Open Content Alliance (OCA) vs. Google Books:

OCA as superior network and better fit for an emerging global public sphere

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Abstract

The Open Content Alliance (OCA) is a network of libraries and similar

organizations committed to digitizing and providing broadest possible access to books

and other materials; over 1.6 million books are already online under OCA principles.

OCA is analyzed in contrast with Google Books (as per the preliminary Google Books

Settlement, November 2009), using Castell's network theory and theories of an emerging

global public sphere, based on the work of Habermas and Fraser. OCA is seen as a

superior network to Google Books, with particular strengths in connectedness,

consistency (shared goals), flexibility, scalability, survivability, networking (inclusion /

exclusion) power, and network-making power, including the ability to form strategic

alliances. The lawsuit against Google Books, and the settlement, illustrate some of the

limitations of Google Books as a network, for example the lawsuit per se is a challenge to

Google Books' rights to make decisions on inclusion and exclusion, and illustrates poor

connectedness and consistency, two attributes Castells points to as essential to the

performance of a network. The respectful, law-abiding approach of OCA is a good fit for

a global public sphere, while the Google Books Settlement takes a key issue that has

traditionally been decided by governments (orphan books), and brings the decision-

making power into private contract negotiations, diminishing democracy. The current

Google Books Settlement is fractured on a national (geographic) basis; consequences

could include decreased understanding of the rest of the world by a leading nation, the

U.S. This works against the development of a global public sphere, and has potential

negative economic and security implications for the U.S.. OCA is presented as one node

of an emerging library network for the global public sphere, a global public good

increasing access to knowledge everywhere, increasing the potential for *informed* public

debate towards global consensus.

Open Content Alliance

OCA (Open Content Alliance, 2009) is a collaboration of organizations that

digitize and make available on a permanent basis multilingual texts (primarily books) and

multimedia materials. Contributors are primarily libraries and library consortia, as well

as universities, archives, historical societies, and corporate partners. Examples of

contributors include Simon Fraser University Library, the University of British Columbia

Libraries, the 152 member libraries of the Consortium of Academic and Research

Libraries in Illinois (CARLI), O'Reilly Media, and Yahoo!   A *Call for Participation* is

open on the OCA website, to any organization that agrees with OCA principles, calling

for widest possible access and respect for the rights of copyright holders and contributors.

The Internet Archive, a not-for-profit organization founded by philanthropist

Brewster Kahle, serves as the administrative centre for OCA, and provides a means of

searching all of the 1.6 million items included in the OCA collections. Searching for

texts can be limited by type of library or collection, such as American Libraries,

Canadian Libraries, or Project Gutenberg. The collections can also be searched using

internet search engines. Although search engine Yahoo is a partner in OCA, content is

not restricted by search engine.   A Google search for *Les Oiseaux de la Province le*

Québec brings up the record for Charles Eus Dionne's work through the Biodiversity

Heritage Library.

Google Books

Google Books (2009) is a project of Google, in partnership with libraries and publishers. Millions of books, primarily from large research library collections, including Harvard, Columbia, Cornell, Oxford, the University of Michigan and New York Public Library, among others, have been scanned, including copies of books that are still in copyright. According to Fisher (2009), 7 million books from 22 libraries were scanned; of these, 1 million were scanned in cooperation with publishers under the Google Partners Program, another 1 million are in the public domain, while the remaining 5 million, or 70% of the total, are still in copyright.

Access to the majority of content in Google Books has been stalled by a class action suit brought in the U.S. by the Authors Guild and the Association of American Publishers. A settlement has been worked out, and has received preliminary approval. The Google Books (2009) settlement has been critiqued or applauded by many groups, as listed in Bailey's (2009) *Google Books Bibliography*. The website of the Open Book Alliance (2009), an umbrella organization representing groups opposed to the Google Books Settlement, is a good source of summary information on the key issues identified with the settlement, including anti-trust issues (the settlement would give Google an effective monopoly over orphan works), copyright infringement concerns (scanning and selling of works without obtaining the permission of rightsholders), privacy concerns (Google gathers information about users for commercial purposes), abuse of the class action process concerns (the plaintiffs are not representative of the class of authors and copyright holders whose works are included in Google Books), and foreign complaints (another form of copyright infringement complaint).

