THE CRIV SHEET

THE NEWSLETTER OF THE COMMITTEE ON RELATIONS WITH INFORMATION VENDORS

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EDITOR'S CORNER

VALERIE CARULLO
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Greetings to everyone in the New Year, I hope 2017 is off to a productive start. On behalf of *The CRIV Sheet* subcommittee, I am proud to present the second issue of *The CRIV Sheet*, Volume 39. In this issue, we offer you articles on a variety of topics, including copyright issues surrounding state legal materials, the landscape of ebooks in the European Union, an overview of legal analytics platforms, a brief history of the ICLR and its decision to remove content from popular vendor sites, and end with updates from two CRIV vendor liaisons.

On December 2, 2016, AALL and Boston University held the National Conference on Copyright of State Legal Materials. AALL member Kelly

Leong from the UCLA Law Library was fortunate to be in Boston at the time and provides a detailed overview of the day's sessions.

As we learned from several sessions at the 2016 AALL Annual Meeting, legal analytics tools are becoming increasingly popular. AALL member Diana J. Koppang, who served as a speaker in one of this summer's analytics panels, provides an in-depth review of several analytics products available in the marketplace.

Next, AALL member Kyle Courtney, Harvard University's copyright advisor, provides fascinating insight into a recent European Union court decision on ebooks and elendings, and contemplates how we can use that decision to reflect on our own laws surrounding lending, ebooks, copyright, and licensing, in an effort to drive library-focused advocacy forward.

We are also fortunate to hear from Daniel Hoadley, of the Incorporated Council of Law Reporting for England & Wales (ICLR), who provides a brief history of the ICLR and explains the rationale behind the decision to remove ICLR content from Westlaw and LexisNexis.

Finally, we conclude this issue with a summary of two of CRIV's semiannual conference calls with legal information vendors.

We hope that you find this issue of *The CRIV Sheet* interesting and instructive. If you would like to contribute to *The CRIV Sheet* or just share your ideas on improving vendor relations, please contact us. Your comments, letters, suggestions, and submissions are always welcome and appreciated. We love to hear from our readers. Please email any member of *The CRIV Sheet* subcommittee with suggestions for articles: **Valerie Carullo**, **Alana Bevan**, **Gilda Chiu**, or **Charles A. Pipins II**.

FROM THE CHAIR

DIANA C. JAQUE
UNIVERSITY OF SOUTHERN CALIFORNIA LAW SCHOOL

Working on CRIV, I am reminded on a daily basis just how many AALL members work tirelessly to advance the interests of our profession. In particular, I'd like to thank *The CRIV Sheet* editor Valerie Carullo and the other CRIV committee members who work on *The CRIV Sheet*: Alana Bevan, Gilda G. Chiu, and Charles A. Pipins II. Their hard work is easily recognizable within the pages of this electronic issue. Few, other than those who have worked on *The CRIV Sheet*, understand the work involved in soliciting and editing the numerous articles that are included throughout the year.

The CRIV Sheet is one of the most noticeable work products generated by the CRIV Committee. I encourage you to read this issue from cover to cover and send any ideas for future articles to Valerie Carullo. You might even consider volunteering to write an article. In this issue, several AALL members have done just that and have contributed articles on vendor-related topics that are important to them. Each author writes about a different facet of vendor relations.

If you find the articles in this issue as fascinating as I do, you may wish to follow the ***CRIV Blog***, (where vendor-related items are posted weekly). Under the guidance of Cindy Hirsch, the ***CRIV Blog*** has been more active this year with more frequent postings about vendor relations issues.

Finally, if you have a vendor-related issue and would like CRIV's assistance, please remember to fill out the **member assistance request form**. Happy Reading!

CRIV Blog
crivblog.com

Cindy Hirsch
COORDINATOR

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THE NATIONAL CONFERENCE ON COPYRIGHT OF STATE LEGAL MATERIALS

KELLY M. LEONG
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Efforts to copyright state legal materials are becoming an issue we can no longer ignore. Unlike federal legal materials that are not copyrightable under section 105 of the Copyright Act, there is some argument over whether state legal materials can be copyrighted. The issues have been building in the form of court cases, usually where a publisher has been assigned an exclusive right to publish by the state and is seeking to enforce that right. The National Conference on Copyright of State Legal Materials, hosted at Boston University School of Law on December 2, 2016, sought to bring together advocates of access to primary legal materials to discuss the issues, ongoing efforts, and the future.

