Contents

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The CRIV Sheet
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Rebecca Rich, Blog Administrator
Jacob Sayward, Blog Administrator
Cynthia Myers, Chair's Updates

CRIV Web Pages & Tools
Diana Jaque
Cynthia Myers
Debora Person

Education Subcommittee
Julie Kimbrough
Liz Reppe
Jacob Sayward

Marketing Subcommittee
Julie Kimbrough
Todd Melnick
Debora Person
Rebecca Rich

Member Advocacy
   (Request for Assistance)
Cynthia Myers, Chair
Diana Jaque
Liz Reppe
Alexa Robertson
Jacob Sayward

New Product Award Subcommittee
Liz Reppe, Chair
David Hollander
Sara Paul Raffel
Jacob Sayward

Vendor Roundtable, Annual Meeting
Liz Reppe, Chair
Cynthia Myers

Listserv Liaisons
Todd Melnick, ALL-SIS
Cynthia Myers, TS-SIS
Sara Paul Raffel, PLL-SIS
Liz Reppe, SCCLL-SIS
Rebecca Rich, Law-Lib
Jacob Sayward, Consumer
   Advocacy Caucus

Secretary
Kurt Mattson

CRIV Website
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CRIV Tools
http://www.aallnet.org/main-menu/Advocacy/vendorrelations/CRIV-Tools

CRIV Blog
http://crivblog.com

David Hollander   Princeton University Library

Editor's Corner

It is my pleasure to begin serving as the editor of *The CRIV Sheet*. First, I would like to thank the previous editor, Liz Reppe, for all of the hard work she did as the editor, providing an excellent example for me to follow. Second, I would like to thank the new assistant editor, Sara Paul Raffel. I look forward to working with her to ensure that *The CRIV Sheet* will continue to cover important, informative, and interesting vendor relations-themed topics that will be of use to our readership.

This issue of *The CRIV Sheet* covers a wide array of vendor relations topics addressed at this past Annual Meeting in Seattle. As in past November issues of *The CRIV Sheet,* the coverage provided here will bring the content of these sessions together and serve as an easy and easily located reference for the vendor relations content provided at the Annual Meeting. Also included in this issue is a description of the New Product Award to be given in 2014, with information about the nominations process.

Finally, a solicitation for contributions to *The CRIV Sheet*: our content is so relevant because working librarians have volunteered to take the time to write about the vendor-relations issues they confront every day. As you work with vendors to build your collections, look for ways to cut costs, and deal with publishing practices that affect your work, please consider writing about those issues, and others, for *The CRIV Sheet.* Our editorial policies are available here: www.aallnet.org/main-menu/Advocacy/vendorrelations/CRIV-Sheet/policy-criv.html. Please feel free to contact me if you have any questions!

Cynthia Myers   George Mason University Law Library

From the Chair

Welcome to the first issue of *The CRIV Sheet* for 2013-2014. It is a pleasure to serve as your chair this year. I would first like to thank Michelle Cosby for her excellent work as CRIV chair last term. CRIV's vice-chair this year is Liz Reppe, who will be taking over as chair next summer.

I would like to point out some of the tools that AALL members have available to assist with vendor relations. The CRIV Blog, available at crivblog.com, established by CRIV, is a resource for keeping up with vendor news. The blog welcomes your comments and has links to other resources such as *The CRIV Sheet,* the *Guide to Fair Business Practices for Legal Publishers,* and other information. Another useful resource is the Request for Assistance form, which can be found at www.aallnet.org/main-menu/Advocacy/vendorrelations/request-assistance.html, as well as on page 12 of this *CRIV Sheet*. This form provides a way for AALL members to submit issues of concern with vendors to CRIV. The form has proved to be a useful avenue for CRIV to mediate between librarians and vendors. Another useful resource is the *Guide to Fair Business Practices for Legal Publishers,* available at www.aallnet.org/main-menu/Advocacy/vendorrelations/docs/fair-practice-guide.html. CRIV encourages publishers to accept the *Guide* and encourages librarians to point out to a publisher instances when its actions fall short of the *Guide*'s requirements.

At the AALL Conference in Seattle, CRIV sponsored a program, Off the Page and Beyond the Book: New Models for Buying and Selling Legal Information, as well as the CRIV Vendor Roundtable. Both events were well-attended and thought-provoking. The Vendor Roundtable followed up on the previous year's topic, e-books, and was a frank dialogue between librarians and vendors about their plans for e-books. I would like to thank all of the librarians and vendors who attended this discussion. You can read a summary of the program and roundtable as well as other AALL Annual Meeting programs in this issue of *The CRIV Sheet.*

CRIV has a full schedule of activities ahead for this year. The majority of the work on CRIV is done via subcommittees with CRIV members serving on multiple subcommittees, which are listed on page one of this issue. I thank the new and continuing members of CRIV for their willingness to serve and help with the important work of CRIV.