Castells' network society

In *The Rise of the Network Society*, Castells (1996) analyses what he sees as a fundamental change in societal organization emerging from the forces of globalization and information technologies. Globalization makes it possible to conduct routine operations such as business transactions on a multinational level. The rise of several East Asian economies in recent decades with histories of network-style organization has influenced Western business interests to reconsider their organizational structures, basically reconfiguring businesses from vertical hierarchies to horizontal organizations. Networks can be interconnected organizations, or corporations that have reconfigured to a network-style organization.

Castells describes the focus of the new business organization as the business *project*, implemented through the network rather than individual companies; Castells suggests that the top-down approach of the bureaucratic organization is doomed to failure, and questions whether the corporation will thrive in the network environment. Castells suggests that the large corporation could dominate in the network society – IF it reforms itself (Castells 1996, 166). Two key attributes for network performance, according to Castells, are *connectedness*, the structural ability to conduct noise-free communication among the components of the network, and *consistency*, the extent to which goals are shared by the network and its components.

In *Communicating Power*, Castells (2009) elaborates further on the structure of networks. A network is defined a series of interconnecting nodes, some of which may have more relevance than others and so be consider centres. Networks are not new; rather, they are a fundamental pattern of life overall, and have formed the backbone of

human societies for thousands of years. In recent years, the emergence of information technologies, which Castells characterizes as the Information Age, have facilitated the emergence of the global network society with transformative effects on every type of human organization. Diffusion of the networks per se around the world is uneven, however the impacts – for example, global commerce and financial transactions – are felt everywhere.

Three major features of networking that are facilitated by new technologies are flexibility, scalability, and survivability. Networks are *flexible* because they can reconfigure to adjust to changing environments, for example by adding or dropping nodes or working around blockages in configuration. Networks are *scalable* because they can expand or contract without disruption. Networks can *survive* attacks to their nodes because the code exists in all of the nodes and so networks can work around or re-create nodes as needed.

The global network society is characterized by the space of flows, which takes on increased importance in comparison with the still-relevant space of places. The nodal structure underlying the internet is one example of a space of flows. The global network society is also characterized by timeless time, "a relentless effort to annihilate time by negating sequencing" (Castells 2009, 35), by compressing time (split-second financial transactions, multitasking), and blurring of past/present/future. Castells contrasts timeless time with prior conceptions of biological time, followed by clock time in the industrial age, and points out another approach to time, that of the long durée or long-term outlook, which may become increasingly important as more attention is paid to environmental factors.

Global networks can operate in any sphere of human activity, for example business / financial (transnational corporations and corporate alliances), scholarly / research (e.g. the Human Genome Project), governmental (WTO), or counter-power networks such as multi-national NGOs.

Castells describes several forms of power in the network society, including *networking power* (the power of inclusion or exclusion), *network power* (setting the rules of inclusion), and the paramount power, *network-making power*, consisting of programming (the ability to create networks and create or re-create the goals of the network), and switching, controlling the connecting points between various interlinking strategic networks.

Open Content Alliance as network

The Open Content Alliance describes itself as "a collaborative effort of a group of cultural, technology, nonprofit, and governmental organizations from around the world that helps build a permanent archive of multilingual digitized text and multimedia material" (OCA website, home). OCA is administered by the Internet Archive. The organizations that participate in the OCA can be characterized as a series of nodes; the Internet Archive, as administrator, is more relevant than other nodes, and can be considered a center.

OCA is high in *connectedness*; the needs for communication among nodes is minimal, and the means primarily technological in nature, contributing collections, facilitating cross searching and access. There is some noise as not all books are available on the same terms and conditions; since OCA members are primarily libraries, the

network can easily revert in these circumstances to a prior form of resource sharing, interlibrary loan, thereby minimizing the impact of noise.

Since OCA is built around a common mission and set of principles, OCA is very strong in *consistency*; the goals of the network are shared goals.

