

## Contents

Editor's Corner	2
From the Chair	2
CRIV Vendor Roundtable	3
Philadelphia 2011: Annual Meeting Educational Program Summaries	6
New Product Award Call for Nominations	10

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vendorrelations](http://www.aallnet.org/main-menu/Advocacy/vendorrelations)

# The CRIV Sheet

## Editor's Corner

This issue of *The CRIV Sheet* continues to support CRIV's commitment to member education and advocacy with its offering of summaries of educational programming from the AALL 2011 Annual Meeting. It is my pleasure to serve a second term as editor. I am most appreciative of the good counsel and ideas of assistant editors Liz Reppe and Todd Melnick. Throughout volume 34, readers will find information on vendor/library relations, publishing practices, cost-savings suggestions, complaint resolution, and more.

While summertime in Philadelphia may seem long ago, the information gleaned from sessions on license negotiations, implementation of new products, and

fair business practices will resonate, regardless of season. They are, after all, perennial issues. A description of the New Product Award and the nomination process completes this issue.

*The CRIV Sheet's* editorial policy is online at [www.aallnet.org/main-menu/Advocacy/vendorrelations/CRIV-Sheet/policy-criv.html](http://www.aallnet.org/main-menu/Advocacy/vendorrelations/CRIV-Sheet/policy-criv.html). Please let me know if you have any comments about this issue, past issues, or future issues, and, as always, *The CRIV Sheet* welcomes and encourages your contributions. I am especially hopeful that readers will contribute articles on successes in complaint resolution, reflections on legal publishing practices, and guidance useful to acquisitions librarians.

Shaun Esposito University of Arizona College of Law Library

## From the Chair

Welcome to the first issue of *The CRIV Sheet* for 2011-2012. As I undertake my duties as CRIV chair for this year, I am very fortunate to follow Rob Myers who has left in place a wonderfully organized committee with dedicated members committed to carrying out CRIV's tasks. We are all fortunate that, after I write my final CRIV chair column next summer, CRIV will be under the capable leadership of Mary Jenkins, the new vice chair of the committee.

As I begin my service as CRIV chair, I want to take some time to reflect on the committee's purpose. As an entity created by AALL, CRIV activities are guided by the committee charge and purpose set forth by the AALL Executive Board. The full text of the committee charge and purpose is available on AALLNET ([www.aallnet.org/main-menu/Leadership-Governance/committee/activecmtes/criv-dup.html](http://www.aallnet.org/main-menu/Leadership-Governance/committee/activecmtes/criv-dup.html)). In brief, CRIV's purpose is to "facilitate communications between information vendors and the members of the Association by monitoring complaints and providing constructive suggestions to vendors of information in any format" and to "educate members on constructive ways to communicate with information vendors." To that end, CRIV encourages vendors to comply with the *Guide to Fair Business Practices for Legal Publishers*, also available on AALLNET ([www.aallnet.org/main-menu/Advocacy/vendorrelations/docs/fair-practice-guide.html](http://www.aallnet.org/main-menu/Advocacy/vendorrelations/docs/fair-practice-guide.html)). Acceptance of and compliance with the *Guide* is entirely voluntary, and it contains no enforcement provisions. All that CRIV can do is encourage publisher acceptance of the *Guide* and point out to a publisher instances when its actions fall short of the *Guide's* requirements. CRIV not only educates publishers about the *Guide* and encourages

their compliance with its provisions but it also educates AALL membership about the *Guide* and how to use it in their communications with publishers.

In the coming year, CRIV will continue its traditional functions in member education and advocacy using the *Guide to Fair Business Practices*, both in presenting membership complaints to publishers and in developing educational programs and materials to assist the membership to deal more constructively with vendors. In addition, CRIV will continue to work with Margie Maes, the newly-appointed vendor liaison, to efficiently coordinate vendor relations activities. CRIV will also be involved with the implementation of the action plan developed following the past winter's Vendor Colloquium. A more detailed description of proposed activities for the coming year appears in the CRIV Activities and Action Plan Report submitted to AALL March 7, 2011, and available at [www.aallnet.org/main-menu/Leadership-Governance/committee/actionplancmtes/2010-11/criv.pdf](http://www.aallnet.org/main-menu/Leadership-Governance/committee/actionplancmtes/2010-11/criv.pdf).