For more information about CRIV, including useful resources, please see www.aallnet.org/main-menu/Advocacy/vendorrelations.

Michelle Cosby   North Carolina Central University School of Law Library

CRIV Vendor Roundtable

The CRIV Roundtable was held on Monday, July 15, and covered e-books one year later. The Roundtable was moderated by Cynthia Myers, incoming CRIV chair. With more than 50 attendees, the Roundtable was well-attended by librarians and vendors alike. Vendors in attendance included ALM/Law Journal Press, Cassidy Cataloging, Fastcase, PLI, ProQuest, West Academic Publishing, Thomson Reuters, Bloomberg, and LexisNexis.

The Roundtable opened with a question to find out which vendors were offering e-books. ALM started the ball rolling by stating that it has started slowly with e-books. It has a mix of offerings with some books being print only, some being e-books only, and some available in both formats. Bloomberg's focus has been getting books on both BNA and BLaw platforms. It also has been exploring e-lending solutions. ProQuest has two main platforms for e-books. Its focus has been general academic, but it has acquired approximately 15,000 law books, and it offers a patron-driven access model. Thomson Reuters said that it has about 450 titles on its e-books platform and plans to continue to grow. Fastcase offers advance sheet and topical advance sheets in an e-platform. West Academic pointed out that there is a difference in offering online content and e-books and others agreed. Thomson Reuters suggested not getting too wrapped up in the definition of an e-book in order to allow flexibility for change. LexisNexis explained that it has an "agnostic" approach, meaning that its e-books would work on any platform. LexisNexis also mentioned that keeping content true to form is important and that this is done by adding functionality. PLI closed out this question by talking about Discover Plus, its e-books platform.

The next question was about whether or not the vendors were using a multi-user licensing format for their e-books. PLI said that it is. LexisNexis said that it is staying traditional at the moment but that this could change. ALM mentioned that it is looking for an effective pricing model. ProQuest stated that it varies since ProQuest is an aggregator, but it has a single-user model. However, it is looking at a three-user model. Thomson Reuters has a single-user licensing agreement.

A librarian mentioned that locked-down networks in a librarian's or an attorney's offices pose a problem if an e-book needs to be downloaded. Downloading multiple platforms to some networks is problematic and sometimes requires that other departments get involved, such as IT, which can slow down the process. It was asked if vendors ever think about using the same platform to minimize libraries having to download multiple platforms. Though some vendors explained why proprietary platforms are important, the general consensus was that vendors need to work together so that they do not do a disservice to their customers.

One librarian mentioned the importance of e-books working with the integrated library system (ILS). The burden should not be on the end user to learn multiple platforms. Another librarian stated that not all users are sophisticated and that the process needs to be transparent and easy to use. Finding aids that are kept with the source were mentioned by librarians as being useful for finding e-book content. Cassidy Cataloging brought up the importance of cataloging records for e-books and that it would help with the ILS issue. A librarian mentioned that cataloging records are expensive and that the vendor should provide them. Bloomberg stated that they do provide these records. ALM is looking into this as an option.

The last question asked about plans for e-book mobile devices. This was a non-issue for most vendors, either because they use the agnostic approach to e-book dissemination or because they already have apps. PLI is working on an iPad app. ProQuest asked if there was a lot of demand for mobile apps. Fastcase wondered why people love apps but don't necessarily love using e-books.

One important message that came out is that the vendors encouraged the librarians to keep talking to them about e-books so that they can make better products. One idea that was proposed was for a forum for librarians and vendors to further discuss e-books. CRIV suggested that the CRIV Blog could be this forum. Additionally, librarians are still concerned with the limits e-books put on interlibrary loans. Librarians also stated that they would cut items with poor usage.

Seattle 2013: Annual Meeting Educational Program Summaries

Sara Paul Raffel   Paul Hastings LLP

Program A1: Making Sense of the Numbers: Understanding Vendor Statistics

Speakers: **Suzanne R. Graham,** Coordinator, Moderator, and Speaker, Cataloging Services Librarian at University of Georgia Law Library; **Jacob Sayward,** Head of Electronic Resources at Fordham Law Library; **Jean P. O'Grady,** Director of Research Services and Libraries, DLA Piper.