OCA is *flexible*. Several different types of organization contribute a variety of content in different formats and languages, with terms and conditions of access determined by the contributor within the broad principles of OCA. Contributors can be added, dropped, or change the nature of their organization (for example, current contributors could merge or split with minimal impact on the organization).

OCA is *scalable*. New contributors are welcome, and only have to indicate agreement with OCA's basic principles. To illustrate OCA's scalability, OCA was launched in 2005 with the goal of scanning several hundred thousand books and making them freely available (Hafner, 2005). Today, just four years later, OCA has exceeded its original goal, with over 1.6 million books available under OCA terms or freely available in the public domain.

At present, OCA is largely North American-based with strengths primarily in English language materials. OCA is scalable to global proportions through one of two means, which are not mutually exclusive. One approach is including more contributors to OCA from other countries, and/or with strengths in other languages. Another approach is for OCA to become a node in an overarching network with other OCA-like entities. For example, the global Francophone community might prefer to work together in a separate network and develop a French-language platform for cross-searching of collections, similar to Internet Archive. These two networks could each have their own

platform for cross searching of both collections, and also share information and services, such as technological know-how relating to digitizing and preservation materials in electronic format. Europeana (2009) is one example of a possible co-node with OCA in a larger network.

OCA is *survivable*. Provision has been made for multiple copies of collections in OCA to ensure preservation and long-term access. If a contributor leaves the OCA, any works in the public domain would be accessible through other nodes. While the Internet Archive currently serves as administrative home, this function could be taken on by one or more other nodes. The ongoing success of OCA does not depend on ongoing contributions by, or even existence of, any existing node.

In terms of the power of networks as described by Castells, OCA has *networking power* in that the current membership determines the principles for inclusion and exclusion; these principles, as set out in the OCA call for participation, constitute *network power*. The Internet Archive and contributors of OCA have *network-making power* in the programming sense that they formed OCA, have created and could re-create the goals guiding OCA, and in the switching sense, as they can create alliances with like-minded networks such as the Open Book Alliance (2009).

OCA resembles a network in terms of space of flows and timeless time. The OCA collections are firmly in the virtual world of the internet, and available in real time throughout the world. Contributions and searching can take place at any location.

To summarize this section, the Open Content Alliance can be understood as a network, a series of contributor nodes with a common interest in mass digitization of books under terms of widest possible access and re-use rights consistent with respecting

the rights of copyright holders. The Internet Archive as administrator of the alliance forms a centre. OCA is very high on consistency, and strong on connectedness, two attributes seen by Castells as key to performance of a network. OCA is flexible, scalable, and survivable; it has networking (inclusion/exclusion) and network (principles of inclusion) power. The contributors of OCA have network-making power in both the programming (network creation and goal-setting) and switching (forming strategic alliances) senses. OCA resembles a network in terms of the space of flows and timeless time.

Google Books and network theory

We will examine Google Books as a business project, separate from the parent Google corporation. Other Google business projects have not attracted the controversy of Google Books, and a network theory analysis of these other projects might produce very different results.

It can be argued that the basic structure of Google Books is not one of a network or series of nodes, but rather one of a single company with multiple partners. This is perhaps best exemplified by the class-action lawsuit against Google Books, and current preliminary settlement, by the Authors Guild, the Association of American Publishers, and other publishers and authors (Google Books, 2009). Google Books has been stalled for years by this class action suit against one entity, Google. In terms of *connectedness*, Google Books is connected in a technological sense, as is OCA, however in an organizational sense, Google Books is highly *disconnected*; there is significant noise in communication between different parties. The Google Books lawsuit and settlement illustrate a lack of *consistency*; the different parties involved in Google Books (authors,

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publishers, Google, libraries, and all the parties involved in the lawsuit) clearly do not share a set of goals.

Unlike the relationship of the Internet Archive and the Open Content Alliance, Google is not a central node in a network, but rather THE center. The terms of the preliminary settlement apply solely to Google; without this one node, Google Books cannot continue. In other words, the Google Books project lacks the *flexibility* of a network. The *survivability* of the Google Books project is not robust, as change in the configuration of the partnerships involved is very likely to require renegotiation.