With a full plate of activities for the coming year, we are fortunate to have dedicated new and returning members of the committee. As in the past, much of the committee's work will be carried out by CRIV subcommittees, listed at the beginning of this issue.

Please contact me with any concerns or suggestions related to AALL member education and advocacy or regarding information vendor-related complaints and communication. Information regarding requests for CRIV's assistance in complaint resolution is available at [www.aallnet.org/main-menu/Advocacy/vendorrelations/request-assistance](http://www.aallnet.org/main-menu/Advocacy/vendorrelations/request-assistance).

## CRIV Vendor Roundtable

The action plan developed after AALL's Vendor Colloquium was the main topic of discussion at this year's CRIV Vendor Roundtable in Philadelphia.

The Vendor Colloquium's discussion topic, "Creating, Disseminating, Using, and Preserving Legal Information in Challenging Times," was attended by 39 law librarians and vendors from February 27-March 1, 2011.

After the colloquium, a working group was assembled to put together an action plan and to document the set of principles that came out of the three days of meetings. The action plan was also sent to members for their comments. After the four-week comment period closed, the working group met by phone to discuss the comments and work them into the plan.

The working group consisted of: Mary Jenkins, Hamilton County Law Library; Greg Lambert, King & Spaulding; Linda Lev-Dunton, Wolters Kluwer; Kristina L. Niedringhaus, Cleveland State University Cleveland Marshall College of Law; Dick Spinelli, Hein; and Cindy Spohr, LexisNexis. The working group members (minus Lambert) were present to discuss the action plan and to get feedback from AALL membership. Margie Maes, AALL vendor relations liaison, moderated the roundtable.

### The Roundtable Develops a Plan

Maes started the roundtable by referring to the handouts, "Shared Principles for Law Librarians and Legal Information Vendors" and the action plan. She explained that the shared principles came out of agreement reached between vendors and librarians at the colloquium. She said that the principles ([www.aallnet.org/main-menu/Advocacy/vendor-relations/colloquium/Shared-Principles.pdf](http://www.aallnet.org/main-menu/Advocacy/vendor-relations/colloquium/Shared-Principles.pdf)) formed the aspirational foundation for the action plan ([www.aallnet.org/main-menu/Advocacy/vendor-relations/colloquium/Action-Plan.pdf](http://www.aallnet.org/main-menu/Advocacy/vendor-relations/colloquium/Action-Plan.pdf)) and its goals. The action plan is broken into three parts: new project work, continuation of current work, and other issues to be developed for future consideration.

The action plan was approved by the AALL Executive Board at its meeting before the start of the 2011 AALL Annual Meeting. The only change the Executive Board requested of the plan was an adjustment in the timeline, Maes said.

The roundtable was used to solicit feedback from the membership regarding the action plan and its goals. Maes said that a task force would be created to implement goals 1-A ("Reinforce our commitment to the *Fair Business Practices Guide*") and 1-D ("Identify and endorse improvements to the procurement process that will benefit librarians and vendors"), because the Executive Board felt these goals were

aligned with each other and could be handled by the same task force.

Goals 1-B ("Cultivate tangible collaboration on preservation and authentication, engaging stakeholders including government and court representatives") and 1-C ("Identify and promote methods of demonstrating return on investment (ROI) and reporting usage statistics and metrics") will be addressed later in the year; additional groups will be appointed to look at those goals. Maes said it would be a large undertaking to have all of the goals being addressed at the same time, so work on them will be phased in.

### Member Questions Sought

Maes opened the session for feedback from the members present at the roundtable regarding goals 1-A and 1-D. The first questioner asked whether there would be another forum to gather member input using the new AALL member communities. Maes said there was not a plan to do so, but that the vendor relations area in AALLNET would be a good place to encourage comment. Jenkins pointed out the need for member feedback because it was important to identify stumbling blocks, best practices, successes, and problems from a law librarian and vendor standpoint. Maes encouraged the vendors present to ask questions and make comments.

