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The Ethics of Library Resource Sharing in the Digital Age

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Abstract

Purpose – To outline ethical implications of the practical challenges facing resource sharing practitioners in the digital age.

Design/methodology/approach – The author presents an overview of major ethical challenges related to digital resource sharing using a framework of four key ethical theories: (1) justice as fairness (2) utilitarianism (3) rights theory and (4) common good theory.

Social implications – Resource sharing practitioners everywhere will find the ethical theories useful when presented with questions related to user access to information.

Originality/value – Library managers charged with development and assessment of resource sharing policies and practices will benefit from this paper.

Keywords Resource sharing, Interlibrary loan, Interlending, Ethics,

Paper type Conceptual paper

Introduction

As digital information supplements and even replaces print material, librarians must adapt resource sharing policies, practices, and procedures to the technological, economic, and legal realities of the digital age. Although interlibrary loan (ILL) specialists provide an invaluable service, this does not mean that everything they do is right, beneficial or good for their patrons, or for society as a whole. As with any human endeavor, they should neither assume that their work is immune to ethical considerations, nor should they take ethical shortcuts. Otherwise, even the most well meaning librarian risks compromising their values, interests, and mission, as well as harming other stakeholders in the information world, including their own constituents.

Traditional library and information ethics and librarian values stem from established ethical frameworks, which adds to their power. Established principles of professional librarianship acknowledge the rights of information producers, the importance of the free exchange of knowledge for social progress, and the responsibility for preserving knowledge for posterity. Despite cross-cultural and political differences, (Vaagan, 2002) IFLA's Committee on Free Access to Information and Freedom of Expression (FAIFE) commission [1] also expresses this in an international context. As for the values of resource sharing professionals, reciprocity and cooperation are both fundamental.

Many of the practical challenges facing librarians, however, are new. As more information is created, put online, and made accessible instantaneously, information sharing is technically easier, yet digital technology is also positioning publishers to gain more control over the creation, dissemination and preservation of information. (Smith, 2011; Geffert, 2011; Gleason, 1988)

As for resource sharing, adhering to differing copyright and licensing laws around the world is challenging, as is operating under increasingly significant financial constraints. (Hadro, 2010) Librarians want to support international borrowing (and lending), and people are requesting it, but if libraries and patrons cannot afford it, or are not permitted to share with libraries around the world, then they may have to do without information that they need. (Smith, 2011) Resource sharing staff must also minimize the negative environmental impact of digital resource sharing procedures, such as when publishers require the printing of online material, rather than allowing it to be transmitted electronically. Most important, though, is the need to protect and extend the legal concept of the fair use of digital information for educational and cultural advancement, rather than accepting license terms that unduly restrict interlibrary loans. (OCLC, 2007; Poynder, 2011; Massie, 2010)

It may come as a great surprise that the values guiding librarians are not universally embraced by publishers, politicians, authors, the public, or even all librarians, but other stakeholders do have other interests. This is why, in order to convince others to support their work, librarians should reference the moral arguments that philosophers have devised as they develop new ways to practically and ethically navigate the digital landscape.

Ethical Values and Frameworks

Merely adhering to religious commandments or governmental laws is insufficient for determining whether something is ethical. Instead, all perspectives must be rationally analyzed and weighed against a conception of the greatest – quantity or quality – of some good or goods. However, what is best is not always obvious, so one cannot rely on common sense alone. At times extensive, sometimes daunting issues, concerns, and questions need to be addressed and parsed in order to be responsible and respectful. There is often room for reasonable debate, and competing goods and interests mean that compromises and tradeoffs are necessary.

Of course, there is always the classic “golden rule” – do unto others, as you would have them do unto you. (Wattles, 1996) This is a good place for resource sharing librarians to start thinking about ethics because the entire resource sharing system is founded on the motivation of both borrowers and lenders to respond to all requests, quickly and appropriately, in the hope that this is reciprocated. However, differences in strategic interests, opinions and values mean that people may not always reciprocate in the way one might expect. In addition, many are adept rationalizers, convincing themselves that what one personally favors, or is in one’s own best interest, is best for all.

Thus, in order to practically and ethically advance their work, librarians need to go beyond common sense, established policy, and recommended procedures, especially if these impede their ability to achieve their mission. They may even need to question and protest laws that violate the values of librarianship and widely accepted ethical principles. This is serious business for which they need serious arguments that are not merely reflexive restatements of traditional positions. In order to help librarians build ethical arguments, this article will focus on applying four of the most ubiquitously referenced ethical theories: (1) justice as fairness (2) utilitarianism/consequentialism (3) rights theory/deontology and (4) common good theory.

