

Risk Management and Copyright

This paper was originally presented at the 21st ANZTLA Conference held in Adelaide, 13-16 July 2006.

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Introduction

This paper presents a positive case study to encourage you to think about the possibilities of applying risk management in your library or wider organization. In the first part of the paper I will briefly explore modern understandings of the concepts of risk and risk management. Secondly, I will introduce the Australian and New Zealand Standards on Risk Management. Thirdly, I will describe how I instigated a review and correction of educational copyright licensing in my college using the processes of risk management. While the terminology of risk management may sound off-putting or marginal to the world of theological libraries, I would encourage you to become familiar with a concept that is increasingly central to the governance of most organizations.

The Concepts of Risk and Risk Management

Firstly though, some questions to explore risk in a library context. Are mis-shelved books a problem in your library? Why or why is this not the case? If so, do you have particular strategies in place to reduce the incidence?

At Adelaide Theological Library mis-shelved books can be a frustrating problem. Not being able to find a book directly impinges on our vision to provide an accessible service to our students and faculty. It is inconvenient for patrons and possibly damages our reputation with them, costs staff time and potentially means a lost book for which we might have to fork our replacement dollars. Some of the strategies or controls we have in place to reduce the incidence of mis-shelved books include: prominent signs asking patrons not to reshelve books; training new volunteers to "shelve downwards" so that recent reshelving may be checked if necessary; and on occasion systematically "reading the shelf."

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What I have just explored is a simple case of risk management. I identified mis-shelved books to be a risk, that is, an unwanted but perhaps likely event. I determined the impact of that event to be detrimental within the context of my library and identified ways by which I can reduce or control its incidence. In our private and work lives, we probably deal with everyday risks such as mis-shelved books in a practical, perhaps unthinking way, using a combination of experience, training and intuition. Formal risk management is the systematic application of management policies and processes to dealing with risk.

I find the current level of consciousness about risk fascinating. While a full exploration is beyond the scope of this paper, it is helpful to realize that risk is very much a modern concept. The origins of the word derive from the Renaissance mercantile world describing the hazards faced by Spanish and Italian sailors traveling in un-chartered waters. Ship-owners wanted to insure their cargo and bankers wished to minimize losses.¹ Although for a long while the concept of risk was restricted to financial and insurance aspects of businesses, since the 1970s risk has been increasingly associated with operational conduct in both the private and public sectors, covering everything from computing failure, loss of reputation and environmental degradation to terrorist attack.² One of the hallmarks of responsible administration and government is the

1. Neils Henrik Gregersen, "Faith in a World of Risks: A Trinitarian Theology of Risk-Taking," in *For All People: Global Theologies in Contexts: Essays in Honor of Viggo Mortensen*, ed. Else Marie Wiberg Pedersen, Holger Lam, and Peter Lodberg (Grand Rapids, Mich.: Eerdmans, 2002), 216.

2. One library related indication of the increased focus on risk is how classification systems have dealt with it over time. For instance the relative index of the 1979 (19th) edition of the *Dewey Decimal Classification* allocates two numbers to risk related subjects. In the 2003 (22nd) edition, there were twelve numbers.

regulatory strategies aimed at managing and averting catastrophes. Our life is full of warnings. Consider the travel warnings, UV radiation level forecasts and food labeling, to name just three. Perhaps this can be viewed as evidence of a controlling society out of control, perhaps it indicates a moral imperative about the rights and obligations we have as individuals and organizations in regard to each other.³ Risk seems unavoidable in a globalised world which is intent on pursuing individual and corporate freedom along with security and economic prosperity.

But let's bring the discussion back to the library environment. I would like to draw your attention to a report describing the Library of Congress's application of a risk assessment model for the long-term preservation and care of its collections.⁴ Back in the mid 1990s the library found it could not assert that its controls to protect its irreplaceable collections were effective because the actual risks to the collection had never been formally assessed. Certainly, library managers and staff had good anecdotal evidence about the threats to their collection, but they had no data to support this in a framework that their funding bodies could work with.⁵ Thus began a complex process of working with staff and auditors to formally identify and document both the risks and the existing procedures that reduced those risks.

