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CRIV Blog

crivblog.com

The CRIV Sheet

Editor's Corner

As outgoing editor, this will be the last “Editor’s Corner” column I write. It has truly been a pleasure to serve. I have been fortunate to work with a very dedicated *The CRIV Sheet* Committee—thank you Charles A. Pipins II, Gilda Chiu, and Valerie Carullo! In addition, thank you to CRIV Chair Jacob Sayward and the entire CRIV committee for providing support and guidance.

The CRIV Sheet serves as a vehicle for the communication of information regarding the practices of the legal publishing industry and legal information vendors. In this third issue of *The CRIV Sheet* for volume 38, we learn about the lawsuit between Casemaker and Fastcase. This interesting article provides a detailed look at the case and a fascinating history of the copyright issues involved. We also answer any questions you might have about the recent product name change for Thomson Reuters Westlaw. We provide an overview of TS-SIS

Vendor Supplied Records Advisory Working Group (VRAG)—this group has been working with legal information providers to provide outreach and support to vendors who supply MARC records for their products. If you are reading *The CRIV Sheet*, you are probably interested in vendor related issues and should check out our recommended programs for the AALL Annual Meeting & Conference in July. Finally, we have the most recent reports from the vendor liaison calls.

If you would like to contribute to *The CRIV Sheet* or just share your ideas on improving vendor relations, please contact us. Your comments, letters, suggestions, and submissions are always appreciated. We love to hear from librarians in a variety of settings. Please email any member of *The CRIV Sheet* committee with suggestions for articles: arobertson@pli.edu, capipinsII@law.umaryland.edu, gilda.chiu@brooklaw.edu, or ycarullo@bna.com. [View](#) the editorial policies.

Jacob Sayward Fordham Law School

From the Chair

Welcome to the third and final issue of the *The CRIV Sheet* for volume 38. We have a lot of coverage of vendor developments in reports from semiannual conference calls with Thomson Reuters and Wolters Kluwer, as well as in an article about the Fastcase/Casemaker lawsuit. We also have a preview of some programming at this year’s AALL Annual Meeting in Chicago. Please check out the recommended programs on vendor relations-related topics.

I specifically want to highlight the Vendor Roundtable, which will be held on Sunday, July 17 at 5:15 p.m. It is a great opportunity for AALL members to share their concerns with information vendors, so I strongly encourage you to attend. The roundtable’s

topic should be announced soon, and the roundtable will be moderated by my successor as CRIV chair, Diana Jaque.

I thank Diana and all the members of CRIV for their hard work this year. AALL, law libraries, and legal publishing all benefit from having great people volunteering to tackle thorny issues. Readers of *The CRIV Sheet* should join me in specifically thanking Alexa Robertson and all those who’ve worked on volume 38 of *The CRIV Sheet*. Excellent job!

CRIV succeeds when it serves the AALL membership, and it can only do that when it hears from the AALL membership. If you would like help resolving a vendor relations issues, please submit a [Request for Assistance](#) or [email me](#).

Playing Fast and Loose with Copyright Law: Casemaker and Fastcase Don't Fight Over the Right to Copyright the Law

When I started writing about the lawsuit between Casemaker and Fastcase, I was interested to see how the case would unfold. A lawsuit between two up and coming legal research databases, each of which is trying to leave their mark on the industry, was likely to be fascinating. I was excited to read how Casemaker would answer Fastcase's complaint. The law couldn't be copyrightable, could it? How could they defend themselves? There had to be something I was missing, something I was not aware of. Then Casemaker announced they would not fight the suit. That meant it was all over, right? Time to go home, nothing to see here. No. In fact, it makes it all the more interesting.

First a little bit of background, both for those who might not have heard about the lawsuit and those who may want more details. Georgia's Secretary of State has an agreement with Lawriter, Casemaker's parent company, designating them the exclusive publisher of Georgia Rules and Regulations with the right to license that content to other publishers. In return, Casemaker publishes the Rules and Regulations online free to the public. Fastcase sources state materials for its database from the state websites. Their online database contains both federal and state administrative rules and regulations, including Georgia's. On December 21 of last year, after realizing Fastcase was publishing the materials without license, Lawriter sought to enforce their rights and sent Fastcase a [take-down notice](#). The take-down notice warned that if Fastcase did not either pay for a license or cease publishing the files, they would "take those steps Lawriter deems necessary to protect its rights, which may include litigation."

