

Advocating for the Once and Future Library

by Daisy Domínguez Singh

A librarian who is involved in advocacy recently groaned that having legislators respond to you with the trite “Libraries! I love books!” signals that your efforts have gone awry. The unwitting retort can signal how unaware the public is about how libraries function, including the real-world impact our work has. Libraries deal with significant budget shortfalls that affect our ability to acquire content for them and to fully staff our services. Libraries deal with other vital issues like efforts to combat book banning, support privacy, and provide more equitable ebook access, to name just a few. Because a significant amount of library work happens behind the scenes, we need to articulate its significance.

This is a propitious moment for sharing library equity concerns with patrons. Modern US libraries are considered a public good available at no additional cost (beyond those paid by taxpayers). A variety of relatively recent movements and initiatives have shown us how we can adapt this ethos to the 21st century. The open-access (OA) movement, which includes the development of open educational resources (OER)—free electronic educational content that makes learning more affordable and has been linked to student retention and success—is now a common part of training efforts for academic library faculty. Adaptive technologies allow students with disabilities greater access to OER as well. Combined with access to paid institutional-level access to digital resources,

access to digital open-access material enabled researchers to conduct their work during the COVID-19 pandemic. Controlled digital lending, whereby institutions make a single digital copy available for loan for each inaccessible print copy, seemed like a sensible, wise, and forward-thinking solution, and heightened library reliance on and expectations regarding remote resources. Providing access to COVID-19-related research helped prompt US government regulations on open access for government-funded research. This article shares the state of advocacy for more equitable ebook access.

LICENSE TO READ

While ebooks may be purchased with perpetual access, meaning that readers should theoretically always have access to the ebook, there is another ebook business model with restrictive license agreements that buck the doctrine of first sale in which once a physical book is purchased, the owner may share it or sell it as they wish. In the problematic ebook model, publishers or vendors may remove access to titles; access to ebooks may expire after a certain number of checkouts, prompting libraries to purchase titles again; and libraries cannot maintain access to ebooks without an ongoing subscription (Haight and Hickman Pierson 2024). The licensing terms for this model prioritizes authors’ copyright protections while putting readers’ copyright fair use protections

in peril (Lamdan et al. 2023). Ebook publishers, who are saving on printing costs, have not actually proffered evidence to justify their higher costs and embargo of ebooks (Haight and Hickman Pierson 2024).

Publishers make institutional ebooks more expensive than an ebook intended for the personal and sole use of the average consumer, arguing that a single institutional copy will be used by multiple readers simultaneously, thereby cutting into publishers’ revenue. Some authors argue that historically, through circulation, libraries have *increased* book sales, so this concern is not fully merited.¹ More worrisome for readers is the effect this has on library collections, which should allow readers access to a multiplicity of ideas and perspectives. DPLA (2024) notes, “instead of being spaces where readers can explore emerging authors or more uncommon works, libraries have been under pressure to focus on bestsellers and titles by big name authors that are in high demand.”

While digital resources have the potential to work toward greater equity in terms of accessibility for a variety of patrons, the high cost of ebooks works against these ideals by limiting the purchasing power of libraries and creating greater gaps between those institutions—and therefore patrons—that can and cannot afford these resources (Haight and Hickman Pierson 2024). To add insult to injury, in some academic libraries, the high cost of other digital resources (like electronic journals) constitutes a majority of their acquisition budgets, dwarfing what is left over for the purchase of physical books or ebooks. This imbalance negatively affects the uniqueness and relevance of collections to their

institutional curricula. The commercial grip on academic publishing is stifling intellectual and scientific progress. While misinformation runs rampant online, vital research remains locked behind costly paywalls.

This ebook business model has also introduced a third party: ebook platforms that are sometimes part of the publishing entity or a partner, and in either case, are perpetually involved in that ebook's life. These platforms collect patron data, which is antithetical to readers' right to privacy (Lamdan et al. 2023) but is argued as a way for the platforms to recoup their investment. These platforms are essentially technology companies, but because they have been treated as publishers, the difference between the two groups were elided. The end result is licenses that run contrary to the library profession's respect for patron privacy (García Mathewson 2024), which lead to an ethically problematic version of "surveillance capitalism" (Lamdan et al. 2023). It is interesting to note that in some cases, ebook publishers may not have access to this information that is so important to the ebook platforms.

