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THE PUBLIC IMAGE OF COPYRIGHT AND PUBLISHING

by Peter Givler

A version of this paper was originally delivered at the International Publishers Association Copyright Symposium, April 24, 2006, in Montreal.

A *New York Times* article from last November quoted a stock analyst for the pharmaceutical industry: "A lot of the demand that the industry has created over the years has been through promotion, and for that promotion to be effective, there has to be trust. That trust has been lost," he said.

The article was about the effect that the Vioxx scandal had on the U.S. drug industry. After the heavily marketed pain killer was shown to significantly increase the risk of heart attacks and strokes, the drug was taken off the market, but the episode left a lot of questions unanswered about the drug-screening processes at both pharmaceutical companies and the Food and Drug Administration. In the end, though, the burden of public blame fell most heavily on the drug companies themselves. The same article cites an October 2005 opinion poll that showed only 8% of the people polled thought drug companies were honest, and that was down from only 14% a year earlier. By comparison, 34% of the people surveyed said they trusted banks, and 39% trusted supermarkets.

As far as I know, publishers weren't included in the poll, and in any case the pharmaceutical and publishing industries would be difficult to compare. But the question of public trust is fundamental to any industry and, certainly, fundamental to the public image of copyright and publishing.

By "public image" and "public trust" I just mean the collective sum of a lot of individual judgments. Those judgments may be based on personal experience, on observation filtered through the media, or a combination of the two. Image is largely a reflection of trust. If trust is high, image will be good; if trust is low, image will be poor. This also means that if trust is low, launching a public relations campaign to build a more positive public image and restore trust is both expensive and ineffective; in fact, the reason it costs so much is that it works so poorly. Strong public trust is the core of good public image, not the other way around.

I think that in many respects publishing has a good image and is trusted, but sussing out the public image of copyright is a little more complicated. Most people don't think about copyright very much, and when they do, they tend to think about it not as a discrete body of U.S. or European law, but as a law implicated in the behavior of the specific industry that most interests them personally: film, music, publishing, software, internet search engines, whatever. In my view, people think well of copyright to the extent that they believe they can trust the people who employ it, and that sense of trust can vary from industry to industry, and even within segments of the same industry.

“CAMPUS COPYRIGHT RIGHTS & RESPONSIBILITIES” AND YOU! OR, *The University of North Carolina: A Profile in Campus Copyright Education*

In late 2005, the Association of American Universities, the Association of Research Libraries, the Association of American Publishers, and the AAUP released “Campus Copyright Rights & Responsibilities: A Basic Guide to Policy Considerations.” The product of four years of discussions and negotiation, the booklet presents a summary of the understanding—and areas of differing opinions—of these four groups on the thorny subject of copyright compliance in higher education.

The booklet does not propose specific policies, but is meant to encourage colleges and universities to review existing policies. It provides information to facilitate that review, with the understanding that each campus is likely to have its own policies for complying with the law. To reach the widest possible campus community, each sponsoring organization distributed print copies to its members and key university offices; and all have posted the booklet on their Web sites.

After the booklet’s release, we started hearing from a number of universities about plans for circulating it

among their faculty, staff, and students—from requests for permission to post the booklet on general counsel Web sites, to a request for a more appropriate TTS-capable file. That last came from a university that has been a national leader on campus copyright education, the University of North Carolina. UNC was among the first to inquire about reproduction of “Campus Copyright” for distribution to every faculty member and have since incorporated the booklet into their system-wide copyright education programs and materials. AAUP recently spoke with Kate Torrey, Director, University of North Carolina Press, and David Harrison, UNC Associate Vice President for Legal Affairs, about the university’s use of the booklet.

Torrey noted that the source of the booklet in the sponsoring organization’s collaborative process meant that the administration, the library, and the press could all see that the various academic points of view were presented: those of producers, disseminators, and consumers of intellectual property. She also stressed that the recognition of its importance by a couple of key offices was necessary

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RICHARD ECKERSLEY, 1941-2006

In 1981, Richard Eckersley arrived at the University of Nebraska Press and began to change the face of university press book design. His high standards for typography and a design sense committed to the meaning and needs of each text gave Nebraska’s books a distinctive quality. The influence of his innovations and precepts has spread throughout the university press world. Mr. Eckersley died on April 16, 2006, at his home in Lincoln. He left behind him a powerful body of design work, and an indelible mark on both scholarly and trade book design.

