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**The CRIV Sheet**

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# The CRIV Sheet

## Editor's Corner

As *The CRIV Sheet* begins another year of publication, I would like to thank Tracy Thompson, executive director of the New England Law Library Consortium, for her guidance during my year as assistant editor. I am grateful for her help last year and am pleased that she is continuing on as the CRIV chair. Now I know that my questions about *The CRIV Sheet* will always be answered!

Our new assistant editor is Stephanie Marshall, faculty services librarian at Texas Wesleyan University School of Law. We will both work hard to publish a newsletter that represents the librarian's voice in the constantly changing legal marketplace.

In this issue we begin with a column from Ms. Thompson, the new CRIV chair. She discusses the CRIV's evolution as a committee, with a special focus on some of the changes that you may see in the next year. She introduces our members and announces the 2007-2008 CRIV subcommittee assignments.

The first *CRIV Sheet* of the year traditionally covers programs from the AALL Annual Conference that are relevant to CRIV's charge. For our first article, our new assistant editor, Ms. Marshall, reviews a program on an issue important to all in our field: A-3: "Legal Information: Globalization, Conglomerates and Competition Monopoly or Free Market?" Next, Joe Hinger, associate director for technical services at St. John's University, enjoys Cheryl Nyberg's musical session on digitized government documents, B-2: "Everything Old Is New Again: Finding Government

Document Collections Reborn Online." JoAnn Hounshell, director of bibliographic services at Chicago-Kent College of Law Library, learned all about licensing agreements when she attended E-6: "Understanding Copyright Challenges in Licensing: What to Look for in Your Subscription Agreement."

Mr. Hinger pulled double-duty for *The CRIV Sheet* and also reviews F-2: "Meeting the Challenges of E-Life Cycle Management—A Town Meeting with the U.S. Government Printing Office and National Archives and Records Administration." New CRIV member Rob Myers, manager of serials and collection access at Case Western Reserve University, notes the helpful highlights in G-6: "New Challenges Demand New Skills: Negotiation 101 for Librarians." Lastly, Dina Dreifuerst, budget and acquisitions librarian at Bracewell & Giuliani LLP, gives her unique perspective on this year's hot topic, H-3: "Legal Publishing in the 21st Century."

This issue also includes a request for nominations for next year's New Product Award. This is an important award, and if there is a new product you love, please consider submitting it for recognition.

*The CRIV Sheet* is nothing without content, and we would love to hear from you. If you would like to write an article, respond to a previous article, or share your thoughts on how we can better work with our vendors, please let us know. You may contact either of us at [aeaton@perkinscoie.com](mailto:aeaton@perkinscoie.com) or [smarshall@law.txwes.edu](mailto:smarshall@law.txwes.edu).

**Tracy L. Thompson** New England Law Library Consortium, Inc., Keene, New Hampshire

## From the Chair

There is a lot of excitement in AALL committees these days, given the work of the Special Committee on Committee Structure. Changes are afoot, and as my oldest son Sam always reminds me, change is growth!

As with many committees, the CRIV may see some growth in 2008-2009. The special committee has proposed a revised charge for the CRIV and an extended term of service for committee members from two years to three. The special committee consulted with last year's CRIV chair, Nina Platt, and the sitting CRIV had the opportunity to review the proposal and provide feedback. I'm grateful to the members of the CRIV who undertook a careful review of the revised charge and shared thoughtful insight.

The special committee will have completed its final report by the end of October, so as of this writing I'm

not sure of the outcome. In any case, I'd like to thank the special committee for its work on behalf of the membership. It's important for organizations to step back and make sure that "the way we've always done it" is still an effective way to do it.

But this year's CRIV is still operating under the existing charge, and we have some changes of our own planned. One of the CRIV's goals is to assist members in becoming their own best advocates with respect to their vendor relationships. To that end the CRIV has devised a monthly tool called CRIV Tips. By the time of this publication you may already be familiar with them.

CRIV Publications Subcommittee member Rob Myers has created a series of 10 scenarios that you might encounter in your everyday work life. One of these

hypothetical situations will be set out in AALL's new monthly e-newsletter, beginning in September and running for 10 months. Following each problem set will be a link to an existing CRIV resource that can assist members in resolving the problem or question at hand. We hope this will help to raise awareness about the resources already available to members through AALL.

Another area we plan to address within the CRIV this year is the practice of vendor site visits. The CRIV performs vendor site visits regularly as part of its ongoing outreach activities. In my tenure on the CRIV (since 2005) I have attended one site visit, hosted by LexisNexis. I was impressed by the level of exchange that occurred in this environment. The CRIV site visit team and the LexisNexis team were each very invested and engaged in the process. Both groups had expertise to share and lessons to learn. Since then I've given a great deal of thought to site visits, especially in light of the legitimate concerns of some that these visits are no more than gripe sessions or junkets.

While I take those criticisms very seriously, I believe the site visit, if properly constituted, can be an excellent tool for building positive and respectful relationships with our publishers and vendors. It's a unique opportunity for participants on each side of the table to gain insight into the needs, expectations, challenges, and expertise of the other.

