

FORUM

A BIMONTHLY REPORT ON RESEARCH LIBRARY ISSUES AND ACTIONS FROM ARL, CNI, AND SPARC

ON ENSURING THAT INTELLECTUAL PROPERTY PUBLIC POLICY PROMOTES PROGRESS

by Peter McPherson, President, National Association of State Universities and Land-Grant Colleges

To promote the Progress of Science and useful Arts....
—US Constitution, Article I, Section 8

The core mission of colleges and universities is to create and distribute knowledge in order to enrich and improve the lives of individuals and to strengthen society. Intellectual property law has become a major factor in how we are able to conduct that mission. Therefore, intellectual property and related issues must be a matter that we understand and focus upon.

The ability of public universities and others to carry out their mission is dependent upon the ability of our faculty and students to gain access to the knowledge, equipment, and techniques necessary to teach and research at the cutting edge of the disciplines and engage in the practice of those “arts.” Increasingly, our faculty and researchers have seen limits placed on their access to these critical resources. Restrictions that limit the ability of public universities to perform their missions make it difficult to fully implement the public good.

Copyright, patent, trade secrets, licensing, and other forms of intellectual property protection are part of the legal framework of our nation. Economic and cultural progress of societies is damaged if the incentive to invent, create, and improve the types of things protected by intellectual property is too weak. The legal basis for these protections is Article I, Section 8, Clause 8 of the United States Constitution: “To promote the Progress of Science and useful Arts, by securing for limited Times to Authors and Inventors the exclusive Rights to their respective Writings and Inventions.”

From the beginning, intellectual property law has required a balancing of needs. On one hand,

there was and is a wish to encourage the creation of intellectual property by giving to the creator a property right. I view this as a form of a temporary monopoly, not to be judgmental but for clarity. On the other hand, society is benefited by early and wide availability of knowledge. The question today is whether we have the right balance, and, if not, then what should be done about it.

Many argue that the balance in recent years has tilted in favor of this “temporary monopoly.” Copyright provisions have been strengthened and lengthened, patent law modified, and various court decisions rendered that affected our understanding of the laws. Further, the increased digitization of content generated by our institutions and others—and the use of that content by students, faculty, and researchers—has increased the challenges we face in teaching, learning, and discovery.

Several of the most important factors in shifting this balance are themselves borne of discovery—the genome, the Internet, zero marginal worldwide distribution costs, etc. These, of course, did not exist when the Constitution was framed and the first defining intellectual property laws were written. Together, relatively recent law revisions, court decisions, and discoveries have combined to create barriers to access that those teachers and researchers of an earlier era did not face and certainly were not anticipated by the framers of the Constitution.

A few examples suggest the scope of the problem:

- “Ownership” of surgical techniques makes teaching them or discovering ways to improve them difficult.
- Transition of scholarly journals to electronic form, driven in part by continual subscription

price increases and market concentration, where licensing governs distribution and concepts such as “first sale” disappear, has reduced the ability of scholars at poorly funded universities worldwide to teach existing knowledge and to build on it in their research.

- Challenges to the legitimate “fair use” of digitized content threatens to hinder the strategic utilization of Web-enabled teaching, whether it be through the use of e-reserves, hybrid teaching tools, or the provision of online courses and programs.
- Lengthened period of copyright ensures that many copyrights outlive their authors and authors’ families and sometimes the commercial existence of the original publisher. These materials become “orphan” works to which rights for reproduction are unavailable when scholars desire continued access to them.

Some of the problems, illustrated by these examples, were foreseen but perhaps not fully dealt with by drafters of some of our intellectual property laws. Fortunately for all of us, these statutes have been viewed as “living” documents where alterations and additions have been made to reflect the evolution of intellectual property concepts. For example, the Bayh-Dole Act provides for the seldom used “march-in” rights that permit federal research funders to bring the benefits of inventions to the public under certain conditions. The copyright laws similarly forbid authors employed by federal laboratories from granting exclusive copyright to their written works to scholarly journals, and it preserves the right of the federal government to make their works publicly available. That act also provides for “fair use” of portions of copyrighted material so that scholars and students can make use of them even if they do not own them.