It is AALL's official position, as outlined in the Public Policy Priorities for the 115th Congress, that it supports "[p]olicies that ensure that government information is in the public domain and available to the public without restriction." Many, including keynote speaker Corynne McSherry of the Electronic Frontier Foundation, as well as a number of courts, agree that copyrighting legal materials—federal or state—is against sound public policy.

McSherry's keynote discussed whether primary legal materials have an author and highlighted several cases that discuss a state's right to copyright state legal materials, and the possibly unintended consequences when legal materials are not part of the public domain. Specifically, McSherry focused on issues with standard developing organizations (SDO) where standards are incorporated by reference into the state administrative codes, such as building codes, but the standards themselves are not part of the code language.

Christopher Bavitz (Harvard Law School) and Jessica Silbey (Northeastern University School of Law) explored whether state law can be copyrighted and discussed who actually authors state legal materials. The scholars agreed that there most certainly is an author, but we can debate who that author is—an SDO, the people, or legislators. How we answer that first question has implications for the rest of the analysis. If it is the people, as Bavitz argues, then as co-authors, the copyright belongs to the public. If it is an SDO, the analysis leads to issues with due process, incentive arguments, and merger discussions. If it is legislators, then it certainly does not seem right, as a matter of public policy, that elected officials serving the state should then own the copyright—but perhaps that is where the argument that the state as an entity owns the copyright originates; the legal materials are seen as a work for hire.

The lunch speaker, journalist Sarah Jeong, highlighted the impacts of restrictive access to legal materials on journalists. Her warning, "the state of access is a disaster" and if you think the state of federal legal filings are bad, state legal filings are even worse. Her discussion focused on PACER's many issues, particularly the inability to keyword search, pointing out that it is easier to search leaked private materials on Wikileaks (for example, the leaked Sony documents) than it is to search official legal filings. The cost to access PACER documents also limits access. Journalism seeks to inform the citizenry, and these types of restrictive access policies are making that more difficult. As we will see, this sentiment is pushed further by later speakers that see it as a civil rights issue.

What are libraries and content providers doing to address the copyrighting of state legal materials? Harvard Law School, with the assistance of Ravel Law, is digitizing all federal and state case law as part of the Caselaw Access Project. Though some have criticized the project for granting an eight-year exclusive license to Ravel Law, that license is subject to exceptions and Harvard Law reserved the right to build its own access portal. In Colorado, AALL member Daniel Cordova of the Colorado Supreme Court Library, is working to create a sustainable model for free and open access. For Colorado, the question comes down to economics and creating a comprehensive digitally accessible collection of legal materials is the answer.

AALL member Ed Walters of Fastcase had a lot to say about challenging copyright of state legal materials,

particularly in Georgia. Walters was emphatic that it was time for states to take back their legal materials instead of "renting their law" back from publishers. He noted that there is a big difference between free and open when it comes to legal materials and that states tend to conflate the two. He went on to discuss the issues with terms of service as the new copyright, where users are subject to additional restrictions. Ed Walters was surely a "fan favorite," as one tweeter noted.

Next up, AALL member Kris Kasianovitz (Stanford University and Free State Government Information (FSGI)) and Seamus Kraft (The OpenGov Foundation)—two leaders working to provide access to government information through advocacy and outreach—discussed their respective organizations in detail. Kraft works closely with the District of Columbia to place its code online and was quick to give a shout out to American Legal Publishing and Municode for their supportive efforts. He is quick to point out that "access to legal information is a straight up civil rights issue for our times" and also called librarians "book wizards." Kasianovitz, of FSGI, encouraged people to get involved, particularly by advocating to their local state governments and by getting involved with groups such as the FSGI.

Video recordings and handouts from the conference are available on AALLNET. The conference committee also **compiled information** on a number of organizations working to make state legal materials available and free of copyright restrictions in addition to a list of speakers—all of which are available on AALLNET.

ANALYZING THE ANALYTICS: A REVIEW OF LEGAL ANALYTICS PLATFORMS

DIANA J. KOPPANG
NEAL, GERBER & EISENBERG LLP

Over a year ago, when I set out to compare analytics platforms—for purchasing reasons and a possible program—I didn't realize how far down the rabbit hole would go. That being said, I've made progress, though this is an area that I believe will see rapid changes within the next couple of years as more companies enter this market and current vendors enhance their products.

Analytics continues to be a popular "buzz" product area—but like anything "buzzy," it can suffer from overuse. Let's start by defining analytics in the world of legal research, at least for the purposes of this discussion. In general, analytics data falls into two areas: representation analytics and motion/outcome analytics. It's important to note that metrics may be used interchangeably with analytics by some vendors.