The speakers at this program did an excellent job of explaining vendor-supplied statistics and the challenges librarians must overcome to easily use them. Jacob Sayward kicked off the session with an explanation of Project COUNTER and SUSHI. COUNTER (Counting Online Usage of Networked Electronic Resources), which launched in 2002, is a nonprofit that includes librarians, publishers, and aggregators. The main goal is to standardize and improve online usage statistics of information resources. It has picked up steam within general academic libraries and vendors (the greatest COUNTER adopters are large non-legal research libraries). However, adoption is now starting to spread to law libraries and legal resource providers. The main benefit of COUNTER is that it standardizes metrics across vendors. For example, librarians know exactly what qualifies as a "search" or a "click" and can count on accuracy. SUSHI (Standardized Usage Statistics Harvesting Initiative) is a technical protocol developed by Project COUNTER and the National Information Standards Organization. It automates the process of harvesting the data and puts it into a consistent format (XML).

Unfortunately, not all vendors that law librarians work with are COUNTER-and SUSHI-compliant. Individual vendor reasons include not wanting to share proprietary information and lack of bandwidth (time, money, staff) to implement it. Sayward suggested that everyone ask vendors why they are not compliant when going around the Exhibit Hall.

Jean O'Grady began her section of the presentation by recalling that, historically, vendor statistics were pretty straightforward due to the limited detail available. Ultimately, this was because librarians were only focused on reporting for cost-recovery purposes. There was no easy way to track what lawyers were doing when a bill was questioned. Eventually, law firm librarians became interested in usage not only from a billing perspective but also in terms of tracking usage in order to maintain the "right" mix of electronic products. Now the major pain point for most librarians is comparing apples to apples—meaning that without a standard like COUNTER in place, how can we compare statistics from various vendors and get a complete picture of usage?

O'Grady shared a screenshot of the spreadsheet that she has created in an attempt to "equalize" all the different types and formats of data she receives from the various publishers. Some publishers provide vastly more data than others. O'Grady made special mention of the features available on Westlaw Analytics.

The major monitoring platforms available to law libraries right now are Research Monitor, Onelog, LookUp Precision, and Quattrove. These products do a number of things, such as perform client/matter number lookup and validation, save passwords, block unlicensed users, monitor usage, and develop usage analytics. O'Grady mentioned that DLA Piper uses Onelog.

In the final section of the program, Suzanne Graham discussed some of the more technical aspects of usage statistics. One important issue is identifying user groups, either directly through the database, via access from the catalog, or with Google Analytics.

Next, the audience was broken up into groups and given a worksheet. This hands-on element taught participants how to read basic usage data. In addition, the worksheet demonstrated how the configuration of the data can affect our perceptions.

There was a brief discussion about authentication methods and defining one's own metrics via a proxy server. Finally, the speakers concluded the program with some examples of creative data-gathering methods, such as tagging the database, and resources used in reference-tracking software (for example, Gimlet).

Rebecca Rich   Nova Southeastern University

Program A7: It's All About the Money: Rethinking the Way We Teach Cost-Effective Legal Research

Speakers: **Kathleen Darvil,** Coordinator, Brooklyn Law School Library; **Sara Kasai Gras,** Moderator, Brooklyn Law School Library; **Caren Biberman,** Cahill Gordon & Reindel LLP; **Cheryl Lynn Niemeier,** Bose McKinney & Evans LLP; **Mark A. Gediman,** Best Best & Krieger LLP; **Connie Smith,** Morgan Lewis.

The ultimate message of this panel of law firm librarian directors put together by two academic law librarians was that cost recovery should still be taught to law students, even though the traditional practice of cost recovery is changing at many firms due to a combination of fixed rate contracts and pushback from clients on paying for research costs. A Lexis survey from 2011 cited in the session noted that 71 percent of the largest firms would continue to bill separately for research and that this percentage increased to 77 percent for large and mid-sized firms. Each firm represented in the panel had a different model for cost recovery, and the librarians also discussed how they train new associates and how they believe law schools should be addressing this issue with law students. Darvil and Gras moderated the panel with the goal of helping academic librarians get a better picture of what cost recovery really looks like in firms.

Cost Recovery Instruction: Firms vs. Law Schools

Gras cited the results of a Lexis 2011 survey that showed that the percentage of law firms that consider cost recovery to be extremely important has increased since 2009 for large and mid-sized law firms. Gras defined cost recovery as the practices that law firms follow to recover some or all of their research costs. These methods vary widely by firm.