Fairness

The theory of fairness, or justice, requires that societies establish basic rules and conditions that are fair to everyone, rather than allowing everyone, or some, to pursue their individual self-interest completely unchecked. Any policies and conditions should ensure that all members of a society, even the weakest, poorest, and most vulnerable, get fair access to social goods. Within the context of resource sharing, for instance, this means ensuring access to digital information for people with visual disabilities or who cannot afford access to a computer or other electronic reading device.

What is fair is not necessarily equal or the same, though. John Rawls explains, through his concept of “the difference principle,” that some people may claim a larger than equal share of social goods, if unequal distribution improves the condition of the worst off members of a community in the long run. (Sandel, 2009) In libraries, this means that certain patron types – e.g. faculty - may have more privileges, because of limited resources and differing needs. However, treating people differently for no good reason is a violation of the principle of fairness.

Libraries are full of rules that help make the system work. When simple and reasonable rules and procedures are established and followed impartially, everyone is treated fairly. ILL departments also rely on consistent rules to effectively and efficiently deal with multiple transactions. However, there are always exceptions and being inflexible in the face of differing circumstances is not fair. In addition, when rules are based on outdated realities, then these must be rethought, especially as information sharing rapidly changes along with technological advances.

The theory of justice as fairness also argues for balancing competing interests and ensuring that the costs and benefits of a complex system are distributed fairly. In resource sharing, for instance, there are the interests of local versus distant patrons, authors and publishers, students and faculty, lenders and borrowers. Of course, what some want may be spurious or even wrong – for instance, if library administrators do not understand that ILL departments need enough staff and budget to be good lenders, as well as borrowers. So, in order to balance competing goods librarians

should consider whose good counts, who pays and who benefits from resource sharing. Only then can they judge the ethical coherence of what they are doing.

Utilitarianism

The focus of utilitarianism is on promoting the good of society through cost-benefit analysis. Its founder, Jeremy Bentham, measured this in terms of happiness, but philosophers often express utility in monetary terms, either as net impact on gross domestic product or on an organization's bottom line. This makes it clear whether a policy or rule is morally defensible, depending on if it produces more net value than other available options. (Bentham, 1781; Goodin, 1993)

Critics of this theory point out that in order to maximize value for a society, utilitarianism may deem it acceptable or advantageous to neglect or mistreat minorities or to violate the rights of an individual. (Sandel, 2009; Williams, 2000) In the library context, maximizing the satisfaction of societal needs for information by freely sharing it can be seen as negatively affecting the satisfaction of publisher and author sales. This may be utilitarian, in the short-term at least, because there are more consumers of information than there are producers. However, failing to compensate authors and publishers may lead to a steep decline in the production of information, leading to less consumer satisfaction in the long run.

Obviously, librarians must make hard choices about what services to provide, how to provide them, and to whom. Utilitarianism provides a readymade theory for analyzing alternative schemes of service provision through cost-benefit analysis. For example, ILL departments may want to purchase article access from document suppliers to make sure requests are filled quickly, but can only do so if the fees are not too high.

Since ILL success is dependent upon completing specific and tangible transactions – allowing goods such as minimizing turnaround time or maximizing volume of filled requests to be achieved for the least cost - many decisions in ILL departments are based on utilitarian considerations. Any service costs money and can be valued in monetary terms (albeit imprecisely). So, as library budgets decrease, whatever benefits are produced from certain policies and procedures need to be balanced by their costs.

Rights

Today, the language of rights is ubiquitous, including the ALA's *Library Bill of Rights*. [2] There is also an *eReader Bill of Rights* [3] and a *Readers' Bill of Rights for Digital Books*, [4] which seek to protect individual information seekers. Modern rights theory takes the view that individuals have certain inherent rights simply because they are human beings possessed of reason and autonomy. In theory, such human rights cannot be superseded, even by contracts. (Freeman, 2002) Likewise, in theory, human rights cannot be violated, even if they promote the greater good of the greater number (utilitarianism) or some other ethical norm. (However, one could argue that in very rare cases, such as for purposes of national security or public safety, individual rights, such as privacy, might be temporarily curtailed.) (Etzioni, 1999)

Of course, not all of these rights are universal rights. For example, library patrons might claim that they have a right to receive any book or article, when they need it, in the format they choose, and for free. Realistically, though, libraries cannot always provide that level of service. Instead, they can try to meet a broader right to education and self-cultivation in a number of different ways and on a schedule that balances the needs and interests of the entire community with available funds.