Baseline representation analytics provide information on what firms or attorneys have represented as well as what parties or jurisdiction a particular area of law falls into. This type of product has been around for many years, though over the course of those years, we have not seen a lot of innovation. These platforms, such as Monitor Suite, LexisNexis atVantage (soon to be Client Profiler), Docket Navigator, and the newest entry—Bloomberg Law Litigation Analytics—tend to focus on federal cases. The areas given the most attention are intellectual property and corporate, both in litigation and transactional matters. The reasons for this focus are logical. PACER data is somewhat normalized, at least compared to any state court data, and intellectual property cases reside almost entirely in federal courts. Only in recent years, with the advent of the Patent Trial and Appeal Board (PTAB), have administrative proceedings been given more attention in analytics. However, the Trademark Trial and Appeal Board (TTAB) seems to be the poor country cousin left out in the cold, perhaps based on the amount of money a patent practice versus a trademark practice is willing to spend on research platforms.

While these representation analytics platforms have been around for a while, the difference in the data output from platform to platform, or even between docket searches and analytics data by the same vendor, can be surprising. While we're moving into more advanced platforms, if the new products are based on the data used in the first generation, there may be some serious

problems that need to be highlighted by the users (i.e., librarians) and resolved by the vendors.

For example, when do they tag a law firm or attorney's representation in a case? When the case is initially filed? A couple weeks later when the defendant has hired counsel? Throughout the case whenever an attorney leaves and another takes his or her place? Running representation searches across Monitor Suite and Bloomberg Law Litigation Analytics resulted in stark differences.

The authority file is key, as well as including subsidiaries, related entities, and, in the case of intellectual property matters, any intellectual property holding companies. Some databases draw from corporate research databases that are part of a sister platform or from a list built specifically for the analytics platform. Can you only choose a company from the authority file or can you use wild cards to catch the company name variations? Personally, I'd like to have both options. Both Monitor Suite and Bloomberg Law only allow you to choose from a list. Monitor Suite is far more expansive and allows you to view and select the name variations and subsidiaries or parent company—an excellent feature. In Bloomberg Law, you can view the hierarchy and see the included subsidiaries, but you can't remove subsidiaries that you would not want included in the data. However, neither platform has an option to conduct a wildcard search. As a patent searcher—another research area with great variations in company names—I find this very frustrating. In patent filings, the company name is often listed in a variety of ways. I never rely on a "normalized" name the vendor provides. Instead I craft what I would consider a better search—one I have control over—to account for those variations. Then I can answer an attorney as to how I searched rather than placing my reputation as a searcher on the faith that the vendor got it right every time. I want that ability to craft a search in any database.

Other factors to consider are court coverage, years included, normalization of law firm names, judge names, customization of reports, and options to export in a variety of formats: Word, Excel, and PDF. A comparison of these factors is provided in a **spreadsheet** I created. We also cannot assume that the same controls that are in place on other databases within a platform or designed by the same vendor are being used in the analytics platforms. I cannot emphasize this point enough—make no assumptions.

It is also important to know how we can trust the data and to what extent. We have to be armed with the information to argue for the product's cost. I've yet to meet an attorney, especially patent attorneys, for whom the answer "I trust the vendor," will suffice.

In the newest legal analytics developments, the area of motion analytics/metrics has emerged. Again, patent litigation has benefited from being an early focus for products such as Lex Machina and Docket Navigator. Contained within both of these products are intersecting representation and motion analytics to provide very dynamic reports.

Motion metrics look at how a case progresses and breaks out timeline data for key moments within a case (for patents, a Markman hearing, or decisions), or significant rulings such as motions for permanent injunctions, motions to dismiss, and motions for summary judgment. These metrics also measure rates of success which can be broken out by jurisdiction, judge, party, law firm, and/or attorney. Both Lex Machina and Docket Navigator provide outcome data such as final resolution of the case, whether a case went to trial, contained damages, had findings of validity or invalidity, or had specific reasons for findings of invalidity.

For patent litigation, Docket Navigator is a very strong and very affordable product. I highly recommend it for patent litigation analytics, but also for any practice that needs to do detailed PTAB research.

Lex Machina will definitely cost more—that is no secret to anyone in the industry—but their new Litigation Analytics Apps (don't think mobile apps, these are still web applications) take things to a new level. This is where they are a power house for request for proposal research and competitive intelligence. You can stack a firm against another firm; jurisdiction against jurisdiction; party against party, and draw a clear comparison of success rates, timelines, presence in courts, appearances before judges, and more. If I could have just purchased the apps to sell the product to my attorneys I would have. However, understandably, the base modules for the different practice areas are a necessary part of the subscription. These modules definitely have a lot of value, and the marketing appeal of the Apps goes over very well at the partner level.