Gras started off the panel with some information from a survey she conducted of academic law librarians. Ninety-five percent of her respondents said that cost-effective research instruction was effectively incorporated into legal research courses. Most of that instruction, according to the survey, focused on free/low-cost research options, cost-effective strategies in Westlaw and Lexis, and retail pricing for Westlaw and Lexis. Some respondents also taught about cost recovery (37 percent) and law firm contract models (74 percent). Gras pointed out that the retail costs may not be particularly useful for most students because most firms have a negotiated flat rate. Gras suggested that teaching more students about cost recovery may be a better use of teaching time. She also suggested that teaching students low-cost resources is fine, but only if students balance cost with speed, efficiency, and comprehensiveness.

Gras noted that using a method that saves on pro forma charges but not time and efficiency may actually cost the client and the firm more money in billable hours. As an example, Gras pointed out that the new WestlawNext pricing model discourages some best research practices, which is why students need to be able to balance cost and efficiency.

Each Firm Has a Different Cost-Recovery Model

Caren Biberman started by explaining that the perception among law firms and law firm librarians is that new associates come into the firms knowing little about research. Biberman said that she thought it was important that law schools put more emphasis on the whole research process and offer more than basic research courses.

Biberman's firm only charges back Lexis and Westlaw to clients, but not any of their other resources. They pass through to the clients the same discounted cost that they pay, and they typically can recover the full discounted cost. Biberman also noted that many clients now refuse to pay for online legal research directly and said that this is reducing the importance of direct cost recovery. Alternative fee agreements, which are becoming more frequent, may also be used to cover cost recovery indirectly. Biberman said that this has changed since she got to her firm because their contracts used to be based on time rather than a flat rate and she used to give a lot of tips on that basis to summer and new associates. Biberman said that the student running up a vast bill in Lexis or Westlaw with no regard to cost is rare. Biberman's firm now has a transactional account with WestlawNext so she does still go over cost with associates. Biberman's firm has Westlaw and Lexis reps there five days a week for two hours each, particularly during the summer, which helps to teach cost-effective research to summer and new associates. Biberman's firm does a five-minute tip of the week where associates who attend get a $5 Starbucks gift card. Biberman also teaches new associates about non-charged back resources.

Mark Gediman's firm does not use discounting or retail pricing to do cost recovery. Gediman's firm uses a flat, per-search charge based on an algorithm over the past year of billable research usage (about 50 percent of overall use), their budgetary goals (typically 60 percent of the cost of the contract), and what is being accessed. This gives clients and attorneys predictability. Part of this is that his firm works with many public agencies that require fine-grained reporting before they will pay a bill. Gediman

pointed out that the ABA Model Rules (1.5) and formal opinions on cost recovery point out that cost recovery should not be a profit center for the firm. In Gediman's firm, online research services take up 80 percent of the cost of the library to the firm. Gediman said that students have a "Google mentality" when it comes to online research—students are so freaked out by the $10K brief story that they are scared to use paid sources. Gediman says that we pay for online resources so that we know we have the right cases. He gave the example of a case that appeared in Google results but had since been modified so that half of the opinion was depublished—an associate relying on the Google version would be wrong.

Connie Smith mentioned that students who have taken Advanced Legal Research are obvious from day one at Morgan Lewis. Smith's firm uses an hourly billing model, which is directly billed to the clients because they have historic data that makes it easier to set a rate for the following year. Most of her firm's clients are Fortune 500 or Fortune 100 companies that are in a better position than most to have the knowledge necessary to know if they are being billed appropriately because they have a point of comparison with inside counsel rates. Smith's firm requires that new associates meet with a librarian or a Westlaw/Lexis rep in order to receive their passwords. This also makes it easier for attorneys to focus on getting the right answer efficiently rather than the cost of a particular database. Smith's firm does not charge the client for case pulls or secondary sources—only for work directly for the client. They also have 200 other databases that are practice specific—so that students understand that Westlaw and Lexis should be the last place to go, not the first place to go. They offer training by vendors and librarians, and they keep the trainings under 15 minutes. There is a quick tip file, and it goes out every day in summer. Vendors have helped to script the tips.

Cheryl Lynn Niemeier works for a small firm (104 attorneys, 16 paralegals, and some interns). Niemeier's firm does not worry very much about recovering its costs for its Westlaw and Lexis bills. Niemeier doesn't care how much the attorneys use it and wants the attorneys focused on research, not cost. When it is billed, it is an effective discount of more than 95 percent. Niemeier still trains efficiency, though, because attorneys do still bill their time, which increases their productivity and makes clients happy.

Audience Questions

One audience member asked about the ethics of cost recovery. Gediman reiterated his point that law firm and academic librarians should be familiar with the ABA model rules, their jurisdiction's rules, and ethics opinions on cost recovery. Gediman also said that we have an obligation to attorneys and clients to use and find the best available information.

