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Billing for Online Research: Options, Options, Options

By Carol Bannen from Reinhart Boerner Van Deuren s.c.

There has been renewed discussion lately about how law firms are billing for online legal research especially with more and more clients refusing to pay for it. This would include billing for Lexis and Westlaw and also how to bill for things that previously were considered overhead but now allow for usage tracking. The American Association of Law Libraries Annual meeting this summer had a program "How to Recover 100% of Your Online Research Costs." (The presentation materials can be found at <http://www.fellersnyder.com/LibSrvs/recover.htm> and includes links to LaJean Humphries LLRX article called "Cost Recovery for Online Research," Mark Estes's Cost Recovery Survey results and West's Cost Recovery Survey results. You can purchase a recording of this program through <http://www.mobiltape.com>. It is item #05AALL-13.)

The surveys found that 96% of the 175 respondents do try to recover online legal research costs from Lexis and Westlaw but only 17% are happy with their ability to pass these costs through to clients. The American Bar Association published Formal Ethics Opinion 93-379, "Billing for Professional Fees, Disbursements and Other Expenses." This opinion

says that disbursement fees (including online research fees) can be billed but should be actual costs plus reasonable overhead charges. Sounds easy but a wide variety of factors come into play.

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According to the West survey the average rate of cost recovery for West/Lexis online research costs is 68% among those firms who attempt to recover costs. People are trying a wide variety of ways to recover costs with varying degrees of success.

Many law firms have flat rate contracts with vendors which means they pay a flat rate each month no matter how much they use. In order to allocate these charges to particular clients they use several methods. Some firms calculate the percentage discount they are getting for the past month (retail rate charges vs. actual charges) and then apply that discount amount to the charges for the last month. This would seem to be the most fair. The client is

only paying for what was used for their particular research and the firm is only charging what they are using. One problem associated with this way of billing is that the client will not be actually billed for the use until two months after the actual use (search done in July, discount calculated in August, billed in September). The discounts will also vary from month to month depending upon the amount of usage. Some firms are now looking at the past twelve months or the previous month's discount and using that as the monthly discount given to clients. This again may not truly reflect what is being used for a particular client especially if there is heavy use for a particular litigation case.

It is especially difficult to estimate how much you think you will spend for a particular job in online research charges. Some firms are trying to simplify this by creating an average charge per transaction. Lexis and Westlaw have complicated ways of billing for use. You can sign in using an hourly ID and then you are billed by the minute depending on the size of the database. Retail rates for a smaller database may be as little as \$6.58 per minute and a large one could be \$17.42 per minute or more. If you sign on transactionally you again are billed depending on the size of the database. For a

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Billing (continued from page 20)

search in all the state and federal cases you could potentially be billed \$149 or more per search. Each database is a different amount and clearly attorneys can't remember what the charges are. Lexis and Westlaw also do not tell you when you sign off how much you have spent. Several other databases do this which really helps to educate and train users. Some firms are simplifying their billing by coming up with average charges for each search, print and link so the attorneys have some idea of what the client will be billed or billing so much per minute. Is this appropriate when the actual cost may vary either up or down? There may also be databases searched that are not part of the flat rate contracts that the firm has to pay for at a retail rate. Should these charges be passed through directly with no discount? Probably.


The shareholders are ultimately responsible for what is and is not billed. Many librarians work hard watching weekly billings and contacting and educating attorneys who seem to have exorbitant use. Our firm mandates annual retraining for both Lexis and Westlaw to maintain their passwords. Making sure that attorneys are putting in valid client and matter numbers is also critical. Client validation products are available from both Lexis and Westlaw. Too many charges to firm numbers should also be monitored. Write-offs can be monitored to see if some shareholders routinely write off charges so that all clients are treated equitably. Clients should be made aware of how online legal research charges will be billed, ideally in the engagement letter. Some firms have decided not to bill at all for the charges and have incorporated the amount into their billable rates.

The West Cost Recovery Survey

results say that the top four best practices are:

- Attorney education and communication
- Client ID validation
- Client education and communication
- Team effort/Company buy in

There are still a variety of pressing questions that your firms will have to answer. What should you do about all the firm related charges for speeches, pro bono work, client development and other non-billable research. Is it appropriate to try to recover any of that expense? What do you do about all the other legal research products available online? Many resources used to be purchased as books. These are now available electronically for a flat fee online but there are products that can track this usage. Should this be billed to clients or seen as overhead? Should all Lexis, Westlaw and other databases be seen as overhead? What is a reasonable amount of overhead that can be added to the cost of online research under the ABA Opinion? What is the firm's target recovery rate?

Amidst all this confusion there are tools available from Lexis and Westlaw to help in calculating how clients are billed. PowerInvoice is from Lexis and Quickview from Westlaw. There are also several products that allow for tracking and billing of other internet based research products. Your law librarian can help you to identify your firm's recovery goals and getting you to it. No one understands the cost of online research like the librarian. A well thought out and communicated policy can make compliance with the ABA Opinion and cost recovery for the firm a success. 

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