

# From the University Presses — Collaborating to Create Cyberinfrastructure: A Critique of the ACLS Report on “Our Cultural Commonwealth”

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Taking a cue from the **National Science Foundation**, which had produced a report in 2003 on “Revolutionizing Science and Engineering through Cyberinfrastructure,” the **American Council of Learned Societies (ACLS)** established a **Commission on Cyberinfrastructure for the Humanities and Social Sciences** in 2004. Chaired by **John Unsworth** and assisted by seven domestic advisors and ten international advisors, the **Commission** of ten members held six public information-gathering meetings from April through June, posted a draft for public comment from November 2005 through January 2006, and then released the final report in June 2006 bearing the title “Our Cultural Commonwealth.”

The **ACLS** is to be commended for undertaking this initiative to awaken scholars in the humanities and social sciences to the urgent need to become more actively involved in shaping the future of the “cyberinfrastructure” that will so greatly affect how they conduct their research, teaching, and publication in the years ahead. The **Commission** brought together many well-known leaders in the field of digital technology and its application in the liberal arts. Among the **Commission** members were **Paul Courant**, **Charles Henry**, **Jerome McGann**, and **Roy Rosenzweig**, and the advisors included such stalwarts as **Clifford Lynch** and **Deanna Marcum**. Surprisingly, however, for an effort that hoped to motivate the transformation of scholarly communication, the **Commission** included no representatives of scholarly publishing despite repeatedly calling upon all parties in the enterprise to collaborate more. In a critique of the **ACLS** report published in the **AAUP’s Exchange** (Fall 2006), **Robert Townsend**, Assistant Director for Research and Publications at the **American Historical Association**, pithily captured what the overall attitude of the **Commission** toward nonprofit publishers seemed to be: “we seem to be re-cast as an unnecessary impediment to the development of a cyberinfrastructure. When the **Commission** then calls on us to engage with other parties (librarians and university administrators) about these issues, it just seems to be inviting us into a dialogue about the arrangements for our own funerals.”

It was perhaps indicative of the assumptions made about university presses by those who convened the **Commission** that the most frequent mention of university presses anywhere in the draft report occurred in the section headed “barriers created by current models of scholarly communication” where it was claimed that “scholarly publishing — whether practiced by university presses or scholarly

societies — has lost sight of its mission, and now operates primarily, and often unsuccessfully, as a financial rather than an intellectual enterprise.” Though dropped from the final report, under protest from many university press directors, this was an unfortunate step backward from the collegiality of a decade ago, when the **Association of American University Presses (AAUP)** cooperated with the **ACLS** in sponsoring two important conferences, “The Specialized Scholarly Monograph in Crisis” (September 1997) and “New Challenges for Scholarly Communication in the Digital Era” (March 1999), and from the time when the **AAUP** and **ACLS** worked hand in glove to produce the landmark study of 1979 known as the “National Enquiry into Scholarly Communication,” some of whose recommendations remain just as pertinent today as they were nearly thirty years ago — such as the encouragement for universities to share the burden of paying for the system broadly, not just letting it be subsidized by the relatively few universities that operate their own presses. The **Commission** actually echoes this position in its insistence that “collective action must be as broad as possible, including not only those universities with presses, but also all universities with faculty, libraries, students, and public outreach” (p. 32) without realizing the precedent for it from the earlier **ACLS** report.

If there is an overall theme to the report, it probably lies in the **Commission’s** argument that for “an effective and trustworthy cyberinfrastructure” to exist, it will have to make digital information “accessible as a public good” (the first of the five “necessary characteristics” identified on pp. 39-41). Its “inherently democratizing power... can be unleashed only if access to the cultural record is as open as possible, in both intellectual and economic terms” (p. 39). But there, exactly, is the rub: the **Commission** never satisfactorily confronts the challenge of the tension that now exists between the intellectual values that universities support, which push for ever more open access, and the current system of scholarly communication, which is still mostly market-based. The **Commission** recognizes the dilemma into which university presses have been placed. For us, “institutional subsidy has declined in recent years, forcing university presses to behave more like commercial entities.” But

then it goes on to engage in exhortation, not analysis: “However, if we take a longer view of the information life-cycle in universities, revenue from sales may not be the best measure of the value of scholarship. It may make more sense to conceive of scholarly communication as a public good rather than to think of it as a marketable commodity” (p. 31).

