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President's Message by Lee Peoples

Spring is in the air. You may be getting your yard or garden in shape and thinking about your taxes, but don't forget to send in your MAALL membership renewal. Individual e-mails were sent to all members, but if you missed it the membership renewal form is available from the MAALL Web site under "Members" and here: <http://www.aallnet.org/chapter/maall/membership2008.pdf>. **Membership renewals are due April 18, 2008.**

Mark your calendars now to attend the MAALL luncheon and business meeting at this year's AALL meeting in Portland, Oregon. Our lunch and meeting is scheduled for Monday, July 14 from noon to 1:15 p.m. The Board is pleased to announce the cost of this year's buffet lunch will be just twenty dollars for MAALL members who have paid their 2008 dues. This low price is thanks in part to a subsidy approved by the Board. The cost for non-MAALL members or

those who have not paid their dues will be twenty-six dollars. The luncheon and business meeting reservation form was sent out via the listserv and a copy is available from the home page of the MAALL Web site. Please return this form and your payment to Jan Medved on or before July 1, 2008.

The 2008 MAALL Annual Meeting is shaping up to be one to remember. The theme for this year's meeting is MAALL in the Mountains. The recently renovated Cosmopolitan hotel in downtown Fayetteville will play host to our meeting, scheduled for October 16-18. We will also visit the Young Law Library at the University of Arkansas School of Law. Our visit will come just on the heels of a major renovation to the School of Law including updates to the classrooms, courtrooms, and law library.

The Education Committee, chaired by incoming MAALL President Joe Custer, is hard at work

planning the educational programming for the meeting. You won't want to miss the remarks of Louise Schaper, executive director of the Fayetteville Public Library, Library Journal's 2005 library of the year. Many more exciting programs are already in the works.

See you in Portland!

From the Vice-President by Joe Custer

The Education Committee has been very grateful for those of you who have submitted program ideas. It looks as if we have all that we need at this point. Thank you. For those programs we are accepting please know that you will be contacted in the next couple weeks if you haven't been already.

Thank you,

Joe

Member News

Iowa

Ann Fessenden, U.S. Courts Library 8th Circuit, is pleased to announce the selection of Melissa Miller as the new Des Moines branch librarian. Melissa holds an MLIS with Law Librarianship certificate from the University of Washington, a JD from Creighton and a BA from the University of Northern Iowa. For about the last year, she has worked as the sole law librarian at a fifty-attorney Seattle law firm. Her experience also includes a yearlong internship at King County Law Library in Seattle where she worked primarily in reference, and positions as circulation assistant and legal research teaching assistant at Creighton Law School Library. She will begin her duties April 21.

Members of the Drake University Law Library faculty and staff were honored during recent Supreme Court Week events at the Drake Law School. Associate Professor and Reference Librarian Susan Lerdal received a Student Bar Association President's Award for Faculty Member of the Year. Public Services Administration Assistant Sherry VonBehren received the Friend of the Journal Award from the *Drake Journal of Agricultural Law* and the Friend of the Law Review Award from the *Drake Law Review*.

Meet MAALL Members

Meet...Corinne Jacox
by Stefanie Pearlman

Corinne is a catalog/reference librarian at Creighton University Law Library in Omaha, Nebraska. She started working at Creighton in September 2001 and has worked in law libraries since 1987. One reason she enjoys her current position is that she is able to see the interplay between cataloging and reference. She finds it, "...rewarding when I'm able to find something in the catalog because of the extra information that we've taken the time to add to the cataloging record."

In addition to her responsibilities at Creighton, Corinne also teaches cataloging for the library science program held at University of Nebraska-Omaha and offered through a cooperative partnership between the University of Nebraska-Omaha and the University of Missouri. She will also teach advanced cataloging this fall. Corinne is a member of two AALL special interest sections: OBS-SIS and TS-SIS. She is currently a member-at-large on the OBS-SIS Board and she has served as chair of the OBS/TS Joint Research Grant Committee and the OBS Local Systems Committee.

Corinne is married to Jay and has a son, Austen, who will turn twenty-one over the summer. In addition to celebrating her son's big birthday this summer, she also plans to attend the AALL Annual Meeting and Conference in Portland. If you see her shopping there, she just may be looking for a magnet to add to her collection. Corinne keeps her collection of magnets from places that she has traveled on display in her office. So, the next time you have the opportunity to view the other displays at Creighton, perhaps you can ask to view this one, too.

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Publication Schedule

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Those wishing to submit items should contact the editor for policy and format information.

Empirical Legal Research: The Next Big Thing for Law Librarians?

By: Darla Jackson, Head of Reference and Access Services
Oklahoma City University School of Law

“Empirical legal scholarship (ELS) is arguably the next big thing in legal intellectual thought.”¹ Tracey George, Professor Vanderbilt Law School

In preparation of this article I decided to conduct a survey of librarians from MAALL institutions to see what types of empirical research they were involved in. I received few responses. This was understandable given that several MAALL members confessed that they did not have a firm understanding of exactly what empirical legal research entailed. As a result, I determined that the first portion of this article should define empirical legal research and scholarship.

Empirical legal scholarship (ELS) has been described as follows: “ELS as the term is generally used in law schools, refers to a specific type of empirical research: a model-based approach coupled with a quantitative method. The empirical legal scholar offers a positive theory of a law or legal institution and then tests that theory using quantitative techniques developed in the social sciences.”² However, some have argued that this definition is too narrow because it does not include some qualitative research methods. Pauline Kim, a professor from Washington University Law School, has suggested a broader definition. She suggests that empirical legal scholarship is different from traditional research in that it relies on “methods developed in the social sciences to systematically explore facts about the operation of the law and legal institutions.”³ Kim indicates that this type of legal research is necessary because “there are important questions in the law and about legal institutions that can’t be answer” through the traditional textual analysis methods of research.⁴ Kim provides the example of a situation in which a researcher is interested in researching the impact of selecting a particular rule of law on the decision making of individuals and businesses. Textual analysis would not shed light on a topic. However, we can certainly understand how an argument for a judgment accepting a particular rule of law would be strengthened by including evidence on the likely effect on “actors in the real world.”⁵