It may not seem intuitive that a company the size of Google with a project as large as Google Books may be limited in scalability, however, in a global world, a transnational networked approach would require either a consensual cross-border collaborative network or a transnational legal framework. The Google Books settlement is a class-action lawsuit conducted in the U.S., which does not give Google approval to move forward in any other jurisdiction. The current iteration of the Google Books settlement eliminates works under copyright outside of the U.S. and countries with similar laws (Canada, the U.K. and Australia). In other words, while the scope of Google Books is large, it is also limited nationally, a limitation that may reflect its status as a single-corporation organization rather than network. This geographic (national) limitation prevents Google Books from full functioning in the space of flows, restricting activity to some extent to the space of places. The current Google Books settlement only covers works published in a particular period of time, that is, recently published books are not covered, placing some limits with respect to the timeless time of the network society.

The Google Books lawsuit illustrates a limitation on the networking power of Google Books; the lawsuit can be characterized as a vigorous questioning of the rights of Google Books to make decisions about inclusion and exclusion. Lack of common ground suggests limited network power. The Google Books Settlement will not prevent Google Books from forming strategic alliances, however it will place some constraints on such alliances; for example, potential alliances with other publisher or author organizations could be blocked by the terms of the Settlement (or those empowered by the Settlement).

To summarize, in contrast with OCA, Google Books is weak in terms of network structure. Communications among willing and unwilling partners are more noisy than connected, and consistency in terms of shared goals among participants is severely lacking. The lawsuit settlement approach constricts both flexibility and survivability. The Google Books approach is nation-specific, and does not appear to lend itself well to multi-national cooperation, suggesting limited scalability and less than full functionality in the space of flows; the Google Books Settlement is time-bound rather than freely functioning in timeless time. The lawsuit against Google Books queries the rights of Google Books to make decisions about inclusion and exclusion, suggesting limited networking power, and the Google Books Settlement will place some constraints on the ability of Google Books to form strategic alliances, limiting network-making power.

Habermas and the Public Sphere

Habermas (1962), in *The Structural Transformations of The Public Sphere*, in the course of analyzing the bourgeois public sphere, discusses what a public sphere is, and some possible functions of a public sphere. The terms "public", "publicity", and "public opinion" are all essentially problematic, primarily because there is an historic element to

the public sphere. That is, what is considered public and what private varies at different times, and in different societies. The concept of the public sphere can apply to space, for example the commons, the market, or public spaces in contrast with private spaces. The distinction is not always clear-cut; private homes may be divided into public rooms, such as the parlour or salon, and private rooms designated for family and perhaps intimate friends.

The public sphere of discourse that is intended to inform political decision-making in constitutional states is the focus of Habermas' analysis. The bourgeois public sphere emerged as a means for public discussion of political matters during the (often messy and revolutionary) process of transfer of decision-making power from monarchies to parliaments. While in theory the concept of the public was meant to be inclusive of all human beings, in practice what happened were meetings of the bourgeois in a fashion reflecting the elegance of the court, a key element of the public sphere in the time of the monarchy, through salons and coffee-shops.   Education and property ownership were considered essential for participation in the public sphere; that anyone could in theory become a property owner was considered sufficient for inclusiveness.

Informed public debate is only possible when the public has access to information.   The means of creation and dissemination can be controlled by public or private parties, or some combination of the two. Early postal systems were in private hands, a situation that suited the merchant customers well. Public postal systems made possible the sharing of letters, an early form of news that became a source of public news through the press.   Habermas discusses the academy as a central organization of the public sphere, as scholars share their learning with the public. The first public library,

which appeared not long after the publication of the popular novel *Pamela*, is mentioned as an institution of the public sphere. The press is seen as the preeminent organ of the public sphere; laws against censorship and for freedom of the press were early victories for the bourgeois public sphere.

Public spheres, according to Habermas, transform over time. What was public can become private, and vice versa. Business has undergone a transition from fully private to an increasingly public nature. The once-private commodity exchange is now the public stock exchange, subject to government regulation. Many formerly private businesses are now publicly traded corporations, regulated by the state.