I would be remiss to not discuss Ravel Law, though I would refer to the **February 2016 edition** of *The CRIV Sheet* for a detailed analysis. This platform stands apart from those I've discussed to this point. It is a

textual analysis product that can predict success based on arguments made before specific judges or within a jurisdiction. In this way, I see it as a power tool for case law research and litigation planning, rather than more prominently being used for pitching to clients or understanding how your firm is positioned within a market.

In doing my analysis of these platforms, I have developed some best practices for trialing these types of platforms. First, when going through a demo ask to have a product developer on the line when possible. They may be needed to answer the type of technical question librarians often (and should) ask, that a salesperson may not be able to answer. If you can trial multiple platforms at the same time, that is ideal to be able to run comparisons. If not, make detailed notes of the types of searches you run that can later be replicated when trialing other platforms. When you reach the contract negotiation stage, I would not recommend long term contracts as this is still a quickly developing area.

For more discussion on this topic **download the PDF** of my presentation and a spreadsheet comparing the analytics platforms.

EU COURT DECISION ON EBOOKS: LENDING, LICENSING, AND THE LAW

KYLE K. COURTNEY
HARVARD UNIVERSITY

If you have been keeping up with European Union (EU) law over the last month, you know that the Court of Justice of the European Union (CJEU) has been making all sorts of interesting decisions that could and likely will affect libraries. A month ago, it was **liability for hyperlinking**; this time it's about ebooks and lending.

However, in this instance, it's a good decision; one that helps bridge the gap between law and technology. Further, here in the U.S., this new case gives us the chance to reflect on our own laws surrounding lending, ebooks, copyright, and licensing, and might even drive some much needed library-focused advocacy forward.

What is the Case?

The CJEU was called upon to interpret an ebook lending system and a 2006 EU **copyright directive on rentals and lending**, in a case titled *Vereniging Openbare Bibliotheken (VOB) v. Stichting Leenrecht* (C-174/15). VOB is the association of Dutch public libraries, who argued that the rules for digital lending of ebooks should be the exact same as it is for traditional books. The VOB brought an action against Stichting Leenrecht, an authors' rights collecting foundation.

Getting back to our bearings here, let's quickly review how libraries, book loans, and collecting societies work in Europe, and specifically, for this case, the Netherlands.

Unlike the U.S., the Netherlands has something called a "public lending" right. Under this right, public libraries are legally required to pay royalties for the books they lend to patrons. These royalty lending fees are then distributed to writers, artists, and publishers via collecting societies.

Now, as our AALL members well-know, we don't have that law here in the U.S. In fact, some people are very opposed to this collecting scheme, while others support at least a fledgling system. The idea of a U.S. collecting society, similar to the European model, has come up from time to time in copyright legislation, court cases, or policy papers. Most recently a U.S. collection society schema was briefly mentioned in a **series of letters to the editor** by Robert Darnton, university professor and librarian emeritus at Harvard, and Mary Rasenberger, executive director of the Authors Guild. However, we are nowhere close to adopting the Dutch library law anytime soon.

Back to the CJEU case: This public lending right in the Netherlands does not apply to ebooks. Libraries that want to loan ebooks must purchase a separate (and potentially expensive) license from a publisher. Thus, we have the origin of this litigation: the VOB sought a declaratory judgment that the loaning laws should be the same for ebooks as it is for traditional books.

Initially, the judges of the Rechtbank Den Haag

(a District Court located in The Hague, Netherlands) asked the CJEU to clarify the VOB's position on ebook lending, in light of a 2006 EU copyright directive. This directive states that the exclusive right to authorize or prohibit rentals and loans belongs to the author of the work. However, countries may opt-out of this rule for the purposes of "public lending," if authors obtain "fair remuneration." This "fair remuneration" often comes in the form of royalty payments made to the collecting societies on behalf of their author-members.

The VOB wanted to continue to use the legally sound "one copy, one user" plan for ebooks, which is derived from the same "one copy, one user" plan for traditional print. In the digital context, a library would lend an ebook by 1) placing a copy on the server of their public library, and 2) let the patron download the copy onto the patron's own computer. To mimic the "one copy, one user" system, only one copy could ever be downloaded during the lending period, and, after the loan period has expired, the downloaded copy would be inaccessible to the patron.

This is basically the same way print books have been loaned for hundreds of years. As the VOB noted in its filings, this ebook loaning system has a sound methodology, utilizes technology to mimic the loan cycle, and merely treats ebooks the same as print books for loaning purposes.