Amongst his most notable work are two very different projects which illustrate his respect and appreciation for the texts he worked with. Avital Ronnell’s *The Telephone Book* (1989), is a work on deconstruction that Eckersley interpreted through revolutionary typographic techniques. *The Journals of Lewis and Clark* had more conventional design requirements that Eckersley served in every detail—including the meandering river that is traced across the spines of the 13 collected volumes. His work has been recognized in numerous design competitions, including the AAUP Book, Jacket, and Journal Show and the annual AIGA juried selections (www.designarchives.aiga.org). Willis

Regier, who worked with Eckersley as both publisher and author, writes that “authors wanted to have their books designed by him. I even made it a practice to acquire books that demanded skillful design in order to make the most of Richard’s ability.”

At the time of his death, Mr. Eckersley had been nominated for the AAUP Constituency Award in recognition of his service to scholarly publishing and the field of design. He served on the AAUP Design Committee (and designed the 1985 Show catalog with considerable style and wit), served as a juror for the AIGA 50 Best Books show and brought a higher profile to the work of university press designers, organized and presented numerous design workshops and panels, was lead author of the important 1994 *Glossary of Typesetting Terms*, and has served as mentor and support for colleagues at many presses. Cope Cumpston, Art Director at the University of Illinois Press, wrote when nominating Eckersley: “His influence is quiet and steady, as he is—but brilliant and central to the mission of AAUP.”

The AAUP Design Committee has dedicated the catalog of the 2006 Book, Jacket, and Journal Show to the memory of Richard Eckersley.

REVIEW: *USED-BOOK SALES* BY THE BOOK INDUSTRY STUDY GROUP

by Willis Regier

Book Industry Study Group. Used-Book Sales: A Study of the Behavior, Structure, Size and Growth of the U.S. Used-Book Market. New York: Book Industry Study Group, 2006. xx, 85 pages, 94 figures.

Used-Book Sales: A Study is a starting point. It covers only two years, 2003 and 2004; its data from used-bookstores are derived from a 9.2% response sample; and its figures on students as consumers come from the responses of only 337 higher education students. As such, the information is indicative rather than probative, but even so, the results are worth having and analyzing. What has been supposed is now demonstrated: "Consumers' book-buying behavior is changing; often they consider used books as they make buying decisions."

The *Study* will be especially useful for booksellers seeking standards of comparison. The analytical categories adopted are slippery, but they reveal current business trends in ratios of sales to inventory, average sales per unit, average shelf life, and relative pricing of new and used copies of the same book.

The *Study* is well-organized, with 94 easily interpretable charts, bar graphs, and tables. A series of bullet points within each section are ideal for readers in a hurry. A fine executive summary, later reiterated as "Conclusions," gets to the gist in four pages. The *Study* reveals that online used-book sales (in dollars) increased 33% between 2003 and 2004, and that traditional independent used-book vendors "are now generating about 40 percent of their business via the Internet." Total sales of used books exceeded \$2.2 billion in 2004, and nearly 37% of those sales "were sold through online channels." In units, the used-book market increased 11% in 2004, while sales of new books dropped by 1.9%.

The *Study* concentrates on the sales that are most likely to reduce new book sales: text books and recently published trade books. There is little attention to antiquarian book sales, though 70% of units sold by used-book vendors are out-of-print titles.

The inexactitude of the figures merits caution. On page 13 the *Study* asserts that there "are approximately 6,100 independent new-book stores," but on page 15 it cites the U.S. Census Bureau figure of 11,036 independent new-book

stores. The *Study* states that there are "4,200 independent used-book stores throughout the U.S.," but Alibris.com alone claims to represent 10,000 stores "in 60 countries, but mostly in the United States." "The online channel is where virtually all the growth in the used-book market is taking place."

Two good reasons are given for the increase in online sellers: their rents are lower and their returns are 1% or less. But "online specialists are very small businesses with mean annual sales of only \$36,200 (median of \$10,000). The online specialist is typically an individual who sells used books as a source of supplemental income." Fortunately, the *Study* benefited from online aggregators—Abebooks.com, Alibris.com, Biblio.com, and eBay.com—to get a better sense of the large impact of so many small players. The formidable used-book vendor, Powells.com, also provided data. Two other participants were Amazon.com and Barnes&Noble.com, whose Web sites sell new and used copies side by side, but no data are given to indicate their customers' preferences. A majority of all booksellers, including online specialists, reported that the availability of a used book had "no effect" on the pricing of a new copy of the same title. Because the high-turnover books are generally text books and recent trade titles, the survey investigated what difference pricing makes: consumers will pay about half-price for a used book in good condition.