Another member of the audience asked if there were plans to get input from professional associations of state procurement directors. He thought such professionals could assist in outlining best practices. Maes responded that the suggestion was excellent and fit within goal 1-D. Jenkins pointed out that the procurement processes and issues vary considerably by library type.

Maes asked whether anyone had suggestions for revisions to the *Fair Business Practices Guide*. No suggestions were given at that time, but Maes indicated solicitations would go out in the future for comments. Maes reiterated that work on goals 1-A and 1-D would be undertaken in the fall.

### Discussion Moves to Goal 1-B—Data Preservation

There being no further comments regarding those two goals, Maes opened up discussion on goal 1-B. She recounted that many librarians at the colloquium expressed an interest in getting more information from publishers about data preservation. Some vendors were surprised at that interest but seemed willing to work with librarians on the issue. Maes was not sure how the goal would be implemented, but it seemed ripe for collaboration.

One member of the audience asked whether the membership of the task forces for goals 1-A and 1-B would be made up of vendors and AALL members. Maes said that the task force membership would be decided by AALL President Darcy Kirk, but that Kirk would seek input from the working group and the vendor liaison. She expected that the work done on the goals would be a collaboration between vendors and librarians.

An audience member asked about the fit between goal 1-B and the new *Uniform Electronic Legal Materials Act*. Maes said that working with the new act would be a part of the goal. AALL Government Relations Office will also work on issues related to the act, so some coordination would have to take place.

The member also asked about Portico. She wondered if Dick Spinelli could address the issues with it. Spinelli referred her question to Kevin Marmion, president of William S. Hein & Company, who was in the audience. Marmion said that the issue for Hein was not financial; it was instead licensing-related. He stated that Hein is an aggregator, so he can't speak to what will happen perpetually to the content that is in HeinOnline. Hein is not against joining Portico; the company is interested in helping libraries with the preservation issue. He referenced a brochure Hein put together to explain what Hein is doing to preserve data. Maes pointed out that it was the kind of initiative that AALL would like to see from all legal information vendors.

Jenkins commented that goal 1-B requires collaboration from all stakeholder groups (courts, promulgating agencies, and other entities) so that we understand more deeply what the issues are.

### **Digitizing Pilot Project Suggested**

A commenter from the audience suggested having a digitizing pilot project that would include a small beta test collection to work with commercial vendors to flesh out objectives and problems. He also suggested there ought to be a safe harbor provision if vendors put something out publicly regarding preservation efforts. His last suggestion was to track what the new act is doing with having commercial publishers provide authentication for state laws.

### **Discussion Moves to Goal 1-C – Usage Stats**

Maes introduced the discussion of goal 1-C by stating that at the colloquium many law librarians raised the issue of usage statistics. She stated it had not come as a surprise to the vendors, since librarians frequently request these. The purpose of the goal is to have more standards and best practices to help assess the value of a product.

An audience member asked whether there was a way to enforce the best practices. The frustration librarians have is that usage statistics are not forthcoming, despite a decade of requests made to some vendors. He queried whether AALL or CRIV could give a vendor a “seal of approval” for compliance. If not, he thought the requests would likely be ignored. Maes said that it was an interesting idea and was curious what the vendors would think of that. She stated AALL has encouraged participation in Project Counter, which is a way to collect and report usage statistics. She thought it would be one standard or best practice they would look to. The challenge for the vendors is that their systems all work differently. However, she acknowledged that having a way to show that publishers comply with librarian best practices requirements would be very helpful.

An audience member commented that the AALL Technical Services Special Interest Section (TS-SIS) is a test group for Project Counter. She said that on the TS-SIS website there is a list of publishers who are in compliance. She noted there are almost no legal publishers. She encouraged the vendors to look into becoming a Project Counter-compliant member.

Maes said that in her role as vendor liaison, she has met with many publishers, and she encourages them to comply with Project Counter. She indicated some were not aware of it and others have not figured out how to become compliant.

Another audience member pointed out that usage statistics are just part of the picture. They can track usage but not whether the researcher is getting the answer or if the product was efficiently used. Jenkins agreed that it was about return on investment, which takes into account a lot more than how many times a document is being served up. Maes added that the goal required perspectives from all library types on this issue. Another audience member responded that she felt that it was more the consumer's responsibility to determine if their users are using the products effectively.