However necessary or important empirical legal re-

search is, given that it requires use of research methods developed by the social sciences with which many in the legal community are not familiar, there continues to be some reluctance to undertake such research. In addition to systematically collecting data, analysis of the collected data is also required. Because becoming familiar with the accepted procedures for collection or location of data as well as the analysis of the data requires investment of time and money, some in the U.S. legal academy have questioned whether conducting empirical research is really advisable.⁶

Despite the questions raised about empirical study and research, empiricism does appear to have taken hold in the legal community. The Association of American Law Schools 2006 Annual Meeting centered on the theme of Empirical Research.⁷ In July 2006 the Center for Empirical Research in Law (CERL), which not only conducts empirical research but also provides training to those interested in employing empirical research methods, was established at the Washington University Law School.⁸ Cornell University’s Journal of Empirical Legal Studies (JELS) began publishing exclusively empirically-oriented articles on a range of law and law-related topics.⁹ And other law reviews and journals published by law schools have begun to publish articles about or based on empirical research.¹⁰

Law schools are not the only U.S. law organizations interested in empirical research. In 2006 the American Bar Foundation, working with Indiana University School of Law, announced that it was accepting proposals for empirical studies regarding law firms and the legal profession.¹¹ The ABF research program continues study in these areas,¹² and the ABF has recently completed a book containing “the finest, most important articles” resulting from the ABFs empirical and interdisciplinary research over the past two decades.¹³

Law firms and the law librarians that they employ are also interested in empirical research. Susan Lerdal, Chair of the American Association of Law Libraries (AALL) Research Committee, reported that in 2004 law firm librarians reported spending twenty-nine percent of their time researching non-legal information.¹⁴ News, company information, verdict and settlement information and other types of

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empirical data, which serve the "business side" of legal practice¹⁵ and support the legal arguments made by firms, are increasingly important.¹⁶

Because of the growing emphasis on empirical research, it has become a topic of growing interest not only to firm librarians, as mentioned above, but to law librarians in a variety of positions in the United States. Barbara Monroe noted the growing influence of empirical research in academic legal research in the Academic Law Library Special Interest Section's Newsletter.¹⁷ Academic law librarians charged with providing support to faculty are engaging in collective discussion about empirical research support. "Supporting the Interdisciplinary and Empirical Research Needs of Law Faculty" is the title of the online forum discussion, sponsored by the AALL Academic Law Libraries Special Interest Section Faculty Services Committee, that took place on February 26-27, 2008.¹⁸

Law libraries and librarians are not just talking about empirical research. Several academic law libraries are hiring staff specifically to support empirical and interdisciplinary research. The Tarlton Law Library of the University of Texas at Austin recently began to recruit for a position that will provide specific support for interdisciplinary and empirical research.¹⁹ Duke Law Library hired a Ph.D. Candidate in Political Science to help "develop a comprehensive plan for supporting faculty empirical research."²⁰ Duke and other academic law libraries have also begun to recruit librarians with special skills or experience in empirical research to support their programs.²¹

How are law librarians developing their empirical research skills? Some are receiving training as part of their library and information degree programs. Surprisingly, however, it has been reported that twenty of the Library and Information Schools accredited by the American Library Association do not require a research methods course as part of the curricula.²² Some law librarians, with advanced degrees in other disciplines have already acquired the skills.²³ Others are attending training provided by professional organizations, such as the workshop AALL will sponsor during that AALL Annual Meeting. Still others may be utilizing training offered online, in-

cluding short courses like the "mini-class" on coding offered by Duke Law Library.²⁵

Regardless of how law librarians are acquiring the skills, they are using the skills to assist others in conducting empirical research and in locating information. The librarians at Georgetown have developed an Empirical Legal Studies Research Guide²⁶ and the Chicago-Kent College of Law Library staff has prepared an online Empirical Research Tutorial.²⁷ Matt Morrison of the Cornell Law Library along with Jill Fukunaga and June Kim of the University of California Los Angeles Law Library have been identified for their contributions²⁸ to the development of the Empirical Legal Studies Bibliographic Database.²⁹

In addition to producing tutorials and bibliographic databases, librarians must identify sources of data.³⁰ This requires that they become aware of free, consortial, and commercial sources of data such as the United Nations Development Programme,³¹ the Inter-university Consortium for Political and Social Research (ICPSR),³² and LexisNexis Statistical Datasets.³³ They must develop collections that provide access to the information needed by empirical scholars.³⁴ They may even be called on to help prepare literature reviews,³⁵ manipulate data using software application such as Excel, the Statistical Package for the Social Sciences (SPSS) and Stata³⁶, and assist legal researchers identify partners and co-authors who can help them interpret and analyze the statistical data.³⁷

In addition to helping other researchers, librarians may be conducting their own empirical research. At the 2007 Mid-America Association of Law Librarians Annual Meeting in Lincoln Nebraska, Susan Lerdal spoke about empirical research in a presentation entitled, "Sound Research or Seat of Your Pants: Should Law Librarians Conduct Empirical Research."³⁸ In the Winter 2006 issue of *Law Library Journal*, Lerdal also advocated librarian involvement in empirical research as a means of "improving decision making, increasing credibility among library users and funding bodies, and providing more opportunities for collaboration and interdisciplinary research."³⁹ Similarly, it has been noted that "it does appear clear, however, that it will become more and more 'necessary to use the methodology of other dis-

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ciplines – in particular, those of sociology, psychology, economics, linguistics, history – and to employ more generally applicable methodologies' in order to study the many problems facing librarianship today."⁴⁰ However, as one MAALL colleague noted, if librarians are going to engage in empirical research, we need to ensure that we are compliant with the regulatory requirements imposed on institutional research, such as the requirement for review of research proposals involving human subjects by an Institutional Research Board (IRB).⁴¹

Whether we are engaging in research ourselves or assisting lawyers, law faculty, or law students, it seems clear that we must familiarize with the empirical research methods. We must follow the example of our colleagues to support the research needs of our employers and institutions within MAALL.