Habermas (1962) discusses the bourgeois public sphere as being in decline. The public of public debate in government has decreased as governments move from a free mandate where the representative has the freedom to choose how to vote, to party systems where such freedom is often severely constrained. The mass media creates an illusion of a public sphere of debate, creating in the public what Marx referred to as a false consciousness of publicity. A combination of the advertising-based focus of the commercial press and the public relations industry mean that public opinion is not so much read as created. Habermas quotes C. Wright Mills' distinction between a public, where opinions are expressed by many, and a mass, where communication tends to be one-way, and concludes that society resembles the mass more than the public.

The transnational public sphere

Fraser (2007) discusses a transformation of the public sphere reflecting world globalization of the last few decades: the emergence of a transnational public sphere. Fraser argues that Habermas' original work was Westphalian or nation-centered in focus.

The public of public opinion of Habermas was the citizenry of a particular country. Fraser points out that current mobilizations of public opinion rarely stop at state borders, and describes the public essential to a public debate on any particular issue as all of those affected by the issue. Issues that have major impacts on society today are often not restricted to the citizenry of any one nation-state, as increasingly capital functions on a global level and the power of most of the world's governments is limited by international organizations such as the World Trade Organization and the World Intellectual Property Organization. Some of the most important issues of our times, such as climate change and global security, are global in nature.

Even within the nation-state, there is increasing hybridization. Large immigrant populations in some countries are not included as citizens; there are sizable diasporas of national citizens. This affects the possibility of having an inclusive public.

Fraser argues for the existence of a new transnational public sphere, and suggests the conditions necessary for an effective *critical* public sphere: a rethinking of normative legitimacy and political efficacy of public opinion. Fraser argues that we must now consider the *who* of the public, in addition to how public opinion is formed.

Ugarteche (2007) critiques Fraser's article on the transnational public sphere on the grounds that the nation-state is not dead. Ugarteche argues that there are no global interests that the leading nations (i.e. the U.S.) would see as superseding their national interests, and points to the inefficacy of 20 million signatures and several hundred thousand people demonstrating in Cologne in 2009 in obtaining the goal of debt relief for poor countries.

Nash (2007), in her critique of Fraser's article argues that a global public sphere

would require that powerful nations would have to change their international policies so as not to automatically always act in the national interest, and that for this to happen, mediation by the public opinion of nations would have to happen.

Let us return to Fraser's point that there is a need to reconsider the legitimacy and political efficacy of the public sphere in light of the transnational public sphere. The structural transformation from court to bourgeois public sphere described by Habermas did not happen spontaneously, but rather through the conscious and reflexive efforts of the bourgeois. As Fraser illustrates, public sphere(s) are increasingly transnational in nature. While Fraser points to the multiplicity of publics with different interests, I would argue that this is no different from the multiple publics within any one nation-state. If a nation can be thought of as one public in spite of diversity of views on many issues, then a global public sphere can also encompass multiple publics with different perspectives.

Feenberg (2009), while cautioning against broad claims for a democratizing function of the Internet per se, argues that the ability of the Internet to assemble a public around a technical network means that the internet can act as a tool in support of the development of a public sphere.

From the author's perspective, Fraser's analysis focuses on the utility of the public sphere as a basis for democratic decision-making, omitting other important elements of publicity such as public space and other public goods. The public sphere as presented by Habermas is not *just* about democratic discourse; the concept of public space can be applied to physical space (the commons, the marketplace), public services (such as the publicity of the postal system), and public goods, such as public education. While all aspects of the public sphere may serve to support a space for democratic discourse, these

other public goods are valuable in their own right.

To summarize, it appears that the public sphere is in a process of transformation from one that is nation-based to one that is transnational or global in scope. The work of developing normative legitimacy and efficacy of a global sphere inclusive of all of humankind, representing many histories, languages, nations, values, and interests, cannot be underestimated. However, the potential benefits, for example to move forward collaboratively toward ecological stability and security, should not be underestimated, either. I argue that it is useful to conceive of a global, and not just transnational public sphere, at least as a goal, and further that it is useful to conceive of political participatory rights within the context of a public sphere which includes not only democratic discourse but also a broad range of public goods and services, from public space to publicly accessible communication services (postal and telephone services) to universal human rights.