Further, the last National Institutes of Health (NIH) appropriations bill included the requirement that scholarly journal articles arising out of NIH-funded work be made available publicly, for free, no later than one year after initial publication. This ensures that scholars and the general public have full access to this important work within a reasonable period of time.

Experience has also demonstrated that we do not need to rely exclusively on federal laws to deal with these important issues; individuals and organizations have found ways to make their intellectual property available for the common good. For example, some creators have used non-exclusive public licenses to ensure that scholars and the entire public may benefit from their creations. Others have lifted restrictions imposed by intellectual property protection to those in impoverished sections of the world. Still others have

decided that it is appropriate for the market to allocate their creations only to those who can afford them.

All of these historical elements and more recent developments point out that a “solution” to fully address some of the contemporary challenges we face in the intellectual property arena may be a combination of further legislation, public licenses, market-based allocation, or market-modification allocations.

It is not my goal to articulate exactly what might be done to right the balance, in other words to specify how to change the access restrictions that unwisely limit researchers and teachers. I do not have sufficient expertise to do so, and, in any case, it would probably be unwise to suggest a general solution when we as a community do not yet fully understand the scope and nuance of the problem.

I would ask, though, why do we find ourselves in the position of feeling that an imbalance has developed? Even as it is impacting our ability to fully perform our mission, why as a community are we really not sure what to do about it? I suggest the following:

The issues are so complex and interrelated that the subject has remained the domain of experts, mostly lawyers and some line executives who manage intellectual property.

University leadership rarely has real expertise in this area. Moreover, these issues rarely are the most pressing problems before university leadership. Perhaps for those reasons, university leadership has not made the effort to pull together a comprehensive and broadly supported view on how intellectual property law impacts our core mission, and, of course, has not developed a broadly supported plan to deal with it.

Various private sector interests have a primary mission to protect or advance certain intellectual property. The measurable monies at stake for those parties produce a focus of effort in Washington. This is in contrast to the generally more diffuse financial and other interests of the academic community and, thereby, the comparative lack of focus. This is the way public policy decisions play out in Washington and perhaps always have.

To address these issues, I recommend that the academy develop a comprehensive set of positions on intellectual property. The positions should be supportive of our core mission of creating and distributing knowledge. The process of developing a set of positions needs to involve the academic library community and university-based technology commercialization officers and intellectual property experts. These groups have thought the most about the issues. But it can not be these professionals alone because their legitimate differing perspectives will make it too hard for them to come up with broadly agreed

upon positions. Presidents and provosts, and perhaps associations of these academic leaders, must play a major role in order to push matters along to get agreement. Of equal importance, senior academic leadership is critical to getting something done once there is agreement on a comprehensive set of positions. NASULGC is certainly willing to help, but it is important that several other groups be deeply involved. Further, any effort in this area must take into account the excellent work done by others. Over the past half dozen or more years, a number of thoughtful people and organizations have examined many of these issues in great detail, including the President's Council of Advisors on Science and Technology (PCAST), the National Academies, and the Council on Competitiveness. A university effort should be informed by that work, not re-create it.

As the process moves forward to develop a comprehensive set of positions, concrete plans need to be made for an adequately funded structure to advance this agenda in Washington and across the country. Staffing should not be large but must include significant expertise in intellectual property, academic policy, and operations and economics. This is a several-year effort as the issues will continue to evolve.

In conclusion, there appears to be an imbalance in the application of intellectual property rules that is impacting our core mission of creating and distributing knowledge. Accordingly, the academic community should find a way to agree on a comprehensive set of positions and develop a structure to support advancing those positions in Washington.

Adapted from a presentation at the Association of Research Libraries Membership Meeting, May 2008.