NOTES AND REFERENCES

¹ Tracy George, *An Empirical Study of Empirical Legal Scholarship: The Top Law Schools*, 81 IND. L.J. 141 (2006).

² Id.

³ Pauline Kim, Do We Have the Numbers? Empirical Research in Law – International Law as a Case Study, Program at the American Association of Law Libraries Annual Meeting (July 10, 2006) (Recording of program available from MObiletape at <http://www.mobiltape.com/search.asp>, SKU 06AALL/CD-D3).

⁴ Id. A similar position is expressed by others writing about legal research methods. "The merits and relevance of using other disciplines such as sociology, political science, economics, psychology, history and feminism as aids to legal research have been widely recognized ... socio-legal research broadens legal discourse in terms of its theoretical and conceptual framework which guide the direction of the studies and its specific research methodologies are able to generate empirical evidence to answer research questions." RESEARCH METHODS FOR LAW 5 (Mike McConville and Wing Hong Chui, eds., 2007).

⁵ However, in response to the questions about the reliance on questionable empirical data, Pauline Kim points out that legal researchers approach issues with an advocacy perspective where as social scientist

more readily look at research as a truth seeking inquiry.

⁶ Much of the debate regarding the effort to conduct empirical research has centered around law professors. Posting of Lisa Fairfax to Conglomerate Blog http://www.theconglomerate.org/2006/07/should_young_sc.html (July 18, 2006) (on file with author) (Posting is titled Should Young Scholars Engage in Empirical Legal Research). Many of the concerns discussed were also addressed in Peter H. Schuck, *Why Don't Law Professors Do More Empirical Research?* 39 J.LEGAL EDUC. 323 (1989).

⁷ Association of American Law Schools, Association of American Law Schools Annual Meeting – Empirical Scholarship: What Should We Study and How Should We Study It (2006), <http://aals.org/am2006/index.html> (last visited April 3, 2008).

⁸ Washington University Law Center for Empirical Research in the Law, *About the Center* <http://cerl.wustl.edu/about.php> (last visited April 1, 2008).

⁹ Blackwell Publishing, Journal of Empirical Legal Studies (<http://www.blackwellpublishing.com/aims.asp?ref=1740-1453&site=1>) (last visited April 2, 2008).

¹⁰ For example, the University of Illinois published articles presented at its symposium for Empirical and Experimental Methods in Law legal research in its law review. An article on the history and future of empirical research was of particular interest. Michael Heise, *The Past, Present and Future of Empirical Legal Scholarship: Judicial Decision Making and the New Empiricism*, 2002 U. ILL. L. REV. 819 (2002). The topic of Law School efforts in empirical legal research is addressed by Tracey George. George, *supra* note 1. However, some have expressed reservations about whether the lack of peer review in student edited law reviews may result in publication of some research of questionable quality. Kim, *supra* note 3. This topic is also discussed in Gregory Mitchell, *Empirical Legal Scholarship as Scientific Dialogue*, 83, N.C. L. REV. 167 (2004).

¹¹ Posting of Bill Henderson to Empirical Legal Studies Blog http://www.elsblog.org/the_empirical_legal_studi/2006/11/data_available_.html (November 21, 2006, 10:18 AM) (on file with author) (Posting is titled Data Available for Empirical Research on Law Firms and the Legal Profession). Updates on the work is available at Indiana University School of Law, 8 Re-

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- searchers Join Law Firms Working Group http://www.law.indiana.edu/front/special/20070716_lfwg_henderson.shtml (last visited April 1, 2008) and Indiana University School of Law, *Law Firms Working Group* <http://firms.law.indiana.edu/about/index.shtml> (last visited April 1, 2008).
- ¹² See American Bar Foundation, *Current Research Areas* <http://www.abf-sociolegal.org/curreareas.html> (last visited April 1, 2008).
- ¹³ The American Bar Association will soon release the American Bar Foundation's Analyzing Law's Reach: Empirical Research on Law and Society. A description of the book containing the quoted language is available from American Bar Association, *Analyzing Law's Reach: Empirical Research on Law and Society* <http://www.abanet.org/abastore/index.cfm?sec-tion=main&fm=Product.AddToCart&pid=1620304> (last visited February 28, 2008). See also Barnes and Noble book description at <http://search.barnesandnoble.com/booksearch/isbninquiry.asp?r=1&ean=9781590318966> (last visited April 3, 2008).
- ¹⁴ Susan N. Lerdal, *Evidence-Based Librarianship Opportunity for Law Librarians?*, 98 LAW LIBR. J. 33, 34 (2006).
- ¹⁵ Id.
- ¹⁶ The importance of empirical data that supports the legal arguments has been emphasized in court decisions. "...the U.S. Supreme Court considered and cited to statistical evidence in their opinions in the University of Michigan affirmative action cases. See *Gratz v. Bollinger*, 539 U.S. 244 (2003) and *Grutter v. Bollinger*, 539 U.S. 306 (2003)." Illinois Institute of Technology Chicago-Kent College of Law Downtown Campus Library, *Empirical Research Tutorial* <http://library.kentlaw.edu/tutorials/EmpTutorial/index.htm> (last visited April 3, 2008).
- ¹⁷ Barbara Monroe, *Developments in Legal Education: A Short Note on Empirical Legal Research* (2006) 26(1) ALL-SIS Newsletter http://www.aallnet.org/sis/allsis/newsletter/26_1/DevLegalEd.htm (last visited April 3, 2008).
- ¹⁸ Positing of Toni L. Aiello to Academic Law Libraries SIS Faculty Services Roundtable Forum (all-fsr) at <http://share.aallnet.org/read/messages?id=82208> (March 6, 2008 12:32PM)(Posting summarizes discussion).
- ¹⁹ University of Texas at Austin, Interdisciplinary and empirical research specialist <http://tarlton.law.utexas.edu/archives/specialist.html> (last visited April 3, 2008).
- ²⁰ See Duke University School of Law, *Law Library Faculty Service Empirical Reference Support* <http://www.law.duke.edu/lib/facultyservices/empirical> (last visited April 3, 2008).
- ²¹ Duke University School of Law, *Reference Librarian* <http://www.law.duke.edu/jobs/reflib> (last visited April 3, 2008). Georgetown University Law Center, *Reference Librarian – Georgetown University Law Library* http://www.ll.georgetown.edu/about/documents/ReferenceLibrarian_01-2008.pdf (last visited April 3, 2008).
- ²² Lerdal, *supra* note 14, 38 citing Soyeon Park, *Research Methods as Core Competency*, 44 J. EDUC. FOR LIBR. & INFO. SCII. 17, 18 (2003).
- ²³ Thea Lindquist and Todd Gilman, *Academic/ Research Librarians with Subject Doctorates: Data and Trends 1965-2006*, 8(1) *Libraries & The Academy* 31 (2008) provides some information on Law Librarians holding Doctorates. Maya Norris, *The Accidental Profession: Work Experience, Education Prove Vital in Educating Law Librarians*, 6(6) *AALL Spectrum* 26, available at http://www.aallnet.org/products/pub_sp0203/pub_sp0203_Accidental.pdf, discusses the usefulness of a Masters in Business Administration degree for nonacademic law librarians. However, masters programs do not necessarily include the in-depth statistical training that doctoral degree programs require. George, *supra* note 1, 150.
- ²⁴ American Association of Law Libraries, *W-3: Conducting Empirical Legal Research*, 101st AALL Annual Meeting and Conference Program Announcement 13, available at http://www.aallnet.org/events/08_Program_announcement.pdf (last visited April 3, 2008).
- ²⁵ Mirya Holman, *Variable Coding: A Short Introduction* Duke University School of Law <http://www.law.duke.edu/lib/downloads/variablecoding.pdf> (last visited April 3, 2008). Additional information regarding training is available at Duke University School of Law, *Law Library Faculty Service Empirical Reference Support Training*, <http://www.law.duke.edu/lib/facultyservices/empirical/training> (last visited April 3, 2008).