Because this was a CJEU decision, the parties received **an early preview at the possible resolution** to the case in June 2016. How? At the CJEU, judges are assisted by lawyers called Advocates General (AG), who give legal opinions on potential resolutions to cases even before the CJEU judges deliver their own ruling. The AG's Opinion is not binding on the CJEU, but it often has some persuasive value.

In an interesting analysis (one that I argue could readily be adopted here in the U.S.) AG Maciej Szpunar suggested that a "dynamic" or "evolving" interpretation of the 2006 copyright directive should be applied, and that lending of ebooks is certainly the modern equivalent to the lending of printed books.

On November 10, 2016, the CJEU concurred with the opinion of their AG Szpunar and said that libraries could lend ebooks the same as they lend paper books.

Of course, the lending of an ebook using the "one copy, one user" model seems rational. The case makes good points regarding lending legally authorized copies (e.g., those that have been placed into circulation by a legal action such as an authorized purchase, a first sale, or other transfer of ownership of that copy to the library), not pirated or illicit copies.

AG Szpunar stated affirmatively in his Opinion that ebook lending wasn't specifically included in the original 2006 EU directive. However, he indicated that even though in 2006 ebook lending was "only in its infancy," this certainly shouldn't preclude a modern reading of the language of the copyright directive.

This is one of the best parts of the AG Opinion. This is precise and modern interpretive law at its best, allowing the adoption of technology that is reasonable, fair, and still exemplifies the goals of the copyright law, something we woefully need here in the U.S.

When U.S. courts (note: without an AG—maybe that would be a good idea?) heard a similar case in 2013, the court made a typical strict reading of the copyright statute, and certainly did not offer any "dynamic" or "evolving" interpretation of U.S. copyright law.

Why? I have **written about this before**, but I will let you in on a secret: our court system favors licensing and contract first and foremost. In fact, ebooks, digital music, digital movies, and, most related econtent, are typically governed by contract or license. Therefore, ebooks are not treated the same as traditional print books. How did this happen? One must first look at traditional library loaning schema, contract law, the first sale doctrine, and the rise of the U.S. software industry to get a sense of where it all began.

The first sale doctrine is an important part of U.S. copyright law which prevents an owner from controlling subsequent or "downstream" transfers of his or her works. This is the central doctrine that permits U.S. libraries to purchase books and then loan those books to an unlimited number of patrons without ever having to pay any fees beyond the initial purchase—not like the public lending right in Europe where fees are collected per loan. Once a copyright holder transfers ownership of a copy, usually through a sale, he or she no longer has rights to that copy. Sometimes this is referred to as exhaustion doctrine, where the copyright is said to be exhausted because it can no longer be exercised by the owner.

Entire industries are built upon the first sale doctrine, including many "secondary market" businesses such as eBay, used book stores, used records stores, etc. Without this law, copyright holders could enforce rights

in this secondary market, which would impact selling, loaning, or gifting any copyrighted work.

Protection of the secondary market is important to our economy. This concept goes back to 1908 when the Supreme Court stated that a copyright holder's attempts to squash the secondary market was "hateful to the law from Lord Coke's day to ours, because it is obnoxious to the public interest."

However, sometime in the late 70s and early 80s, a concept from the newly developing software world emerged. For software transactions, companies wanted to maximize the ability to control downstream uses. As early as 1977, courts interpreted new purchases that had attached license agreements. Courts considered that the user must read them closely to determine whether they merely impose usage restrictions on a sale, or whether those restrictions are so inconsistent with ownership that no sale took place.

Courts came to a consensus quickly in a series of lawsuits surrounding software synthesizing topics such as copyright, purchase, ownership, and first sale. If the underlying transaction resembles a loan or a lease, with the transferor retaining title and seeking to regain physical possession, courts are unlikely to find that a sale occurred. Without a sale, you can't invoke the first sale doctrine.

"[A] copyright owner can cause any distribution to be a license, as long he distributes the copy under restrictions that are inconsistent with a 'sale' of that copy."

Not one purchaser has "owned" a copy of MS Word, PowerPoint, or other software programs on our computers since the 1980s. We are all renters; we simply lease this software.

Now we come to the U.S. ebooks problem: like software, electronic works (mp3, pdf, ebooks, etc.) are typically sold subject to agreements (contracts, licenses, etc.), in transactions that look less like an outright sale and more like a limited license. Again, if there is no sale, then you can't claim the benefits of the first sale doctrine.