### **Part Two of Action Plan Discussed—CRIV's Role**

The next part of the discussion was on part two of the action plan, which focuses on ongoing work. Goal 2-A, “Clarify the roles of the Vendor Liaison, CRIV and other entities involved in vendor relations,” was created in response to members' feedback. Maes said all of the goals in part two will require the work of the vendor liaison and CRIV, along with other entities in the organizations.

An audience member commented that members need to communicate to CRIV because there might be

issues that arise that CRIV is not aware of. Also, there are some online discussion forums to which CRIV members do not have access. Communication needs to be two-way. Maes agreed and said that, while she and CRIV members monitor blogs and online discussion forums, it would be nice to have direct dialog with members. Jenkins referenced the new tools on AALLNET and asked for suggestions on how CRIV could best communicate with members.

A member expressed his concern that the AALL Executive Board was trying to control the message about vendor actions. He encouraged AALL to empower some group, CRIV or another, to speak as independently as possible on the behalf of law libraries, without having to get permission. Maes said that the Executive Board has been working on developing more policies in this area. One of her responsibilities will be to draft a vendor relations policy that will make the roles clearer.

Jenkins also responded that CRIV is able to advocate on the behalf of members on specific unfair practices. She pointed out that outgoing CRIV Chair Rob Myers had advocated for members on approximately 20 issues during the past year. She did recognize there was a gap between what CRIV can do and what some members would like it to be able to do.

Niedringhaus expressed a desire that the task forces created for goals 2-A, 2-B, and 2-C include representatives from all types of libraries and SIS members, so their broad input would be received.

Chris Graesser, former board liaison to CRIV, clarified that AALL never seeks to suppress librarians' personal and individual input. What is limited is the ability to speak for the organization. The board does appreciate hearing from members about their experiences with vendors. Maes responded that there is great value in individual consumer advocacy.

One audience member echoed the need for feedback from all library types. One library's needs are not going to be the same as another library's needs. Furthermore, he pointed out that our needs do not require us to take an adversarial position with respect to vendors. Some of our members are vendors, and the organization is supposed to represent the membership as a whole, not just the library members.

Jenkins asked Maes about the new antitrust policy. Maes responded that the Executive Board considered a draft policy and voted not to approve it. The Board

Administration Committee will do further study and review of the issue and present another draft. AALL Vice President Jean Wenger said that it was important to AALL to have more member input for the policy.

### **Part Three of Action Plan Discussed**

The discussion moved to part three of the action plan. Maes said there wasn't time to flesh out goals for future consideration at the colloquium.

She commented that training came up very often during the meeting. Vendors wanted more opportunities to reach users with training, and librarians sought better product training. The desire to address open access issues was also mentioned. However, they did not identify specific goals for this topic at the colloquium. In addition, the group wanted to set up a format and schedule for future colloquia.

An audience member suggested a broader discussion of copyright would be a good topic. It would be helpful, the audience members said, to consider issues with sharing content on course websites or corporate intranets. Development of rules to help librarians to be more efficient in this area would also be useful. Maes responded that the comment came during the drafting of the action plan. It did not make it into the final plan, but it might be something the Copyright Committee could work on. Jenkins said that some government agencies have given copyright to commercial vendors for government information. She thought that issue warranted discussion as well. She recognized it was being addressed by other groups, but indicated it was related to the other copyright issues brought up.

### **Final Comments Sought**

After Maes made a call for final comments, an audience member made two suggestions. First, she said it was important for librarians to have access to quality statistics. She noted that Project Counter has done studies on how to evaluate usage statistics. She also made the point that it was important to librarians, library staff, and vendors to receive training on how to deal with vendor and publication problems. Maes responded that that issue might be covered under the procurement process goal of 1-D. She said the training aspect of part three of the action plan was focused more on the training on the use of products.

In closing, Maes said the working group was officially disbanded because its charge had been completed. However, in her role as vendor liaison, she will continue to receive feedback about the action plan.