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²⁶ Georgetown University Law Center, *Empirical Legal Studies Research Guide*, available at <http://www.ll.georgetown.edu/guides/EmpiricalLegalStudies.cfm> (last visited April 3, 2008).

²⁷ Illinois Institute of Technology Chicago-Kent College of Law Downtown Campus Library, above n 12.

²⁸ University of California Los Angeles School of Law, *ELS Bibliography Database Description* <http://www.law.ucla.edu/home/index.asp?page=2691> (last visited April 3, 2008).

²⁹ The database is available at University of California Los Angeles School of Law, *ELS Bibliography Database* <http://www.law.ucla.edu/home/apps/els/> (last visited April 3, 2008).

³⁰ Kim, *supra* note 3.

³¹ Statistics from the Human Development Report are available at <http://hdr.undp.org/en/statistics/> (last visited April 3, 2008). Joseph Doherty discussed the ease of use of data from the United Nations Development Programme in his comments during the program on empirical research at the American Association of Law Libraries Annual Meeting (July 10, 2006). Joseph Doherty, Do We Have the Numbers? Empirical Research in Law – International Law as a Case Study, Program at the American Association of Law Libraries Annual Meeting (July 10, 2006) (Recording of program available from Mobiclape at <http://www.mobiclape.com/search.asp>, SKU 06AALL/CD-D3).

³² Inter-university Consortium for Political and Social Research (ICPSR) home page <http://www.icpsr.umich.edu/ICPSR/index.html> (last visited April 3, 2008).

³³ The press release regarding the launch of the LexisNexis Statistical Datasets product is available at <http://www.lexisnexis.com/media/press-release.aspx?id=1030.asp>. At least one MAALL institution, the University of Oklahoma Law Library, in cooperation with the OU Libraries System, has the LexisNexis Statistical Universe available to its students and faculty. See the listing for the database at <http://libraries.ou.edu/eresources/LORA/LORA.asp?type=index&list=0&value=L> (last visited April 3, 2008).

³⁴ Kim, *supra* note 3, discusses the types of support empirical researchers will need from libraries and librarians. She notes that in addition to data, legal

researchers undertaking empirical research, who are not familiar with data collection or social science research methods, will need access to the literature of the social sciences in order to develop an understanding of the methods.

³⁵ Kim, *supra* note 3.

³⁶ Doherty, *supra* note 32.

³⁷ Kim, *supra* note 3. Kim repeatedly notes that legal researchers may need to partner with individuals trained in the methodologies of the social sciences.

³⁸ Susan N. Lerdal, *Seat of Your Pants or Sound Research* SPECIAL LIBRARY ASSOCIATION IOWA CHAPTER BULLETIN 16 (December 2006), available at <http://units.sla.org/chapter/cio/ciobulletin10.pdf> (last visited April 3, 2008) (Includes a short summary of some of the information provided at the MAALL Annual Meeting). Susan N. Lerdal, *Member News*, Special Library Association Iowa Chapter Bulletin 4 (December 2007), available at <http://units.sla.org/chapter/cio/documents/ciobulletin12.pdf> (last visited April 3, 2008) documents the presentation. A copy of the slides from Lerdal's presentation is on file with the author.

³⁹ Lerdal, *supra* note 14, 50.

⁴⁰ Ronald R Powell and Lynn S. Connaway, BASIC RESEARCH METHODS FOR LIBRARIANS 9 (4th ed. 2004) citing B.C. Vickery, Academic Research in Library and Information Studies, 7 J. OF LIBRARIANSHIP 153, 158 (July 1975).

⁴¹ Institutional Review Board may be established in compliance with 42 U.S.C. 289 and 45 CFR 46. Some articles reporting empirical legal research results detail in the methodology the approval of the IRB. See Jeremy B. Bluementhal, *Does Mood Influence Moral Judgment? An Empirical Test with Legal and Policy Implications*, 29 Law and Psychology Review 1, 13 (2005).