What are libraries actually getting with ebook purchases? Not much. We are leasing these ebooks, at best. Further, because that rental/lease is subject to a license, the lessor (publisher) can put terms in the license that prevents us from doing what we normally do with print books: such as allowing unlimited check-outs, placing items on reserve, making preservation copies, loaning items out to other libraries via interlibrary loan, etc. The contract rules.

Our legislature and courts have certainly not offered the same "dynamic" or "evolving" interpretation of our first sale doctrine, like AG Szpunar suggested in the VOB case.

In 2001, the former Register of Copyrights rejected the development of a "digital first sale" doctrine, which was followed by a similar judicial rejection in 2013 in the case *Capitol Records, LLC v. ReDigi*. This case involved a company called ReDigi, a digital music company, which was trying to develop a "used mp3" market based on the "digital first sale" idea, which would permit an owner of a digital work to transfer it to another person, provided that the original was deleted. This business idea probably would have been very successful with consumers and libraries. However, Capitol Records quickly sued, and the court's strict reading of the first sale doctrine prevented ReDigi from continuing the business.

From the publisher's perspective, this is a great end-run on the secondary market. You can set prices, limit access, and lock down these products with licenses that, if they were in the print-based world, would be subject to downstream uses that you couldn't control. Financially, publishers would much rather have libraries buy 1,000 ebook licenses, rather than buy one physical book that libraries could loan out 1,000 times.

The rejection of digital first sale and acceptance of the "contract as king" dichotomy, along with other developments of related laws from their origins to the present day, makes it clear that first sale rights only apply to physical, not digital, disposal of copies, at least for now. In the U.S., there is no "digital secondary market" for mp3s, ebooks, or movies, nor would publishers embrace such an expanded secondary market.

How far has this gone? Initially, the big six publishers were requiring absurd licensing terms to ebooks that they could never put into a print contract, e.g., 26 check-outs of an ebook requires a new license purchase ("mimicking the life of the book"), no interlibrary loan, no print distribution, no preservation copies allowed, three to 10 times the normal price for a library to purchase an ebook, or, in some cases, no ebook sales were permitted to libraries at all.

Here's the advocacy part: If "contract is king" and libraries are purchasing ebooks, they need to negotiate for clauses in the contract that best serve their community, their mission, and their collection policies.

Libraries often do educational outreach to remind

all our faculty, scholars, students, and patrons that a contract isn't formalized until it is signed—and libraries should heed their own advice. Even with the biggest publisher featuring the most basic boiler plate contract, we should take the time to try and negotiate. You don't know the outcome if you don't ask. Think of clauses that serve a purpose beyond what the publishers think: introduce interlibrary loan clauses, preservation clauses, and reject any terms that harm collection development goals or the mission of your library. Publishers aren't thinking about long-term preservation, nor do they always consider classroom uses or alternate scholarship methodologies (such as text and data mining). They also do not think of access for our print disabled or visually impaired patrons that require special accessibility. Even when they explicitly reject interlibrary loan or other rights, ask! Cross out those clauses and offer new language.

Remember, more often than not the publisher is thinking about pure access to their materials, not about extended uses that the library has to consider.

Why are the publishers fixed on access with ebook and other electronic materials? The answer is simple: technology. Electronic transmissions of a work are generally forbidden because of the nature of copies in today's digital environment: files that are in .pdf format, for example, can allow transfer from one party to another, but the transferor may still retain a perfect copy of the work. This is called piracy. First sale was never intended to exist in this digital environment, but with some careful reading of the law, an understanding of other technology to replicate the "one copy, one user" model, and maintaining our values as champions of access, we can learn from the CJEU decision, and even adopt that ebook lending model here in the U.S., despite any contractual misgivings. This will also help us partner with the creators and publishers to fight piracy.

As we all know, librarians are not pirates. Libraries are filled with information professionals from all backgrounds that take the law and their community and collection roles very seriously. Again, librarians are information professionals. We are not the group to fight about ebooks. In fact, as it should be pointed out anytime libraries and ebooks are mentioned, libraries are some of the world's best customers for ebooks.

We need to stop thinking of copyright as being about copies. It has become much more about access.

The court in VOB did not actually address this access and piracy issue. While ebooks can feature digital rights management to protect books, there is no mention in the case of technology that could enforce the "one copy, one user" model for ebooks. However, it does exist. With a little advocacy and some licensing know-how, libraries can offer the same "dynamic" or "evolving" ebook programs in our own backyard.

In the meanwhile, keep an eye on the CJEU courts because addressing the viability and legality of the technology surrounding the "one copy, one user" ebook model might be the next case on the horizon.