Different groups may also claim rights that compete or conflict. For instance, the right of ownership implies that if anyone wants to use an author's work, then they have to attribute it, and either pay or get permission to use it. Since publishers contribute to the production of intellectual property by vetting, editing and distributing it, they, too, can claim a moral and legal imperative. However, publishers also infringe on the rights of academic authors by taking copyright and further payment away from them, then limiting the distribution that authors want and that society and individuals need to further the development of knowledge. Copyright laws that explicitly address ILL are designed to protect this right.

While librarians might consider library service to be a right of all citizens, not everyone agrees, and resource sharing is often viewed, funded and staffed as a supplementary, rather than as a core service. Rights theory is important because the system will only work if librarians understand, respect, and advocate for the rights of everyone involved. However, it alone is not sufficient for making ethical decisions in resource sharing or any other matter.

Common Good

An ethical theory of the common good distinguishes between the short-term self-interest of individuals in society and the long-term welfare of the entire society. Common good theory considers what kind of society people want to live in, asking people to refrain from behaviors that undermine such a society, and to develop behaviors that promote it. Achieving effective collective action on behalf of the common good requires making rules and policies that discourage problematic actions or that deplete resources that everyone needs.

Unfortunately, some people are tempted to overuse common resources, either because they do not believe their individual actions will make a difference or because they want to acquire as many benefits for themselves as they can, assuming everyone else will do the same. (Hardin, 1968)

In the context of libraries and ILL, reducing the environmental impact of printing and minimizing access fees appear to be consistent with common good theory. Paradoxically, however, common good theory – like utilitarianism – offers arguments both for and against the open sharing of information, depending on whether one believes that this hinders or encourages the creation of knowledge. (Wright, 1997; Massie, 2010)

Ethical Issues and Analysis

While ethical analyses can help librarians address any issue, conflicts among ethical theories exist, such as when something is clearly utilitarian, but is not very fair or is a violation of specific rights. This is why ethical conduct is best understood as choosing among competing goods, rather than choosing to do something right versus wrong, or good versus evil. When administrators, publishers, lawmakers, or the public dictate policies and rules that are inconsistent with librarian values and norms, though, librarians should turn to ethical reasoning in defense of their work.

Charging Fees

Online catalogs and websites now make information discovery much easier, but the full text of much of it is not available for free through libraries. Publishers are now charging libraries more money to access information online, even when they have already purchased it in print. (Poynder, 2011; Wright, 1997) Digital information can also be more expensive when it is only available through a publisher, because no library has bought or licensed it, or because they have but are not permitted to use it to fill ILL requests. ILL services can also be increasingly costly when using commercial document supply companies that charge a premium for speed. More libraries are also now charging fees to other libraries in order to recoup some of the costs of lending.

Any user who claims a "right" to free information or services is arguing for an idealistic extreme. However, librarians are committed to access and serving those who cannot afford to pay, as well as those who can. In effect, such access is often subsidized through grants, donations, a progressive income tax, or tuition charges adjusted for need based financial aid. Governments could also do more to fund libraries, if they deem them a common public good. Alternatively, or in addition, lawmakers could legislate more liberal fair use doctrines and educational exceptions to copyright laws so that libraries could share more information. Or, publishers could find cheaper pricing options for libraries to access online e-articles and e-books on a small per use basis, rather than the prices they now charge, which are often as high as the price to buy an entire print book, or the rigid and expensive big packages that they offer to libraries.

Of course, libraries can join consortia that agree to freely lend to members. (Although lending requests may then increase, this can be mitigated by other efficiencies.) The use of automated technology is another way to decrease the cost per transaction, although there are start up costs for purchasing management software, such as ILLiad, as well as technical support costs. Some products, such as the Odyssey Standalone document transmission software are even free. Unless costs are controlled, when it is more costly for libraries to provide services, librarians may have to pass

along fees to patrons. The danger, though, is that in many cases this means that patrons will choose to make do without the information, limiting the advance of knowledge, which is a common good, as well as a right, with a great deal of utility.

Environmental Impact

Electronic delivery offers an ostensibly greener alternative to material delivery, since it does not require paper and packaging. However, some publishers require librarians to print and then scan digital material for faxing or emailing, even though electronic transmission of articles through software such as Ariel or Odyssey is secure, and saves paper, energy and time. E-book licenses often do not allow them to be used for ILL at all, although it is technically possible to allow loans only for a limited time, just as is done for local patrons.