—Copyright © 2008 Peter McPherson

HOW FAIR USE PREVAILED IN THE HARRY POTTER CASE

by Jonathan Band¹

In a highly publicized decision issued on September 8, 2008, US District Court Judge Robert Patterson ruled that Steven Vander Ark's *Harry Potter Lexicon* infringed J. K. Rowling's copyright.² Although J. K. Rowling prevailed in the litigation, the big winner actually was fair use.

The *Lexicon* is a hard-copy A-to-Z encyclopedia of the characters, spells, creatures, places, events, and magical items in the series. (Rowling did not challenge the online version of the *Lexicon*.) Judge Patterson found that the *Lexicon's* purpose was transformative under the first fair-use factor—the purpose and character of the use. Judge Patterson concluded that the *Lexicon* was a reference guide intended to make “information about

the intricate world of Harry Potter readily accessible to readers”:

To fulfill this function, the *Lexicon* identifies more than 2,400 elements from the Harry Potter world, extracts and synthesizes fictional facts related to each element from all seven novels, and presents that information in a format that allows readers to access it quickly as they make their way through the series.

The court further noted:

[t]he utility of the *Lexicon*, as a reference guide to a multi-volume work of fantasy literature, demonstrates a productive use for a different purpose than the original works. The *Lexicon* makes the elaborate imaginary world of Harry Potter searchable, item by item, and gives readers a complete picture of each item that cannot be gleaned by reading the voluminous series, since the material related to each item is scattered over thousands of pages of complex narrative and plot.

Judge Patterson observed that “the demand for and usefulness of this type of reference guide” was demonstrated by the existence of similar companion works for other series, such as the *Chronicles of Narnia*. The judge also found that J. K. Rowling herself admitted to consulting an online version of the *Lexicon*, as did the producer of the film version of the fifth novel. Judge Patterson took care to distinguish the *Lexicon's* “function as a reference guide” from the trivia book on the *Seinfeld* TV series at issue in *Castle Rock Entertainment Inc. v. Carol Publishing Group Inc.*, 150 F.3d 132 (2d Cir. 1998). While the trivia book simply entertained *Seinfeld* fans, the *Lexicon* sought to “aid the reader or student of Harry Potter by providing references about elements encountered in the series.”

Judge Patterson held that the *Lexicon* was transformative even though it did not contain significant commentary or analysis. Providing “an alphabetized catalogue of elements from the Harry Potter world” was sufficient basis for rendering the *Lexicon* transformative.

Considering the fourth fair-use factor, the effect of the use on the potential market for the work, Judge Patterson rejected J. K. Rowling's argument that the *Lexicon* would impair the market for an encyclopedia she planned to write. Judge Patterson ruled that “the market for reference guides to the Harry Potter works is not exclusively hers to exploit or license, no matter the commercial success attributable to the popularity of the original works.” Judge Patterson added that “[t]he market for reference guides does not become derivative simply because the copyright holder seeks to produce or license one.”

When looking at the broader implications of the case, Judge Patterson stated that “[i]n striking the balance between the property rights of original authors and the

freedom of expression of secondary authors, reference guides to works of literature should generally be encouraged by copyright law as they provide a benefit [to] readers and students....” He later added that “reference works that share the *Lexicon’s* purpose of aiding readers of literature generally should be encouraged rather than stifled.”

Given these pro-fair-use holdings, which will be extremely helpful in future fair-use cases, why did Judge Patterson rule against the *Lexicon*? The answer turns on the specific facts unique to this case.

First, many of the entries contained lengthy verbatim copies or close paraphrases of descriptions in the Harry Potter novels. Judge Patterson found that the *Lexicon* reproduced more of these “colorful literary device[s]” or “distinctive description[s]” than “reasonably necessary for the purpose of creating a useful and complete reference guide.” The court concluded that verbatim copying of descriptions of even ordinary objects “demonstrates Vander Ark’s lack of restraint due to an enthusiastic admiration of Rowling’s artistic expression, or perhaps haste and laziness...in composing the *Lexicon* entries.” Additionally, the *Lexicon* reproduced in their entirety many of the songs and poems contained in the novels. Judge Patterson found that the *Lexicon* harmed a possible derivative market for print publication of these songs and poems.