Another audience member asked if there were any real world consequences to new associates having mediocre research skills. Biberman said that partners will do their own research if they are not comfortable with the skills of associates. Biberman also mentioned that only a small percentage of associates make partner and implied that strong research skills differentiate associates. Lastly, Biberman said that regardless of the immediate effect on an associate's career, clients deserve the best in research skills. Niemeier concurred and added that associates need to know how to talk to librarians when they run into research difficulties, and he noted that associates will not make it in the long haul if they are slacking in the research department.

Another question was about gamification to encourage research training and other methods to encourage attendance at training sessions. Gediman said that this is the biggest challenge at law firms and suggested that reformulating content delivery for the TiVo generation, such as by making research training drop in, can increase attendance. Gediman said that at his firm this can make the difference between training a dozen lawyers and training 60. He also mentioned adding fun elements to the sessions, such as racing hot wheels. Biberman mentioned that having incentives, such as a drawing for an iPad when summer associates attend six out of seven training sessions, increased attendance. Smith said that this generation expects a reward for everything that they do, so taking that into account can increase attendance.

A law firm librarian in the audience wanted to know more about how Niemeier's firm was able to skip worrying about cost recovery. Niemeier said that they really just do not worry about it, saying that the amount they recover has really gone down and that they allow attorneys to put in non-billable account numbers when they do research. However, Niemeier said that to enable that, she is reducing the cost impact of her library elsewhere. Niemeier's library now has 25 percent of the books that it had when she got there, and she regularly assesses databases for usage and overlap in an effort to streamline resources. This has made her library more efficient and has reduced the impact on the overall firm budget. Smith added that many firms may not realize that the price of cost recovery is very high in terms of administrative staff time and resources so that after number crunching, in many cases the numbers may be a wash.

An academic librarian asked whether the firm librarians were seeing an impact on ease of getting good research results from the new platforms. Smith said that from what she has been seeing, associates still need to know the research basics. Gediman said that he tells associates the 15-minute rule: that if after 15 minutes they are spinning their wheels doing research, they should come talk to a librarian.

Lastly, a new academic librarian asked what academic librarians should teach students about legal research, costs, and cost recovery. Biberman said that, in many cases, talking to local firm librarians can result in some help both learning what local firms are looking

for and getting help teaching it. Smith said that academic librarians should teach that for those going to a large firm or a firm with a librarian: make the librarian your best friend. Gediman said that, in Los Angeles, local law school and law firm librarians get together once a year for a pow-wow to get people on the same page. Gediman also said that instruction should emphasize the use of a subscription service as opposed to Google and particularly that accuracy in research is more important than just being done. Niemeier concurred and said that her advice would be to teach students to be efficient, ask your librarian, do not use Google, and know what your firm does with regard to cost recovery.

Kurt Mattson   Lionel Sawyer & Collins

Program C1: Fishbowl Fun! A Closer Look at Four Key Licensing Provisions

Speakers: **Tracy L. Thompson-Przylucki,** Coordinator and Presenter, New England Law Library Consortium

This program was intended for librarians with experience in negotiating licensing agreements and was advertised as "not for the faint of heart." Participants gained a better understanding and insight into specific licensing provisions identified by the Procurement Committee. The agenda included non-disclosure, fair use/ILL, usage statistics, and future trends in licensing. The discussion was lively and participation was very good—to the extent that non-disclosure and fair use/ILL were the topics that consumed the majority of the session.

Non-Disclosure
This topic raised some interesting points of discussion and illustrated the differences in the types of organizations in which librarians serve. For example, law firms have been asked to refrain from disclosing the details of their contracts, but more recent trends show that this information is shared, as well as the product's use versus its competitors. Third-party consultants that are hired by a firm to negotiate a contract also have been subject to these provisions. Government libraries do not comply with such non-disclosure provisions in vendor contracts because many states have laws that prohibit such terms. Discussions also centered around the "most-favored nation" and "benchmarking" clauses. Experienced

audience members cautioned to be specific as to who will be benchmarked, e.g., a certain range within the Am Law 200.

Fair Use
Fair use is an important issue today, and the experts in the fishbowl advocated that librarians be very specific as to the definition of "permissible use." In addition, a contract should also allow for "occasional irregular, limited use with attribution" to encompass an unforeseen or one-off need during the contract's term.

Interlibrary loan rights were also discussed and apply primarily to the academic setting. There was some dialog about adding an ILL provision to a contract. The audience felt that this should be standardized among consortium members.

Participants acquired an AALL procurement toolkit. This revised tool consists of *Principles for Licensing Electronic Resources,* the *Guide to Fair Business Practices for Legal Publishers,* a glossary, licensing checklist, and flowchart.