The global public sphere and the Open Content Alliance

The approach of the Open Content Alliance fits well with the global public sphere. The aim of providing widest possible access and re-use terms is a movement towards a common knowledge base, a global public good for a global public sphere. The network basis of the organization means that contributors can participate in creating this global knowledge base while working within the legal frameworks of their national boundaries.

Google Books, in its current iteration, primarily serves only one nation-state, the United States. While ready access to this massive collection of online books in the near future may appear to give the U.S. an advantage over other countries, I would argue that this advantage could be very short-term in nature. Due to the variations in copyright

laws, books of most nations, with the exception of nations with very similar copyright

laws (Canada, the U.K., and Australia) have been removed from Google Books.

According to the Google website, Google plans to make these books available for

purchase by individuals, or through library subscriptions. Students are generally not

wealthy, and are not likely to be able to afford to purchase all of the books needed for

their research. If students use a library Google Books subscription and rely on this

heavily, or even exclusively (a real possibility since the large size of the collection and

the ready access will provide many students with more than enough resources for many

research projects), then these U.S.-based students will be working with research

collections that are much more U.S.-centric than current print-based library collections.

That is, the Google Books library version will be much like a current university library

collection, *with almost all of the non-U.S. books removed*. An hypothesis that graduates

of U.S. universities would, in aggregate, emerge with a decreased understanding of the

world beyond the U.S. with Google Books, seems reasonable. If correct, this could have

a negative impact on the U.S. in the global marketplace; if Americans have less

knowledge of the world at large, this does not bode well for the U.S. in a global

marketplace, and in terms of security, as decreased understanding of other peoples seems

likely to decrease the ability of U.S. citizens to interpret and circumvent potential security

threats. The impact could be felt in as little as a year, as the tendency to assign major

research projects for undergraduates primarily in the final year before graduation could

mean a graduating class with less knowledge of the world outside the U.S. in as little as

one year's time. An overall decreased understanding of the world outside the U.S. by

citizens of this leading nation would be problematic for the formation of an inclusive

global public sphere.

Suber (2009), in an analysis of the Google Books settlement with a focus on issues relating to open access to the scholarly literature, points to some of the less well known potential implications of the settlement as it stands. For example, this is a class action suit where the majority of those affected are not represented. The Authors Guild represents primarily non-academic authors, while the books included in Google Books are overwhelmingly written by academic authors. Academic authors as a group tend to have different interests than other authors. For example, authors of trade books are likely to be very concerned with copyright retention and monetary reward, while for the academic author the primary rewards are generally prestige and career advancement. Similarly, the publishing organization involved in the Google Books settlement, the Association of American Publishers, does not reflect the academic publishers whose works are most likely to be included in Google Books. Academic publishers and publishing organizations that are moving towards open access for monographs, such as the Open Access Scholarly Publishers Association (OASPA), are not represented. The Google Books settlement calls for setup of a Books Rights Registry, to be administered by the plaintiffs in the lawsuit. The Association of American Publishers has been actively involved in lobbying against open access; hence, the settlement as currently conceived may inadvertently act *against* development of an emerging global public good, i.e. open access to the scholarly literature, by empowering opponents of the public sphere.

According to the Google Books website, the aim is to eventually include other countries in the service, and Google is actively negotiating with publishers in other

countries. It remains to be seen whether Google Books will ever become a truly global service, or remain a fractured service with significant differences in access and service levels in different countries. If Google Books becomes a dominant player in the publishing industry, this fracturing and disparity in service seems likely to lead to, at best, fewer opportunities to develop consensus in the global public sphere.

The orphan works issue distinguishes the OCA and Google Books approaches. OCA early on identified this as an issue for legislators to address and brought the issue forward accordingly. The Google Books approach has been to use private contract law to resolve this issue through the Google Books settlement. If this aspect of the Google Books settlement is approved, this could be considered a precedent which would be a significant blow to the public sphere: an issue (copyright) which belongs to the public and its representatives in the legislature, being decided on a national basis through private contract negotiations.