Fastcase did respond. On February 3 of this year, Fastcase filed suit in the U.S. District Court in Atlanta asking for a declaratory judgment. In their [complaint](#), Fastcase stated that sourcing research materials from state websites hosted by private publishers is a common practice and they went on to claim that Casemaker engages in the very same practice as well. They also argued, "It is well established in American law that state laws, including administrative rules and regulations, are not copyrightable, and must remain public as a matter of due process."

On this last point Casemaker agrees. CEO David Harriman told [Lawsites](#) the company is "all in favor

of that, of having state law declared not copyrightable." For this reason, they've decided not to fight the suit. This leaves the court free to enter a declaratory judgment in Fastcase's favor. Casemaker's choice not to respond to the suit raises the question, "How might this affect Lawriter and Georgia's agreement?" However, the greater question that begs to be asked is, "How will this case affect the remaining contracts around the country?" Fastcase CEO Ed Walters hit the nail on the head when he told [Lawsites](#), "[T]he implications are much bigger [than this case.] There are claims of copyright in almost every state."

Free State Government Information (FSGI) is a project run by librarians and copyright experts working towards the goals of educating librarians and getting clearer state copyright on government publications. According to [FSGI](#), each state has the discretion to copyright their publications or to place them in the public domain, but "most state laws are ambiguous and often unknown, even by agencies within their state." The differences and ambiguities FSGI mentions impedes the work of archivists, librarians, and researchers. They complicate digitization projects and limit efforts to make the law available for free online.

Some state laws are very explicit about protecting their copyright, claiming copyright over everything the state produces. Colorado claims copyright over everything it produces, even over Colorado Revised Statutes despite the fact that such a claim would not likely stand up in court. The Colorado statutes are a clear example of a state's view that they feel they have full right to prosecute all but fair use of their works. Some states are vague and provide limited guidance about what the state views as protected by copyright. Idaho claims copyright over all "compilations," though there is little guidance as to what that means. Other states are completely silent. If you want to know more about your particular state, Harvard's Office for Scholarly Communication created the [State Copyright Resource Center](#), "to help identify the relevant laws in each state."

Historically, state laws and judicial opinions were copyrightable. According to Andrea Simon in her article "[A Constitutional Analysis of Copyrighting Government-Commissioned Work](#)," states did not have government printers, and getting private publishers to print the materials required an incentive. So it made sense as a public policy to allow copyright

to help bolster citizen access to the law. Are we once again in an analogous situation? As evidenced by the fact that so many of these exclusive publication contracts exist, private publishers require incentive to publish the material online for free. With citizens expecting access to everything online and governments failing to have the resources to make administrative rules and regulations accessible this way, is it actually in the public interest to provide for copyright in this one area? Probably not.

Not all state edicts are copyrightable anymore. The law has changed since it made policy sense to allow states to copyright *all* of their labor. The cases *Fastcase* cited in their complaint stands for the principle that some law is not copyrightable, but not the principle that *all* law is copyrightable. *Wheaton v. Peters*, 33 U.S. 591 (1834) only references Supreme Court cases; *Banks v. Manchester*, 128 U.S. 244 (1888) holds that there can be no copyright on work of judges; and *Howell v. Miller*, 91 F. 129 (6th Cir. 1898) stands for the principle that “no one can obtain the exclusive right to publish the laws of a state,” by which the court meant statutes. As such there is now a general prohibition against private copyrights of state court opinions and statutes, but there is not much guidance on administrative rules and regulations.

While *Fastcase* and *Casemaker* might agree that administrative rules and regulations should not be copyrighted, that is not the current state of the law. According to [FSGI](#), government documents meet the requirements for protection offered by Section 102(a) of the Copyright Act that automatically copyrights all law. Section 105 of the U.S. Copyright Act creates an exception preventing the United States Government from obtaining copyright over any of its works. Section 105 says nothing about state governments, and the rest of the Copyright Act is equally silent about copyright and the states.