ICLR REMOVES CASES FROM WESTLAW AND LEXISNEXIS IN THE U.S.

DANIEL HOADLEY
THE INCORPORATED COUNCIL OF LAW REPORTING FOR ENGLAND & WALES

The Incorporated Council of Law Reporting for England & Wales (ICLR) was formed to be something of a renaissance for the English legal system. At the time, Queen Victoria held the British throne and Abraham Lincoln was in the White House. During this period, three pivotal developments emerged. The first was the construction of the Royal Courts of Justice, which provided the first permanent home for the most important English courts. The second was the fusion of common law and equity. The third critical development was the recognition that any common law system worth its salt required a cast iron mechanism for recording, publishing, and tracking the decisions of the judges. ICLR was formed in 1865 with the specific purpose of providing that very mechanism. For the past century and a half, ICLR—as the preeminent and authoritative provider of English case law—has been producing constant and meticulous coverage of law-changing decisions of the English courts.

As an organization in which the majority of our staff are writers and editors, the rapid rise of online legal research was a phenomenon which at first we were challenged to understand and seize upon.

As a charity, our mission has never been about maximizing our profits. Our only priority is to continue to apply our expertise in curating and guarding the most accurate account of English common law as it develops in the courts at moderately priced rates, and in a way that is most assessable to the profession. We have worked hard to embrace technological change which began with the launch of **ICLR Online** in 2011.

In response to the sharp downturn in print sales and to ensure continued access to our law reports, ICLR struck up partnerships with several commercial publishers, including Thomson Reuters (Westlaw), LexisNexis, and Justis Publishing. The licensing strategy has enabled users from around the world to access our reports online, but in order for us to continue producing the high quality and timely law reports for which we are known, we must return to providing our work to you directly.

The decision to remove our content from Westlaw and LexisNexis in the United States was not taken lightly. However, the work we do is of considerable importance to the effective administration of justice and our main priority is to ensure that we have the necessary independence and resources to continue our work. Direct provision of our law reports is vital to this.

Our ability to generate accurate and authoritative law reports makes a difference in law firms and courtrooms up and down the UK and across the common law world. This past December, people in the UK watched live broadcasts of the UK government's appeal to the Supreme Court in the Brexit case. Virtually all of the authorities cited by both sides of the argument are the reports produced by ICLR.

We are keen to open dialogue with you to ensure that we are supporting your needs during this period of change and beyond. This includes working closely with both Westlaw and LexisNexis to ensure all customers benefit from a straightforward and seamless transition to **ICLR Online**.

CRIV LIAISONS TO VENDORS

CRIV holds semiannual calls with four legal vendors: Bloomberg BNA, LexisNexis, Thomson Reuters, and Wolters Kluwer. CRIV publishes notes from the calls as they become available both in *The CRIV Sheet* and on the ***CRIV Blog***. For this issue, we have notes from recent calls with LexisNexis and Wolters Kluwer.

CRIV/LEXISNEXIS SEMIANNUAL CALL

JAMES C. GERNERT

On November 29, 2016, CRIV had its semiannual AALL/LexisNexis vendor relations conference call. Present on the call were Cindy Spohr, LexisNexis manager, librarian relations group, Kate Hagan, AALL executive director, and James C. Gernert, CRIV vice-chair and LexisNexis liaison.

The first item on the agenda related to the Vendor Voice articles in *AALL Spectrum*. Cindy Spohr said that questions had been raised as to how vendors were selected for the column, and specifically wondered if the article involved a paid sponsorship arrangement. Kate Hagan addressed this question by stating that there definitely were no paid sponsorships involved with the vendors who were highlighted in the articles—she said that the selections were made by the editorial board of *AALL Spectrum*, and Heather Haemker, AALL's publications manager.

The next part of the discussion focused on the status of Lexis.com—if there was a definite date for its sunset, and what type of support Lexis would be providing for it in the meantime. Spohr didn't have a definite answer at the time, but said that she would follow up, and has since provided the following statement:

> *LexisNexis has announced that we are retiring the lexis.com® service and upgrading customers to Lexis Advance® over the next 12 months.*
>
> *Law school customers were notified last February that lexis.com will retire for all faculty and students on December 31, 2016.*
>
> *With the LexisNexis® content collection accessible on the Lexis*

Advance service, and because of its superior technology, it is time to ensure that U.S. legal professionals are taking advantage of the benefits only available with the Lexis Advance service.

We are committed to ensuring a smooth transition for members of your organization currently using lexis.com, and are starting this process now to provide your organization with sufficient time to prepare for this change. Upgrading customers to Lexis Advance will take place throughout 2017. Please contact your Client Manager with questions.