Obviously the size as well as mission of our libraries will not match that of the Library of Congress. Instead, perhaps your library relies heavily on digital information, or document delivery, or the patronage of a key organization, or a certain piece of equipment, or the skills of a particular

3. In my thoughts about Western modernity, I am indebted to Charles Taylor, *Modern Social Imaginaries* (Durham: Duke University Press, 2004).

4. Laura Price and Abby Smith, "Managing Cultural Assets from a Business Perspective," (Washington, D. C.: Council on Library and Information Resources, March 2000). <http://www.clir.org/pubs/abstract/pub90abst.html>

5. *Ibid.*, p. 4-5.

staff member. What enables your library to work well? What safeguards or policies and procedures are in place to protect these services? What could happen in your library that might threaten—or indeed improve—its effectiveness? This is the stuff of risk management.

Australian and New Zealand Standard on Risk Management

If you are serious about “doing” risk management, purchase a copy of the Australian and New Zealand Standard and its companion handbook.⁶ Standards are documents - often adopted internationally - that set out “specifications and procedures designed to ensure that a material, product, method or service is fit for its purpose and consistently performs in the way it was intended.”⁷ Given the emphasis on safety and reliability, you can see why standards are integral to a discussion on risk. Indeed in the interests of improving business management, an Australian and New Zealand standard on risk itself was first published in 1995 and most recently updated in 2004.⁸ The writers of the standard encourage a holistic interpretation of risk management, one that may be applicable at all levels of all kinds of organizations and can be used to identify and explore opportunities as well as reducing adverse effects. Perhaps most importantly, they recognize that we always work in a culture of uncertainty and variability.⁹

6. Standards Australia and Standards New Zealand, *Risk Management: AS/NZS 4360:2004* (Sydney; Wellington: Standards Australia International Ltd.; Standards New Zealand, 2004), Standards Australia and Standards New Zealand, *HB 436:2004: Handbook: Risk Management Guidelines: Companion to AS/NZS 4360:2004*, rev. ed. (Sydney; Wellington: Standards Australia International Ltd; Standards New Zealand, 2004).
7. Standards Australia, “What is a Standard?” <http://www.standards.org.au/cat.asp?catid=2>.
8. Diana Thompson, “Risk Management: A Brief History,” *B+FS* 117, no. 3 (June-July 2003): 30.
9. *AS/NZS 4360:2004 Guidelines*.

Risk Management and Copyright at the Adelaide College of Divinity

According to the standard, risk is formally defined as “the chance of something happening that will have an impact on objectives.”¹⁰ The risk management process is “the systematic application of management policies, procedures and practices to the tasks of communicating, establishing the context, identifying, analyzing, evaluating, treating, monitoring and reviewing risk.”¹¹ I will refer to each of these steps as I describe the recent review of educational copyright licensing at my institution, the Adelaide College of Divinity (ACD).

Establishing Context

The ACD is an ecumenical consortium of theological colleges representing the Anglican, Catholic and Uniting Churches. The ACD is a registered private provider of educational courses in both the vocational education and training (VET) and the higher education sectors. The ACD has also entered into an agreement with Flinders University to provide all the teaching in the Flinders University School of Theology. Thus students taught at the ACD may be enrolled with either the ACD or Flinders University, and some (not all) ACD faculty members have academic status with the university.

Since 1997 the consortium of colleges has shared residency at the ACD Campus (about 20 minutes drive from Flinders University). While operating from a shared campus has advanced many common ventures (including the amalgamation of the libraries into the Adelaide Theological Library) the colleges retain significant autonomy. They employ faculty, buy their own computing hardware, market courses to, and form their students in their own particular denominational ways. An ongoing debate and “tweaking” of college

10. Definition 1.3.13 in *AS/NZS 4360:2004*, 4.

11. Definition 1.3.21 in *Ibid.*, 5.

responsibilities vis-a-vis consortium responsibilities has been a feature of ACD campus life.