Second, the case concerned not only the seven Harry Potter novels, but also two short companion books written by Rowling. These books, *Quidditch through the Ages* and *Fantastic Beasts & Where to Find Them*, appear as reference books used by the students at Hogwarts in the novels. *Fantastic Beasts*, for example, is an A-to-Z encyclopedia of the imaginary animals that exist in the Harry Potter universe. Because the *Lexicon* presents much of the same information in the same way as these two companion books, Judge Patterson found that the *Lexicon* “is transformative to a much lesser extent” with respect to the companion books than to the novels. Moreover, Judge Patterson found that the *Lexicon* could harm the sales of the companion books: “consumers who purchased the *Lexicon* would have scant incentive to purchase either of Rowling’s companion books, as the information contained in these short works has been incorporated in the *Lexicon* almost wholesale.”³

Although ruling for the plaintiffs on the particular facts of this case, Judge Patterson’s decision leaves ample room for the creation of reference guides to literary works, even when the guides do not contain scholarly criticism or analysis. The decision also provides a clear roadmap for how to avoid infringement claims when creating such guides; the guide’s author must take care not to copy more “highly aesthetic expression” than necessary to achieve the guide’s educational purpose. Moreover, the guide’s author must exercise even greater care when copying material from reference works created by the original author.

Taking a step back, one can draw three broader

lessons from the decision. First, fair use is alive and well. The decision makes clear that expression can be incorporated into transformative works, so long as the expression is reasonably necessary for achieving the transformative purpose. Even though the fair-use privilege failed under the specific facts of this case, the court assessed only the minimum amount of statutory damages—\$750 per work infringed, for a total of \$6,750. Judge Patterson had the discretion to assess damages as high as \$1.35 million. Presumably the judge awarded the minimum rather than the maximum in part because the defendant had “the reasonable belief that [the *Lexicon’s*] use of the Harry Potter works constituted fair use....”

Second, courts get fair use. Judge Patterson unquestionably understands the policies that underlie the fair-use doctrine, and the importance of striking the proper balance between protection and the dissemination of information. Indeed, the decision demonstrates once again that the federal judiciary understands fair use better than Congress, which repeatedly advances legislation that encroaches on fair use and the public domain. The judiciary also understands fair use better than the executive branch, which consistently opposes the adoption of fair-use principles by our trading partners.

Third, fair use can thrive only if defendants can litigate long enough to get their day in court. Plaintiffs in copyright cases often have very deep pockets; here, Rowling, one of the wealthiest authors in history, was joined by Warner Brothers, the purchaser of the film rights to the Harry Potter series. Fortunately for the *Lexicon’s* publisher, the Fair Use Project of Stanford Law School’s Center for Internet and Society participated in its defense. Public interest “law firms” such as the Fair Use Project and the Electronic Frontier Foundation play a critical role in leveling the copyright-litigation playing field to ensure that courts have the ability to consider the merits of assertions of the fair-use privilege.

—Copyright © 2008 Jonathan Band

¹ Mr. Band is an attorney who represents Internet companies and library associations on intellectual property matters. He may be contacted via his Web site <http://www.policybandwidth.com/>.

² *Warner Bros. Entertainment Inc. and J. K. Rowling v. RDR Books et al*, ___ F.Supp.2d ___, 2008 WL 4126736, S.D.N.Y., September 8, 2008 (NO. 07 CIV. 9667 (RPP)).

³ While Judge Patterson may have reached the right result given the amount of expressive material the *Lexicon* copied, one can debate some of Judge Patterson’s specific holdings. Most notably, Judge Patterson ruled that “fictional facts” are expression protected by copyright. However, it is a fact that the novels describe a certain set of events and characters. A reference work should be able to report on that fact, so long as it is clear that the reference work is reporting on the fact and not participating in the fiction.