The only case that addresses them according to [FSGI](#), is *Bldg. Officials & Code Adm. v. Code Tech., Inc.*, 628 F.2d 730 (1st Cir 1980). In *Bldg. Officials & Code Adm.*, Massachusetts had adopted a model code into their building code. The company who drafted and copyrighted the original model code wanted to prevent any other publishers from publishing the Massachusetts code because they in turn would be publishing the company’s work. The court did not find any of the plaintiff’s arguments convincing, finding their copyright in the code was void once it was adopted into law by Massachusetts. This case was interesting because while the court acknowledged that when government works have the force of law they should be available to the public it affects, it held that states, falling outside section 105 of the

copyright act, can determine their own copyright. The court was only concerned with preventing private publishers from having the right to keep the law from the public. So currently, all state produced materials, except statutes and judicial decisions, are automatically copyrighted under U.S. copyright law and are governed exclusively by individual state laws. Only the states themselves can likely exert a copyright in state administrative rules and regulations.

The *Fastcase/Casemaker* suit is not the first case where Georgia law has been entangled in a copyright suit. In 1982, Georgia attempted to claim a copyright over the Georgia Code. Georgia had a contract with The Michie Company to revise, compile, and print a new code. When The Harrison Company compiled their own version of the Georgia Code using the prerelease Michie code for reference, Georgia filed [suit](#). In the decision denying Georgia’s motion for preliminary judgment, the court said “[t]he public must have free access to state laws, unhampered by any claim of copyright” The court declined to examine if Georgia could have a copyright in the captions of the code compilation, since the defendant had not copied the captions in their compilation of the code. The case was later settled.

More recently, [Georgia sued Public Resource](#), a site run by Carl Malamud, for putting scanned copies of the *Official Code of Georgia Annotated* on their website. The difference with this case and the one previous was that Public Resource displays not just the statutory language, but also the annotations that Georgia contracted LexisNexis to draft. The Copyright Office may be on Georgia’s side as it takes no qualms with registering “annotations that summarize or comment upon legal materials.” The Copyright Office has one caveat: those annotations cannot have the force of law.

This is actually the point of contention between Malamud and Georgia. *The Official Code of Georgia Annotated* is the official version of Georgia’s Code. For this reason, Malamud argues that Georgia can have no copyright in it. Georgia disagrees, noting that the statutory text is available online for free, but claiming copyright in the annotations. This case is indicative of just how unresolved so much of our intellectual property law is. Eventually, the court must decide whether Georgia has a copyright in captions, and the decision will likely turn on whether the court finds that they have the force of law.

There are the two main theories used to justify preventing states from claiming copyright in the law. The theory the court in *Bldg. Officials & Code Adm.* used was “that citizens must have free access to the laws which govern them Due process requires people to have notice of what the law requires of

them so that they may obey it and avoid its sanctions.” Another theory of why there should be no copyright of any government publication is, according to Simon, the idea that “public sponsorship implies public ownership.” That is to say our tax dollars paid the salaries of those who created the material, so those individuals cannot have a “pecuniary interest or proprietorship, as against the public at large, in the fruits of their . . . labors” *Banks v. Manchester*, 128 U.S. 244, 253 (1888). It is this same argument that Fastcase ultimately makes in their complaint.

Regardless of the theory, even the Copyright Office seems to believe: anything that has the force of law should be in the public domain. Their [Compendium of U.S. Copyright Office Practices](#) states, “As a matter of longstanding public policy, the U.S. Copyright Office will not register a government edict that has been issued by any state, local, or territorial government, including legislative enactments, judicial decisions, *administrative rulings*, public ordinances, or similar types of official legal materials” (emphasis added).

The Copyright Office will not register anything that has the force of law, and in this they include administrative law.