Every organisation will have its own story, stakeholders, goals and objectives. This context will set the scope for how it follows through on risk management activities. A recent educational audit instigated quality audit and risk management processes at the ACD and the campus set up a Risk Management Committee. As manager of a significant function of the ACD Campus (its library), I was asked to be on the committee and I have also taken on the role of chair. Because of audit requirements the ACD has necessarily set very broad criteria against which we evaluate risk to encompass all areas of our operation:

- governance
- service delivery
- management of human resources
- management of financial resources
- management of property
- management of information resources

Identifying Risks

This is the complex process whereby the committee identify where, when, why and how events could prevent (or enhance) our objective of delivering theological education. For many criteria, our risk identification process was initially driven by the compliance provisions of legislation which if not continually met, become a risk to the viability of the organisation. Think GST, occupational health & safety and accreditation just for a start. This was precisely the case with copyright as well.

Let me digress momentarily to offer you a brief overview of (Australian) copyright law as it applies to educational institutions. Copyright is a type of legal protection for people who express ideas and information in certain forms, for example, a literary, dramatic, musical or artistic work. Anyone

who wants to use material protected by copyright generally needs permission from the copyright owner. There are provisions (exemptions) in the Copyright Act that allow educational institutions to use copyright material for educational purposes without needing permission. Under these provisions, payments are made via a range of schemes (or licenses) to copyright collection societies which then distribute these payments to copyright owners. These agencies are Copyright Agency Limited (CAL) (for reproducing literary, dramatic, artistic and musical material) and Screenrights (for copying from radio and TV).¹²

Copyright is a complex issue for educational institutions, not least because of the significant level of remuneration required to pay for licenses. Ensuring that all faculty understand and abide by the provisions of the act, that is, copy within the legal limits, for the prescribed purposes only, and undertake any required recording and labeling is an ongoing task especially in this era of digital communication. And of course, the penalties of infringement may also be a significant cost to an institution, given that copyright owners are entitled to take legal action against infringers of their copyright.

Returning to the ACD situation, I had long been confused by the medley of the licenses managed by the university and the ACD colleges.¹³ Earlier approaches to ACD management about the possibilities of simplifying the administration of our

12. Australian Copyright Council, *Educational Institutions: Introduction to Copyright*, Information Sheet G48 (Strawberry Hills, N.S.W: Australian Copyright Council, September 2004).

13. Two of the colleges resident on the ACD Campus held CAL hard copy licences under the record keeping system; the other two colleges held these licences under the sampling system. None of the colleges had yet elected to enter into a CAL electronic licence, nor held a Screenrights licence. Flinders University however, held both CAL hardcopy and electronic licences under the sampling system as well as the Screenrights licence.

licenses had met with the response that copyright had always been the responsibility of the colleges. It was thought that at least one college feared an increase in fees if the administration of copyright was altered. In short we made no headway until risk management provided the framework for a collaborative investigation of the issue.

Analysing Risks

Once a risk has been identified, a crucial step in the risk management process is to look at existing controls. What is in place that mitigates against a risk? Being able to document current procedures can be a very affirming task, and also breaks down the fear of the unknown.

So, with the authority of the Risk Management Committee I approached the college principals to analyse their existing copyright licenses and procedures. I also boned up on the various fact sheets available from the Australian Copyright Council and the collection agencies.¹⁴

My risk analysis highlighted administrative irregularities with two of the four college licenses, implying that some faculty members were infringing copyright. I met with the faculty of one college; only one member of that faculty was diligently recording what they copied as required by their college license. Not that that really mattered because the submission of quarterly reports of copying amounts to CAL had lapsed with a recent change in college personnel. Another college had been submitting their reports, but had not received a notice of payment from CAL for a considerable time.