What to Consider When Interpreting License Agreements for Electronic Products

By: Douglas Lind, Law Library Director and Associate Professor of Law, Southern Illinois University

Some of us are familiar with standard clauses in license agreements for electronic products, and (for the time being) a few law librarians still have the authority to sign these agreements. But how many of us actually read and understand what it is that we are signing? For the uninitiated, there are several good Web sites out there which offer guidance and standard language. Many libraries and library associations create guidelines or sample language; these can easily be accessed on the internet. The problem that I have found with most of these sites is that they are overly broad and/or out of date to be of any practical use to the librarian charged with interpreting (and sometimes signing) license agreements.

In my experience I have found the following handful of links to be the best starting points:

NERL Licensing Principles (licensing guidelines and generic licenses)

<http://www.library.yale.edu/NERLpublic/licensingprinciples.html>.

- In my opinion the best site for guidance on electronic licenses.

Yale University Library

<http://www.library.yale.edu/~llicense/usecls.shtml>.

- Provides example clauses and commentary.

<http://www.columbia.edu/cu/libraries/inside/ner/license-checklist.html>.

- A useful checklist from Columbia University for internal use.

AALL: "Principles for Licensing Electronic Resources" (2004)

<http://www.aallnet.org/committee/reports/LicensingPrinciplesElecResources.pdf>

- Revised report by the Licensing Principles for Electronic Resources Special Committee.

So, what should one actually be looking for when reviewing a license? And furthermore, if university counsel is going to review the agreement anyway, what role (if any) should the library play in all of this? As the demand and availability of electronic products proliferates throughout law schools it is in-

creasingly important to take the time to read and understand the conditions to which the library is now beholden. While it is common practice to have university counsel or purchasing office vet all contractual services this doesn't preclude someone in the library taking a look at those things which might directly affect the library – things which university counsel might not be concerned with.

What follows are common legal issues and concepts found within license agreements and how they might affect the purchaser or the university. The clauses are divided into two broad categories: "clauses which affect law libraries" and "clauses which affect the law school or university at large." Although much of what is found below is the result of years of my analyzing license agreements I can not take full credit. The NERL licensing principles provided wonderful direction as did the insights of my fellow members of a university wide committee I was on while employed at Georgetown. The committee's task of analyzing sample clauses as well as interviews with university counsel and University Purchasing Office proved to be invaluable.

In conclusion, if there is something in a license agreement which you don't agree with, work with the vendor! I have found that many are willing to make minor changes. Sometimes they are not agreeable, citing company policy in refusal to change clauses (such as a request I made to remove all language requiring binding arbitration). In those cases you need to decide how badly you want the product. Is the clause a deal killer or can you live with it? For the record, I've learned to live with a lot of minor clauses which, in principle, I disagreed with, but in practice never adversely affected the library or university. Finally, your school's legal counsel or purchasing office should always be consulted whenever you have concerns or are making modifications to any license agreement.

Clauses Which Affect Law Libraries:

Authorized users

Commentary: Authorized users should be defined by their affiliation with the Law School as opposed to their geographic location. Categories of affiliation are determined by each library. Additionally, it is good practice for law libraries to ill make every effort

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to negotiate access for other non-law patrons affiliated with the University at large.

Sample language (from NERL license):

“Persons affiliated with Licensee: Full and part time students and employees (including faculty, staff, affiliated researchers and independent contractors) of Licensee and its member institutions regardless of the physical location of such persons.

Walk-ins: Patrons not affiliated with Licensee who are physically present at Licensee’s site(s) (‘walk-ins’).

Alumni: Alumni of the University who have registered for access to the secure electronic network of the University.”

Copyright

Commentary: The University Libraries should not agree to any terms within a license agreement that would restrict fair use of rights of the materials.

Explanation to vendor: The copyright law of the United States governs the making of photocopies or other reproductions of copyrighted materials. Under certain conditions specified in the law, libraries and archives are authorized to furnish a photocopy or other reproduction. One of these specified conditions is that the photocopy or other reproduction is not to be “used for any purpose other than private study, scholarship, or research.” If a user makes a request for, or later uses, a photocopy or other reproduction for purposes in excess of “fair use” that user may be liable for copyright infringement. The University makes all reasonable efforts through the posting of information within the library to explain copyright restrictions and fair use rights to its patrons.

Course Packs

Commentary: Law libraries generally should negotiate terms that allow for the use of licensed materials in course packs.

Sample language to include (from NERL license): “Licensee and Authorized Users may use a reasonable portion of the Licensed Materials in the preparation of Course Packs or other educational materials.”

Course Reserves (print and electronic)

Commentary: Law libraries should negotiate terms that allow for the use of licensed materials for print and electronic reserves.

Sample language to include (from NERL license): “Licensee and Authorized Users may use a reasonable portion of the Licensed Materials for use in connection with specific courses of instruction offered by Licensee and/or its parent institution.”

Discipline

Commentary: Law libraries should make reasonable efforts to inform users of the terms of use; however, we do not have the ability to formally discipline users who breach the terms. Any and all references to regulating and disciplining authorized users who breach the terms of use should be removed.

Use Statistics

Commentary: The license should include provision of use statistics at least twice a year.

