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James S. Heller

William & Mary Law School, heller@wm.edu

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Do Androids Dream of Electric Books?

Thoughts on legal content dissemination and consumption in the digital environment

By James S. Heller

Philip H. Dick's 1968 novel, *Do Androids Dream of Electric Sheep?*, later (and loosely) adapted as the film *Blade Runner*, takes place in the dystopian west coast of the United States after World War Terminus (WWT).

Most humans have immigrated to a colony on Mars, where each immigrant is given an android servant/slave. Several sophisticated Nexus-6 androids have escaped to Earth, and bounty hunter Rick Deckard (the film's *Blade Runner*) must find and "retire" (kill) them.

The radioactive fallout from WWT killed nearly all of Earth's animals, making them very expensive status symbols to own. As for the humans left on earth, they have affordable android-like pets that replicate flesh-and-blood ones. And while they may continue to dream of real sheep jumping over fences, there really aren't any sheep left. Author Dick asks whether androids dream of *electric* sheep. Assuming that androids do, in fact, dream, the answer could be yes. And maybe, just maybe, humans dream of electric sheep, too.

Now back to our world. In the past year or so, I have read articles with the following headlines:

- "Three Major Publishers Sue Open-Education Textbook Start-up," *Chronicle of Higher Education*, April 5, 2012.

- "How Dead Is Amazon's Kindle? Could Be Very Dead," *Forbes*, April 30, 2012.
- "Final Order in GSU E-Reserves Case is a Rebuke to Publishers," *Publishers Weekly*, August 13, 2012.
- "Amazon Confirms: All New Kindle Fires Stuck with Ads," CNET, September 7, 2012.
- "Amazon Backtracks, Will Offer \$15 Opt-out for Ads on Kindle Fire Tablets," CNET, September 8, 2012.
- "Thomson Reuters Bids Adieu to Law School Publishing," *Wall Street Journal*, February 4, 2013.
- "Judge Approves State E-book Settlement," PW Daily, February 8, 2013.

- "Apple Loses: Judge Finds Price-Fixing in E-Book Case," PW Daily, July 10, 2013.

The publishing world appears to be as chaotic as the post-apocalyptic one invented by Dick. And, as in the novel, reality is not always easy to discern: the Nook is dead, long live the Kindle! Or, the Kindle could be dead, too . . . so Amazon adds advertising . . . but it's a PR disaster, so you can pay to opt out of the ads. Publishers sue an open-education textbook company . . . and (surprise?) the start-up fights back. DOJ sues five publishers for collusion over e-book price fixing . . . and they settle . . . except for Apple. Thomson Reuters sells its Law School Publishing division to a private equity firm . . . but they will license those books back; you'll get the same stuff under a similar moniker ("West Academic Publishing"), but from a different owner.

Nonlegal publishers are still trying to figure out a profitable business plan for digital publishing that doesn't involve suing their competitors and libraries, fixing prices, or adding pop-up ads. They haven't captured me yet; at home, I subscribe to several newspapers and magazines and turn real pages. I read books made of paper, not e-books on a Kindle or iPad.

But at work as a law librarian, the content I consume is nearly all digital. Like the radioactive fallout's effect on wildlife in *Do Androids Dream of Electric Sheep?*, static library budgets, the rising cost of print legal materials, and the increasing availability of digital legal materials diminished the print ecosystem. But unlike the struggling inhabitants of Dick's world, both legal information providers and consumers seem to be doing very well in the digital environment. So why do legal publishers seem to have less trouble than other publishers?

Digital Legal Publishing

The first reason that legal publishers seem to struggle less is the nature of legal publishing. Lexis and Westlaw,



- "Nook's death spiral and Kindle's triumph," Yahoo News, February 14, 2013.
- "In Lawsuit with Publishers, Open Textbook Startup Boundless Hits Back," Paid Content, February 14, 2013.
- "Indie Booksellers Sue Amazon, Big Six over E-book DRM," PW Daily, February 20, 2013.



the senior citizens of digital publishing, pretty much gobbled up their competition. The duopoly easily survived start-ups like Hyperlaw (now defunct, but who, with Matthew Bender, won a court decision over West's claim that pagination in case reporters was copyrighted), and competitor Wolters Kluwer hasn't gotten much traction despite the acquisition of Aspen, CCH, and LoisLaw. Casemaker and Fastcase made inroads by partnering with bar associations, but their strength is primary law: statutes, cases, and regulations. (We have yet to see results from the recent partnership between Fastcase and William S. Hein & Co.) What we have with the legal publishing industry, then, is a near-monopoly environment—think Verizon and AT&T—and a mature one, at that. Bloomberg Law/Bloomberg BNA could make things interesting; time will tell. (I realize that there has been a lot of consolidation in the book industry, too; the Random House/Penguin Group merger leaves us with only a handful of large trade publishing houses.)

The other reasons are the content and audience. There are about 50,000 novels published in the U.S. each year, and, as popular as John Grisham is, Doubleday (part of the Random House/Bertelsman/Penguin family) needs to get people to buy Grisham's recent novels, *The Racketeer* and *Calico Joe*. By contrast, the audience for legal materials is, in many ways, built-in and captive: lawyers need legal content to do their work.