The common good argument here is that the environment is important to everyone. Moreover, the social cost of waste, from a utilitarian perspective, outweighs the benefits of compliance with this type of publisher demand. Publishers may have reason to fear that access to online information will encourage more uncompensated sharing among the public. However, scanners are now widely available, so even if licenses require printing of copies, this does not alleviate that problem, but only causes others. If it is unjust and unfair for people to share information without payment, then the ethical remedy is public education and new revenue models where articles are available for a reasonable price, like iTunes songs, and librarians must make sure that any license terms they agree to do not require such procedures.

The Fair Use of Digital Information Through Copyright Laws and License Agreements

Publishers are using the advent of digital information to argue that they need greater protection from piracy, placing more liberal sharing of information by libraries (and fair use by the public) under attack. If publishers and governments limit or simply do not allow the sharing of digital information among libraries, and information becomes primarily digital, then there will effectively be no resource sharing. Therefore, in order to continue to connect information and people, librarians need to be aware of the license terms they are agreeing to, and work with publishers and legislators so that public rights are maintained and publishers can collect copyright fees as required.

IFLA's *Position on Copyright in the Digital Environment* asserts, "Digital is not different." (Byrne, 2005) The ethical arguments for fair use of digital information, while recognizing that pirating is easier online, remain the same as for the fair use of print information. A utilitarian argument against fair use and educational exemptions, from the publisher perspective, is that it provides a monetary disincentive for authors to create knowledge, publishers to publish knowledge, and aggregators to aggregate knowledge. At the same time, however, the utilitarian benefits of fair use and educational exemptions may be said to promote economic growth through innovation and competition created by the spread of knowledge. If more knowledge is created, published, aggregated and distributed through such policies, and if the benefits of fair use policies outweigh costs, then this can be said to generate a net economic benefit. Of course, it is difficult to calculate whether this is the case. This is why the principles of fair use and copyright exemptions for education seek to balance the rights of each party, offering compensation, within copyright law, as well as the ability to use information freely, especially, but not only, for education and scholarship.

Authors certainly do have a reasonable interest, even a right, to receive some direct profit from the publication of their work, just as publishers do. However, authors may sometimes sell their rights to publishers, or sign contracts which amount to giving away their rights, even though they also have an interest in their work being widely read and disseminated, especially in the scholarly market, where rewards more often come indirectly through grants, reputation, university salaries, and the advantages of tenure and promotion. A theory of justice as fairness might, therefore, weigh authorial interest in being read and disseminated over an interest in direct profit. Publishers and aggregators, for their part, may be said to have an interest in and a right to recouping the costs of editing, publication or aggregation with some profit margin, although just how high a margin is debatable.

The public, for their part, has a reasonable interest – some would say this is also a right and consistent with the common good – in accessing information for learning. (ARL, 1995) Maximizing the common good would also appear prima facie to require open sharing of knowledge for learning (which arguably also encompasses popular culture) because this contributes to the general improvement of society. A more educated public will be happier, more productive, and more tolerant. Authors, publishers, and aggregators are also members of the public themselves, and

would, therefore, also benefit from any general social improvements. A right to self-improvement and self-development may even be inherent, although this does not necessarily convey an absolute right to profit from reading any particular article or book at any time one desires. Nor does it necessarily convey an absolute right to free access.

Librarians are in contact with publishers, explaining these issues and securing contract terms that address their concerns. For instance, the IDS Project, a consortium of libraries in the state of New York, has found that only 15 percent of publishers completely forbid the use of their material for interlibrary loan. [5] There are now ILLiad addons, and an OCLC Knowledge Base, with generic license information that attest to the fact that publishers are open to finding ways to work with librarians to reach mutual goals. On the other hand, there have also been recent efforts, like those of HarperCollins, to have e-books expire after 26 checkouts, and international efforts, like those of the International Association of Scientific, Technical & Medical Publishers, that seek to forbid international information sharing by libraries.

Agreements about what constitutes fair use of copyrighted material in libraries are legitimate and debatable. What is not at issue is that all stakeholders – authors, publishers, librarians and patrons – need each other to advance, rather than hinder or inhibit, learning, scholarly communication, education, research and cultural production. Therefore, their interests must be balanced.

The Ethical Way Forward

By being explicit about how the work that librarians do upholds certain values, the public can better understand, appreciate and support the role of libraries and librarians in helping them continue to access and use information. This means that librarians themselves must understand how their policies and procedures, as well as the current legal, economic and technological landscape, syncs with their values and ethical precepts, and advocate for change, when they do not.