# Philadelphia 2011: Annual Meeting Educational Program Summaries

Michelle Cosby North Carolina Central University School of Law

## Program H-1: Getting to Yes for Your Library: Negotiating Vendor Contracts in Your Favor

Speakers: **Clare D'Agostino**, Morgan Lewis & Bockius LLP; **Loretta F. Orndorff**, Cozen O'Connor; **Scott B. Schwartz**, Cozen O'Connor; and **Connie Smith**, Morgan Lewis & Bockius LLP

"Getting to Yes for Your Library" was a program that covered several aspects of vendor-librarian contract negotiation and was tailored to librarians who have a role in contract negotiations. Upon arrival, a bookmark was given to attendees. The bookmark was titled, "Elements of Vendor Contracts that make Librarians Crazy," and is a great cheat sheet because it covers all the key points in the program and gives concise explanations of each element.

The program began with a quick explanation of the primary types of negotiation, principled negotiation and the "easy" process, and then went into advice. The panelist recommended that librarians prepare by reading literature, checking online discussion forums, and getting a trial subscription to the product before negotiations begin. They also advised being aware during the negotiation process and to pay attention to the vendor relationship so that things do not get personal.

Another tip offered suggested that if the price sounds great, check the contract and make sure the firm is not losing any services or coverage. The panelist also recommended taking a break after negotiations and to remember that walking away is always an option.

Following a skit on the negotiating process by Connie Smith and Loretta Orndorff, the speakers addressed the nuts and bolts of vendor contracts. The panelists stressed that although there is no such thing as a basic contract, there are several elements one needs to make sure are covered in the contract: organization name and corporate designation; location (exclude the locations not using the service if there are multiple offices); dates; payment terms; vendor designations; and definitions, acronyms, abbreviations, and file names.

The discussion then turned to triggering event clauses. A triggering event could be a merger or dissolution. These clauses may be a positive or a negative, but in general, they benefit the vendor. Triggering language must be used very carefully. Similarly, if you know there will be a merger or dissolution, the panelist suggested bringing in the vendors and negotiating new terms in good faith.

Vendors using the firm's name in advertising were also discussed. The panelists said that in theory it seems like a good idea because it is free advertising; however, the firm does not want to be perceived as endorsing a product or discriminating against another product, so it was suggested that you negotiate this term based on the needs of your organization.

Next, the panelists spoke about the problems that could arise with clauses that prevent third party consultants from using a product. Vendors want to limit the use, but this may not be good for the firm. Librarians may want to change or strike this clause all together. Another approach is to get a waiver from the vendor if you have a non-disclosure clause.

Contracts can be made up of many documents. The panelists gave a list of documents that can make up a contract: master agreement, order form, pricing document, privacy statement, online terms and conditions, and non-disclosure agreement. All of these documents make up the final deal. Additionally, it is important to know which document is the controlling document so that users do not agree to new terms with click-through documents.

Payment terms and late fees were then discussed. The panelists cautioned that you need your payment terms to be reasonable. For example, the bill may go to a location where the mail is only checked once a month, so 30 days may not be sufficient depending on your organization. Payment terms and late fees are fully negotiable.

The next issue discussed was evergreen language, also known as automatic renewals. In general, firm librarians did not think that automatic renewals were good for the firm. The contract should be renegotiated each time. This was followed by a discussion of indemnification and warranty language. Indemnification protects the firm if the firm is sued for using the vendor's product. Some of the panelists stated that they walk away if a vendor does not offer complete indemnification.

The last topic covered was standardized acceptable language (SAL). All of the panelists agreed that it is only standard for the vendor and that you should negotiate all terms. Alternatively, librarians should present their own SAL to the vendor.

The program ended with audience questions.

## Program G-4: Anatomy of a License Agreement

Speakers: **Christine L. Graesser**, moderator, Connecticut Legislative Library; **Lesley Ellen Harris**, Copyrightlaws.com; **Katherine Lowry**, Baker & Hostetler; and **Tracy L. Thompson-Przylucki**, New England Law Library Consortium, Inc.

If any law librarians in attendance at this session of the Annual Meeting did not extract some valuable information, they probably should not be negotiating licenses for online materials. Law librarians listening closely could find themselves empowered. As the speakers emphasized, every license is negotiable.