It pains the brain to think that any government edicts carrying the force of law would not be in the public domain. Administrative rules have the force of law. Laws effect and control the lives of citizens, and due process requires citizens have access to the laws that govern them. As such, they should not be copyrighted by states. If more cases like the Fastcase/Casemaker lawsuit start being filed, it very well could force a change in the way states are allowed to copyright their works. Nevertheless, we should not sit idly by. If we want things to change, we are going to have to reach out to our state legislatures, maybe even Congress, and ask for change or at the very least clarification. For now, I'll be making popcorn to eat as I watch history unfold in a way that could change the way many librarians do business, hopefully for the better.

Gilda Chiu Brooklyn Law School

Thomson Reuters Westlaw: Platform Formerly Known as WestlawNext

With the sunseting of Westlaw Classic finally complete, Thomson Reuters made the decision to change their platform's name to “Thomson Reuters Westlaw” starting in February of this year. Some librarians have expressed concern about the rebranding and what it might mean for the future. Is Thomson Reuters possibly looking into restructuring the content available or current subscription contract terms or models? Other librarians have more immediate needs they would like addressed, such as will Thomson Reuters provide teaching and reference librarians with any promotional or educational materials to update their “WestlawNext” handouts and lessons. In order to get some answers, I contacted Thomson Reuters and here is what I was able to gather.

- The name change from “WestlawNext” to “Thomson Reuters Westlaw” was only a name change. Thomson Reuters has no intentions of altering plans, content, or subscriptions as part of the rebranding.

- “Thomson Reuters Westlaw” will still be accessible using the next.westlaw.com web address, as well as westlaw.com. In addition, any “WestlawNext” shortcuts or links in your OPACs, library research pages, etc., will still work and route to the correct webpage.
- Thomson Reuters is not planning on issuing any marketing or materials around the name change or to accommodate for the name change. Libraries are welcome to continue to use any “WestlawNext” branded items, handouts, etc., they have until Thomson Reuters needs to change them for another reason.

If you still have questions or concerns about this change, please feel free to contact CRIV or your Thomson Reuters sales executive or client manager as well as their [reference attorneys](#) (1-800-REF-ATTY).

VRAG: A Brief Overview

Angela Jones, Southern Methodist University and Caroline Walters, Harvard University

Over the past few decades, it has become somewhat of an understatement to say that law libraries have come to depend on electronic resources and databases. As the number of e-resources has proliferated, often replacing or duplicating print resources in the process, it is increasingly challenging for law libraries to represent these items in our online catalogs. Simply put, there are now far too many e-resources to be cataloged title by title by existing cataloging departments. But this challenge has also created new opportunities. There exist multiple vendors who fill the gap, creating MARC records for titles represented in online databases. One example is Cassidy Cataloguing, who create MARC records for titles in a variety of commercial databases, including HeinOnline, WestlawNext, Lexis, and others. Many commercial database vendors, who understand the importance of discovery, have begun to offer MARC records for their databases; two examples are Bloomberg BNA and, more recently, Wolters Kluwer. Law libraries have become increasingly reliant on these MARC records for research and discovery.

At the same time, the records supplied by vendors often vary in quality, with some being quite good and others less so. Often the main problem is that they don't always conform to accepted national cataloging standards. This can be particularly true of records provided by the commercial database vendors. To address this situation, TS-SIS created the Task Group on Vendor-Supplied Bibliographic Records in 2006. Renamed the Vendor-Supplied Records Advisory Working Group (VRAG), the group's purpose is two-fold. First, VRAG aims to advise vendors about the quality of their MARC records, especially in regards

to how well the records meet cataloging standards. VRAG also communicates to the law library community the sources for MARC records for various legal databases. [View the spreadsheet.](#)

In one example of the type of work that VRAG has done this year, VRAG has worked very closely with Wolters Kluwer as they created MARC records for IntelliConnect, and made them available to their customers at no additional charge. From the onset of their project, they sent VRAG sample records and were eager to get our feedback. The review process was followed up with regular conference calls with their MARC record developers, the development team at Wolters Kluwer, and VRAG members for additional clarification and feedback. We have also begun the same process with records for Cheetah. This collaborative approach has been a very productive experience that we hope the entire law library community will find beneficial. [Access the records.](#)

And finally, in response to the law library community's call for vendor-supplied MARC records, the William S. Hein, Co., Inc., has recently collaborated with Cassidy Cataloguing and offered a very interesting hybrid model: Hein provided the entire back file of MARC records to their *Law Journal Library*, *Legal Classics Library*, and *American Law Institute Library*. In order to receive this back file, customers agreed to purchase annual updates to the collections for three years, upfront, from Cassidy. We are hopeful that this experimental model was successful and that Hein and Cassidy will continue to expand the program.

