

# AT THE EDGE

**K**eynote speaker at the ALIA Information Online 2015 Conference next month, Siva Vaidhyanathan, teaches in the University of Virginia School of Law and is the University's Robertson Professor of Media Studies. INCITE asked Siva about his writing and his thoughts about what will be his first visit to Australia.

The ALIA Information Online 2015 Conference theme is 'At the Edge'. Siva Vaidhyanathan is an experienced explorer of edgy issues for the library and information services sector, including Google, copyright and intellectual property.

In March 2002, *Library Journal* cited Siva among its 'Movers & Shakers' in the library field. In the feature story, Vaidhyanathan lauded librarians for being 'on the front lines of copyright battles' and for being 'the custodians of our information and cultural commons'.

In 2001, Siva published *Copyrights and Copywrongs: The Rise of Intellectual Property and How it Threatens Creativity*. Siva has testified as an expert before the US Copyright Office on the *Digital Millennium Copyright Act* and he believes Australian librarians, like their colleagues overseas, should be ensuring we are fully across the current copyright debate.

'The most alarming and most interesting aspect of copyright right now involves international treaties. Increasingly copyright industries are ignoring legislators with their commitment to openness and debate and instead pushing trade negotiators to embed aspects of copyright protection in treaties,' he says.

'Many nations consider treaties differently than regular legislation, making them resistant to amendment and sometimes even secret until they are ratified. We can credit more than a decade of copyright activism by librarians and others for this move. Copyright extremists no longer believe in their ability to make cogent and convincing policy arguments in public.'

One aspect of the copyright debate that is causing a lot of discussion about interpretation is the term 'transformative' in relation to copying material between formats. Siva says it looks as though 'transformative' is here to stay for a while, at least in the United States.

'Oh, I wish 'transformative use' had a clear and predictable meaning,' Siva says.

'The good news is that we have seen several important new types of 'transformative' uses declared fair use in the United States of late. The most important of these involves



Siva Vaidhyanathan will speak about the Human Knowledge Project in Sydney next month.

the copies that Google made of copyrighted books for its Google Books service. The university partners were worried that their participation in the scanning project could make them liable. But it looks like such massive copying for the sake of creating a full text index is likely to be held to be fair use. The case continues up through higher courts.'

Siva adds that this is something he feels he did not predict accurately. 'I argued in many forums over the past few years that I did not think US courts would consider massive book scanning by a commercial entity to be fair use. I was wrong. And I am happy to be wrong on this. I do caution, however, that fair use remains a minor part of copyright law outside the United States. Fair use is still a local ordinance in a global information ecosystem.'

Siva has written for many periodicals, ranging from *The American Scholar* and *The Chronicle of Higher Education* to *The New York Times Magazine* and *The Washington Post*. He gained his PhD in American Studies from the University of Texas at Austin and has taught at a number of universities, including Columbia, New York University and Universiteit van Amsterdam.

In 2004, Siva tackled the issue of intellectual property in his book *The Anarchist in the Library: How the Clash between Freedom and Control is Hacking the Real World and Crashing the System*. He wrote that concerns about intellectual property now make artists pause and consider consequences.

'This impedes play,' he says. 'It saps confidence and innocence from the creative process. Many a creative discussion has devolved into a 'I wonder if we will get sued' argument. That's sad. Artists should not have to have lawyers on speed dial.'

'There are other, broader issues. For instance, much of our rich literary and musical heritage depends on our ability to improvise using the raw materials of the past. As copyright terms get extended to cover works made decades ago, we end up poorer. There are fewer works of importance entering the public domain.'

On the other hand, Siva believes Wikipedia has significant positive potential. 'I don't think any of us should be very worried about Wikipedia,' he says. 'In fact, Wikipedia offers us so many useful ways to teach people about the power and problems that web culture offers.'

'The best thing about Wikipedia is that it's easy to show students that there is an elaborate process of debate that generates the entries. There are clear rules that guide the style and substance. And if we see a problem with Wikipedia we may try to correct it. It's a wonderful teaching tool.'

'Google is another matter,' he says, having written a compelling case for caution in his book, *The Googlization of Everything and Why We Should Worry* in 2011.

'It's important that we all recognise that Google is working in the interest of Google,' he points out. 'Google is not some magical force in the universe. It is not run by wizards. It's a publicly traded American company. It offers services in exchange for our attention, which it sells. And human beings – overall male, educated Californians – make the value judgements that forge the workings of Google's algorithms. So its service to us is guided by, and limited by, the biases of the company and the people who work for it.'

'That means we should all use Google with caution. We should be careful as Google grows in political and cultural influence. Google can still be a wonderful addition to our lives. But we should be aware of its intent, its methods, its biases, and its power.'

Siva was writing another book *The Anarchist in the Library* when the planes hit the twin towers on September 11 2001. 'As a New Yorker, September 11, 2001 caused us all to rethink everything,' he explains.

'It became very difficult to get up in the morning and worry about what was going to happen to Napster or other peer-to-peer music systems. My concerns about digital networks had always been proxies for larger concerns about democracy, openness, cultural play, possibilities for dissent, habits and structures that foster deliberation and debate, privacy, and intellectual freedom. So once my own government set about trying to redesign or stifle what had been fairly open digital communication networks, I realised that my skills and concerns had more overtly political salience.'

'I ended up with a book that concerned itself with the health of our public sphere in general. This made the book diffuse and hard to sell, unfortunately. But I was incapable of thinking of the book any other way after I saw what happened to my

neighbours that horrible day, and then what my government did to my country and others in the months after.'

'I do think we should be aware that our digital technologies can foster information anarchy, as in radical decentralisation and the breakdown of authority,' he continues.

'That has both positive and negative consequences. My argument in the book ends with the claim that libraries are embodiments of a more reasonable, rational, hopeful model of information exchange. Libraries are republican. They are both temples to the Enlightenment and functional elements of the Enlightenment. We should all try to live like we are fully and constantly engaged with libraries. And, of course, we should fund and support libraries.'

Siva is looking forward to ALIA's flagship online technology conference and enjoying a February summer. 'I have never been to Australia before,' he says. 'So I am open to being impressed by everything. I have long been impressed by the intellectual work that reaches me from Australia. And I am sure that I will learn a great deal during my short stay.'

Follow Siva Twitter at @sivavaid and hear him speak on Tuesday 3 February about the Human Knowledge Project at the ALIA Information Online 2015 Conference opening plenary session.

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