All participants were knowledgeable about how to administer, negotiate, and analyze electronic license agreements. The information was streamlined but also provided detailed examination and analyses, including consideration for global concerns. Explanation was given in a general format but linked together main areas for discussion among all types of law libraries.

The theme from “Jaws” played during part of this presentation, reminding the audience that vendors can sometimes circle like sharks; however, the AALL publication, *Guide to Fair Business Practices*, can always be relied upon for direction (found under the advocacy tab on AALLNET).

When defining the content in the agreement, a librarian should begin by defining the parties, the signatories, and the authorized users. The written contract would ideally spell this out in plain language and with a choice of appropriate law and venue. Of course, confidentiality is a must, and amendments are to be expected. The timetable for all of these issues should allow ample discussion between the vendor and librarian.

Signers must have authority to represent the entity, especially for consortia. A license agreement should address who may use the licensed material, what a user may do with the content, and what content is available. Further, language should be used consistently throughout the agreement. Tie your needs into your collection development policy with a checklist. Speakers noted that each clause is initially written for the vendor’s benefit, but the librarian can change it.

Lowry’s firm has multiple locations, some of which would require consideration of the currency, taxes, and exchange rates referenced in a license agreement. Thompson-Przylucki added that we need to consider the potential differences in contract and copyright law if one party or the other is a non-U.S. entity.

Harris highlighted how there could be changes in

circumstances midterm that would necessitate amendments to the initial agreement: for example, hiring, under-representing, or a drop of more than 10 percent of attorneys in a firm. In the academic world, a frequent issue is the question of content changes in the licensed material. Removal of content could require remuneration. Procedures to follow in this case should be spelled out or conditions named for the necessary renegotiation of the license agreement.

Confidentiality was another issue that was defined and summarized. Law firms are generally contractually prevented from discussing pricing or other key license terms—an issue identified as a burden and disadvantage to librarians. How can competitive pricing be sought? What is a violation? With respect to users of the material, is a third party consultant’s use that affects revenue considered standard? What about use by alumni, clients, or independent contractors? Mutual non-disclosure may be a key provision of a license agreement similar to the need for privacy, banning the vendor from using certain information for its marketing purposes.

The speakers urged creativity. A law firm could, for example, request a 90-day “try and buy” and then walk away from the deal if the product is not being used.

Each speaker addressed automatic renewals and the option for a third or fourth year of the contract. The duration of a license agreement cannot be changed, nor can one component typically be cancelled. If you itemize each title or component in a license agreement, you can allocate your funds accordingly. Legal publishers often demand more than the Consumer Price Index with a base line of 5 percent typically justified by new content. These are provisions of the contract that must be examined. Terms not to renew cannot be ignored; an automatic renewal may not match the original user agreement because factors do change.

The speakers reminded the audience that if you do not trust the vendor, you should go elsewhere. (Cue the “Jaws” music.) Who is the true copyright owner of the material? Is it the person or vendor with whom you are forming a license agreement? Is there a warranty or guarantee that the author or creator will not go on to a different company? This should be clarified each way and “true up” to it.

Government entities should show the standards they must live by from the beginning of the conversation with particular areas of concern redlined. Respect should consistently be given to copyright rules,

inter-library loan collaboration, and trying not to exceed fair use. The serious issue of indemnity, the possibility that it is not unilateral, and the need to cover your law library's legal costs could be the beginning of another program in the future.

In a firm setting, an enterprise license is required. How will access be accomplished? Will it be accommodated by IP authentication? Are passwords the only option? What makes this concept unmanageable in the academic setting when the gold standard is the IP? In a law school, the vendor may not be able to limit the access. In a law firm, is the price reflective of only the attorneys actually using the product or how can flexible licenses be achieved that are mutually beneficial? Where would case action or arbitration take place? In the case of choosing which law is the governing authority, always choose your own country or your own state.