The CRIV Sheet: Recommended Programs for 2016 AALL Annual Meeting & Conference

The 2016 AALL Annual Meeting & Conference will take place in Chicago from July 16–19, 2016. July will be here before you know it, so as you plan your [conference schedule](#), here are a few programs that CRIV recommends:

[“Are People Even Using This Database?”: e-Resources and Statistics](#)

Sunday, July 17
11:30 a.m.–12:30 p.m.
Hyatt Regency Ballroom D

Libraries have struggled for many years to come up with a comprehensive approach to evaluating e-resources. The demand to find a solution to this problem has grown dramatically as pressures on library budgets have increased. This session will focus on the role of usage statistics in the library process of evaluating e-resource purchases and renewals. It will begin with a presentation on the range of availability of usage statistics: COUNTER compliant, vendor specific, institutionally generated, self-generated, and the absence of

statistics. A panel of experts will then be asked questions based on information gathered in a preconference survey of firm and academic librarians. These may include questions regarding how to use statistics to make informed collection decisions, what the numbers actually mean, and how to convey the import of the statistics gathered to stakeholders.

Crowdsourcing a Skill Set to Manage the Legal Information of the Future

Sunday, July 17
11:30 a.m.–12:30 p.m.
Hyatt Regency Ballroom A

Major changes in the legal field and libraries are shifting the way information services and resources are purchased and accessed. What can librarians do to ensure they have a skill set for tomorrow's legal information landscape? This session will answer that question by drawing on the expertise of professionals involved with digital content, metadata, acquisitions and management, and the expertise of participants, to crowdsource a list of practical skills. The panel will discuss trends related to their area of expertise and specify skills needed to meet those challenges, as well as resources for skills development. Participants will discuss new skills in small groups and get feedback from the panel.

Deep Dive: Cool Tools Café

Sunday, July 17
2:30 p.m.–5:00 p.m.
Hyatt Regency Grand Ballroom AB

One of the most attractive features of the Cool Tools Café, for the presenters and attendees, is the casual atmosphere. Participants will learn in small groups about emerging or existing technologies from librarians who have implemented these technologies in their libraries. The small group setting allows for the opportunity to discuss why the technologies are useful, how they work, and how they can be implemented. Tools for legal research, collaboration, marketing services, instruction, productivity, citation, presentation, and website functionality are examples of past demonstrations. The variety of the demonstrations in these sessions epitomizes the dynamic role of today's legal information professional.

CRIV Vendor Roundtable

Sunday, July 17
5:15 p.m.–6:15 p.m.
Hyatt Regency Acapulco Room

Keep an eye on the [CRIV Blog](#) for forthcoming details.

Negotiate with Confidence

Monday, July 18
9:45 a.m.–10:45 a.m.
Hyatt Regency Grand Ballroom B

Enhance the value you bring to your organization and create new opportunities by learning how to negotiate with confidence. All types of librarians can benefit from improved negotiation skills, whether negotiating with vendors over contract terms, creating opportunities to collaborate, or negotiating within their organization for the library budget. Understanding key negotiation techniques can help you become a comfortable, confident negotiator in any setting. With the basic tools to plan for, manage, and evaluate negotiation opportunities, you'll be able to see every discussion—whether simple or difficult—as an opportunity to negotiate, influence your organization, and create value.

Contract Review: Considering the Vendor Relationship and Key Terms

Monday, July 18
11:15 a.m.–12:15 p.m.
Hyatt Regency Ballroom C

Contractual relationships are critical to the functioning of modern libraries, as content, support services, and systems are almost always governed by licenses and service agreements. Contract terms can seem arcane on the page, which is why it is important to frame the relationship with the vendor before reviewing the contract. This session will help attendees develop a framework for review and will highlight certain key contract terms and potential contractual pitfalls. The speakers will bring both academic and firm perspectives.