Unlike mainstream publishers, legal publishers can focus on lawyers and would-be lawyers. Lexis, Westlaw, and Bloomberg Law understand that the way to lawyers' hearts and wallets is to capture them early. They offer favorable contracts to law schools and vigorously promote their products with gifts like coffee mugs and thumb drives. Law students are hooked on online legal research by the end of their first year. And when these students become lawyers, they pay for continued access to content . . . and they pay a lot.

According to ALM Legal Intelligence's 2012 Law Librarian Survey, the biggest U.S. law firms pay a small fortune to run their libraries, averaging nearly \$6.7 million in 2011, a 33 percent increase from only two years earlier. Of this amount, more than \$5 million was for information resources, nearly all of them online.

Times are changing, however. Law firms still make a lot of money; the 2012 AmLaw 100 survey noted that 80 percent of the top 100 reported gains in revenue from the prior year. But a firm's ability to recover costs for online research is not what it used to be: 54 percent of the firms charged back more than 60

percent of their online costs in 2009, but only 29 percent did so in 2011.

Even though there is a ton of free legal information on governmental sites, plus competition from low-cost providers such as Casemaker and Fastcase, the private sector pays more and more for digital information. I suspect this won't last forever. Maybe someday we will see headlines like "Lexis sues Virginia Bar and Fastcase for Collusion," "Westlaw Adds Advertisements to Ohio Attorney General Opinions," or "Bloomberg Wins Soda War; Lexis and Westlaw Are Next Targets."

It's life in the fast lane for digital legal content. From *Administrative Law to Zoning Law and Practice* and everything in between, Lexis has moved into the e-book world in a big way. The same is true for Thomson Reuters, whether the title has a narrow audience (*Ohio Arrest, Search and Seizure*) or a broad one (*Scalia and Garner's Reading Law: The Interpretation of Legal Texts*).

Library Migration to E-books

Every library must answer at least the following questions when deciding on format: who uses their materials, what format do those users want (or need), who can access the materials, how easily can they access them, and what do they cost? Although our faculty and students go digital for primary law and journal articles, they prefer print for scholarly books and treatises. To provide broader access, our library "leases" three e-book modules (Economics, Law, and Political Science) from Oxford Scholarship Online (OSO) at a very reasonable price. Even though we still buy many of the same titles in print, a big selling point is that OSO e-books can be used by all law school faculty and students, and not just one at a time. By contrast, we passed on Cambridge Books Online because they didn't have a leasing option. We still buy Cambridge titles in print, and that's what we are sticking with . . . for now.

Migrating to e-books is a more complex matter in public law libraries, for several reasons. First, public libraries have a diverse clientele with varying abilities and appetites. Many people neither want nor are able to use an e-book, so unless the library wants to lend out iPads or Kindles (something I would never do) and provide a lot of hand-holding (something few libraries can afford to do), it's better to stick with print for now.

The other reasons are well-stated in the *Library Journal/ School Library Journal* 2012 Survey on Ebook Usage in U.S. Public Libraries:

"Public libraries, more than any of the other type of libraries we have surveyed, are on the front lines of

the unresolved tug of war between book publishers, ebook vendors, and libraries. Draconian pricing, restrictions on access, crippling DRM, and a morass of formats and devices present very real challenges to public libraries. . . .

"Our survey this year found increased frustration from libraries that are trying to provide econtent. The relationship between book publishers and libraries has scarcely been more contentious than when it comes to ebooks; piracy paranoia and instability in a long stable business model has endangered the generally amicable relationship book publishers have had with libraries—and in many cases the resulting policies (unfounded as ebook piracy has yet to become a problem) are interfering with libraries' ability to serve their users. For publishers, these policies are also likely resulting in missed opportunity for discovery of those books not available, as LJ's Patron Profiles research indicates."

Our law library's migration from print to digital has been a whole lot easier. CCH and BNA print loose-leaf binders hit the Dumpster many years ago, as did print digests and Shepards. We also cancelled many Lexis, Matthew Bender, and Westlaw print treatises that were supplemented—we get them on their databases—and lots of periodicals. As for primary law, we now have one annotated code in print (Virginia), and only four West reporters (Federal Supplement, Federal Reporter, Supreme Court, and Southeastern). Last year we subscribed to West's electronic Study Aids, which gives our students access to several hundred titles, including series like Concise Hornbooks, Gilbert Outlines, and Nutshells. The e-Study Aids save our students a lot of money. They don't bill yet, so that makes them happy. We will reduce the number of copies—and possibly eliminate—the print versions of these titles. And that makes me happy.

The war between digital and paper is pretty much over in law firms and law schools. Digital won, but there are still some battles to be fought. Do Androids Dream of Electric Books? Yes. And as a law librarian, so do I. ■



James S. Heller (heller@wm.edu) is director of the law library, professor of law, and professor of public policy at The College of William & Mary in Williamsburg, Virginia.