That’s all fine and dandy, and I doubt any university press director would disagree with the sentiment. We have always recognized our primary mission to be the dissemination of knowledge “far and wide” (in the oft-quoted words of **Daniel Coit Gilman**), and while appreciating the signals that markets can bring to

help make decisions about what to publish, university presses would welcome the freedom to engage in the supply of a “pure public

good” like knowledge free of severe economic constraints. Only the **Commission** doesn’t tell us how to get to this promised land. It doesn’t even include in the final report the acknowledgment of the draft report that “to operate as an intellectual enterprise, scholarly communication — like research libraries — may need to operate on subsidy” and that a variety of activities that presses could pursue, enumerated in the draft report, “could well produce sufficient value for libraries to be paid for in the cash economy in which publishers now largely operate, *if publishers were properly capitalized to retool so they could provide such services*” (italics added).

But that is just the point. Where does such capital come from? University presses have been chronically underfunded, and even today few universities seem to have much inclination to invest in their presses so that they could “retool” themselves. On the contrary, to provide just one recent example, the announcement of the position of director of the **SUNY Press** includes this among its expectations: “increase financial assets of the **Press** with the goal of achieving financial sustainability within five years.” In other words, the **SUNY** administration expects the press soon to operate with no subsidy from the university at all. There is no better way to hamstring a press from engaging in the kind of retooling and experimentation that the **Commission** calls for in this report. So long as such attitudes prevail among university administrators, the road to “open access” will

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remain closed as far as university presses are concerned.

Such recommendations as the **Commission** makes for university presses are either contradictory or too vague to be helpful. While repeatedly emphasizing that our future lies in the growth of the new knowledge economy rather than the old industrial economy, the **Commission** at the same time rails against the constraints of current copyright law, particularly the **DMCA**, which it incorrectly claims “lacks any of the fair use provisions” of Section 107. (In fact, the **DMCA** was legislated with the explicit recognition that it in no way changed the applicability of fair use.) But nowhere is there any acknowledgment that **Congress** passed the **DMCA** precisely to encourage the growth of the knowledge economy, on the theory that publishers would not put materials online without some means of protecting them from the kind of rampant piracy that digital technology permits (as the music industry has witnessed from P2P file-sharing). The **Commission** implicitly chides publishers in the humanities for not moving ahead more rapidly toward open access, “an area in which many of the natural sciences and some social sciences are conspicuously ahead of the humanities” (p. 33), without any mention of the crucial fact that the vast majority of the most important publishing done in the sciences and (quantitative) social sciences is in journals, not books; the economics of book publishing, needless to say, is quite different from the economics of journal publishing, and they use entirely different business models. On the same page the **Commission** cites the development of open-source software as “an instructive analogue here” and argues that “the experience in that community suggests, strongly, that one can build scalable and successful economic enterprises on the basis of free intellectual property.” But the devil is in the details, and the **Commission** provides none. In fact, it is difficult to see what the analogue in scholarly book publishing might be to the support services that private companies have provided for software platforms employing open-source software; one can better imagine what they might be in the journal publishing arena, but again it takes capital to develop such services, and no capital for such development by university presses is anywhere in sight. While emphasizing how important it is “to be open to new business models” (p. 32), the **Commission** can cite only one experiment, by the **National Academies Press**, which by “distributing the content of its monographs free on the **webShas** seen its sales of print increase dramatically.” The more recent experience of that press would at least temper the claim of “dramatically” increased sales, but more important is the fact, not mentioned by the **Commission**, that this is a very unusual type of press, not having much in common with other university presses (not least in being focused exclusively in the sciences) and therefore not capable of serving as a clear model

for other presses to emulate. (At **Penn State** our Office of Digital Scholarly Publishing is publishing a series in *Romance Studies* that does emulate the **NAP** model, but we have no idea yet whether it will work or not for the humanities.) Finally, in its promotion of cooperation between the public and private sectors, the **Commission** several times cites the **Google Library Project** as “one model of financial sustainability” (p. 45) but never acknowledges the financial downside that this **Google** initiative has presented for university presses, which have been obliged to take sides with other publishers and with authors in their opposition to **Google**’s attempted revolution in copyright law, which will redound to the benefit of **Google** (and other search-engine companies) more than to anyone else in either the public or private sector.

