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The CRIV Sheet

Editor's Corner

The CRIV Sheet is back and ready to help you navigate through another year of vendor relations and other issues having to do with acquiring, paying for, and effectively using information resources. New Chair Amy Eaton gives us her wrap-up of the Annual Meeting and introduces new and returning CRIV members. We also have a review of an Annual Meeting educational program as well as a report from the vendor roundtable to share with you.

As Eaton says in her remarks, the Committee on Relations with Information Vendors is charged with the task of fostering “positive, constructive, and open communication between information vendors and the membership of AALL in matters relating to

provision of information in any format.” *The CRIV Sheet* will strive to do its part in carrying out that charge. If you are interested in helping us do it, please write a letter, submit an article for publication here, ask a question, or otherwise make use of CRIV.

I would like to thank Stephanie Marshall, previous editor of *The CRIV Sheet*, for her guidance while I was assistant editor last year, and I am grateful to Mary Jenkins for taking on the task of being assistant editor this year. And all newsletter editors in voluntary organizations like this are especially grateful to the people who do the real work—authors, reporters, and others who provide the content. Thank you, and I hope to hear from you again!

Amy Eaton Perkins Coie LLP

From the Chair

Welcome to the first *CRIV Sheet* of 2009-2010. I joined CRIV three years ago and was asked to stay on when the committee converted to a three-year term. It has been a long tenure and I look forward to my year as chair. Catherine Lemann has appointed Rob Myers as vice chair, and Rob and I will work together closely this year.

Joe Thomas, having served as assistant editor under Stephanie Marshall, will serve as the *CRIV Sheet* editor for 2009-2010. Joe will be ably assisted by new committee member Mary Jenkins (2009-2012). The other members of CRIV for the upcoming year are Caren Biblerman (2009-2012), Michelle Cosby (2008-2011), Shaun Esposito (2008-2011), Stephanie Marshall (2007-2010), Cynthia Myers (2009-2012), Lucy Ann Rieger (2007-2010), and Carol Suhre (2009-2012).

CRIV was an active participant at the 2009 Annual Meeting in Washington, D.C. We hosted the vendor roundtable and were very pleased with the turnout. Many publishers sent representatives, and we had librarians from all types of law libraries. We began the roundtable with a discussion of Shared Electronic Resources Understanding (SERU) and found that although the premise is interesting, it might be difficult to apply in the for-profit environment.

We also used the vendor roundtable to note that the Federal Trade Commission has issued a request for comments on the rule concerning the use of prenotification negative option plans. Discussion at the roundtable centered on expiration dates for negative option plans, defining “clearly and conspicuously,” and further defining what constitutes an “agreement,” especially in the digital age. CRIV is in the process of drafting comments, which will be sent to the Executive Board to review.

Although the Annual Meeting has just ended, we have submitted or co-sponsored five program proposals for 2010. We also look forward to hosting the vendor roundtable in Denver. As a result of budget cuts, we do find ourselves without the funds for a traditional vendor site visit. We hope to be able to work our way around this by perhaps participating in a reverse site visit, meeting with a publisher over the web, or participating in a site visit with a vendor in an area that will not require travel or lodging. As we all know, this is a year that requires creative budgeting by all of us. The year ahead will no doubt be challenging. CRIV will continue to support the Association's members by following our charge to “foster positive, constructive, and open communication between information vendors and the membership of AALL in matters relation to the provision of information in any format.” We welcome your comments.

Annual Meeting Report: Vendor Roundtable

The CRIV roundtable was well attended by both librarians and vendors. The event was hosted by Tracy Thompson-Przylucki, the outgoing chair of CRIV, and Amy Eaton, the incoming chair.

The first topic up for discussion was the Shared Electronic Resource Understanding (SERU), developed by the National Information Standards Organization. SERU is a licensing issue. Instead of negotiating new contracts, both librarians and vendors can agree to follow the terms in SERU. Thompson-Przylucki pointed out that SERU should only be used when appropriate, for example, with purchases under a certain dollar amount or for agreements that rarely change. If you need to purchase a database with a narrow user group, SERU is probably not appropriate.

One concern mentioned was that SERU does not specifically mention law firms or law firm librarians. However, it was noted that SERU does not exclude any particular organization type and that it could be used by law firms. Upon further discussion, vendors and librarians alike stated that they liked the standardization of SERU. However, it was noted that the purchase order becomes more important due to the standardization. Some vendors said that they liked it because it would speed up the negotiation process. Others stated that their organizations would not allow them to use SERU because the organization requires that certain contracts be used.

If you are interested in learning more about SERU or joining the SERU registry, please visit www.niso.org/workrooms/seru.

The focus of the discussion then changed to the Federal Trade Commission's call for comments on pre-notification in negative option plans (16 C.F.R. Part 425). In general, negative option plans put the responsibility on the consumer to state that he or she does not want to purchase something. The rule was implemented to protect consumers from misuse. In order for a business to use a negative option plan, the terms must be clearly and conspicuously stated and the consumer must accept. Some stated that this rule should be expanded to cover continuity plans and auto-renewals. Others suggested that there should be a time limit on the acceptance. For example, someone in the library may have agreed to something five years ago but no longer works at the library. The library should not continually be bound by this person's decision. Someone also suggested that there should be a definition of "clear and conspicuous," as well as a definition of "agreement" by the consumer. Other suggestions were that the time period for returning items should be extended and that subscriptions should not be added that were not explicitly agreed upon. The suggestions were noted and the roundtable ended.