The third item on the agenda related to the recent LexisNexis acquisition of Intelligize, and what impact it might have on other Lexis Securities products, specifically Securities Mosaic. Spohr indicated that there were no plans to merge the products in the short-term, since Lexis saw them as serving somewhat different functions and markets. Securities Mosaic is more of a research product, whereas Intelligize is more of a specific practitioner-oriented tool. LexisNexis has since provided the following statement regarding the products:

In September, LexisNexis acquired privately held Intelligize, Inc., provider of the industry standard for U.S. Securities and Exchange Commission (SEC) intelligence. The acquisition expanded our LexisNexis securities and M&A offering with new content, innovative tools, and analytics while complementing our existing securities solution, Lexis® Securities Mosaic®.

Intelligize™ provides a leading analytics solution enabling legal, academic, and business professionals to efficiently mine data and insights from SEC filings, M&A contracts, transactional agreements, and corporate governance documents. This enables customers to streamline compliance processes, benchmark peer disclosures, clearly identify market standards, draft documents based on SEC filed precedent, and clear SEC reviews in an efficient manner.

The Lexis® Securities Mosaic® service equips law firms, businesses, and industries to meet the challenges of global securities-related work by pulling together a comprehensive selection of sources including SEC EDGAR®, SEDAR® and UK filings; current awareness tools; and a broad spectrum of relevant information ranging from international private placement memoranda to law firm memos.

In the immediate future, there are no changes to current contracts or how customers access or are billed for either product. LexisNexis will keep the law librarian community informed as decisions are made regarding these products.

The final item discussed was the need for better integration of some LexisNexis products into one interface. Gernert expressed that this was definitely a problem with Courtlink, which has been under the LexisNexis corporate umbrella for many years, but still requires a separate password for access. For libraries that are already struggling with password management, having to make sure that Courtlink access is set up in addition to Lexis.com or Advance is a struggle, and often results in the service not being used as much as it might be by our patrons. Spohr indicated that she understood the issue and thought that there might be some plans to integrate Courtlink access more completely into Lexis Advance, but couldn't really provide a timeline or more specific information at this point.

CRIV/WOLTERS KLUWER SEMIANNUAL CALL

CHARLES A. PIPINS II

On December 8, 2016, CRIV held its first semiannual call with Wolters Kluwer. In attendance were: Charles A. Pipins II (CRIV vendor liaison); Kate Hagan (AALL executive director); Cindy Burrows (Wolters Kluwer); Chris Pamboukes (Wolters Kluwer); and Scott Murray (Wolters Kluwer).

CRIV had no outstanding requests for advocacy involving Wolters Kluwer products from the membership to discuss.

After introductions were made, the call began with a discussion of an ongoing project regarding MARC records. Wolters Kluwer is creating MARC records for Intelliconnect and Cheetah. Wolters Kluwer has also developed a **MARC Records Manager** to help download and maintain the MARC records. MARC Records Manager will allow users to search and find MARC records, and will provide alerts when MARC records have been updated. More information on MARC Records Manager will be released during the first quarter of 2017.

We also discussed several upcoming changes and developments to Wolters Kluwer products. First, Cheetah content migration from Intelliconnect was completed at the end of 2016, and new content sets to be added this year include: Telecom, Blue Chip, and Tax Archives. New enhancements to the Cheetah user interface will continue. Murray noted that, if you haven't seen Cheetah lately, you should take another look because it has evolved over the last three years. One example is the way in which Cheetah manages search results. This feature has shifted to a new configuration in which the search result document opens in a new overlay.

Wolters Kluwer is also making it easier to search their content within a subscriber's portal with a widget. Their new widget builder is included in the subscription and has a number of customizable features. This keeps portals current with a search box that will search only the Wolters Kluwer content to which the customer is subscribed.

Speaking of portals, Wolters Kluwer is working on partnering with various enterprise search platforms to allow their content to be searchable from a search engine within whatever enterprise is utilized in a firm's portal.

Wolters Kluwer Browser Search is a plugin that allows a user to search Google and Wolters Kluwer content at the same time. It instantly integrates browser search queries with subscribed content from Wolters Kluwer. This **plugin** is free to current Cheetah subscribers.

Finally, SmartTask is a practice resource that offers step-by-step guidance on a variety of practical legal tasks. Wolters Kluwer treatises, as well as primary materials and practice notes are integrated throughout. This product is organized with the transactional lawyer's workflow in mind, but is still customizable to fit the needs of a particular office.

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