus from his workshop at the North Pole. They do, they build him an automated workshop, and much strangeness ensues. Pia Zadora is presumably the big-name star in an entirely forgettable role. The theme song ("Hooray for Santa Claus," with "Santa" consistently pronounced "Santy" even after it's spelled out), repeated at the start and end of the film, was almost enough to send me running screaming from the treadmill. Only "scifi" because there's a rocket (and a tickle-gun, and a freeze-ray) involved. You get Wernher von Green, head of the space program; Mrs. Claus "positively identifying the kidnappers as Martians" (you can tell because they have olive skin and wear hoods with antennas); and a subplot about spaceships attempting to retrieve Santa that is dropped immediately. They don't get much stranger than this. I can't imagine watching it a second time, but it gets $0.75 for sheer novelty value.

Teenagers from Outer Space, 1959, b&w, Tom Graeff (dir.), David Love, Dawn Bender, Tom Graeff (who also produced and wrote). 1:25.

The blurb says, "The Martians are coming to Earth to raise the Gargon Herd, an unstoppable torrent of giant lobsters." They aren't identified as Martians,and there's no attempt to make them anything but pure human—from some planet where kids don't know their parents, there is no joy or love, and there's a need for a planet to raise the Gargons as a reserve food supply. Why? Because the Gargons start out tiny, then grow to a million times the size, into enormous, vicious lobster-like creatures. They'll kill everything on Earth, of course, but "what concern are foreign people to the supreme race?" One crew member (a teenager who turns out to be the son of the Great Leader, of course) objects to using a planet with intelligent life, and escapes. There's a weapon that eliminates all flesh from living things (skeletal special effects—or, rather, one skeleton reused

several times). There's lots of life in the 1950s. It's silly, but it's not a bad B movie. Decent print quality. $1.

Crash of the Moons, 1954, b&w, Hollingsworth Morse (dir.), Richard Crane, Sally Mansfield, John Banner. 1:18 [1:12]

> As cheap TV serials go, this one's pretty good, with extensive sets and simple but adequate space stuff. The blurb notes "Rocky's scantily clad assistant, Vena Ray" (Sally Mansfield), but she seems clothed in the women's fashion of this near future—loose-skirted minidress with cape, neither particularly scanty nor at all shocking. The science doesn't bear scrutiny—for example, the "moons" in this case are twin "gypsy moons," connected by a band of atmosphere and both fully capable of supporting human life, at least until one of them crashes into a planet whose female ruler doesn't get along with the federation of planets. Good simple fun, including an amusing sidekick (Winky), the stalwart hero (Rocky Jones, Space Ranger), and a kid. Decent print with some damage. $1, as long as you don't expect credible scifi.

Menace from Outer Space, 1956, b&w, same director and cast (without John Banner). 1:18.

> The same hostile female ruler (planet Officious? Ophecia?) is involved here as well, but mostly it's about strange crystalline rockets being fired at Earth, apparently from a moon known to lack metals and clearly incapable of supporting life. Except, of course, that it does: Entirely human life on a planet where everything's crystal-based. Spies, intrigue, general nonsense, and (as in *Crash of the Moons*) a kindly elderly professor. $0.75—the plot's neither quite as ridiculous nor quite as interesting as the other one.

Disc 5

Hercules! Legendary strong man, son of Zeus, beefcake for the ages, played by a different mortal in each of these movies—four of some 40 Italian and Italian-French productions with titles including "Ercole" or "Maciste" (son of Hercules?) or "Sanson" (Samson, but who's counting?), not including TV movies and the Disney cartoon.

These movies have a lot in common besides Hercules as protagonist. They're all color. They're all Italian. They all feature evil or semi-evil (sometimes deranged) women rulers or co-rulers who swoon over Hercules (and try to keep him around with drugs and implied sex). They all have lots of young women in short "Hellene"/Theban/whatever outfits to match the lightly clad Hercules and other beefcake.

Oh, and they're all fairly well made movies. Sure, they're fodder for MST3K (at least two of these four were on that show). Sure, the plots make as much sense as most mythical tales, less than some. But they

have good production values—sometimes *remarkably* good production values—and good cinematography, staging, and the rest. These are legitimate B flicks. Hear that snap and crunch? The snap is the thread of connection to "SciFi" breaking completely free. The crunch is Hercules tossing huge statues into groups of attackers or otherwise showing his superhuman strength. (Why not? He's born of gods.)

Hercules Against the Moon Men, 1964, color, Giacomo Gentilomo (dir.), Sergio Cianti ("Alan Steel") as Hercules, original title *Maciste e la regina di Samar* (Italian-French production). 1:30 [1:27]

> From the opening titles, you might think this was black and white. It's not, although the color's a little faded. More damage than in the other films, but still a watchable print. The plot involves the city of Samar, where children are being sacrificed to a mountain—which is where the moon men live, and they have an alliance with the evil queen. Too much plot, and for some reason the U.S. agents felt it necessary to have an "American" star, thus "Alan Steel" for the actor Sergio Cianti. I give it $0.75, mostly because the print's damaged.