Librarians must also acknowledge and respect the rights and interests of other stakeholders in the information world, basing their own decisions on rational analysis of what actions will most effectively help the most people, or best advance mutually agreed upon goals, such as learning and the production of knowledge. In addition to utilitarian concerns about what is most efficient, it is also essential to not violate the rights of patrons, authors, publishers and other stakeholders, to ignore principles of fairness, or to undermine the common good.

The time to negotiate, advocate and act is now. The first step is to initiate public conversations about the importance of solving these, and other practical issues in resource sharing in an ethical manner. The interests and rights of libraries and individuals who cannot necessarily afford lobbyists or legal representation are important to society. Librarians are certainly among those who need to speak out and work with publishers and lawmakers to find solutions that benefit the creation and dissemination of knowledge.

The ethical way forward also requires that librarians resist publishers that try to dictate license terms restricting user rights. Librarians are often unaware of what licenses say and are afraid to use digital information for ILL. Some library negotiators may inadvertently give away rights they are accustomed to working with, or allow terms that have a negative environmental impact. However, many publishers do allow libraries to share digital information, according to the same standards that govern print copies and loans. Librarians must ask for what they want and explain why, so publishers can understand and work with them to come up with mutually beneficial terms.

National lawmakers and international policy organizations also need to hear arguments about why fair use and educational exemptions are a practical and ethical solution to disseminating information, while still protecting author and publisher rights. Copyright laws are complex and differ around the world and even where fair use and educational exemptions have a long history, misunderstandings abound. This is why researching and codifying best practices is so important. Documents such as *Fair Use Challenges in Academic and Research Libraries* [6] are available to help librarians understand and protect their rights and interests. The utility, rights and interests of popular authors and publishers who add value to databases also need to be protected, but again a balance must be struck between profit and the utility, common good and the right of encouraging learning and research.

Technical realities inevitably shape how information is shared, so it must be acknowledged that online piracy does exist. However, since sharing seems to be a natural human instinct, as well as impossible to completely regulate – as

has been found with online music - librarians should join publishers in educating the public about the costs and consequences of such behavior. Publishers should also continue to work with libraries willing to pay copyright fees, especially in convenient ways, such as the Copyright Clearance Center's *Get it Now* service. New models of revenue generation must also be invented, such as low cost individual article access, or short-term rentals through libraries from publishers, such as OCLC and Ingram's MyiLibrary.

Meanwhile, many academic and national libraries have or are developing open digital libraries, and librarians should continue to create, support, and market projects that provide digital information to the public for no direct cost. These include Europeana, the World Digital Library, Project Gutenberg, ERIC, HathiTrust, and the Internet Archive's Open Library. In addition to curating digital information, librarians should also encourage, and even lead, open access publishing and Creative Commons efforts. If libraries and universities become direct publishers of peer reviewed, open access material, then the need for significant publisher profit, exorbitant prices to buy back the work of their institutions' own faculty, and limitations on information sharing will be eliminated. This, of course, is a daunting undertaking, and most libraries do not yet have the budgets, staff, time or expertise to do so. However, there are examples such as the University of Michigan, which has merged its press and library, and many digital journals and depositories are available from other libraries as well. Those who work in publishing are not the foes of librarians because they also believe in the power of information. In the future, they may even work for libraries.

Librarians are in a good position to understand and mediate among all stakeholders so that individual and societal interests in learning and in creating new knowledge are ultimately served. Instead of merely minimizing risks to their institutions, they should, instead, lead discussions of how to improve the system for everyone. (Aufderheide and Jaszi, 2011) Ethics are sometimes considered an extra, only to be pondered once the practical work is done, but ethical analysis can make effective and practical decision-making easier. Therefore, it is vital that librarians make all parties – including the public – understand why open, free, convenient resource sharing is crucial to scholarly communication and popular culture, and to protect what is at stake – the intellectual development of individuals and society – when it is threatened.

Notes

1. IFLA Committee on Freedom of Access to Information and Freedom of Expression web site available at <http://www.ifla.org/faife>.
2. The American Library Association's Library Bill of Rights is available at <http://www.ala.org/ala/issuesadvocacy/intfreedom/librarybill/index.cfm>.
3. The Librarian in Black blog posted "The eBook User's Bill of Rights", available at <http://librarianinblack.net/librarianinblack/2011/02/ebookrights.html>.
4. The Readers' Bill of rights for Digital Books is available at <http://readersbillofrights.info/bill-of-rights>.
5. For more information on the IDS Project, see their web site at www.idsproject.org.
6. The full text of the Association of Research Libraries' *Fair Use Challenges in Academic and Research Libraries* is available at http://www.arl.org/bm~doc/arl_csm_fairusereport.pdf.

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