The *Study* concludes that "today's used-book market is a technology-enabled marketplace that is behaving rationally. Booksellers are trying to maximize profits, and end customers are seeking to maximize utility." How does this pertain to university press publishing? No more nor less than it does to publishing generally. There has been considerable anxiety about the impact of improved efficiency in the used-book sector, but the report suggests that so far, the impact is not great. In 2004, 111.2 million used books were sold, amounting to "5.4 percent of total consumer domestic expenditures on books."

Willis Regier is the Director of the University of Illinois Press, and has previously reviewed J. Thompson's Books in the Digital Age for the Exchange (Summer 2005).

NOTICE

"An Exchange of Views: Fair Use, Part II" has been suspended. We do hope to be able to publish the remainder of this series in the future. "Fair Use, Part I" by Sanford Thatcher ran in the Fall 2005 *Exchange*.

Public Image, continued

Another notorious recent example may serve as illustration: the disastrous copy-protection scheme that Sony BMG used in some CDs released last year. The scheme, which prevented the user from making more than three copies of the CD, embedded software from the CD deep in the user's computer operating system, making the computer vulnerable to worm attack along the way. Technically adept users were quick to spot the intrusion of the Sony DRM software, and just as quick to discover that it was hard to remove without crippling part of the operating system. Enterprising hackers were also quick to notice, and worms began to appear that exploited the vulnerability. Sony threw in the towel and announced last November that it would stop manufacturing CDs containing the offending copy-protection software, but by then 2.1 million of the offending discs had been sold.

Interestingly, users didn't seem to be complaining about copyright as such but about Sony's bad behavior, namely, forcing intrusive and potentially harmful software into the operating system of its customer's computers. Software designed to prevent you from copying a digital file that's embedded in a physical object, like a CD, can't work any other way than by automatically installing software on your computer. The Sony system installed bad software and tried to hide it, violating their customer's trust, but what they also did was create a climate of consumer distrust about software copy-protection in general for CDs and DVDs. It wasn't just Sony that got a black eye, but an entire class of DRM tools and the industries that rely on them.

I come from a segment of publishing—university presses and nonprofit scholarly publishers—that happens to enjoy a reasonably high degree of public trust. In part that's because of our affiliation with trusted institutions: research universities, scholarly societies, and so forth. And, frankly, in part it's because we're the churchmice of the publishing industry, too poor to be anything but either honest or stupid, and most people are charitable enough to give us the benefit of the doubt. So I'm seeing this whole question of image and public trust through a lens with a particular tint, but I have had my own recent illustrative encounter with what I think of as the general public attitude toward publishing and copyright.

Last year I wrote a long letter to Google about the Library Project, now subsumed under Google Book Search, challenging what I understood to be Google's legal rationale for digitizing copyrighted material in the library collections

at Michigan, Stanford, and Harvard without permission of the rights holders. The letter was leaked and published in Business Week Online. The story was widely picked up, both nationally and internationally, and became (relatively) big news.

Two things surprised me about the coverage. First, that it happened at all: who in the world would have suspected that a six-page letter about two of the more obscure provisions of U.S. copyright law, fair use and the library exemptions, would generate such widespread interest? And the second surprise was that the coverage was so favorable.

It's true, I did get one anonymous e-mail accusing me of being a "paranoid, money-grubbing bibliocrat," and my letter came in for its full share of comment and criticism on blogs and listservs. But the response from the general public, if you'll allow me to characterize mainstream print media readers and writers that way, was almost uniformly favorable; that is, people seemed to agree that the letter raised some valid questions.

I don't think that all those people were making a considered judgment about Google's compliance with copyright law. Lawyers and industry professionals certainly did, or already had, but we're a very small segment of the general public. So if most people don't know the law, what basis do they have for agreeing or disagreeing with an interpretation of it?