The report’s strength lies more in its depiction of a desired future for “our cultural commonwealth” than in its elaboration of a realistic plan to get there from here, at least as far as nonprofit publishers are concerned. There is a tendency in its portrayal of university presses for the **Commission** to “blame the victim,” and its recommendations, particularly in the arena of copyright law reform, do not take into proper account the way university presses are now compelled to operate in the market economy. They could lead, at least in the short run, to an exacerbation of the problems of scholarly communication rather than to their amelioration. (The exception is the report’s endorsement of legislation to deal with the problem of “orphan works,” but the **Commission** gives all credit to the U.S. Copyright Office without realizing that the **Association of American Publishers** has been pushing for such legislation for many years.) Yes, “university presses and scholarly societies need to envision creative dissemination models that reflect academic values and lobby for the resources needed to realize those models” (p. 44), but does it help much to call on “university counsels, boards of trustees, and provosts to provide *aggressive* support for the principles of fair use and open access, and to promote awareness and use of Creative Commons licenses” (p. 43, italics added) when such “aggressive” fair use leads to the misuse of e-reserve systems now being challenged by publishers (including the two largest university presses in the world) and when the Creative Commons license rests on a crucially vague distinction between what is “commercial” and “noncommercial” use and is inconsistent with university press licensing practices? (Is the publishing that university presses do “commercial” — because we do it in the normal market economy — or “noncom-

mercial” — because presses are nonprofit and part of the “educational” establishment?) The great danger here lies in pressing the agenda of the “copyleft” and the proponents of “open access” when the rest of the environment of scholarly communication is not yet ready to adapt and survive under the changed conditions that these visionaries want to implement. Pursue too aggressive an interpretation of “fair use,” and the baby may get thrown out with the bathwater: the infrastructure of university press publishing will be undermined while nothing has yet arisen to take its place and provide the functional equivalent of the services that presses provide now.

But I do not want to leave the impression, either, that presses are dead set against abandoning their present business models and reliance on the market economy. There is indeed a need for creative thinking and experimentation among presses as well as among scholars and librarians. At the same time as it is important to recognize the dependence of university presses on copyright protection now to ensure the economic viability of their business, it is equally important to be aware that university presses could operate on a model not requiring such dependence. Indeed, a good argument could be made that the most efficient model for university press publishing, all things considered (including the legal costs of protecting copyrights), would be to have the first-copy costs of publishing covered by grants from universities. The effect, for presses, of operating on a grants model would be to lessen their economic reliance on copyright law (which would remain important to authors, however, insofar as it affords protection against plagiarism). In fact, presses could then feel free to take full advantage of digital distribution and allow their publications to be accessed for no charge anywhere in the world. This would maximize the values of public access that the **Commission** is so keen to ensure and would provide a kind of new foreign aid to underdeveloped countries that are unlikely ever to close the gap in efficient distribution of print materials but could, at least in major university centers, allow scholars all over the world to benefit from the fruits of new scholarship published by university presses through the Internet.

Thus, ultimately, I do favor the kind of “risk-taking” and experimentation that is the report’s primary purpose to encourage. It is the reason our Office of Digital Scholarly Publishing exists at **Penn State** as a joint enterprise of the press and library, which we hope will eventually serve as a model for other universities, and university consortia, to emulate — once we find out whether it can work! And we also hope that the next time such a **Commission** convenes to consider the future of scholarly communication, nonprofit publishers like us will actually be invited to the table to share our ideas and experiences so that the resulting recommendations may better reflect the contributions that we now, and can potentially, make to the improvement of the system. 🌱