For more information regarding this rule please see www.ftc.gov/os/fedreg/2009/may/090514negativeoptionplans.pdf.

Alicia Brillon William A. Wise Law Library, University of Colorado, Boulder

Report on Annual Meeting Program A-2: "Beyond Copyright? How License Agreements and Digital Rights Management Pose Challenges to Fair Use and the Provision of Electronic or Media Services"

Presenters:

Ryan Overdorf, coordinator, moderator, and speaker, University of Toledo, College of Law Library; and **Rebecca L. Tushnet**, Georgetown University Law Center

Ryan Overdorf, senior electronic and media services librarian at the University of Toledo College of Law, coordinated and presented at this session, which focused on the provision of media services and how digital rights policies may affect those services. Overdorf explained that in his capacity as a media librarian, he has done everything from running the video camera to ensuring that presenters' microphones are working and their PowerPoints display correctly.

Beyond those technical duties, however, he is deeply involved in all aspects of Toledo's policies regarding electronic materials and copyright. To illustrate the issues, he presented two case studies.

The first was an instance in which a vendor wanted a detailed written explanation regarding the use of its product on open computers (i.e., computers that do not require usernames or passwords to access data). When the license came up for renewal, the vendor eventually agreed, orally, to allow campus-wide use. No written authorization followed, so Overdorf requested that something be sent to protect the university in the future should their current account representative change.

The second case study involved streaming media. Overdorf noted that it doesn't always actually "stream"—a feature that allows the content owners to prevent users from downloading the information. Because of this, faculty will often ask media services to record it for them. Should media services do so?

Overdorf then went on to explain the "analog hole." This is a way in which anyone can circumvent digital rights management. For example, a member of the audience could take a photograph of the PowerPoint screen shown during Overdorf's presentation. There would be no way for him to stop that sort of activity. Users (or attendees) need to be motivated not to bypass any digital rights management protections.

Overdorf then noted that 17 U.S.C. § 1201(a)(1)(A) states, "No person shall circumvent a technological measure that effectively controls access to a work protected under this title." So the recording of streaming video at the behest of a faculty member could violate this section of the U.S. Code. Overdorf pointed out that media issues often involve gray areas and there often is no clear-cut answer.

Professor Rebecca Tushnet of the Georgetown Law Center then took the stage and used three examples to note the difficulties of digital rights and educational uses. Like Overdorf, she first addressed streaming video and the ability of a viewer to save it. She noted that the copyright office wanted to push screen capture software as a solution for allowing educational use of streaming video—another, slightly different example of the analog hole. However, content owners felt that this would be a circumvention of their digital rights management (and license agreements). Those who are risk averse may want to wait for a legal opinion to be issued on this topic.

Tushnet's next example utilized the Kindle and how Amazon.com dealt with a problematic copyright issue that cropped up in the United States after copies of *1984* and *Animal Farm* had been purchased and downloaded by U.S. users. Amazon's solution was to remotely delete the content from the users' Kindles and provide them with a refund. Had the users purchased a physical book, Amazon would have likely been unable to recall each sold volume. This episode demonstrated how users of digital content can be treated quite differently from those who operate in the world of physical objects.

Tushnet's last example involved Google Book Search. She noted that under the settlement agreement, Google will never remove a book from the system, thus avoiding the Amazon/Orwell problem. But the settlement doesn't cover an infringement other than one pertaining to the book itself. What if a book contains a photograph or illustration that is owned by someone other than the book publisher? Individual components of a book are not covered by the settlement, and, since it is very easy to recall an e-book (as the Amazon/Orwell situation illustrates), every plaintiff who is not a book publisher will ask for a recall as part of his or her remedy.

"Beyond Copyright" was a thoughtful session that illustrated the uncertainty and nuances that can be present in even the simplest digital rights situation. Even those who have dealt with such issues since their inception would find this session of interest. If you were unable to attend this session in person and deal at all with digital rights issues in your workplace, I would recommend downloading the audio recording from AALL2go (www.softconference.com/aall).

Call for Nominations: AALL New Product Award

Have you discovered any great new library products this past year? If so, let us know—it is time to nominate these products for AALL's New Product Award. Visit the CRIV website at www.aallnet.org/committee/criv/news/newprod.htm for more information.

To Submit a Nomination for the 2010 Award

Nomination forms can be found on the CRIV website under the New Product Award tab or at www.aallnet.org/committee/criv/news/newproductform.pdf. **The deadline for receipt of submissions is February 1, 2010.**

Librarian Nominations

If you are a librarian nominating a product, please give as much information about the product as possible. The New Product Awards Subcommittee will contact the publisher of the product for any further information required.

Vendor/Publisher Nominations

If you are a vendor or publisher nominating a hardcopy product, please submit the form along with a sample product, if available. If you are nominating a web-based or online product, please submit the form with all necessary contact information, including URL(s) and temporary log-in and password information.