In this short session, participants were introduced to many new approaches with which to confidently negotiate favorable license terms in their various library environments. From all accounts, future similar programs would be welcome.

Todd Melnick   Fordham University Law Library

Program E1: Off the Page and Beyond the Book: New Models for Buying and Selling Legal Information

Speakers: **Todd Melnick,** Coordinator, Fordham University Law Library; **Ed Walters,** FastCase; **Jason Wilson,** Jones McClure; **Scott Meiser,** LexisNexis; **Jean O'Grady,** DLA Piper

It is no secret that law librarians and legal information vendors are often at odds. Library budgets are declining while patrons demand ever more varied and sophisticated research tools. Librarians have less money to spend. Vendors are ever conscious of the bottom line. Surely technology can help bridge this gap, but how? And is legal information technology moving in the right direction, or is it shackled by the same old practices and ways of thinking that constrained us in the expensive world of print?

The genesis of this session was the Vendor Roundtable at the 2012 AALL Annual Meeting in Boston where Ed Walters, the CEO of FastCase, made the point that information vendors are too wedded to outmoded book-based metaphors for delivering and pricing legal information. He suggested that the legal information community must think beyond these metaphors if we are going to create a sustainable and truly useful legal information economy. In the post-print world, legal information vendors do not have to sell books organized into chapters—fixed, paginated, frozen. Information can flow, recombine, be mashed-up. Pages and bindings and covers and all physical constraints no longer withhold information, and they should not restrict our thinking about legal information online. This session was an attempt to continue the conversation that Walters began last year in Boston.

The session began with a brief introduction by Walters followed by a recorded video comment from Law Librarian of Congress David Mao. Video comments from various librarians were interspersed between live presentations throughout the session. Mao briefly outlined the situation law librarians of all sorts find themselves in—the cost of legal information is increasing while library budgets are declining. Might technology provide a solution? Mao suggested that law librarians take a lesson from new online education models (e.g. Massive Open Online Courses, or MOOCs) that are finding cost effective ways to creatively use information technology to reach large numbers of students. Mao cautioned librarians not to be afraid of technological change even as it transforms their profession. Librarians need to pivot away from outmoded tasks. They must be at the forefront of teaching publishers and patrons what the law library of tomorrow should be.

Next, Walters offered what he called a FastCase trade secret. In order to know what to do today, you need to imagine how you would like things to be in 10 to 20 years and then take the first step along that vector. The purpose of this session, said Walters, is to begin to imagine what e-books and other electronic legal information resources could be. Only by imagining what we want them to be in the indeterminate future can we know what steps to take today to move in the direction of that future. And, he added, we need to talk about the metaphors we use to conceive of the future we want. Will we adopt new metaphors that are consistent with the fully imagined future, or will we be restricted by the metaphors that we lived by in the past?

Print books are physical objects. They cannot easily be shared by more than one person at a time. They are divided into pages, chapters, and volumes depending on purely physical constraints. But e-books are not books. They have none of the physical constraints of paper. E-books are not exclusive. They do not consume space. The concept of the volume does not apply to electronic information. Electronic information is not static. We should not use book-based metaphors when thinking about information systems that are not physically constrained. Walters left the audience with this thought: "E-books are not books. We get to decide what they are going to be."

Walters' remarks were followed by a video comment by Wisconsin State Law Librarian Julie Tessmer. Tessmer's primary concern is that the high cost of legal information has made it difficult for public law libraries to provide their users with a comprehensive collection of legal resources. She reported, "We now have a class system of the haves and have-nots with regard to legal information." She offered a possible solution to this disparity in "reigniting the spirit of Andrew Carnegie." She would like public law libraries to work together to share scarce resources so that public patrons have access to every resource they need.

Next, Jason Wilson, vice president of innovative legal publisher Jones McClure, painted himself as a realist in contrast to Walters' idealism. He described the limitations on what is possible with regard to e-books in the near term. He then discussed the issues facing publishers in trying to appease his patron groups, each of whom wants something different from

e-books. He divided these issues into three areas: technical specifications, distribution models, and licensing. For example, should a publisher build out a platform or provide platform-neutral content? If a publisher does not build a proprietary platform, how can it be sure that all of the functionality built into the materials will work across platforms out of the publisher's control? Should publishers build apps? What research tools should be included? Full-text searching? What sort of personalization and social networking tools should be included? How is versioning to be handled? What user access model should a publisher adopt? Should consortium pricing and pooling agreements be permitted? How are interlibrary loans handled? Who pays for archiving and how is that handled?