At present no formal guidelines or procedures exist for site visits. The CRIV's Site Visits Subcommittee is chaired this year by JoAnn Hounshell. Ms. Hounshell served on the site visit planning committee last year (visiting CCH) and is familiar with the process. She heads up an effort to develop some policy guidelines and procedures for members and vendors alike. This will help all involved parties, and the membership at large, have a better sense of the goals and expectations of vendor site visits and will assist future CRIVs in planning. The CRIV plans to submit a formal procedure to the AALL Executive Board for consideration at its November meeting.

I welcome any CRIV-related ideas, concerns, or questions at [tracy.thompson@yale.edu](mailto:tracy.thompson@yale.edu).

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## New Orleans 2007—Educational Program Summaries

*Editor's Note: The handouts and recordings for these programs are available for purchase at [www.aallnet.org/products/products\\_educational.asp](http://www.aallnet.org/products/products_educational.asp).*

**Stephanie Marshall**

Texas Wesleyan University School of Law Dee J. Kelly Law Library, Fort Worth

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### Program A-3: Legal Information: Globalization, Conglomerates and Competition Monopoly or Free Market?

**Speakers:**

**Kendall F. Svengalis**

Rhode Island LawPress

**David Anthony Szwak**

Bodenheimer, Jones & Szwak, LLP

**Coordinator and Moderator:**

**LaJean Humphries**

Schwabe Williamson & Wyatt, PC

The focus of this session was to learn how much costs have risen and why and what you, the consumer, can do about it. *Note: the PowerPoint presentation is available at <http://rilawpress.com> on the bottom of the page.*

Ken Svengalis, president of Rhode Island LawPress and publisher of the *Legal Information Buyer's Guide and Reference Manual*, was the session's opening speaker. He stated that for 2006 the relative market shares of major legal publishers were Thomson with

41.5 percent, Reed Elsevier with 23 percent, and Wolters Kluwer with 20 percent. He said the "big three" controlled about 85 percent of the market for legal information, and when he compared 2006 operating profit margins, Wolters Kluwer had 17 percent, Reed Elsevier had 24.2 percent, and Thomson West Legal and Regulatory had 31 percent. He further stated these numbers are even more impressive when compared to the 25-year overall corporate average of 8.3 percent and the current corporate average of 10.3 percent.

Mr. Svengalis said there is a legal publishing oligopoly, with Thomson West alone accounting for 41 percent of the market. Since 1979, he stated, the "big three" have effectively "swept the decks clear" of potential sources of competition with new rivals becoming likely candidates for acquisition.

In looking at the average annual increase in new

costs for 1995 to 2007, Mr. Svengalis said that for Aspen, BNA, CCH, LexisNexis Matthew Bender, LexisNexis Michie, and Thomson West, it ranges from 2.5 to 5 percent. However, he said the average annual increase in supplementation costs for 1995 to 2006 is higher than the average new item cost. Mr. Svengalis said supplementation costs were: Aspen at 9 percent; BNA, CCH, and Matthew Bender at 4 to 5 percent; Michie at 8 percent; and Thomson West at a much higher 13.5 percent. He further stated that more than 85 percent of profits are derived from continuing supplementation costs. For Thomson West print publications, the average annual supplementation percentage cost increases for 1995 to 2006 ranges from 11.5 percent for codes and treatises to 22 percent for digests, he said.

Mr. Svengalis then discussed library management agreements (LMA). He stated the encouraged contract is three years, but two-year contracts are allowed. Rates are negotiated, he said, but typically average 7 to 8 percent in the second and third years with sometimes a teaser as low as 2 percent in the first year. He stated many law librarians are skeptical of the agreements for a number of reasons, including (1) failure to agree on the list of subscribing titles; (2) fluctuations in budgets; (3) high pressure sales tactic; and (4) the non-disclosure provisions.

Mr. Svengalis then stated that the *AALL Price Index for Legal Publishers* history shows the number of titles being indexed from 1973 to the present has significantly decreased. He said Thomson West refused to provide the *AALL Price Index* Committee with supplementation cost data for the period of 1998 to 2004. Svengalis believes that AALL has been unwilling to confront Thomson West on the issue.

Mr. Svengalis stated that customers have a right to demand transparency in pricing, particularly supplementation cost history, in order to make intelligent product choices and budgetary projections. He also stated that AALL needs to resuscitate the *AALL Price Index*, with or without Thomson West's assistance, and tighten Principle 2.3(i) iv of the *AALL Guide to Fair Business Practices for Legal Publishers*, which should preclude using confidential contractual arrangements as a pretext for refusing to provide generic annual subscriber supplementations costs. He added that "AALL should demand that 'partnerships' reflect mutual respect between legal publishers and AALL and the interest of its member libraries."