RESEARCH, TEACHING & LEARNING

Crit Stuart, Director, ARL Research, Teaching & Learning Program

ON THE NEED FOR A NEW, OPEN ACCESS, ONLINE DIRECTORY OF SPECIAL COLLECTIONS

by Jeffrey Makala, Assistant Special Collections Librarian, University of South Carolina

One year ago this month, ARL published an impressive book and Web site to commemorate its 75th anniversary: *Celebrating Research: Rare and Special Collections from the Membership of the Association of Research Libraries*.¹ With this joint publication, a significant and surprising gap in our contemporary information environment has been highlighted: there is no current, freely available directory of major research collections or academic and research library subject strengths in North America. ARL's *Celebrating Research* Web site could serve as the springboard for the library community to create one.

For the *Celebrating Research* project, each of the 123 ARL member libraries was asked to contribute materials for a two-page spread that would highlight one significant research collection with a narrative description and multiple illustrations. At the back of the printed volume is a lengthy section of special collections overviews and profiles of ARL member libraries. This section gives each library an opportunity to describe their special collections by subject as well as by format or particular strength (see accompanying illustration). The Gladys Krieble Delmas Foundation underwrote the publication of this volume and its attendant Web site, the latter of which fully reproduces the complete text and illustrations from the book. ARL, OCLC, Brown University Library, EBSCO, and Harrassowitz also provided support, making this project a substantial collaborative undertaking.

Even if one is an old library hand, after a quick page-through, one senses that the corpus of significant research collections in North American libraries is much, much broader and deeper than one had imagined. The nature of personal and institutional collecting has

changed considerably over the past few decades: social history, popular culture, and collections of widely mixed media are now as much the norm for special collections interests as are traditional author and subject collections.

Nicolas Barker, editor of *The Book Collector*, contributes a long introduction to *Celebrating Research* where he surveys the changes in American special collections during his

lifetime. In attempting to comment upon each library's entry, he is nearly overwhelmed at the profusion of research material at hand, often in places where he least expected to find such material. His surprise is justified; when we look carefully, beyond just the major collections at a select few universities, there is a wealth of cultural heritage material being preserved in all of our libraries that is not always readily apparent, or easily identified.

These were my first thoughts as I browsed through *Celebrating Research*. But a noticeable absence also came to light as I began to think about the several other projects and directories that attempt to document materials in our libraries: *Why is there no current directory of special collections resources at the collection level?* And then, attendantly, is it too retrograde to even suggest the need for something like a comprehensive online directory of such things in the post-Google information universe?

Our current print reference tools only partially meet this need. Information Today's *American Library Directory* is not meant to be a comprehensive collections guide, as it does not even index its brief collection entries separately or by subject. Gale's *Directory of Special Libraries and Information Centers* allows major collections to be listed, but does not provide contributors enough length in the collection field for a complete list, or for narrative collection descriptions. Nor do all libraries contribute to it.

David Stam's excellent two-volume *International Directory of Library Histories* (2001) contains historical essays and collection profiles of many major libraries, but only a handful are located in North America. Lee Ash's *Subject Collections: A Guide to Special Book Collections and Subject Emphases as Reported by University, College, Public, and Special Libraries and Museums in the United States and*

University of South Carolina Libraries

The University of South Carolina, then South Carolina College, started building its library collections in 1803. In 1840, it opened the first purpose-built freestanding college library building in the nation, and by 1850, with 25,000 volumes, it had the largest library collection south of Washington, DC. Many of the books acquired then survive, either in Thomas Cooper Library's Special Collections or in the South Caroliniana Library: incunabula, Theodor de Bry's *Greater Voyages*, Stuart's *Antiquities*, the complete Piranesi, the *Description de l'Égypte*, Kingsborough's *Mexican Antiquities*, Karl Bodmer's *Travels in North America*, and even South Carolina College Book 1.