I determined that the risk of copyright infringement could be reduced and administration simplified if the ACD applied

14. Web pages of relevant institutions: Australian Copyright Council <http://www.copyright.org.au>; Copyright Agency Limited <http://www.copyright.com.au>, Screenrights <<http://www.screen.org>>

for a statutory license for educational copying and was the administrative body on behalf of the colleges. The colleges could then cancel their individual licenses.

I also decided that the ACD should elect a sampling system of payment. This would negate the need for day-to-day record keeping and submission of quarterly returns, but would require an annual return of student numbers and participation in an occasional survey. This system would match what was in place at Flinders University. It would mean that all ACD faculty regardless of college or university affiliation would be bound by the same procedures. Staff training as well as administration would be easier.

I was also very keen to explore the purchase of additional licenses, for example, the CAL Electronic Reproduction and Communication License which was introduced with the Digital Amendment Act in 2000. This allows educational institutions to email copyright works, reproduce works from the Web and make material available on an intranet. I was also interested in the Screenrights license which enables educational copies of television and radio programs that can be added to the library collection. While Flinders University held these licenses, none of the colleges did and trying to negotiate them without a simplified administration seemed an insurmountable problem.

Risk analysis is all about determining likelihood and consequences—ranking the risk. It can be a complex statistical process. In my case it didn't take algebraic formulae to confirm that it was highly likely that copyright infringement was occurring. I was unsure of the exact consequences, but knew we were at risk of litigation for non-compliance. Staying with the status quo also meant forgoing the opportunity to enhance our service.

Treating Risks

With these ideas I returned to the college principals to seek permission to talk with the copyright collection agencies to clarify procedures and costs. By this stage the principals clearly understood the risks in continuing with the status quo, and I was given permission to oversee the project. Both they and I had some nervousness about "going public" because it would definitely highlight many of our irregularities. Would there be a chance of retrospective litigation? As it turned out copyright personnel were somewhat intrigued by the complexity of our inherited situation and more than happy to have just one person to talk with in sorting it all out. They were incredibly helpful in suggesting ways to expedite all the necessary legalities in a very tight timeframe.

I completed a much more comprehensive report detailing costs and conditions against my recommendations—what the terminology of risk management labels a "treatment plan." By the way I actually recommended that the ACD defer entering into the CAL electronic license because CAL had yet to develop a system of monitoring electronic use in the vocational sector and I was unable to estimate the annual costs of this license. However, the principals determined that given probable current behaviour, this was a license we needed to have, in spite of the unknown costs.¹⁵

Within four months, I had overseen the process to completely overhaul our copyright licensing. Admittedly, it took another four months to prepare and carry out initial faculty education. (I had scored the job of ACD Copyright Officer.)

Monitoring and Review

Finally, as with all system implementation,

¹⁵ Reasonable charges for the cost of the electronic licence have since been determined.

review is a vital part of the process. With the copyright the requirement to pay an annual fee provides an excellent timeframe in which to monitor and review our licenses. At the beginning of each semester when it is most likely that topic material is being prepared, I remind faculty and administration staff of their copyright responsibilities. And, copyright is one of the issues covered in the orientation of new staff.

Summary

My experience with risk management has been overwhelmingly positive as demonstrated by the success with copyright. Having an important bearing on this is the fact that risk management at the ACD has the strong support of senior management. Several library policies and procedures are identified on the risk management plan and I feel this reinforces the library as a core service of the ACD. I think too that librarians as good information managers are well situated to be involved in risk management processes.

However, it is important to remember that risk management at best identifies and minimizes, but can not completely eliminate, risk. I will close by again referring to the Renaissance etymology of risk. The concept of "sailing in uncharted waters" includes elements of both, venture and danger, gains and losses. Being able to navigate around some rocks, does not negate the probability of the threat of both cliffs and icebergs even for the best of sailors.

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