According to Mr. Svengalis, some things consumers can do are:

- reduce exposure to publications with high supplementation costs;
- if signing an LMA, cancel all marginal publications prior to doing so;

- discourage the use of the confidentiality clause;
- gain access to accurate data regarding annual costs of supplementation for publications and services;
- use the "Law Library Cost Saving Tips" in Appendix J of his *Legal Information Buyer's Guide and Reference Manual*;
- play off the major online services against each other (but you must be prepared to drop one service if the company will not meet your demands); and
- promote *Casemaker* as a low cost default alternative to the premium online services.

David Szwak, of Bodenheimer, Jones & Szwak, LLP, next spoke about the consumer side of this issue with some suggestions on how to deal with the legal publishing industry in the future. He stated that larger firms no longer supplement their treatises and use electronic sources only. Since paper resources are no longer accessible, Mr. Szwak said he introduced specialized Web sites at the bar association level to assist the smaller firms and pro se litigants with legal research. His firm started myfaircredit.com, myfairdebt.com, and its latest myfairauto.com. These specialized Web sites offer pre-packaged legal information to users who need legal resources.

Mr. Szwak said it is getting harder to get legal information at a fair price, and Thomson West has a monopoly on the market, controlling the mainstream legal materials that lawyers need. He stated that much like the credit reporting industry, West gets its information at a low cost from the courts. They manipulate and enhance it, and they control the market.

Mr. Szwak explained that at the end of June the Supreme Court came down with an opinion making it easier to use vertical price fixing (*Leegin Creative Leather Products v. PSKS, Inc.*, 127 S.Ct. 2705 (2007)). According to Mr. Szwak, this is the first real change in antitrust law in more than 100 years. The court decided not to use the per se illegal standard but a standard of reason. Mr. Szwak argues that this allows companies to fix prices and then come into court and argue to the jury that their reasons are pro-competitor.

Mr. Szwak said law libraries have an antitrust issue to deal with. He likens the legal information industry to the globalization of the credit reporting agencies, which no longer have local affiliate credit bureaus. The credit industry eliminated local affiliates and now the consumer must deal with the national office. He then stated that with the legal information industry, the only middle-man between Thomson West and the consumer is the library.

The session ended with questions from the floor.

## Program B-2: Everything Old Is New Again: Finding Government Document Collections Reborn Online

### Speaker:

#### Cheryl Rae Nyberg

University of Washington Gallagher Law Library

Cheryl Rae Nyberg, reference librarian at the University of Washington Gallagher Law Library, intelligently constructed this workshop, complete with music clips that served as an introduction to the next topic she was going to cover.

The program began with music from the '60s and '70s that have been remade since their original release. Ms. Nyberg compared these covered songs to government documents: they have been published in the past, some have been reprinted at a later date, and some have, or are being, digitized, bringing these older government documents to the forefront once again. She mentioned several traits of the newer versions of the government documents: sometimes the "remake" is better than the original, sometimes worse; they almost always differ in some way from the original; they may look the same or appear different; and, they may "behave" the same as, or differently from, the original version.

### Digitized Government Documents

The difference between government document digitization and music is that government documents do not fall under copyright, and anybody can "rework" these publications in any format. Ms. Nyberg stressed that when older government documents are digitized via optical character recognition (OCR), it is best to proofread the final product to ensure the highest quality. The OCR process is only a mechanized process that scans and indexes the print material, and sometimes the process does not function perfectly, resulting in a product that does not represent the original version.

When reviewing digitized government document collections, Ms. Nyberg suggests following these steps:

- (1) Locate the collection—Google, University of Michigan, GPO
- (2) "Habituate" the collection—become familiar with the strengths, weaknesses
- (3) Evaluate the source—would you recommend this source?
- (4) Populate the source—create guides, catalog it, advertise it, link it, etc.
- (5) Imitate "good collections" of government documents—not enough libraries do digitization projects

(6) Appreciate those that digitize—send thank-you letters, congratulations, etc.

Ms. Nyberg discussed sites that are free to access. She took the audience on a field trip to at least 50 digitization projects, some complete and some still being constructed and/or updated. When visiting each site, Ms. Nyberg looks for navigability, organization of the site, clunkiness, existence of lists, indexes, tables of contents, and click ability.

During the entire presentation, the speaker gave information about the scanning/OCR process. She specifically emphasized the PDF version when digitizing. There are two methods of digitization that produce a PDF. Simply scanning and posting a document to a site makes it virtually "unsearchable," even with the Adobe Toolbar. In order for a document to be searchable, once it is scanned, it must go through a process that puts the text behind the image—basically two versions for each scanned page. Adobe Toolbar and most search tools only search the text version that exists transparently behind the PDF image.

### Historical Issues

The challenge of historical sites was the next topic of discussion. Of great importance is the use of archaic language. The language used in the 1800s has changed, and in some instances words now have completely different meanings. When using sources that contain very old documents, it is best to use historical dictionaries to figure out what the terms were during the period in which you are searching.