By now it shouldn't surprise you to learn that I think it's trust. As I said above it didn't hurt that the questions were raised publicly not by another multi-billion dollar corporation, but by the churchmice of the industry. It also doesn't hurt that, in relation to other industries like oil and pharmaceuticals, publishing itself may be regarded as a church mouse.

But I think there's more to it than that. Publishing has always been about connection: connecting writers and readers, past and present, North and South, East and West. Just as books themselves are durable artifacts that embody stable texts, publishing has always been about maintaining continuity—of culture, language, science, religion. Most fundamental of all, publishing has always been about knowledge—"the progress of Science and useful Arts," in the wonderfully homely language of the U.S. Constitution—fixing it so that it can be preserved, putting it in accessible form, passing it on.

That's important work and on the whole we've done it well. Because of that, as an industry we enjoy a high degree of

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Public Image, continued

public trust. As a practical matter, that means we are trusted to use copyright well and not abuse its limited monopoly. There are two areas where this trust is not as high as it should be; they are worrying, but they are also quite specific and limited: what is perceived to be the unjustifiably high cost of getting access to scientific research related to health care, especially when the research itself is publicly funded, and what is perceived to be the unjustifiably high cost of college textbooks. Both are complicated issues and while I'm not qualified to unravel them, I do have some practical observations.

First, to the extent that these problems are exacerbated by misunderstanding, the cure for bad information is always better information. The Publishing Research Consortium report on NIH author postings is an excellent example of what publishers can do to shed real light on a poorly understood problem (see <http://www.publishingresearch.org.uk>).

Second, to the extent that these problems have caused an erosion of public trust, let's try to address the causes of the distrust, and not waste money on ineffective public relations campaigns. When people distrust you, they're suspicious of what you say, so they're certainly not going to start believing we're nice trustworthy folks just because we say we are.

Finally, let's remember what we're good at and try not to repeat what, in hindsight, look like the mistakes of other

Campus Copyright, continued

for the booklet's widest impact. "The provost, as chief academic officer, is critical for advancing not just the legal, but the moral and ethical requirements of copyright," Torrey said. The legal affairs office also recognized the value of the document and is best able to effectively incorporate it into policy making and copyright education.

According to Harrison, the booklet has now been distributed to all 16 campuses in the North Carolina system, and it has been discussed by campus attorneys. All faculty at Chapel Hill received the PDF via an email from the provost, and the General Administration plans to distribute it at least yearly to all new faculty, staff, and students. Legal Affairs is also creating a new Web site that will feature the booklet and a variety of other resources for copyright education.

Harrison noted that the new booklet was a good complement to UNC's already strong copyright policies, primers, and education programs which include copyright education as an important component of UNC Leadership Workshops for new department chairs and deans.

copyright industries. One way of looking at the problems of the music industry is that they're a consequence of the industry's own decision to force consumers to adopt digital playback technologies without allowing the market to adapt and develop. "Force" is not an exaggeration. If you remember the late '80s and early '90s, as CDs came on the market, vinyl was withdrawn; it was pulled out of stores and warehouses and dumped into a giant sludge pit in New Jersey. Within three years records had virtually disappeared from the consumer market.

Recorded popular music moved from analog artifact to digital file virtually overnight, and everybody in the music industry was so busy selling consumers CD players and CD replacements for record collections, that nobody in the industry stopped to think about what it would mean. But their customers did—and then many stopped becoming their customers.

As an industry, we're sometimes criticized for being slow to change. Well, we are—but I think that's strength, not a weakness. I think most people trust us to try to get things right, and if that means we move a little more slowly than Merck, or Sony, or Google, to tell you the truth, I don't think that hurts us a bit.

Peter Givler is the Executive Director of AAUP.

The reaction to "Campus Copyrights Rights & Responsibilities" has been very positive, according to both Torrey and Harrison. Harrison credits this to "its balanced and focused approach." Torrey noted that work of the kind that the UNC General Administration has done on copyright education, including the wide distribution of this booklet, is particularly important for the work of faculty. "With the decentralization of activities that used to be centralized in the library or copyshops, faculty can find themselves on their own in very gray areas, surrounded by layers of legalese," said Torrey. "Faculty properly think that intellectual work is their primary concern." Materials such as the booklet and the education work of the counsel's office ensure that intellectual work, not policy decoding, can remain their focus.