I have not researched the prevalence of specific risks to patron privacy, but there appears to be a spectrum. When libraries lead patrons to databases, which then ask patrons to supply information that is used according to their terms of service, the library has not shared personally identifiable information, but the patron has. Given that libraries are generally trusted institutions (Asher et al. 2022), do the patrons realize that their consent trumps whatever protection they might think a library is providing? On the other end of the spectrum, are other vendors who "gather

data without explicit consent, utilizing methods such as cookies or browser fingerprinting" (Bettinger 2023: 12).

COPYRIGHT AND EBOOK LICENSES

Historically, libraries have used the right of first sale or first sale doctrine, to loan books as a basic public good. Library advocates consider controlled digital lending a lending model akin to—and an evolution of—the historical right of first sale.² Controlled digital lending was crucial during the COVID-19 pandemic when physical access was impossible. It enabled

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libraries to loan an ebook as a surrogate for a physical book in the library's holdings. Post-pandemic, this leeway has been scaled back, most notably by the decision on Internet Archive's use of controlled digital lending (*Hachette v. Internet Archive*), which was decided in favor of authors and publishers arguing that controlled digital lending is not protected by copyright. In June 2024, the Internet Archive, complying with the court decision, removed half a million ebooks (Belanger 2024).

Various bills and court cases have challenged how ebook licensing has stripped ebooks of the rights inherent in physical books. A Maryland law requiring publishers to offer them "on reasonable terms that would enable

public libraries to provide library users with access to the electronic literary product" (Haight and Hickman Pierson 2024: 231), was struck down in 2022 in the court case *Association of American Publishers v. Frosh*. The federal judge decided in favor of the association, citing the law as being preempted by copyright (Brittain 2022). Aware that copyright reform would be a long and difficult battle, advocates are going a different route. Library Futures,³ for example, is using a consumer-rights angle as a stop gap measure and invoking contract law at the state level and even sharing model statutory language that can be used by legislators (Haight and Hickman Pierson 2024).

Library advocates are also proposing digital ownership models as a solution to this conundrum. Library Futures is a strong advocate for a return to safeguarding ownership. Its recently published advocacy document, *Principles on Library Ownership of Digital Books* (Halperin 2024), delineates the guardrails for the benefit of both the publishing industry and libraries, such as allowing libraries to fulfill their traditional function to preserve books as formats evolve and to prevent access to reader data. The Digital Public Library of America has developed a model of digital ownership called the Palace Project⁴ based on a library-driven platform for the management and delivery of e-content. This landmark agreement with Independent Publishers Group (IPG) allows libraries to have perpetual ownership of many independent publisher titles (DPLA 2024). This agreement is remarkable for the precedent it sets and influence it may have on similar action by the Association of American Publishers.

Advocacy to support patron privacy is another angle that merits attention; state laws about library record confidentiality should also be extended to ebook platforms to support intellectual freedom and reduce surveillance by data cartels. Privacy advocates are sharing the ways that licenses can be negotiated to protect library patrons (García Mathewson 2024).

LICENSED TO THRIVE

Ultimately, these concerns relate to access to information, which is the foundation of a working democracy. For librarians, educating patrons about such issues is part of our public service. By expressing our concerns, we foster critical thinking and make this public good sustainable. Better messaging from librarians will make library patrons stronger advocates, who will then exert pressure on state legislators to enact change. For library users and advocates, librarians need your informed and articulate support on this matter. We ask you to consider the importance, complexity, and evolving needs of the 21st century library.

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NOTES

- 1 "Hachette v. Internet Archive - Amicus brief of Kevin L. Smith and William M. Cross." <https://www.eff.org/document/hachette-v-internet-archive-amicus-brief-kevin-l-smith-and-william-m-cross>
- 2 "Hachette v. Internet Archive - Amicus brief of Kevin L. Smith and William M. Cross." <https://www.libraryfutures.net>
- 3 <https://www.libraryfutures.net>
- 4 <https://thepalaceproject.org/>

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Daisy Domínguez Singh is the University of Maine dean of libraries, leading a talented staff at Fogler Library in Orono, Merrill Library in Machias, Maine InfoNet, and the University of Maine Press.