Another historical issue that must be taken into consideration is the way the language was written. For example, in older texts the letter "f" represented what is now the letter "s," and the letter "v" represented what is now the letter "u." When scanning documents that use these styles, it is necessary to proofread and fix them in the underlying text to make them searchable by the user who is searching using contemporary spelling. The PDF version will always remain exactly as it appeared on the original piece. Obsolete typefaces must also be taken into account, as they can cause errors in the scanning process.

### The Role of Commercial Vendors

At this point in the program, Ms. Nyberg shifted her discussion to the commercial vendors that are digitizing documents. Of great importance is the fact that commercial vendors have better budgets, better coverage, more volumes, more titles, more search tools, the ability for usability testing, Web site design,

and testability. This is a great opportunity for them, as there is no copyright on the publications they are digitizing, and they will produce products that will generate income.

We began a field trip through some of the commercial vendors that are embarking on digitization projects of government documents. Of major focus were HeinOnline, LLMC Digital, and the Readex/LexisNexis serial set digitization “competition.” Lexis and Westlaw were also mentioned, but it was important to note that these two sources do not focus on government documents or scanning. They present documents in the HTML version and do not always offer an exact snapshot of the original documents.

To finish her presentation, Ms. Nyberg talked about all these scattered digitization projects in the online

world and mentioned that there is no easy place to go to find a listing or directory of these sites. In order to find them, users must navigate the Internet, create bookmarks in their search engines, and make their own finding aids to the projects that do exist. Emphasis was placed on the need for better access to these digitized collections.

Ms. Nyberg concluded this program by comparing all the government document digitization projects to dots on a map. She noted that nobody is connecting the dots; nobody is indexing or listing all the digitization projects that exist in the world in one place or in one single finding aid. As these government document digitization projects grow in number every year, there is a great need for such a tool to enable researchers to find the collections that exist.

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**JoAnn Hounshell** Chicago-Kent College of Law Library

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## **E-6: Understanding Copyright Challenges in Licensing: What to Look for in Your Subscription Agreement**

### **Speakers:**

**K. Matthew Dames**  
Seso Group LLP

**Stephen K. Garfield**  
Copyright Clearance Center

**Tracy L. Thompson**  
New England Law Library Consortium, Inc.

**Moderator:**  
**Scott Bailey**  
Squire, Sanders & Dempsey, LLP

Tracy Thompson, executive director of the New England Law Library Consortium Inc., opened the program by providing an introduction to the main components of licensing agreements and their implications. She reminded the audience that licensing is a verb and that all parties should be active participants in the development of an agreement.

Ms. Thompson recommended that libraries create a standard in-house licensing agreement and be willing to present it to the information provider at the beginning of the negotiations. She also recommended that libraries use the available AALL resources when creating and negotiating license agreements, in particular “Principles for Licensing Electronic Resources” and the *AALL Guide to Fair Business Practices for Legal Publishers*. Both documents are available on the AALL Web site.

Ms. Thompson recommended that the agreement define any potentially ambiguous terms, such as

commercial use. Libraries should also be aware of “click through” language that may make the library’s patron an independent party of a license agreement that has already been negotiated on his or her behalf. The “click through” language can easily be changed from “I read and agree” to “I read and understand.”

Ms. Thompson provided an overview of the anatomy of a license agreement and where the copyright implications might intersect. Authorized users may vary from resource to resource and therefore should be spelled out in each agreement. The license agreement should clearly state what content is being covered, what functionality will be available, and the statement of schedules for new content. Never assume authorized use; the license agreement should clearly state what is authorized and unauthorized use.

The agreement should include a fair use exception within the terms of the agreement. Usage statistics are increasingly important to libraries and should be included in the license agreement, including how they will be delivered. Libraries should be aware of whether the product is COUNTER compliant. The agreement should include privacy language on usage statistics.

The license agreement will include obligation language, which will cover uninterrupted access, indemnify the library against a third party content provider’s rights, set forth provisions for customer support and technical assistance, and provide adequate notices of changes or withdrawal of content.

The licensee's obligations will be to pay the bill, use reasonable efforts to limit use to authorized users, and manage access methods by password, IP, etc.

The license agreement should also state what terms trigger termination of the agreement. Dispute resolution terms should be included on whether the parties will resolve any disputes through mediation or arbitration. Governing law and venue provisions should also be part of the dispute resolution clause.

Libraries should be sure that all the terms are encapsulated within the agreement—that there are no oral agreements outside the contract, etc. The agreement should also be clear about how modifications will be made, how obligations can be sold, about protections for acts of God, and about severability and waiver.

Ms. Thompson concluded by discussing current developments in licensing, including the National Information Standards Organization Initiative Shared E-Resources Understanding (SERU). SERU is a set of shared understandings that all parties can point to and agree upon. There is a registry that includes publishers, libraries, and consortia. She also recommended Lolly Gassaway's *Get Copyright Right*,

*The Best of Copyright Corner from SLA's Information Outlook* (2006) and Leslie Ellen Harris's *Licensing Digital Content* and her Web site, [copyrightlaws.com](http://copyrightlaws.com), which includes copyright law online courses.