Sample language (NERL): “Usage Data: Licensor shall provide to Licensee statistics regarding the usage of the Licensed Materials by Licensee and/or its Authorized Users in conformance with the Codes of Practice for Project COUNTER located at: http://www.projectcounter.org/code_practice.html

Modification to Terms

Explanation to vendor: The University believes that it is unreasonable to make modifications to this Agreement without advanced written notice and without offering a pro-rata refund if we are not in agreement with the modifications to the terms. We propose the following language for this section:

Sample language no. 1: “Any changes to this

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Agreement must be made in advance and in writing and must be signed by both parties. In the event that changes to this Agreement proposed by the Licensor are not acceptable to the Licensee, Licensor shall refund to the Licensee fees applicable to the unexpired portion of their subscription period on a pro-rata basis.” (Source: variation on Foundation Grants license)

Sample language no. 2: “The University requests advanced notification of changes and the right to reassess its continued subscription to the Product if there are any ‘amendments to the Product(s) and Pricing’ as noted in this section. To ensure this, we would like to insert the following language into this section: ‘[xxxNAME OF COMPANYxxx] will notify LICENSEE in writing at least 30 days in advance of any amendments to the Product(s) and Pricing, at which time LICENSEE may elect to cancel the subscription and obtain a pro-rata refund of part of the fee based on the remaining unexpired portion of the subscription period.’” (Source: Salem Press license)

Interlibrary Loan

Commentary: Law libraries should remove references to the provision of data or statistics on ILL use; remove references to geographic limitations to ILL (e.g. ILL to US only). If they do not agree to electronic interlibrary loan without restriction, use preferred language number 2. Since we do not have the ability to track electronic documents sent to other libraries through the use of Ariel or Ariel-like systems, do not agree to any clause that asks the University to control use of the electronic version of the article at the borrowing library.

Explanation to vendor: It is this institution’s policy that we secure the same rights for use of electronic resources that are otherwise provided for under Fair Use laws, and as such we request the right to use the electronic version for Interlibrary Loan.

Preferred Language no. 1: The Licensee may supply through interlibrary loan a copy of an

individual document being part of the Licensed Materials by post, fax or electronic transmission via the Internet or otherwise, for the purposes of research or private study and not for commercial use. Specifically, copies may be made in compliance with Section 108 of the Copyright Act of the US and within the CONTU guidelines.

Preferred Language no. 2: Licensee may supply through interlibrary loan a copy of an individual document being part of the Licensed Materials by post, fax or secure electronic transmission using Ariel or its equivalent, whereby the electronic file is deleted immediately after printing, for the purposes of research or private study and not for commercial use. Specifically, copies may be made in compliance with Section 108 of the Copyright Act of the US and within the CONTU guidelines.

Backup copy

Commentary: The license should include the ability to create a backup copy to be used in case there are significant service problems with the publisher. This backup copy may also be used as the archival copy.

Sample language from the NERL license (with slight modification): “Upon request of Licensee, Licensee may receive from Licensor and/or create one (1) copy of the entire set of Licensed Materials to be maintained as a backup or archival copy during the term of the Agreement or as required to exercise Licensee’s rights for perpetual access to the licensed materials.”

Archival Access/Perpetual License

Commentary: Archival access should be negotiated for all purchased resources that are owned (not leased).

Sample language from the NERL license: “Licensor hereby grants to Licensee a nonexclusive, royalty-free, perpetual license to use any Licensed Materials that were accessible during the term of this Agreement, which provisions shall survive any termination of this

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Agreement. Except in the case of termination for cause, Licensor shall provide the Licensee with access to the Licensed Materials in a manner and form substantially equivalent to the means by which access is provided under this Agreement.”

Withdrawn Materials

Commentary: The license should include written notification and pro-rata refund in the event that more than 10% (especially in cases where we pay for online content) of the content is withdrawn and the licensee decides not to continue the subscription.

Sample language (NERL): “Licensor reserves the right to withdraw from the Licensed Materials any item or part of an item for which it no longer retains the right to publish, or which it has reasonable grounds to believe infringes copyright or is defamatory, obscene, unlawful or otherwise objectionable. Licensor shall give written notice to the Licensee of such withdrawal no later than thirty (30) days following the removal of any item pursuant to this section. If such withdrawal renders the Licensed Materials less useful to Licensee or its Authorized Users, Licensor shall reimburse Licensee in an amount that the withdrawal is proportional to the total Fees owed by Licensee under this Agreement.”

Clauses Which Affect the Law School or University at Large:

Arbitration or Mediation

Commentary: Preference is usually that any and all language that refers to arbitration or mediation be removed in its entirety. Generally, University Counsel would request that any terms that require use of a particular organization for mediation be struck.

Explanation to vendor: University Counsel recommends against agreeing to licenses that specify binding arbitration or mediation as a means for claims and dispute resolution, and as such we request that all references to arbitration and/or mediation be removed.

Cache Servers

Commentary: Strike any language prohibiting cache servers.

Sample replacement language (NERL license): “Licensee and Authorized Users may make such local digital copies of the Licensed Materials as are necessary to ensure efficient use by Authorized Users by appropriate browser or other software.”

Click-on licenses

Commentary: Generally, libraries should not agree to click-on licenses. Whenever possible, the library should negotiate a written license which would supersede a click-on license which could be changed by the publisher without the library’s knowledge.

Sample language on click-ons from NERL:

“Notice of ‘Click-Through’ License Terms or Other Means of Passive Assent: In the event that the Licensor requires Authorized Users to agree to terms relating to the use of the Licensed Materials before permitting Authorized Users to gain access to the Licensed Materials (commonly referred to as ‘click-through’ licenses), or otherwise attempts to impose such terms on Authorized Users through mere use or viewing of the Authorized Materials, Licensor shall provide Licensee with written notice of and an opportunity to comment on such terms prior to their implementation. In no event shall terms materially differ from the provisions of this Agreement. In the event of any conflict between such terms and this Agreement, the terms of this Agreement shall prevail.”

Confidentiality

Commentary: Strike any obligations to keep license terms or fees confidential. In addition, the vendor shall not sell or share any collected user information. Vendors should not collect information on our patrons. If they do, they need to include a FERPA provision within the agreement (see generally, <http://www.ed.gov/policy/gen/guid/fpco/ferpa/index.html>)

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Indemnification, Hold Harmless

Commentary: University Counsel advises that generally libraries should never agree to a contract in which the University indemnifies the vendor, without the vendor indemnifying the University.

Suggested Language:

“The University agrees to indemnify, defend, and hold harmless Licensor and its officers, directors, and employees from and against all claims, demands, liabilities, suits, damages, costs and expenses of every kind and description, including penalties and reasonable attorneys fees, proximately resulting from any negligent act or omission of the University or its officers, directors, or employees, or from any breach by the University of any obligation, representations, or warranties under this agreement.