*Download "Campus Copyright Rights & Responsibilities":
www.aaupnet.org/aboutup/issues/Campus_Copyright.pdf

See the UNC Copyright Primers:

www.northcarolina.edu/content.php/legal/copyright/index.htm

Other copyright resources, including the new AAUP Permission FAQs:
www.aaupnet.org/aboutup/issues/copyright/

MISCELLANY

Open Access for Federally Funded Research

On May 2, Senators John Cornyn (R-TX) and Joe Lieberman (D-CT) introduced a bill titled the Federal Research Public Access Act of 2006. The bill would impose stricter requirements for public access to research produced with federal funding. Last year the National Institutes of Health (NIH) implemented a voluntary policy of posting NIH-funded research to PubMed Central within 12 months of its original publication, but few researchers have taken part in that program.

The Cornyn/Lieberman bill, S.2695, would make posting a requirement, rather than voluntary, would require posting within 6 months of publication, and would apply to any federal agency with a research grant budget of more than \$100 million, not just the NIH. The Professional and Scholarly Publishing Division of AAP has expressed concern about the consequences of this legislation, stating that its provisions threaten to undermine the value of peer review by removing the publishers' ability to sustain investments in a range of scientific, technical, and medical publishing activities.

Publishing Research Council

In early 2006, AAUP joined the Publishing Research Council. Based in London, the PRC represents publishers and societies who support global research into scholarly communication, with the aim to provide unbiased data and objective analysis. PRC's objective is to support work that is scientific and pro-scholarship, and to promote an understanding of the role of publishing and its impact on research and teaching. The group was founded by The Publishers Association (PA) of the UK, the Association of Learned and Professional Society Publishers (ALPSP), and the International Association of Scientific, Technical and Medical Publishers (STM). AAUP and PSP/AAP are corresponding partners.

On May 12, the PRC issued a new study, "Journals and Scientific Productivity: A case study in immunology and microbiology." Challenging the perception that access to journals is a primary obstacle to researchers, the survey of 883 scientists found that the single most important issue obstructing the productivity of biomedical scientists today is the culture of research funding. In addition to a sometimes cited lack of resources, it is the 'stop-go' funding culture that often prohibits scientists from initiating new

ideas, choosing research projects that contrast with funders' priorities, and recruiting and retaining qualified staff.

The Summary report, as well as the full study report, can be accessed at <http://www.publishingresearch.org.uk>.

Books for Understanding

The Books for Understanding program has created or revised and republished three bibliographies in recent months. Our newest list is on the topic of Immigration, addressing the broad public debate in the United States and around the world. Approximately 140 titles have been included in that bibliography, highlighting the wealth of information available on immigration policies and history, as well as cultural studies and personal stories. Bibliographies on Taxes and the Sudan have been updated and republished. The Sudan book list more than doubled in size to encompass new scholarship on the current crisis in the African country, as well as historical research on its colonial past. A list on the city of New Orleans is planned in time for the AAUP meeting there in June.

Please visit these and our other topical book lists at <http://www.booksforunderstanding.org>.

AAUP Strategic Plan

Under the direction of AAUP President Lynne Withey (Director, University of California Press) and Strategic Planning Committee Chair Alex Holzman (Director, Temple University Press), a new strategic plan for the Association is being developed. A draft of the Strategic Plan was circulated to the AAUP membership in late May for review.

The draft is currently available to members via the Members-only Web site at www.aaupnet.org/members/. Login information can be requested at www.aaupnet.org/pwrequest.html. Members have several opportunities to offer comments and ask questions about the new plan. Two sessions at the annual meeting in New Orleans have been scheduled to discuss the plan: after the AAUP Business Meeting on June 15 (3:00-4:30) and from 5:00-6:00 on June 17. Any feedback or questions can also be directed to Lynne at lynne.withey@ucpress.edu and Alex at aholzman@temple.edu.

All feedback will be taken into consideration as the Strategic Plan is finalized over the summer months. The committee hopes for participation from the widest range of constituents, in order to make this the best possible document for our future as an association.

New Orleans and AAUP

More so than almost any previous AAUP meeting, the location of the 2006 annual meeting is of great importance. After Hurricanes Katrina and Rita battered the Gulf Coast and destroyed much of New Orleans, there was considerable discussion within AAUP of what to do about the already scheduled 2006 meeting. Should we keep the meeting in New Orleans if the conference hotel, the Sheraton New Orleans, was ready to accept conventions? That question was easy to answer once the hotel reported that it would be ready for us. The AAUP board, staff, and members quickly agreed that if our conference could be so much as a drop in the bucket towards economic recovery, that was one drop to the good.