The panel discussion began with the question of how negotiable are the terms in a license agreement. Matthew Dames, of Seso Group LLP, believes that everything is negotiable—some terms more easily than others. The best way to negotiate effectively is to know what you have by doing a content audit. Stephen Garfield announced that the Copyright Clearance Center has just released a new annual copyright license for academia. This license was developed to provide comprehensive, “check-and-go” permissions to use content from books, scholarly journals, trade magazines, and newspapers.

The panel was asked to give examples of how a library can reasonably meet the obligation of notifying authorized users of terms and conditions and what clauses to be aware of within a license agreement. The library must understand its environment and its patrons as well as copyright. Mr. Dames cautioned librarians on license agreement language that in any way restricts usage of material that is already in the public domain.

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Joseph P. Hinger    St. John's University, Rittenberg Law Library, Jamaica, New York

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## **F-2: Meeting the Challenges of E-life Cycle Management—A Town Meeting with the U.S. Government Printing Office and National Archives and Records Administration**

### **Speakers:**

**Richard G. Davis**

U.S. Government Printing Office

**Kenneth Thibodeau**

Electronic Records Archives, National Archives and Records Administration

**Michael L. Wash**

U.S. Government Printing Office

This meeting was a dialogue with representatives from the U.S. Government Printing Office (GPO) and the National Archives and Records Administration (NARA) on progress that is being made in implementing important new digital initiatives—the Future Digital System (FDSys) and the Electronic Records Archives (ERA). Dr. Kenneth Thibodeau, ERA program director at NARA, explained the process NARA is undertaking to digitize the information to include in ERA. He outlined NARA's plan to preserve the historical archival records of the U.S. government. Its digitization plan to date has budgeted \$130 million for its major activity.

Archives are created by people in the government; documents are used for their created purpose, then they are transferred to NARA for destruction, or preservation and digitization. This decision is made by NARA, in conjunction with the agencies that submit the archival record. Interestingly, only two percent of all archives received are kept and preserved for “afterlife” activities. Once preserved, an appropriate access is given according to the level of access, depending on the confidentiality and security of the record.

### **The Life of a Record**

Dr. Thibodeau discussed the workflow of the records after they enter NARA. Initially the records are received, scheduled into logs, and transferred to storage. NARA has been digitizing documents since 1970, emphasizing presidential documents. Every four to eight years there is a high flow of presidential electronic records due to the change of the presidency. All records and White House photography left behind by the presidents are property of the U.S. archivist.

President George H. W. Bush left approximately 200,000 e-mails. President Clinton left approximately three million e-mails, and it is expected that the number of e-mails and documents being left with the current and future presidents will grow exponentially.

Many presidential documents are highly classified, and NARA must decide their level of access. All presidential documents are immediately indexed and reviewed as to whether they should be retained. All personal documents are returned to the presidents for their keeping, and all political documents are retained.

In 2009, NARA plans to unveil public access to the ERA. This new initiative will take advantage of technology in the preservation of the documents, and it will also enhance all current functions. A pilot phase begins this September, which will last for six months.

The goal of ERA is to develop “one-stop shopping” for all archives, using systematic basics for all the records in the system, and to preserve the electronic records that are in electronic format. NARA collaborates with many agencies to determine authenticity. NARA cannot edit, change, or commercialize the documents to make them visibly pleasing.

### **Digital Government Documents**

Richard G. Davis, acting superintendent of documents at GPO, said that GPO has been dealing with digital documents since GPO Access was released in 1994. He stated that currently 92 percent of all government documents are also issued in an online format. The biggest issue GPO encounters is the acquisition of the content from the specific agencies, and it is very difficult to identify all the fugitive documents. Partnerships with the federal agencies are extremely important, and much time is spent on forming them. These partnerships are informing the role of GPO and the depository program.

Davis stated that it is very important to reach out and educate users and make them aware of where the information is coming from, to ensure that the information is authentic, and to ensure that users are receiving the correct information that they set out to find. He discussed the issue of “official v. authentic” information.

GPO is currently authenticating public and private laws. In order to ensure the authenticity of the records, it must track the electronic documents from the point that they are released from the agency up until the moment that they are actually digitized by GPO.

FDSys will employ intuitive search mechanisms and will not use Wide Area Information Servers (WAIS).

FDSys will be interoperable between all GPO databases, and the same protocol will be used between them, making it easier for the end user. Also, the end user will not have to back out of documents to perform another search.

GPO is working heavily on “version” control. Much focus is given to access to the metadata and on creating bibliographic records for the electronic documents. GPO abides by Section 509 in the *Americans with Disabilities Act*, ensuring access to the information for the broadest audience. A final area where GPO is giving concentration is on creating opportunities to interact with GPO personnel, hopefully creating a virtual reference function.

Michael L. Wash, chief technical officer at GPO, discussed the challenges in receiving the information from the agencies and the chain of custody in order to provide authentic information. FDSys is quickly becoming reality. FDSys will be able to verify and track all versions of documents, thus giving permanent access to them. The workflow consists of structuring the data, preserving the data, and giving permanent access to the data. Wash talked about how the system must be adaptable to policy changes and that GPO ensured this when selecting a vendor for the new system.