The focus for acquisition in the earlier 20th century was on South Carolina, on earlier British fiction, and on such high points as the *Nuremberg Chronicle* (1493), the King James Bible, and the Blaeu *Atlas*. Over the past 25 years, Thomas Cooper's Special Collections have grown six-fold, to over 120,000 volumes and several modern literary archives. Areas of significant growth include: philosophy (Hume, Russell); history (Garibaldi), exploration (Renaissance city maps), military history (Civil War, World War I), and military aviation (World War II); natural history (garden books, 18th-century watercolors, Abbot) and the history of science (Darwin, Babbage); English literature (Milton), Scottish literature (Burns, Carlyle, Stevenson), and American literature (Emerson, Fuller, Whitman, Johnson, Fitzgerald, Hemingway, Rawlings, Heller, Dickey, Jakes, Ellroy, Higgins); children's literature (particularly African-American); and the history of the book.

Over the same period, the department has added new initiatives in the areas of teaching, exhibits, digitization, and scholarly and public programs. An extensive series of Web exhibits and Web projects based on the collections has been attracting over 25 million hits a year.

Collection Profile and Overview: Patrick Scott
Illustrations: Keith McGraw and Jeffrey Makala

University of South Carolina
Rare Books & Special Collections
Thomas Cooper Library
Columbia, South Carolina 29208
<http://www.sc.edu/library/spcoll/rarebook.html>
tclrarebooks@gwm.sc.edu
(803) 777-8154 (t)
(803) 777-4661 (f)

Sample Collection Overview from
Celebrating Research

Canada, the definitive reference work on the subject, had been updated every few years since it first appeared in the 1960s, but now has not been printed since 1993.

The University of Idaho Library's "Repositories of Primary Sources" Web site is the only current resource that lists major repositories and provides links to them, browsable by state.² It is a homegrown product that is unique and immensely useful for geographically locating a library or archives Web site, but it was not created to provide collection-level information.

Finding the location of the papers of a major author or corporate body is now fairly painless thanks to Google and the profusion of online finding aids in many formats. Subscription databases such as ArchivesUSA and OCLC's ArchiveGrid, and free services such as the National Union Catalog of Manuscript Collections (NUCMC) perform similar tasks for this type of archival collection for which clear metadata in the form of collection inventories or finding aids already exists.

But how would, say, a graduate student systematically learn which libraries in North America have the most substantial collections of John Milton? Or American advertising? Or the history of science in the Arab world? The days when seasoned special collections librarians and faculty members would draw up shortlists of the major collections in multiple fields off the tops of their heads are now long gone, as the sheer number of repositories, changing collection patterns, and newly acquired collections have exploded in recent memory. New scholarly works will often thank and credit our colleagues in libraries across the country; the best provide clear citations to unique items and to the occasional collection. But on the whole, comprehensive collection knowledge across multiple disciplines has now passed beyond even the best subject specialists in academic departments and university research libraries.

At the micro level, individual volumes can of course be located through our standard suite of bibliographic tools. But the collection-level printed bibliography has mostly become a relic of the past. So quite often, full collection-level information, especially concerning an institution's subject strengths, areas of collecting focus, or unusual depths or breadths, is not located anywhere except in a narrative or separate page on the institution's own Web site. In addition, subject collections now regularly comprise many formats of material, from books and manuscripts to smaller archives, collections of clippings, realia, photographs, digital files, etc., that may not be as readily located as a single volume. How would we know an institution collects broadly in the history of radio and television, in materials produced by American utopian communities, or the works of 19th-century French authors unless they themselves tell us so, overtly, on their own?

We need an aggregator for this type of information, a way to bring our collective knowledge of our own

collection strengths into a browsable and searchable format to benefit our readers and the research community. We need to fill the gap that exists between item-level cataloging and broad general collection summaries by documenting the special collections in our libraries within the framework of one reference tool. Doing so in an online environment, perhaps updatable by its own membership, à la wikis, should not be too terribly difficult if a concerted effort is made. So let this be a call:

Let ARL's *Celebrating Research* Web site be the start of a new, open access, online directory of all special collections in North American libraries.