How many of us have clicked through the screen or page to "I have read and understand ..."? This is a

legal agreement. The law library may be liable to report unauthorized use and may be responsible for getting the breach resolved. New on the horizon and for future consideration are problems with regard to a core user group, mandates to serve the public, distance education, geographical boundaries, and perpetual access vis-à-vis e-books and e-readers. Also mentioned were ethical obligations to protect the client, remote access for attorneys, the use of a name for collateral, getting the negotiations as understood in writing, and merger clauses.

The program offered a lot to learn in a short amount of time. All of these elements of a license agreement should be reviewed carefully: copyright; contract terms; indemnity clauses; term; termination and renewal; changes to terms or content cancellation; unauthorized use; breach; archiving; public terminals; and the quality of training, service, and support. All of these items would lead to an agreement and arrangement that has conformity for law firm, academic, state, court, or county law libraries.

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**Debora Perso**    George William Hopper Law Library

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## **Program K-6: The New Generation of Legal Research Databases: Eighteen Months Later**

Speakers: **Jean P. O'Grady**, DLA Piper; **Denise A. Pagh**, Kronick, Moskovitz, Tiedemann & Girard; **Lisa A. Spar**, Hofstra University Law School Library; and **Victoria J. Szymczak**, moderator, Brooklyn Law School Library

As the session began, coordinator Caren Biberman, of Cahill Gordon & Reindel, explained that the panel originally proposed a review of competing databases that were expected to introduce major new interfaces this year. By the time of the AALL Annual Meeting, however, roll out of the other products had been delayed. Therefore, the session was to cover WestlawNext only. I sympathized with the panel, whose session, it appeared, would be without two thirds of its content. "How," I thought, "are they going to fill the whole hour with talk about WestlawNext?"

As it turned out, it was easy. Biberman had assembled an interesting panel of academic and law firm librarians for the discussion. The session used a question and answer format punctuated with statistics from a survey of AALL members taken over the past year. Seventy-six percent of the respondents were law firm librarians, and 18 percent were from law schools. The remaining 6 percent were from corporate and

government agencies. After a brief introduction to the program and review of Lexis Advance and Bloomberg Law, the moderator asked the law firm librarians in the audience to stand. Next she asked them to sit if they had rolled out WestlawNext. About half the librarians sat. She did the same with the academics. Nearly all of the librarians sat down. She repeated the exercise with court and corporate librarians, and only a very few sat. Her exercise showed that law schools are adopting WestlawNext more readily than law firms, state courts, and corporations, though we learned later that "roll out" was a relative term. It was a nice way to lay the groundwork for the Q&A that followed.

### **When Did You Roll Out WestlawNext and Why?**

Hofstra brought WestlawNext out in the fall of 2010. They felt that with limited opportunity for Computer-Assisted Legal Research instruction for incoming students, it was best to give them some exposure to the product in the event that they encountered it in the course of their employment.

Brooklyn Law School waited until this summer because printing issues were not settled, and there were continuing questions about what content was included.

Both law firms rolled out WestlawNext last fall. Pagh said they wanted to give attorneys a chance to work in both systems as long as possible in order to acclimate to the new system. She felt her attorneys would benefit from some of the advantageous features, such as folders and sharing. O'Grady decided to begin with librarians only and gather feedback. After a three- to four-month trial, librarians did not respond overall favorably, because they like to have more control over their results. But when they allowed general access, lawyers adapted quickly. They will continue to watch issues that librarians perceived as problematic, such as view charge.

The survey results showed 48 percent of the 266 respondents rolled out WestlawNext. Most law schools made the product available to librarians (100 percent), faculty (98 percent), and students (93 percent) over time. Of the firms that had rolled out WestlawNext, 92 percent made it accessible to librarians and 85 percent made it accessible to attorneys. Those that chose to delay roll out cited some of the same reasons we will see later as perceived weaknesses: cost, quality of content, split between choosing Westlaw Classic and WestlawNext, Lexis being the sole provider, and other software issues.

### **What Type of Training Did You Provide?**

#### **Why? How Was It Received?**

At Hofstra, Spar reported that 1L students have only a brief overview, but advanced legal research students have full access, and they love it. Faculty members have responded favorably, though librarians in the academic institutions are less enthusiastic and find they return to Westlaw Classic to perform some of their research.