The most important distinction between OCA and Google Books in relation to the public sphere is that OCA is a voluntary network of largely public sector organizations with a commitment to building a public good (widest possible access to, and re-use of, books), while Google is a for-profit corporation. This may not be intuitive, as Google's business approach to date has been focused on advertising of a non-intrusive nature, so that Google *looks like* a public service. While some aspects of Google Books include a public service component, such as free access to books in the public domain, the bulk of Google Books is composed of books that will be made available for commercial sale. Google Books will likely resemble, not a library, but rather competitor Amazon. This could be a useful and popular service, making it easier to access books and hence

contributing to the public sphere; but this approach is not *of* the public sphere. While

Google Books indicates that Google Books will be available for purchase by libraries,

there is no indication at this time of the terms and conditions, so it is not known whether

the pricing and other terms, such as patron privacy, will actually meet the needs of

libraries.

To summarize this section, OCA is clearly an organization and service that

complements and supports a growing global public sphere. Contributors provide widest

possible access to, and re-use of, works included in the service, including free access to

works that are in the public domain. Decisions that belong to the public and its

representatives, such as the fate of orphan works, are left to the democratic apparatus.

Google Books, on the other hand, while it does include some elements (increased access

to books) that are supportive of the public sphere, other elements of the Google Books

settlement are quite problematic for the public sphere. The public sphere appearance of

Google is just that – appearance. Google is a for-profit business; while Google Books

does include a public service component, the primary purpose is making money. The

Google Books approach takes decision-making that belongs to the whole public and its

representatives (i.e. orphan works), and brings them into private contract negotiations.

Google Books is not inclusive of the smaller public of everyone affected by the initiative,

and gives power to one group (trade publishers and authors) whose interests are contrary

to the majority of authors of books included in Google Books (academic authors).

Google Books, initially at least and possibly in the long-term, provides access to this

significant collection of books in a manner that is fractured on a national basis, arguably

against the interest of an emerging public sphere.

The library of the global public sphere

Libraries and like-minded organizations are in the process of building what can be characterized as a library for a global public sphere, with OCA representing one of the nodes of this larger network. The library of the global public sphere can be envisioned as a network, consisting of many libraries of several types and like-minded organizations, working together in a decentralized way to provide the most possible access (virtually when possible, in the space of flows and timeless time) to our collective heritage of knowledge, literature and culture, to the people of the public sphere (all of humanity).

While the mandate of the public library to serve the information needs of the whole community is obvious, the vast majority of academic and special (e.g., government) libraries also see themselves as having a mandate to serve the public good. The internet makes it possible to extend the long-held dream of the library beyond the individual node or local library (whether public, university, or organization-based), to one that is universally accessible around the globe. Basil Stuart-Stubbs (1992) presents a dream of library networking, for British Columbia post-secondary libraries, within the context of a long-held goal of many libraries and library cooperatives around the world, a vision of libraries sharing resources (collections) through interlibrary loan networks, a dream realized in British Columbia through the development of the post-secondary library consortium, the BC Electronic Library Network (BC ELN). BC ELN is just one illustration of the collaboration amongst libraries that has flourished in the past few decades, particularly after the development of the Internet, as illustrated by the more than one hundred and fifty members of the International Coalition of Library Consortia (ICOLC), or Consortium of Consortia, itself a collaborative international network.

While some aspects of the increasing collaboration of libraries through networks reflect resistance to an increasingly concentrated, powerful, and globalized scholarly publishing industry as described by Morrison (2009), the primary driver to collaboration is the potential to affordably expand services beyond what can be provided by any library on its own (DeBruijn, 1995).   Libraries collaborate not only as a means of resisting a dysfunctional scholarly communication market, but also on a range of other projects, such as to share collections to provide a richer set of resources for the patrons of all libraries, and working cooperatively on electronic reference services to provide a range of hours and level of service beyond the reach of any individual library.

Libraries work cooperatively not only amongst themselves, but also with like-minded institutions such as archives, museums, and historical societies. The factors driving convergence in other sectors such as telecommunications are at play in the public sector as well. This is particularly evident in efforts to digitize and make accessible and searchable primary historical materials.   The resources per se form part of a great many collections in a variety of locations, including libraries, museums, archives, and the attics of many a family home. Cooperation is seen as highly desirable to ensure that digitization efforts meet standards for preservation and cross-searching, and so new forms of cross-organizational networks have been emerging in recent years, such as Canadiana.org (2009).