Licensor agrees to indemnify, defend, and hold harmless the University and its officers, directors, and employees from and against all claims, demands, liabilities, suits, damages, costs and expenses of every kind and description, including penalties and reasonable attorneys fees, proximately resulting from any negligent act or omission of Licensor or its officers, directors, or employees, or from any breach by Licensor of any obligation, representations, or warranties under this agreement.”

Liability

Commentary: Liabilities should be mutual.

Sample language: “In no event shall either the University or Licensor or their respective officers, agents, or employees be liable for loss of profits or for indirect, special, incidental or consequential damages, to either the University or Licensor, arising out of or related to the performance of this Agreement.”

Quality of Service

Commentary: University Counsel recommends having a statement that requires the vendor to compensate the library for downtime. The li-

cense should always include contact information for help with problems and requirement of notification of scheduled maintenance.

Sample language (from NERL): “Licensor shall use reasonable efforts to ensure that the Licensor’s server or servers have sufficient capacity and rate of connectivity to provide the Licensee and its Authorized Users with a quality of service comparable to current standards in the scholarly information provision industry in the Licensee’s locale. Licensor shall use reasonable efforts to provide continuous service seven (7) days a week with an average of 98% up-time per month. The 2% down-time includes periodic unavailability due to the maintenance of the server(s), the installation and testing of software, the loading of additional Licensed Materials as they become available, and downtime related to the failure of equipment or services outside the control of Licensor, including but not limited to public or private telecommunications services or internet nodes or facilities. Scheduled down-time will be performed at a time to minimize inconvenience to Licensee and its Authorized Users. Licensor shall notify Licensee in a timely manner of all instances of system unavailability that occur outside the Licensor’s normal maintenance window and use reasonable effort to provide advance notice of hardware or software changes that may affect system performance. If the Licensed Materials fail to operate in conformance with the terms of this Agreement, Licensee shall immediately notify Licensor, and Licensor shall promptly use reasonable efforts to restore access to the Licensed Materials as soon as possible. In the event that Licensor fails to repair the nonconformity in a reasonable time, Licensor shall reimburse Licensee in an amount that the nonconformity is proportional to the total Fees owed by Licensee under this Agreement.”

Renewal information

Commentary: Unless there are significant cost savings involved, universities are hesitant to agree to multi-year contracts. For annual renewals of licensed resources, libraries should

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encourage vendors to not require that a new license be signed at the point of renewal unless the terms of the license have been changed. It is burdensome to have to review, and, possibly renegotiate licenses (if the license reverts to the former terms) every year. The contract should remain in force until one of the parties requests a change allowing the other party thirty days' notice prior to implementation of the change.

Site / Secure Network Definition

Commentary: The definition of authorized site should not be geographically based. It should allow for access to all authorized users who access the network.

Sample language: "A network (whether a standalone network or a virtual network within the Internet) which is only accessible to Authorized Users approved by a Member whose identity is authenticated at the time of login and periodically thereafter consistent with current best practice, and whose conduct is subject to regulation by the Member."

Taxes

Commentary: Most law schools are non-profit and exempt from taxes. Clauses that refer to taxes should be removed.

Termination / Breach

Guidelines: Terms should be mutual, provide for time (30 days) to cure breach, and provide for refund if licensor terminates without cause, change 'breach' to 'material breach', and insert 'reasonable' whenever possible.

Explanation to vendor no. 1: It is this institution's policy that all language concerning termination and breach, such as in these two sections, be made reciprocal.

Explanation to vendor no. 2: The clause on termination does not provide for a pro-rata refund if the termination is made without cause. We feel this is unreasonable and we propose to add in language that would provide for such an event, such as "In the event that the

[xxxNAME OF COMPANYxxx] terminates Subscriber access to the service without cause, the [xxxNAME OF COMPANYxxx] will provide to the Subscriber, a refund or credit based on the unused portion of the paid subscription period on a pro-rata basis."

Sample language no. 1: "Either party may terminate this license for substantial or material breach of the agreement by providing the other party with written notice in paper or electronic form. Prior to termination, the offending party will have thirty (30) days to cure breach, if curable. If the [xxxNAME OF COMPANYxxx] is the breaching party and the Licensee is subsequently terminated, [xxxNAME OF COMPANYxxx] shall make a pro-rata refund of part of the Fee to the Licensee, taking into account the remaining unexpired portion of the Subscription Period. No refund will be provided to the Institution if they are the breaching party and termination results." (Source: Columbia University Press license)

Sample language no. 2: "In the event of any systematic, persistent, or substantial unauthorized use of the Licensed Materials by an Authorized User, either the Licensor or the Licensee may suspend access to the Internet Protocol ('IP') address(es) identified as the one(s) from which the unauthorized use originated. Once the breach has been cured, if a curable breach, access to the suspended IP address(es) will be restored."

News From Other Chapters

CALL (Chicago Association of Law Libraries)

CALL Bulletin <http://www.aallnet.org/chapter/call/publications/callbull205.pdf>

Fall 2007 Number 205

Bob Winger's article about former Chicago area law librarian Carl Yirka offered interesting insight into one law librarian's diverse career. Now the director of the law library at the Vermont Law School, Carl detailed his varied educational and professional experiences. While many of us may use flash drives, Debbie Ginsberg gave readers an in-depth look at different types and functions of USB flash drives. Wikis, how best to use them, and a list of resources about them were the topic for Therese Clark Arado's "Techbuzz" column.

CoALL (Colorado Association of Law Libraries)

CoAll Scuttle <http://www.aallnet.org/chapter/coall/scuttle.asp>

Winter 2008 Volume 18 Issue 1

CoALL has created a new column in their newsletter that highlights one of their member libraries. Read this issue to learn more about the National Indian Law Library (NILL) in Boulder, CO. Of particular interest may be the updated content on NILL's Web site regarding Basic Indian Law Research Tips for Federal and Tribal Indian Law. For readers, this issue also provides a review of the book, *Wretched Sisters* by Mary Welek Atwell.