In the law firm environment, webinar sessions and on-site training were employed. Librarians provided demonstrations in practice group meetings, and they sought out those who had not been through the trainings to do one-on-one sessions. Pagh created and populated practice-specific folders to share, and during their training period she had attorneys use their own passwords rather than the training password so that they could keep any folders they had set up after the training period was over. To avoid client charges, she gave them a non-billable client number to use. The account had an expiration date, so there was incentive to begin using the software early.

The heaviest users in the law firm environment are new associates, and they love it. O'Grady noted that some partners who did not use Westlaw Classic previously have been through WestlawNext training and are now enthusiastic users.

### **What Problems Have You Run into with Training and Roll Out?**

Billing was an issue. It took a while to research and identify differences in charges. There seems to have been no overall change in client billing, but it will require time to identify any real trend.

There were some problems reported with older versions of software. Unauthorized access screens popped up even though the requested content was within the terms of the contract. Furthermore, hyperlinks for results lists exceeded the character limits in Word 2003, so the links didn't work. As a work-around, the lists are downloaded as PDF files, but the problem has not been resolved yet.

Law schools are struggling to find time to do training in both systems, and those schools that train in just one have a difficult decision to make. "Find" searches from Westlaw's homepage auto-direct to WestlawNext, which can be confusing if students are not familiar with both systems, among other issues. In some instances the deciding factor is the market penetration of WestlawNext in the various regions of the country, and those figures are not readily available. Printing, which had been an issue, appears to have been resolved.

### **What Are the Strengths and Weaknesses of WestlawNext?**

Librarians like database searching, so they find the freeform natural language searching that WestlawNext employs somewhat frustrating. They tend to revert to Westlaw Classic for certain types of searches. Most students and attorneys, however, like not having to select a database for searching. Even for librarians, facets (a new search feature) have proven useful in identifying resources that would have required searching through a variety of databases in Westlaw Classic.

Still, there is a continuing need in legal research instruction to define types and uses of the various resources. It is not always clear what information will fall within which facet, and we have no way of knowing how the facets will appear as more content is added to WestlawNext.

### **And the Survey Says**

The survey separated strengths and weaknesses identified by librarians from those identified by other users, but they did tend to fall along the same lines.

Strengths: ease of use, clean and uncluttered feel, federated search capabilities, faceted results, search algorithm, folders and sharing, and simplified and reasonable pricing.

Weaknesses (some of which overlap with the strengths named above): confusion over pricing, oversimplification of research, lack of precision, not conducive to power searching, search algorithm is unclear and inconsistent, not all content is included, and printing issues.

## **Audience Response**

There were a number of good questions and comments from the audience. It was a common observation that those users with strong research skills tend to prefer Westlaw Classic. Whether WestlawNext “dumbs down” legal research is open to discussion. The panel felt that any new system would have a learning curve. The ability to affect good research within the system once the content has settled will still require refinement of skills.

In the current environment, there did not seem to be holes in the major content. For example, when

comparing the systems for cost purposes, searches run for case law resulted in a different number of hits but no material cases were missed in WestlawNext. The panel identified problems searching ethics opinions and some foreign and international content, and the lack of scope information is a real disadvantage.

Obviously the topic generated a great deal of interest. Sharing experiences makes it easier for many of us as we decide how best to approach legal research instruction in our environments, to such ends as we believe will ultimately benefit students, faculty, attorneys, and law firms.

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## **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 re-introduced 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 below or via email.

### **To Submit a Nomination for the 2012 Award**

Nomination forms can be found on the CRIV website under the new product award tab or at [www.aallnet.org/main-menu/Advocacy/vendor-relations/award-best.html](http://www.aallnet.org/main-menu/Advocacy/vendor-relations/award-best.html). The deadline for receipt of submissions is January 31.

### **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 four copies for the New Product Award Subcommittee and the AALL Awards Committee.

### **Submit completed forms and documents by January 31 to:**

Cynthia Myers  
Head of Technical Services  
George Mason University Law Library  
3301 Fairfax Drive  
Arlington, VA 22201  
703/993-8592 - office  
703/993-8113 - fax  
[cm Myersj@gmu.edu](mailto:cm Myersj@gmu.edu)