A very interesting comment by Wash was that GPO is *not* trying to displace print publications because he believes print will be alive for a long time. He mentioned that FDSys has the capability to maintain and work with GPO print products. It is necessary to improve the search ability of the system to ensure that users receive the proper documents they need.

GPO works very closely with NARA, the Library of Congress, and many other agencies to ensure that everything in FDSys is searchable. The initial contract included a list of 3,000 requirements that must ensure that the system functions properly. Wash outlined the three releases planned for FDSys.

Davis ended the program by stating that one of the other challenges GPO faces is that there are not enough humans for the process. Automation helps tremendously for the access of the information, but it never replaces humans. Humans are always needed for policy issues that arise all the time. An example that Davis gave was, “At what level do they authenticate the documents? Is it on a document level, on a page level, or on a paragraph level? Or perhaps a more granular level?” This is where humans must step in to resolve issues that automation could never do.

The town meeting ended with questions and answers from the audience.

## G-6: New Challenges Demand New Skills: Negotiation 101 for Librarians

### Speaker:

**Lorraine Busby**

University of Western Ontario

Through the years I've attended a number of AALL Annual Meetings and have learned that if I take away two really valuable ideas from each program, I've gotten my employer's money's worth. As a former law firm library director and now manager of serials at a law school, I've negotiated my share of subscription agreements. Thus my hopes of learning something new as I signed up for "New Challenges Demand New Skills: Negotiation 101 for Librarians" were relatively low. Wow, was I wrong!

The program, coordinated by Tracy Thompson, executive director of the New England Law Library Consortium Inc., provided a wealth of information for negotiating with information vendors. Lorraine Busby teaches a class on vendor relations at the Library and Information Science program at the University of Western Ontario. Her well-honed negotiation skills are useful as the associate university librarian for information resources at the university.

Ms. Busby began her talk by suggesting that librarians feel that because "they are dealing with for-profit vendors, the vendors possess greater skill and experience in the negotiation process than librarians." The goal, according to Ms. Busby, is to be equal partners in acquiring information resources for our libraries.

She views negotiation as a way of doing business—akin to a game. Negotiation is neither good nor bad but rather a way of achieving a desired outcome. It should not be seen as a form of persuasion. The goal is an outcome agreeable to both parties. According to Busby, the comparable game is Monopoly. The goal is to win, but both parties need to believe it is possible to win. The players are your friends, and you shouldn't label them as good or bad. Strategy and technique are important, and there are rules to the game.

Negotiation differs from Monopoly; with Monopoly, the game comes to an end when one player wins. With negotiation, both parties want to continue after completing the particular transaction at hand (win-win). Librarians need and want to be able to negotiate with the vendor again.

### Key Issues of Negotiation

Ms. Busby identified several key issues to beginning the negotiation process. First, you must know exactly what you want. You shouldn't negotiate unless you have decided you want a particular product. It doesn't matter how inexpensive the price—if you don't want

the product, don't negotiate for it. Second, you must acquire the information you need to make decisions. Third, you need to have a plan and know what you are trying to achieve. Lastly, you should listen and learn. Even if you don't reach the desired result, you should walk away feeling you have learned something.

Things that can be negotiated include cost, service, licensing terms and conditions, payment terms, length of the agreement, the type of access that is needed, and how quickly access is needed. Ms. Busby observes that librarians often focus on the cost of the product as the most important thing to be negotiated, but she feels these other items may be just as or more important. As a negotiator, you must decide what is most important to your institution.

Money is often what drives the decision and tends to be what people are most interested in, but Ms. Busby negotiates the monetary issue last after getting everything else in place. This is because her institution frequently places a higher priority on training, service, and support than cost. According to Ms. Busby, it isn't worth the time and effort trying to negotiate a discount on lower priced products because the return on your investment is not significant.

Discounts vary depending on whether you work in an academic, court, or law firm environment. Discounts generally range between 10 and 15 percent but can go as high as 20 percent in the academic environment. You must figure out the standard discount in your type of environment.

### Licensing Agreements

Ms. Busby's view is that there are three philosophical approaches to licensing agreements. The first is to sign the agreement as presented because there is no history of vendors suing customers over license agreements for breach of contract. This is a position of strength only available to the largest, most prestigious institutions that have the resources to fend off a potential law suit.

The second is to sign the agreement, and if problems arise, be prepared to walk away. This approach can only be taken when you are sure there won't be serious negative consequences from terminating the agreement.

The third and safest approach is to refuse to sign the agreement until all terms and conditions are acceptable; this also educates the vendor of the institution's needs. While this is the best approach, it may become necessary to fall back on the second approach if the vendor will not agree to your terms and conditions.

Ms. Busby feels strongly that the more information you have, the stronger your negotiation position. She suggests taking advantage of meetings with new sales representatives to fish for information and to educate the representative about your needs. You want to establish a process that is legal, ethical, and businesslike.