Hercules and the Captive Women, 1961, color, Vittorio Cottafavi (dir.), Reg Park as Hercules, original title *Ercole alla conquista di Atlantide* (Italian production). 1:41 (original), 1:33 (U.S.). [1:34]

> Too bad they didn't use the Italian title, since this is really about Atlantis—and now we know how that island disappeared! Hercules, setting out from Thebes for some reason, kills a demon/demigod, freeing a captive woman (singular: there's only one) who's partly trapped inside rock, and they go back to Atlantis, where…oh, never mind. The immortal race of Atlantis men all look the same, they want to be shrouded in fog, they mistreat regular folks, and thanks to Hercules, the whole island gets blown up and deep-sixed. Good color, some print damage, certainly watchable. $1.

Hercules and the Tyrants of Babylon, 1964, color, Domenico Paolella (dir.), Peter Lupus ("Rock Stevens") as Hercules, original title *Ercole contro I tiranni di Babilonia* (Italian production). 1:30 (orig.), 1:26 (U.S.) [1:25]

> He's been hanging out, preventing Babylonian troops from capturing more slaves to take back to their empire ruled by two brothers and a sister (all a bit deranged). He finds that the queen of the Hellenes has been captured, so off he goes to the rescue. The tyrants don't know she's one of the slaves. Lots of stuff ensues. The climax involves the highly probable scenario that the female ruler has had all the buildings in downtown Babylon attached by chains to a huge underground winch, so that, at her command, a hundred slaves can turn the winch, thus destroying Babylon so she can rule

from the other major city. Need I say that Hercules has the strength of a hundred? Peter Lupus is probably the best actor of the four Hercules on this disc and this episode may be the least over-the-top in acting. $1.25.

Hercules Unchained, 1959, color, Pietro Francisci (dir.), Steve Reeves as Hercules, Primo Carnera, original title *Ercole e la regina di Lidia* (Italian-French production). 1:34 (original), 1:45 (U.S.) [1:36]

This seems like the biggest production of the four, and the print's in the best shape. Thebes has problems because King Oedipus is blind and in exile and his sons, who are supposed to alternate on the throne, don't: The first on the throne is crazy as a loon and won't yield power. Hercules ends up on a diplomatic mission, drinks from the well of forgetfulness and is seduced by Queen Omphale—who wears a catsuit in the opening sequence, remarkable for a film set in ancient times. Lots of plot. This time Hercules is married and his new wife is in danger. (Primo Carnera? Heavyweight champion, and even bigger than Steve Reeves; he's in the movie for maybe two minutes, but it was his last hurrah.) Spectacular. $1.

Disc 6

The Lost Jungle, 1934, b&w, David Howard and Armand Schaefer (dir.), Clyde Beatty. 1:08

This is the "feature version" of a serial with the same name which ran roughly four hours total. Maybe the four-hour version had a more coherent plot. The short version is mostly wild animal "training" and capture with a jungle-rescue plot added. Clyde Beatty may have been the "good" animal trainer, as opposed to a vicious underling portrayed in the movie, but we're still talking about removing proud predators from their native environments, "training" them with whips and other methods and putting them on display. I'm no PETA person, but I am an HSUS member and I couldn't watch the movie without disdain and discomfort. Different times, I guess. Also weakly acted with an erratic plot. $0.

Mesa of Lost Women, 1953, b&w, Ron Ormand and Herbert Tevos (dir.), Jackie Coogan, Lyle Talbot (narration). 1:10 [1:09].

Mad scientist creating giant immortal women and stunted little men—and giant spiders as a byproduct— within a remote Mexican mesa. Thrills! Chills! Absurd plot and endless guitar strumming! Exotic dances! Portentous narration! Another amusing mess. Sometimes-damaged print. $0.50.

Assignment Outer Space, 1960, color, Antonio Margheriti (dir.), Rik Von Nutter, Gabriella Farinon, David Montresor. 1:13

A newsman gets assigned to a space station whose commander doesn't really want him there, and there's an Earth-threatening emergency almost immediately (a space ship gone derelict that emits a sun-temperature field surrounding it for hundreds of miles is about to enter Earth orbit and destroy all life—we *do* like to launch ambitious projects, don't we?). Classic B sci-fi and there's a female crew member who almost immediately falls deeply in love with the reporter. Maybe one reason they had trouble with the spaceships is that the navigational instruments are obviously audio distortion meters. Decent production values, somewhat faded color, nothing great but watchable. $1.

Laser Mission, 1990, color, BJ Davis (dir.), Brandon Lee, Debi A. Monahan, Ernest Borgnine, rated R. 1:24.

How do you get a 15-year-old movie with major stars on a cheap 50-movie pack? This one *has* to be in copyright. Yes, it is *that* Brandon Lee, Bruce Lee's son—and how many Ernest Borgnines do you know? Excellent color, no signs of print damage, at least full VHS quality, good production values. Unfortunately, it's meretricious tripe: A story about a mercenary who takes great delight in slaughtering as many "enemies" as he can, occasionally with martial arts but mostly with rapid-fire weaponry. He's the *hero*. There's a "science" twist: a diamond the size of a golf ball with which an aging scientist (Borgnine) can, after the rock's stolen, be coerced into building a "super laser weapon that creates atomic explosions" or something like that. The villains appear to be ex-Nazis in South America. Debi Monahan (a looker, of course) is supposed to be the scientist's daughter— which certainly seems believable as she whips out her thigh-mounted pistol and outshoots Lee. I could only watch it by treating the violence as cartoon violence: The body count was in the hundreds. I can't recommend this one even as high camp. $0.

Masthead

URL: cites.boisestate.edu/civ5i14.pdf