Wilson asked us to face the reality that everybody wants something different and that "it's going to be a tough, long road to hoe." He ended by reminding the audience about the CD-ROM debacle and offering the hope that we are more careful and deliberate in our adoption of e-books.

Wilson's comments were followed by a video from Steve Lastres, director of the law library at Debevoise & Plimpton. Lastres asked legal vendors to start working with librarians to bring information solutions to law firms that are specifically targeted to the needs of particular practice areas. He also said that law librarians want platform-neutral content that can be delivered through their integrated library systems. Scott Meiser of LexisNexis spoke next and offered a middle way between Walters' optimism and Wilson's reality principle. Meiser wished to speak pragmatically about where we are and where we are going with regard to e-books. In his view, the key for law librarians is to develop an e-books strategy before they are forced to do so by patron demand. Do not let your e-book strategy be decided for you, he warned. Vendors and librarians must work together and move forward in a considered way. Meiser is optimistic about the possibilities of the e-book. He championed the creation of new electronic publications produced by gathering content related to particular topics from larger, more expensive general resources and recombining them into affordable, targeted resources that would have been much too expensive to produce in the world of print.

Meiser's presentation was followed by a video from Elizabeth Farrell, assistant director at Florida State University. Farrell offered a challenge to information vendors to "reengage and reinvest in the two things that made them great to begin with: their people and their editorial expertise." She thinks the customer service representatives are the most important employees working for information vendors and that they should be given the training and resources appropriate to their value. Further, she argues that libraries will continue to buy research tools and resources that are truly useful and well-made but will be quick to eliminate poor ones.

The final live comments were delivered by Jean O'Grady of DLA Piper. O'Grady began by saying that, "As much as I am very excited by the prospect of e-books, I do absolutely have the sense that we are revisiting our experience of the introduction of CD-ROMs." She has seen many e-book platforms and e-book models, none of which are well tailored to the way lawyers work. Why spend time and money on e-books when Lexis or Westlaw as currently configured allow users to easily search across the full text of multivolume treatises? No extant e-book model offers this sort of flexibility. She said, pointedly, "We work in an environment in which there is a very low tolerance for aggravation." Lawyers simply will not use resources that are difficult to use. Her bottom line is that technology will help firm law libraries realize efficiencies, for example, with the elimination of loose-leaf filing, but e-books are not where they need to be for the law firm market. But vendors and librarians need to do a better job of tailoring online resources to the actual work of lawyers.

The last two video comments came from Sarah Glassmeyer, director for content development at CALI, and Robert Nissenbaum, the director of the law library at Fordham Law School. "There is something seriously wrong in the world," said Glassmeyer, "when the average law library, or even the above average law library, is unable to afford a comprehensive collection of primary law." Glassmeyer lays blame for this situation primarily with local, state, and federal governments, which have failed to make the information they generate freely and easily available to the public. Nissenbaum thinks that any discussion about legal information that does not wrestle first with the huge changes in both legal education and the legal profession is failing to see the elephant in the room. He left the audience with this final thought, "I'm paging Chicken Little."

To round out the session, Walters led a valuable discussion of the issues raised by the live presentations and the video comments and took several questions and comments from the audience.

Walters left the audience with these words: "Y'all, e-books are not books. We can make them into whatever we want them to be."

David Hollander   Princeton University Library

Program F5: Mass Digitization in the Law Library: Obstacles and Opportunities

Speakers: **Dean Rowan,** Moderator, University of California School of Law–Berkeley School of Law Library; **David Hansen,** University of California School of Law–Berkeley School of Law

This program provided an informative look at copyright issues that libraries might face when conducting a mass-digitization project, and, in sum, painted a picture that was less scary for libraries than might be imagined. The moderator, Dean Rowan, opened up the session by introducing the topic; by describing some of the major players in mass digitization, such as Google Books, HathiTrust, and the Internet Archive; and by thanking the session's co-sponsor, the Legal Information Preservation Alliance (LIPA). Then, Rowan introduced the program's lone speaker, the incredibly knowledgeable David Hansen, a fellow at the Berkeley Digital Library Copyright Project.

Hansen thanked everyone for coming, especially since the program was held at 8:30 a.m. on the morning after the Westlaw party. He then quickly dug into the issue at the heart of the session. His stated goal was to have the audience understand that copyright issues associated with mass-digitization projects were simply not that scary. Solutions exist to enable these projects to move forward. Indeed, this theme was woven throughout Hansen's talk, from his overview of basic copyright law and rules to his discussion of some of the major cases that have been decided. For example, on the issue of damages, when successfully sued for copyright infringement, profit-making defendants may be subject to statutory damages, which could be quite high, no matter the actual damages to the plaintiff. However, nonprofit defendants, such as law school libraries, are not subject to these statutory damages, but rather are only subject to actual damages, which are quite often low. Furthermore, state law schools are often covered by sovereign immunity and thus protected from having to pay damages in any copyright case.