What I propose is essentially a simple online tool, and not nearly as sexy as creating interactive learning objects or a large comprehensive collaborative digitization project. But it is a way of filling a significant gap between current efforts at comprehensive, page-level digitization in our libraries and the brief, macro-level collection information currently available, mostly for purchase. It should be a tool that all North American libraries will want to contribute to, as it is in our communal best interest to share our collection strengths with our colleagues, faculty, and the larger research community. It should also be a tool that is easily updated, that will permit both casual browsing in index form and more complex searching, and that will contain narrative collection descriptions.

Research, at whatever level one defines it, is currently conducted in every special collection in the country, and serious special collections can be found in nearly all academic libraries, many public libraries large and small, independent research libraries, numerous historical societies, and private libraries. The work of the ARL Special Collections Task Force earlier this decade has led directly to large-scale efforts to catalog or process many of those collections that may have existed but were "hidden" without the proper access tools. Partly as a result of the task force's initiatives, the library profession has come to a general consensus on the utility of collection-level descriptions, the posting of collection summaries and inventories, and to innovation in exploring new projects that enhance access to new and previously undescribed items and collections in our libraries. Likewise, the recently established ARL Working Group on Special Collections plays a role in advancing issues related to collections stewardship and the role of special collections in research, teaching, and learning.

Sherrie Schmidt and Duane Webster, in their preface to *Celebrating Research*, state that the collection essays "represent a window into the future of research libraries." Especially in the book's partner Web site, ARL has created the beginnings of a tool that can fill a present void in the scholarly world. I urge all organizations with an interest in special collections to consider the broader implications of such a resource, and seek out partners to create a

complete directory of special collections, for all North American libraries, that is freely available on the Web. Individual libraries working with organizations such as ARL, OCLC RLG Programs, the Oberlin Group, and especially the Association of College & Research Libraries Rare Books and Manuscripts Section could be strong partners and advocates for such a collaborative project.

One of the more interesting biblio-futurist predictions that has emerged in the past few years states that, since all major research libraries are now subscribing to essentially the same databases and have standing orders for the same serials and for monographs from the same university presses, we are moving toward a grand uniformity in what we own or pay to access. Therefore, in the future, what will distinguish one library from another, and what will increasingly tend to define it, is its rare, special, and subject collections. If this prediction comes to pass (which, given today's library business models, may well happen), a directory such as this will be of increasingly significant utility.

In the spring of 2008 a question was posed on the ExLibris electronic discussion list, which is composed primarily of special collections librarians, scholars, and antiquarian book dealers. A Spanish bookseller was trying to identify significant collections of Dante in American libraries. He had done the necessary Googling beforehand and had come up mostly empty. But after his query was posted to the list, he quickly received from the collective knowledge of the group quite a few more positive responses than anyone following the original query probably expected. Questions like this, no doubt asked in our libraries every day, illustrate perfectly the information gap we should attempt to bridge. A researcher should have a freely accessible tool at their fingertips that brings to light the collection strengths of our libraries, that serves as a gateway to research, and helps expose even more of the "hidden" collection information that is present but not always overtly stated, certainly not in one common location.

We all know our own collections and their strengths better than anyone and want to share them with others. So let's not just celebrate research, but truly support it by creating a new reference tool that will do our collections and our great libraries justice.

—Copyright © 2008 Jeffrey Makala

The author would like to acknowledge and thank Jaia Barrett and Christian Dupont for their assistance in the preparation of this article.

¹ Philip N. Cronenwett, Kevin Osborn, Samuel A. Streit, eds., *Celebrating Research* (Washington DC: ARL, 2007), <http://www.celebratingresearch.org/>.

² Terry Abraham, comp., "Repositories of Primary Sources," University of Idaho Library, <http://www.uiweb.uidaho.edu/special-collections/Other.Repositories.html>.

