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AALL Review: Beyond Copyright: How License Agreements & Digital Rights Management Post Challenges to Fair Use & the Provision of Electronic or Media Services

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License agreements and Digital Rights Management (DRM) technologies are common among content suppliers. DRM is the use of technological means to control digital content. Librarians need to understand the connection between copyright and contract, and the implications of fair use.

Senior Electronic/Media Services Librarian Ryan S. Overdorf of LaValley Law Library University of Toledo College of Law described a case study dealing with the ethical obligations and practical difficulties on providing service in the current environment. Associate Professor, Rebecca Tushnet of Georgetown University Law Center followed with an examination of how legal and technological changes are impacting libraries.

Overdorf manages the media services unit at LaValley Law Library and has the responsibility of media services policy making. He provided a case example from their organization in which a vendor required a detailed written explanation regarding the use of its product on open computers at the law school. His unit agreed to monitor the authorized open computers and block the product on the unauthorized computers with subsequent agreed oral modification to allow campus wide use by the vendor. In analysis of this situation, there was little evidence of usage and cancellation would result in loss of access.

There are three fair use examples to think about in our current environment: streaming video, kindles and Google Books. Streaming video was the main issue with concerns of streaming problems including not always streaming, unable to download and asking media services department to record it for them in this case study. It was determined by LaValley that streaming video can be a form of DRM, governed by the Digital Millennium Copyright Act (DMCA), 17 U.S.C. § 1201(a)(1) (A) and governed by a Terms of Use agreement.

The following policy choices were determined as options for their institution. Keep in mind these choices may be different for other institutions. Media services could cut back in order to record the video for faculty. They may regulate only the availability of its services and not seek to police copyright. Media services may also continue to be concerned with significant intellectual property violations. The point of this case study was to illustrate to the audience that there is the need to be concerned with the frequency of licensing and there are restrictions on what a copyright owner can do.

Associate Professor, Rebecca Tushnet of Georgetown University Law Center discussed how legal and technological changes are impacting libraries. In her article entitled, *My Library: Copyright and the Role of Institutions in a Peer-to-Peer World*, 53 UCLA L. REV. 977 (2006), Tushnet questions how media should give traditional libraries special consideration in copyright. With easily available technologies, how can a library justify lending and copying? DRM technologies impose barriers to copying and sharing that often conflict with institutional policies. One prevalent case Tushnet discusses is that of Google Book Search Library Project in which Google will digitize and make books searchable. There are a bunch of legal issues revolving around this type of “library.”

Both Overdorf and Tushnet provided a good overview of issues libraries may face concerning license agreements and digital rights management. Librarians should be aware of the intersection between copyright and contract, fair use consequences and how technology is changing the way in which we do business.