The meeting will still be mainly about professional development and social networking—busy days filled with panels, workshops, and lots of talk about lots of things. But it will also be a chance for people from all around the country, all around the world, to see first-hand what happened to this region, and to find ways to contribute to the regeneration of a vibrant city—through convention and tourist dollars, donations of money or time to recovery groups, and through the power of witnessing. Cliff Prince, publicist at University Press of Mississippi and a New Orleans native, sent out an eloquent plea for meeting attendees to step out beyond the French Quarter and Canal Street district of our hotel and witness the New Orleans that residents are living in, and to tell those stories to remind people in other regions that the news cycle may have moved on, but the devastation hasn't yet. Knowledge and advocacy is essential to keep the effects of Katrina in the national consciousness.

During the AAUP conference, there will be numerous opportunities to learn more about the Katrina recovery and relief efforts. University of New Orleans professor and historian of New Orleans Michael Mizell-Nelson has generously offered to lead a tour of a small group of AAUP attendees to view some of the affected areas within the context of the city's history. For those who can't make that tour, there are several companies that regularly run "misery tours," as residents label them. We'll also have an expanded and updated version of our online "Katrina Relief Programs" guide available for meeting attendees. AAUP Projects Coordinator Sarah Northmore, with the help of AAUP members in the region, is compiling information

on organizations in the Gulf Coast that are in need of donations and/or volunteers. The areas of relief covered will include: rebuilding libraries, historic preservation, public awareness campaigns, arts organizations, humanitarian services to families, the elderly, and the displaced, as well as environmental and urban cleanup. The brochure, which will also be posted online, will have profiles of various organizations and their needs, as well as contact information. We hope this resource will prove useful to attendees.

The Program Committee is also happy to announce that Jim Amoss, Editor of the *New Orleans Times-Picayune*, will be speaking at the Opening Banquet on Thursday, June 15. The *Times-Picayune* and its staff received two 2006 Pulitzer Prizes, both related to their work in the aftermath of Hurricane Katrina. The newspaper was recognized for Public Service and the staff was recognized for its breaking news reporting.

Finally, the one thing that AAUP and its members can best provide is scholarship and in-depth information through the books and journals we publish. While the New Orleans Public Library systems has been overwhelmed by the physical donation of books to a system that is struggling to rebuild its facilities, two *Books for Understanding* lists can lead interested readers around the world to books that will illuminate the disaster that hit the Gulf Coast last year and the geography, history, and culture of the region. **Hurricane Katrina** covers relevant topics from the region's waterways to hurricane science and disaster recovery planning. **New Orleans** contains a wide variety of books on this beautiful city's often turbulent past and its influential arts and music scene, as well as local politics, guides, and more. Visit these resources via <http://www.booksforunderstanding.org>.

UP Books Selected for Libraries

The 16th edition of *University Press Books Selected for Public and Secondary School Libraries* is now available in print and online at www.aaupnet.org/librarybooks/. This annual collaboration between AAUP, the American Association of School Librarians, and the Small & Medium Library Committee of the Public Library Association is an important collection tool for libraries around the nation. The 2006 bibliography lists and rates more than 430 books from AAUP member presses. The bibliography is distributed free to more than 13,000 librarians and is accessible to the public online.

CALENDAR

SSP 2006 Annual Conference

June 6-7, 2006
Crystal City, VA

AAUP E-Publishing Workshop

June 14-15, 2006
New Orleans, LA

AAUP Editors-in-Chief Workshop

June 14-15, 2006
New Orleans, LA

2006 AAUP Annual Meeting

June 15-18, 2006
New Orleans, LA

2006 ALA Annual Conference

June 22-28, 2006
New Orleans, LA

Southern Presses 2007

Crowne Plaza Jacksonville Riverfront
Jacksonville, Florida
February 16-18, 2007

2007 AAUP Production Managers' Meeting

May 30-June 2, 2007
Statler Hotel
Ithaca, NY

2007 AAUP Annual Meeting

June 14-17, 2007
Minneapolis, MN



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