ON THE NEED FOR A NEW, OPEN ACCESS, ONLINE DIRECTORY OF SPECIAL COLLECTIONS: A RESPONSE

by Alice Prochaska, University Librarian, Yale University

As chair of ARL's Special Collections Working Group, I am delighted to see Jeffrey Makala put forward this proposal for a systematic directory of special collections. Coming from a long career in archives and special collections in the UK, I have always found it surprising that there is in North America no real counterpart to the British National Register of Archives (NRA). Of course, there are several useful resources, which are mentioned in the article, but the UK example might be a helpful point of reference. The NRA is a central point for the collection and dissemination of information about the nature and location of manuscripts relating to British history. It currently consists of over 44,000 unpublished lists and catalogues that describe archival holdings in the United Kingdom and overseas. (See <http://www.nationalarchives.gov.uk/nra/>.)

There can be no doubt that compiling and maintaining any such registry would be exponentially more difficult for North American holdings, given the huge size of the task and their distribution over an entire continent. Furthermore, the British NRA has existed for some 80 years or more, with a systematic process for repositories to record new accessions each year. Jeffrey Makala's proposal for a more modest profile of each repository's main special collections, however, would be useful and workable. Over time, it could build up to being a reliable source for researchers across North America and overseas.

The ARL Special Collections Working Group will consider adding this proposal to their list of recommendations to be included in their report, now in the final stages of compilation and expected to be published early in 2009. Any suggestions from readers of this newsletter, for ways to make such a register workable and sustainable, would be received most gratefully. The working group's report will contain some 20 or more recommendations for good practice in the collection, care, and accessibility of special collections, in all formats including those that are born digital. The group believes that special collections define, more than ever before, the distinctive character of each research library at a time when electronic publications and digitized books are commonly accessible. We will argue that the time is now to advance an agenda for special collections. Jeffrey Makala's proposal brings timely support to that argument.

—Copyright © 2008 Alice Prochaska



ARL: A Bimonthly Report on Research Library Issues and Actions from ARL, CNI, and SPARC (US ISSN 1050-6098) is published six times a year by the Association of Research Libraries, 21 Dupont Circle, Washington, DC 20036. 202-296-2296 FAX 202-872-0884 <http://www.arl.org/resources/pubs/br/>
Copyright: © 2008 by the Association of Research Libraries

ARL policy is to grant blanket permission to reprint any article in the newsletter for educational use as long as the source, author, issue, and page numbers are acknowledged. Exceptions to this

Executive Director: Charles B. Lowry
Editor: G. Jaia Barrett, Deputy Executive Director
Assistant Editor: Kaylyn Groves
Designer: Kevin Osborn, Research & Design, Ltd., Arlington, VA
Subscriptions: Members—\$25 per year for additional subscription; Nonmembers—\$50 per year plus shipping and handling.

policy may be noted for certain articles. For commercial use, a reprint request should be sent to ARL Publications pubs@arl.org.

ARL CALENDAR 2009

<http://www.arl.org/events/calendar/>

January 5–9	Web Development with XML: Design and Applications <i>Chapel Hill, North Carolina</i>	May 19–22	ARL Board & Membership Meeting <i>Houston, Texas</i>
January 23–26	ARL at ALA Midwinter Meeting <i>Denver, Colorado</i>	July 27–28	ARL Board Meeting <i>Washington DC</i>
February 12–13	ARL Board Meeting <i>Washington DC</i>	October 13–16	ARL Board & Membership Meeting <i>Washington DC</i>
March 11–12	Scholarly Communication Outreach: Crafting Messages that Grab Faculty Attention <i>Seattle, Washington</i>	December 14–15	CNI Fall Task Force Meeting <i>Washington DC</i>
March 16–20	Service Quality Evaluation Academy <i>New Orleans, Louisiana</i>		
April 6–7	CNI Spring Task Force Meeting <i>Minneapolis, Minnesota</i>		

ARL Membership Meetings 2010

April 27–30, 2010, Seattle, Washington
Note new dates

October 12–15, 2010, Washington DC

260

How Fair Use Prevailed in the Harry Potter Case.....3
Call for an Open Access Directory of Special Collections.....5

October 2008