It is best to start this process from the very beginning so that it is in place when it comes time to negotiate with this person down the road. Ask questions, disclose information you feel the vendor needs, and describe your institution's priorities and why you want the particular product or service.

Ms. Busby suggests librarians need a basic understanding of the information economy and its pricing structure. Vendors, especially jobbers, generally offer volume discounts for books, charge various handling fees for serials, and offer customized pricing for electronic information (Ms. Busby has been told there are more than 100 different pricing models for electronic information—meaning it is a highly negotiable area).

Prior to beginning any negotiation for a particular product, you need four pieces of information. First is the list price of the product; this will be the highest amount you may have to pay for the product. Second is the vendor's fiscal year, which helps in identifying when the vendor may be willing to offer the lowest prices due to year-end sales quotas. Third is understanding the relative importance of the product in the vendor's suite of products. If it is a new product or not a bigger seller, the vendor may be willing to negotiate. Lastly, know how much business your library does with the vendor; the more business you give them, the more they may be willing to deal.

Ms. Busby stresses that librarians need to create a plan that is more specific than simply getting the best price possible. We should assume that everything is

negotiable. Payment terms could be split between fiscal years, or you can ask to pre-pay if you are flush with money before your fiscal close. You may be able to delay payment until the next fiscal year if you need the product now but don't have it in your budget. You can negotiate for a percentage cap on renewal price increases, training support, customized service, catalog records, and local loads of content. Ms. Busby warns that your first price commitment should be low because you can't go back in subsequent years and get a lower price.

### **Negotiation Tactics**

When it comes to negotiation tactics, Ms. Busby feels strongly that you should use only tactics that you are comfortable with and that suit your personality. Possible tactics include keeping control of the conversation and using silence to your advantage. She suggests that you have delay tactics ready in advance, such as "I need to clear this with my boss" or "Let me think about that." She stresses that you need good communication skills along with taking and maintaining notes.

Often it is hard to know whether you've gotten a good deal due to confidentiality agreements and the difficulty in comparing different terms between different-sized libraries. The real question, according to Ms. Busby, is "Did you get what you want?" If you got what you wanted, then the deal was good.

Ms. Busby ended with some parting words of advice. Find the approach and style that work for you. When a vendor offers you a price, don't be afraid to ask for a better one. Ms. Busby was surprised to learn from a vendor that many librarians never ask for a discount. She said, negotiation is only possible if you ask, otherwise you are simply agreeing to whatever you are offered. Looking back on some of my own negotiations, I have to wonder, did I negotiate or did I simply agree?

**Dina Dreifuerst**

Bracewell & Giuliani LLP, Houston

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## **H3: Hot Topic: Legal Publishing in the 21st Century**

*Note: Before I begin my review of this program, I must issue a disclaimer or two. When I sat down in the meeting room to hear what the speakers and moderators had to say, I did so as the librarian relations manager for Jones McClure Publishing, an independent legal publisher. When I wrote this review, a little more than one month later, I was back in a firm law library, tasked with the responsibility of managing the library budget and our vendor relationships. I have strong opinions about the legal publishing industry and its relationship with the law library community. I hope that my unique*

*perspective will give you a deeper understanding of the issues discussed during this program.*

### **Speakers:**

**MaryKatherine Callaway**

LSU Press

**Stacey Caywood**

Wolters Kluwer Law and Business

**Scott Livingston**

LexisNexis U.S. Legal Market, Research Solutions

**Andrew Martens**

Thomson West, Senior Vice President for New Product Development

**Dick Spinelli**

William S. Hein, Senior Vice President

**Paul Wojcik**

BNA, Chairman and CEO

**Co-Moderators:****James S. Heller**

College of William and Mary, Wolf Library

**Sarah K. Wiant**

Washington and Lee University School of Law Library

As I looked up at the stage with its impressive array of industry insiders, I confess to wondering why any independent, but traditional, legal publishers were not at the table. The “big three and a half” were well-represented, of course, and clearly an effort had been made to include other voices, but both Hein and LSU Press are self-described “niche publishers.” Where was James, Knowles, CEB, or even Jones McClure? This question is not intended as a criticism of the tireless efforts of the program organizers; I simply feel that including full-bore, for-profit competitors in panels such as this one could lead to a more spirited debate with fewer pat answers to probing questions.

That said, the participating companies made a genuine effort to send suitably high-ranking speakers. I was particularly impressed to see BNA’s CEO on deck and felt that, of the four larger entities, his responses to the moderators’ questions were the most genuine. I was struck by his prompt and precise answer to the audience question regarding profit margins. Clearly, it is something he ponders often, as the head of a for-profit corporation.

Stacey Caywood from Wolters Kluwer (WK) reported an 18 percent profit margin, “lower than Thomson and Reed Elsevier...and I’m always getting pressure about that,” she said. The Lexis and West representatives referred the audience to their financials, due to be announced in a few weeks.

