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E-publishing and the challenges for libraries

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Introduction

Electronic publishing presents libraries with a series of challenges if they shall be able to continue their core activities: Acquisition, lending and making available, and preservation of works.

The transition of publishing literary and artistic works on tangible media to e-publishing, i.e. publishing them as electronic files in databases accessible via the internet, also changes the rules by which libraries have so far operated. How libraries meet this challenge will decide whether and how libraries in the future will be able to fulfil their objective: to make a broad spectrum of published works available to the general public for the use of personal study and development, education and research.

E-publishing and acquisition

Until recently printed books and journals were published as individual items and bought by libraries. Since the end of the 1990's scientific journals have been primarily published in electronic formats and distributed in packages, compiled either by the publisher or by distributing agencies. We see the same development with books. Acquisitions have been replaced by subscriptions. Libraries subscribe to an internet access-point at the publisher's or distributor's database.

Libraries are in the middle of a move from having collections to having connections. This move is not yet fully completed. We still have some printed journals, and books are still to a large extent acquired in print. However, the end of this period is in sight. With the development of reading devices, for the downloading of electronic books, we are approaching the end of the Gutenberg era.

This development is an immense improvement of services. It is convenient and it reduces transactions costs to subscribe to packages of journal and book databases. However, there is no such thing as a free lunch!

The main problem is that the supplier decides what is in the package, and he may not be interested in including "bestsellers" or even very infrequently used material. The result is that the library may not be able to present to its users the very best literature or the most specialised literature on a subject. The library may become a distributor of mainstream products.

Another consequence is that libraries will no longer be able to control the authenticity of the content or to ensure that content is not removed from the databases. It is very difficult to detect whether content has been tampered with, but it regularly happens that content is removed from the databases. This may be due to technical problems or to commercial decisions made by the service provider and publisher. Sometimes the content will be available from another distributor, and sometimes it simply disappears.

Now, the library may want to include a provision in the licensing contract with the publisher, that material may not be changed or removed from the database, but this is subject to freedom of contracts. If the publisher judges that a book is so valuable to the users that he may obtain greater revenue from selling the work directly to the users rather than including it in the subscription package to the library, nothing can force the publisher to act otherwise.



Change of legal basis

The works made available by the library are protected by copyright, and copyright legislation regulates how libraries may use the material they acquire. With the introduction of electronic publishing the legal basis for the library's activity changes dramatically.

As for printed works or works published on tangible media like CD, CD-Rom or DVD, the author has the exclusive right to decide whether to publish or not, but after the first sale the distribution right is exhausted and the library, having acquired it, can do with it as it sees fit. One usually says that the distribution right is exhausted after the first sale.

Works published in databases are not distributed; they are communicated to the public or made available to the public. Communication to the public or making available to the public is regarded as a service, and the question of exhaustion does not arise in the case of services. Therefore every on-line access is an act which is subject to authorisation. This right is non-exhaustible, and until the work becomes public domain – approximately 100 to 120 years after publication – libraries are dependent on the licence agreement with the author or other rights holders to whom the author may have transferred his copyright.

There are good reasons for the differences between the distribution right and the communication to the public right. The acquisition by the library of printed books does not prevent the bookseller from selling the same titles to other buyers. On the contrary, libraries stimulate interest in reading, and people who borrow many books also buy many books. Although publishers are not happy to admit it, libraries do not ruin the market. However, if a library could acquire an electronic publication and make it available on the server for everyone to access, there would subsequently be no need for anyone else to buy it. In order to prevent such a scenario, the right to control the communication to the public or the making available to the public lies firmly with the author (or other rights holders to whom he may have transferred his copyright).

The basic principle regarding exceptions and limitations to author's rights is that the exceptions do not interfere with the rights holder's commercial exploitation of the works. The challenge, therefore, for libraries and publishers in the age of electronic publication, is to find ways and means as to how libraries may fulfil their societal objectives without compromising the legitimate commercial interests of the authors and publishers.

Consequences

Because e-publishing is a service and the concept of exhaustion does not apply, the library can only acquire the digital object, the e-book or e-journal, by entering a licence agreement with the author (or other rights holders). The rights holders are free to decide whether they want to enter a licence agreement giving access to specific works and to decide on the terms for such access.

The consequence of this is that the acquisition policy may be decided by the publisher and not by the library. This is not a hypothetical danger. Libraries have actually experienced instances of publishers

- refusing to include certain titles of e-books,
- removing certain titles from the subscription packages in order only to sell the books to individual private customers,



and

- prescribing the terms for access.

This is a direct challenge to the core activities and responsibilities of libraries. If this challenge is not met, it is difficult to see how libraries can fulfil their objectives in the future.

How can libraries change this situation?

At present, EBLIDA wants to avoid in Europe the situation that developed in recent months in the United States of America where publishers deny libraries the right to buy ebooks.

To know more about the situation in the USA, go to <http://ebooksforlibraries.com/>.

EBLIDA is currently working on defining statements of principles on access to e-resources in libraries. These principles should be made available in autumn and will complete the current document.

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