HALL (Houston Area Law Librarians)

Houston Area Law Librarians Newsletter <http://www.aallnet.org/chapter/hall/Newsletter/JanFeb08.pdf>

January/February 2008 Volume 25

While full of local chapter news, this issue of the HALL newsletter also presented an informative article about AALL's principles regarding public information on government Web sites. Along with summarizing the AALL policy, Karen Silber outlined the principles and gave a link to AALL's Principles and Core Values.

LLAGNY (Law Library Association of Greater New York)

LLAGNY Law Lines http://www.aallnet.org/chapter/llagny/Ll_Fall2007.pdf

Fall 2007 Volume 31 Number 1

Astrid Emil offers practical advice on crafting library displays, and William Manz provides a guide to New York legislative intent research.

LLAW (Law Librarians Association of Wisconsin)

LLAW Newsletter <http://www.aallnet.org/chapter/llaw/publications/newsspring08.pdf>

Spring 2008 Volume 25 Number 4

"Unusual Items in our Library Collections" presents a round up of just that and reveals libraries that own anatomic models (ordered for medical cases) and a ping-pong paddle pouch, among other remarkable items. A "Recommended Reading" feature suggests a variety of recent professional articles and postings that might be of interest.

LLOPS (Law Librarians of Puget Sound)

LLOPSCited <http://www.aallnet.org/chapter/llops/committees/newsletter/winter07.pdf>

Winter 2007 Volume 18 Issue 2

Among the adventures undertaken by the Puget Sound law librarians included a field trip to Seattle Public Library's Seattle room. There the librarians received a personal tour highlighting some of the room's unique items. The collection contained artwork, photography, land records, indexes, and maps. Fred Ward offered his ideas on using the library's intranet Web site as another avenue to market the library and publicize its efforts. Lastly, as if keeping up with law school law reviews does not pose enough challenges, Ann Hemmens detailed some undergraduate students who now publish law reviews. One example she gave was the Washington Undergraduate Law Review available at <http://students.washington.edu/wulr/archive/?volume=1&issue=1>.

LLSDC (Law Librarians Society of Washington D.C., Inc.)

Law Library Lights <http://llsdc.org/attachments/wysiwyg/207/LLLW08.pdf>

Winter 2008 Volume 51 Number 2

Themed as "Extreme Makeover: Library Edition," this newsletter includes six articles on library renovations, ranging from compact shelving installation to re-purposing space to losing half of the library's area. The newsletter also includes a piece describing a free bookmarking service called AddThis.com, which provides code that can be added to a library's Web site to allow users to easily bookmark pages offline.

MALL (Minnesota Association of Law Libraries)

MALL Newsletter <http://www.aallnet.org/chapter/mall/mnews.htm>

January/February 2008 Mid-Winter Edition Volume 34 Issue 4

Lindsay Hutchins Matts discusses the use of social networking sites such as Facebook, MySpace, and Friendster in a feature article. She discusses the changing nature of "friend" and cautions users to remember that others can read posts and profiles that are not pro-

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News From Other Chapters *(continued from page 9)*

tected. Tara Boyer, a new law librarian, shares her need for a mentor as she settles into her first job and encourages established law librarians to create and participate in mentoring programs.

NOCALL (Northern California Association of Law Libraries)

NOCALL News <http://www.nocall.org/nocallnews/index.html>

January - February 2008 Volume 28 Issue 3

Once again, the NOCALL News stands out in the reader's advisory arena. Find out new (and old) books to read with your kids on your next plane ride in the "What Are You Reading" column by Nora Levine. The "Joe's Basement" column highlights a completely new way to take minutes at your next social gathering. Notes on odd facts mentioned by the librarians at the meal were taken on a restaurant napkin and transcribed for the newsletter. Those San Francisco librarians are an interesting bunch!

ORALL (Ohio Regional Association of Law Libraries)

ORALL Newsletter <http://www.orall.org/newsletter/index.htm>

December 2007 Volume 2007 Number 4

In response to the recent news coverage of dog fighting, this issue of the *ORALL Newsletter* provides an article on the legislative history of statutes outlawing dog fighting in Ohio. Sue Altmeyer attended a session on researching Canadian law at the fourth North-east Regional Law Libraries Meeting. The session looked at the differences of Canadian law from American law from the viewpoint of Homer Simpson. ("D'oh! Canada!") A link to the MP3 file of the presentation is provided.

SANDALL (San Diego Area Law Libraries)

SANDALL News <http://www.aallnet.org/chapter/sandall/newsletter2008-01.pdf>

January 2008 Volume 10 Issue 3

Betsy Chessler's article about searching in the PubMed database proved especially helpful because it gave specific search tips together with screen shots. This created an article that any librarian could refer to when searching in PubMed. The interview with Tom Champagne provided another glimpse into one law librarian's background.

SCALL (Southern California Association of Law Libraries)

SCALL Newsletter <http://aallnet.org/chapter/scall/newsletter/NewsletterJanFeb2008.pdf>

January/February 2008 Volume 35 Number 3

This issue's memorable articles center around its chapter's members. First, Brian Keefe eulogized the life and times of Dean Donald Dunn. Next, Tina Jagerson introduced herself by telling how and why she pursued law librarianship. Finally, Kelly Keach documented how he ended up in law school and his present position. While he does not yet have a Master's in Library and Information Science, he plans on working towards that goal.

SEAALL (Southeastern Chapter of the American Association of Law Libraries)

The Southeastern Law Librarian <http://www.aallnet.org/chapter/seaall/newsletter.htm>

Winter 2008 Volume 33 Issue 1

Carol Yecies at Nova Southeastern University reports on a pilot project in which they are participating. The project brings PACER to the general public. This is being done free of charge in sixteen pilot libraries around the country.

WPLLA (Western Pennsylvania Law Library Association)

WPLLA Newsletter <http://www.aallnet.org/chapter/wplla/newsletterwinter8.pdf>

Winter 2008

WPLLA has hosted a variety of informative programs for their membership, one of which was a presentation from Advance Me Associates on the power of image and first impressions. Read the article to learn how you and your library can improve your professional demeanor.