The format of this program was straightforward. Prior to the conference, the moderators solicited topics from the law library community via the law-lib discussion list and other channels. Most of the questions were for the entire panel; others were directed at just a few of the participants. In addition, the audience was invited to submit questions to the moderators, who then presented a few to the panel. The following is a brief summary of some of the discussion.

The first question pertained to each vendor’s primary market, and the process for pricing materials. BNA, Lexis, West, and WK all serve the broad legal market, while Hein and LSU focus on smaller segments. Most talked about the different roles of content creators and content aggregators. With respect to pricing strategies, all cited the same factors: production costs, competition, and something along the lines of “what the market will bear.”

Interestingly, in response to a later question regarding the possibility that decreased competition has led to increased pricing, no one was willing to concede that correlation. In fact, both Lexis and West posited that mergers allow economies of scale to actually lower costs for customers. Personally, I have yet to see that theory evidenced in the invoices and subscription notices that come across my desk.

When quizzed about the future of small legal publishers, BNA and Hein were both very upbeat. I agree with Hein’s statement that it’s “very bright for publishers that can remain independent.” In response to a later question about major challenges for their companies, both alluded to staking out a place in the market and “fighting for your piece of the pie.”

LSU added that university presses exist to further the mission of the university that supports them. While there has been some consolidation, they are niche publishers serving a unique market. In response to another question, MaryKatherine Callaway, of LSU Press, acknowledged that a typical first printing has dropped from more than 2,000 copies to about 750. And LSU looks for other revenue opportunities, like e-books or foreign translations.

All of the participants were asked to respond to a multi-part question dealing with how consolidation has affected the total number of print titles and whether we are at risk of losing divergent views. The general consensus was that the numbers did drop in the 1990s in the wake of the merger frenzy, but that print is viewed as a viable medium; most publishers are “reinvigorating” their print product lines. And the number of divergent views appears to be a non-issue in the Internet Age.

Not surprisingly, concerns about pricing practices were raised repeatedly. BNA, Lexis, West, and WK all laid the blame for double-digit increases on a broad range of factors, including expensive editors and authors, technology updates and innovations, and the profitability expectations placed on a publicly traded company. West’s response was brutally honest, if a bit chilling. If the pricing “is in line with the value provided, then despite the pain, it’ll be worth paying,” said Andrew Martens.

When asked to justify the use of their products in place of free or low-cost state and federal databases, Lexis called aggregation “the original value-add,” a position echoed by Hein’s reference to “one-stop shopping” for legal research. Others chimed in on the merits of editorial content, authority, organization, and taxonomy. BNA’s approach is to ask “how can we make this free information more valuable to the user?”

Speaking of organization of online resources, another question addressed the lack of indices and tables of

contents. The larger publishers all acknowledged that their companies stumbled on their first forays into the world of electronic research and assumed that indices and tables of contents had been rendered obsolete by the fabulous and faultless search engine.

In all, I found this program informative, both for that which was said and that which was left unsaid. The somewhat glib responses from what Lexis' Scott Livingston referred to as "the large players" spoke

volumes about how the law library community is perceived by decision-makers within their organizations. I think the moderators did an admirable job of asking probing questions and pressing for genuine answers, and they did have some success. Hopefully audience members came away from this program with a clearer understanding of today's legal publishing industry and what drives decisions made by the major players...and I hope that you, the reader, feel equally edified!

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## New Product Award Nominations Sought

Have you discovered any great new library products this past year? If so, let us know! It is time to nominate these products for AALL's New Product Award.

The New Product Award honors a new and innovative commercial legal information product that enhances or improves existing law library services and/or procedures. New products may include, but are not limited to, printed material, computer hardware and/or software, or other products or devices that aid or improve access to legal information, the legal research process, or procedures for technical processing of library materials. Any product that has been re-introduced in a new format or with substantial changes is also available. A new product is one that has been in the library-related marketplace for two years or less.

All AALL members are encouraged to think about the exciting new information products being used in their libraries and to send us their nominations for this award. Recipients of the New Product Award need not hold membership in AALL. Nominations for this award may be made by any AALL member and by vendors nominating their own products.

### **To Submit a Nomination for the 2008 Award:**

Please visit the CRIVPage ([www.aallnet.org/committee/criv/news/newprod.htm](http://www.aallnet.org/committee/criv/news/newprod.htm)) for a copy of the submission form. **Deadline for receipt of submissions is January 14, 2008.**

If you are a librarian nominating a product, please give as much information about the product as possible. The New Product Awards Subcommittee will contact the publisher of the product for any further information required.

If you are a vendor or publisher nominating a hardcopy product, please submit the form along with a sample product, if available. If you are nominating a Web-based or online product, please submit the form with all necessary contact information, including URL(s) and temporary login and password information.

For hardcopy products, brochures, and/or any other materials, we recommend that you send eight copies for the New Product Award Subcommittee and the AALL Awards Committee.

Please send completed forms and documents to:

Joseph P. Hinger  
Associate Director for Technical Services  
St. John's University  
Rittenberg Law Library  
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**Deadline for submissions is January 14, 2008.**