CRIV Liaisons to Vendors

CRIV has started holding semiannual calls with four legal vendors: Bloomberg BNA, LexisNexis, Thomson Reuters, and Wolters Kluwer. CRIV published notes from the calls as they become available both in *The CRIV Sheet* and on the [CRIV Blog](#). For this issue, we

have notes from the inaugural calls with Thomson Reuters and Wolters Kluwer. We published notes from the inaugural Bloomberg BNA and Lexis Nexis calls in the [previous edition](#) of *The CRIV Sheet*.

Gilda Chiu

CRIV/Thomson Reuters Semiannual Call

The first semiannual call between CRIV and Thomson Reuters was held on December 15, 2015. In attendance were Lori Hedstrom (Thomson Reuters); Jeff McCoy (Thomson Reuters); Kate Hagan (AALL); and Gilda Chiu (CRIV vendor liaison).

The conversation started with discussion about any new products or other issues of interest Thomson Reuters wanted AALL members to know about. Thomson Reuters had nothing concrete to report, though they mentioned there might be some developments coming for WestlawNext and Practical Law during the spring.

Next some member concerns were addressed. The first was the changes in customer service structure, especially in regards to academic account managers being integrated into the government customer team. Thomson Reuters explained that the decision of merging the academic and government customer service teams was made so that they could widen the access to managers for all of their customers by creating a larger team to even out the distribution of managers instead of having academic managers constantly having to travel to meet with customers. Overall, Thomson Reuters believes the move will be beneficial for customers and account managers, especially managers with too many accounts.

Another concern was a possible change in the labeling of pocket parts. A librarian mentioned noticing that pocket parts, in her case for the Alabama Code, only contained the volume number in which it should be filed in but not the date of the replacement volume (information typically used to

make sure the current volume is being updated and not the superseded volume). Thomson Reuters was not aware of any change in the labeling of pocket parts, also pointing out that the required information would still be on the filing instructions. They will get back to CRIV about whether the missing information is indeed a publishing change or just an error.

The best contact for informing Thomson Reuters about problems with the WestlawNext platform and if Thomson Reuters was going to continue to support indexes for its treatises on the same platform were also discussed. Thomson Reuters said the best way to provide feedback on WestlawNext, whether it is to report errors or recommend improvements, is to contact Product Development through the “Improve Westlaw” link located at the bottom of any page on WestlawNext. A librarian can also call any reference attorney through the dedicated 800 number (1-800-733-2889) and mention his or her concerns and the attorney will forward the comments to Product Development. As for the question about the indexes, Thomson Reuters will absolutely continue to support indexes on WestlawNext. The question came up after a librarian expressed having issues with index links not working and wondering if this meant that Thomson Reuters might be looking to phase out indexes on their platform. Thomson Reuters believes that the problems might have arisen from the migration to the new platform. They will inquire with their team and get back to CRIV about what exactly is the issue with the indexing errors.

The next call is set to be scheduled for late spring/early summer 2016.

CRIV/Wolters Kluwer Semiannual Call

On December 14, 2015, CRIV had its first semiannual call with Wolters Kluwer (WK). In attendance were Linda Dunton (Wolters Kluwer), Kate Hagan (AALL), and Sara Paul Raffel (CRIV vendor liaison)

There were no outstanding Requests for Advocacy involving WK products from the membership to discuss.

We discussed an ongoing project regarding MARC records. WK is creating MARC records for IntelliConnect and Cheetah. VRAG is working closely with WK to develop what the record should look like.

In terms of upcoming changes and developments—most content is moving over to the new platform, Cheetah. In addition, they recently rebranded; WK

Law and Business is now Wolters Kluwer Legal & Regulatory Solutions. The U.S. Legal entity is still CCH Incorporated, but the business unit name has changed. The logo will not change.

WK stressed that they are very much interested in continuing to support AALL programming and educational activities and would like to be on panels at the AALL Annual Meeting.

Finally, our current liaison, Linda Dutton, retired in February, and a permanent replacement has not yet been named.

CRIV will hold another call with WK in spring of 2016.