The Open Content Alliance fits within this model of libraries cooperating with each other and with like-minded institutions such as museums and archives. All share resources, primarily published materials, to provide the broadest possible access, not only

for the patrons of all cooperating organizations, but also for the public at large whenever possible.

Conclusion

The Open Content Alliance has been quietly and legally building a substantive network organization and collections, already over 1.6 million items, in a manner that will support the development and growth of a fully global public sphere.

OCA is a network, consisting of nodes with one central administrative node, the Internet Archive; OCA displays key characteristics of networks, including connectedness, consistency, flexibility, scalability, and survivability. OCA has networking power, the ability to include or exclude potential nodes, based on the OCA principles which provide the basis for network power, and network-making power, or the ability to form strategic alliances. Google Books, in contrast, is a corporation with partnerships; while some aspects are network-like, Google Books lacks connectedness and consistency, and may lack flexibility and survivability, as illustrated by the stalling of Google Books for years by a class action lawsuit. The lawsuit against Google Books queries the right of Google Books to include or exclude, hence challenging networking power, and Google Books is likely to be constrained in network-making power by the Google Books Settlement, both in legal terms and by the empowerment the Settlement gives to particular groups.

The concept of the public sphere, as presented in Habermas' (1962) seminal work *Structural Transformations of the Public Sphere*, is currently the subject of much theoretical discussion. Fraser (2007) argues compellingly that the public sphere is undergoing another major transformation in our globalized world, from the national to the transnational public sphere. There are arguments about the potential for normative

legitimacy and efficacy of a transnational public sphere. Ugarteche (2007) points out that the nation-state, particularly the leading nation-states (i.e. the U.S.), will not be giving up the right to pursue its national interest anytime soon. Nash (2007) points out that nation-states need to be convinced by national public spheres to enter into global agreements that are not always in the best interest of the nation-state.

The public sphere is about more than just democratic discourse; the latter is seen as one element in a broader public sphere than includes public space, public goods such as telephony, postal services, highways and the Internet, and public services such as public education.

OCA is an organization that is a good fit for an emerging global public sphere. The aims of widest possible access and re-use rights mean optimized access to collections for everywhere, everywhere. The approach of respect for copyright holders, contributors and the public through a legislated approach to public issues such as orphan works is compatible with, and supportive of, an ongoing healthy public sphere in the sense of democratic discourse and decision-making. While Google Books does include some elements that are supportive of a public sphere, particularly increased access to books and especially free access to public domain books, some aspects of the current iteration of the Google Books settlement are very problematic for the public sphere. The settlement per se brings issues that arguably belong to the public sphere, such as the fate of orphan works, into private contract negotiations. The parties of the settlement are not only not inclusive of the public at large, they are not even representative of all those affected. For example, academic authors whose works make up the majority of books included in Google Books are almost not represented, and it can be argued that the Google Books

settlement places the fate of their works into the hands of the Google Books plaintiffs through the Book Rights Registry that Google Books aims to set up, whose interests are often contradictory to the aims of academic authors, whose priority is generally broadest possible access, citations, prestige and career advancement, as compared with the economic rights focus of the Google Books plaintiffs. The public service like appearance of Google, based as it is on Google's focus on nonintrusive advertising, is deceptive. Google is a for-profit business, and most of Google Books will be for sale. The Google Books approach is challenged with national copyright legislation, which may result in a fracturing of collections along national lines which could result in increasing disparity in access to books and decreasing diversity of what might be a heavily used collection; both of these are divisive elements that move us away from, rather than towards, a global public sphere.

OCA is one illustration of the emerging library of the global public sphere, a network of libraries and like-minded organizations cooperating to provide the broadest possible public with the most possible access to the world's knowledge, literature and culture. The emerging global library network, implementing a long-held desire and tendency of libraries made possible through technological developments, supports Castell's view of the rising network society, and is a public good that supports the emerging global public sphere, facilitating both education in general and specific information-seeking in particular, both essential elements for conducting *informed* public debate in a global democratic public sphere.

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