Thus, Hansen imparted a rarely heard way of thinking among risk-averse law librarians. He cited the low probability of a case being brought (pointing out that there are very, very few such cases), an even lower probability of its success (libraries are sympathetic defendants, after all), and an even lower probability that any damages would materially harm the law schools. Rather, according to Hansen, law libraries should weigh the risk of not fulfilling a library's mission to make material easily available to researchers versus the small risk of a lawsuit.

The program then turned to one of the scarier issues for librarians thinking about a digitization project: orphan works. Orphan works are copyrighted works

for which the creators cannot be found to ask permission to copy or digitize. According to Hansen, 30 percent of the 10 million volumes in the HathiTrust digital library are orphan works. He then described a smaller digital project that epitomized the frustration orphan works can generate. The University of North Carolina Libraries digitized the papers of Thomas E. Watson, a collection of 8,400 documents, with 3,300 unique authors. More than half of the hours spent working on this entire project were spent finding the authors to get copyright permission. Of the 3,300, they found only four! However, Hansen explained that conducting a search for the authors of orphan works can still be worthwhile as evidence that an eventual use of the copyrighted work qualifies as a fair use under the copyright statute.

Another strategy to feel confident that a digitization project will not run into copyright difficulty is to follow best practices on fair use as determined by the Association of Research Libraries (ARL). The ARL's *Code of Best Practices in Fair Use for Academic and Research Libraries* is available at www.arl.org/focus-areas/copyright-ip/fair-use/code-of-best-practices. Another helpful resource is the Society of American Archivists' *Orphan Works: Statement of Best Practices*. Hansen thought that it was possible that courts might view adherence to such best practices favorably and perhaps even view them as a sort of quasi-standard for winning a fair use argument. Hansen ended his presentation by reiterating his central point that libraries interested in digitization projects have less to fear from copyright than they might initially think. He suggested greater communication between libraries about what each is doing in terms of digitization, about the risks that the libraries perceive, and about better assessing whether these fears are actually realistic.

The program ended with a question period. Most questioners wanted to clarify details of copyright law. After questions concerning the copyright of foreign materials (subject to the copyright laws of the country of publication), personal unpublished letters (subject to copyright), and the cost of digitization projects (high), Hansen hinted at possible exciting changes in copyright law. He explained that a U.S. House subcommittee is beginning to explore writing an updated copyright statute that would better govern copyright in the digital age, though it's still years, if not decades, away. He encouraged libraries to be aggressive about having a seat at the table as the federal government reworks these laws that have a profound impact on how libraries will fulfill their role in providing information to their patrons and the wider public.

AALL New Product Award Call for Nominations

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 reintroduced in a new format or with substantial changes is also eligible. 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. Interested vendors may also self-nominate their new products. Recipients of the New Product Award need not hold membership in AALL. Nominations can be sent by mail to the address to the right or via email.

To Submit a Nomination for the 2014 Award

Nomination forms can be found on the AALL Vendor Relations website (under the Advocacy tab on AALLNET's homepage) or at www.aallnet.org/ Documents/Awards/newproductform.pdf. The deadline for receipt of submissions is February 1.

Librarian Nominations

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.

Vendor/Publisher Nominations

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 five copies each for the New Product Award Subcommittee and the AALL Awards Committee.

Submit completed forms and documents by February 1 to:

Liz Reppe
Minnesota State Law Library
Room G25, Minnesota Judicial Center
25 Rev. Dr. Martin Luther King Jr. Blvd.
St. Paul, MN 55155
Tel. 651-297-2089
liz.reppe@courts.state.mn.us

Request for Assistance: Committee on Relations with Information Vendors

Note: Prior to filing a request for assistance, individuals are expected to have made a reasonable attempt to resolve the issue at hand. To avoid duplication of effort, please provide a complete account of your efforts to communicate with the vendor. Copies of notes from conversations with the vendor are helpful.

Date: _____

Name: _____

Library: _____

Address: _____

_____

Telephone: _____

Fax: _____

Email: _____

Vendor: _____

Nature of problem: _____

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Please send this form and supporting documentation to:
Cynthia Myers
Head of Collection Development and Technical Services
George Mason University Law Library
3301 Fairfax Dr.
Arlington, VA 22201-4426
703/993-8592
Fax: 703/993-8113
cmyersj@gmu.edu

You may also complete this form online at:
www.aallnet.org/main-menu/Advocacy/vendorrelations/request-assistance.html