Many in our community have been alarmed by recent developments regarding vendor consolidation and its impact on the dissemination of legal scholarly publications. We have watched as a handful of powerful vendors have consolidated control over much of the “life cycle” of legal publishing. Further, these vendors have often been less than enthusiastic about making content available via open access, frequently leaving institutions deprived of the scholarship they funded. Notably, the University of California recently decided to walk away from negotiations with Elsevier due to its history of opposition to open-access publishing. Elsevier’s acquisition of scholarly communications platforms such as SSRN, Expresso, and Digital Commons has raised concerns whether a single vendor has too much control over legal academic publishing. (Learn more at bit.ly/MJ20Digital.)

Academic Publishers and Open Access

There is a plethora of literature on the “serials crisis” in academic libraries. Faced with increasingly higher subscription costs, research libraries routinely struggle to provide access to serials to their patrons. The Association of Research Libraries reports that their member libraries have had to contend with a 521 percent increase in the cost of serials since 1986, far outpacing the consumer price index, which rose only 118 percent during this period. (Read the article in Vox at bit.ly/MJ20Facts.) Many assumed that the transition from print to electronic publishing would
lower, not increase, the cost associated with academic journal publishing. Instead, libraries face increasingly higher costs while publishers such as Elsevier enjoy ever higher profit margins (in 2018, Elsevier saw a profit margin of 31.3%). (Learn more at bit.ly/MJ20Elsevier.)

In response to this seemingly unsustainable publishing model, the University of California chose to discontinue its $11M per year contract with Elsevier beginning in 2019. The University of California system is the largest academic system in the world and its 27,000 researchers contribute over 10 percent of Elsevier’s corpus. A few academic libraries followed the University of California’s lead; however, it remains to be seen what impact, if any, this negotiating tactic will have on both Elsevier and academic publishing in general.

To counter publishers’ control over the dissemination of academic research, many scholars have begun adopting open-access publishing practices. Open Access (OA) comprises a range of methods for exchanging academic works in a free and open manner. It can mean making pre-prints of one’s articles available online ahead of their publication, or depositing finished works in a university’s institutional repository (IR). Its purpose is largely to circumvent the academic publishing business—which would have research institutions buy back the scholarship that they funded—and to make these materials available to the widest possible audience. There is even evidence that making materials available via open access can improve overall citation rates. Yet, even these attempts at independent exchange of information are falling under the influence of publishers as vendors have begun acquiring the very mechanisms that make open-access publishing possible.

The Life Cycle of Legal Publishing

There is a typical workflow that legal academics adhere to when publishing a scholarly article. Most articles begin as a working draft, or conference paper, that may be shared with a small group of colleagues for feedback and constructive criticism. Frequently, these working drafts are then uploaded to a hosting service such as SSRN to enable easier distribution of the article to other academics. An open-access alternative to SSRN is the LawArxiv project hosted by Cornell University. LawArxiv is based on the open-source arXiv platform by the Open Science Foundation. Despite the efforts of projects like LawArxiv, SSRN remains such a dominant player in this market that its download metrics are used to evaluate professor performance and make decisions about tenure. Elsevier acquired SSRN in May 2016, and there is already evidence that they are exerting influence over this platform that may run counter to the goals of open access. For example, it was discovered that SSRN has been manipulating search results to push materials it considers “scholarly” versus “popular.” (Read the article at bit.ly/MJ20Scholar.) The fact that a vendor is making decisions about what materials are scholarly has understandably raised concerns within the legal academic community.

After uploading a working draft, scholars typically further refine their work for eventual submission to law reviews and journals. There are two major systems for article submissions—Expresso and Scholastica. For many years, Expresso had a dominating market share, but Scholastica has made a noticeable impact over the last few years. With Elsevier’s acquisition of Bepress, it now owns Expresso. Consequently, both working draft hosting and article submissions are now controlled by the same vendor. The Bepress acquisition also gave Elsevier control of Digital Commons, the most widely used IR platform among American Bar Association-accredited law schools. Institutional repositories are platforms used by academic institutions to collate, archive, and preserve scholarship produced by their faculty and students. If an author has retained copyright to their work, or the right to self-archive, they will often deposit the final version of the publication in their school’s institutional repository to make it permanently accessible.

Schools are heavily dependent on the vendors that host their institutional repositories to provide ongoing access. As these vendors gain more control over the academic legal publishing life cycle, their leverage over law schools and libraries grows and their ability to extract even greater subscription fees for the use of their tools also increases.

Open-Source Alternatives

To avoid becoming overly dependent on vendor-provided solutions, some libraries have opted to host their own publishing platforms. These homegrown digital repositories make use of open-source digital asset management software that both preserves digital files and makes them discoverable with built-in search engines. But to qualify as institutional repositories—and to serve as a comparable replacement to Digital Commons—indepedent developers have had to augment this software with additional functionalities that fulfill open-access goals, some of which include:

- Exposure of metadata on the open web in a format that can be indexed by Google Scholar
- Automatically generated citations in a variety of different styles
- Authority control with commonly accepted author identifier systems such as ORCID
- Persistent identifiers for files using reliable systems such as DOI or handle.net
- Self-deposit workflows so that researchers can deposit their own works into the repository
- Embargoing and access control for works whose copyright agreements...
stipulate that they cannot be made available elsewhere for a period after initial publication.

DSpace is one of the oldest and most widely used open-source institutional repository platforms. It began as a project between Hewlett Packard and MIT back in 2002 with a focus on long-term storage, access, and preservation. Now on its sixth version, with a seventh on the way, many IR features have been added over the years, to the point where DSpace can function as a “turn-key” institutional repository solution with just its core feature set. If you need additional customizations, there is a large community of contract developers who can help build your repository and tailor it to your needs. Duraspace, the nonprofit organization that moderates DSpace’s development, even offers a hosted plan for libraries that lack access to server infrastructure.

EPrints is another well-established open-source IR platform. Though not as widely adopted as DSpace, it has been around just as long and has grown up alongside and in response to the open-access movement. EPrints was one of the few digital asset management systems that was built specifically for publishing scholarly works. It lacks the big third-party developer community that other platforms on this list enjoy, but it is still actively maintained by its original developer, the University of Southampton, which can be contracted to build and host EPrints repositories.

Islandora is an open-source digital asset management system that is quickly growing in popularity thanks to its integration with Drupal, a web development framework that has a broad following. From humble beginnings as a pet project at the University of Prince Edward Island, Islandora now has a big developer community that stretches around the world. The suite of features that transforms the out-of-the-box install into an institutional repository is called Islandora Scholar. The Islandora development cycle is somewhat chaotic and can leave some projects behind with successive versions. Though valid today, there is some risk that Islandora Scholar could become incompatible with future versions of Islandora.

Invenio is a digital library platform that was developed at CERN (the same European research organization responsible for the Large Hadron Collider). It is used by a number of other major labs for large-scale data storage. An IR variant was developed by a CERN spin-off company in Norway called TIND. They offer a more mediated experience for library customers, not dissimilar to Bepress’s service model with Digital Commons. TIND has made some inroads into law libraries lately with Berkeley Law, notably choosing TIND for their integrated library system and their new institutional repository (replacing their existing Digital Commons installation).

While open-source software may be free to use, the costs associated with developing and maintaining one’s own repository can be significant. It requires investments in server infrastructure or cloud-based web services to host the repository. A systems administrator is needed to properly install the repository, and a web developer to code and design the website that surrounds it. Few law libraries possess the resources to deploy their own open-source repository. They opt instead to pay specialized contractors to develop their repositories for them, or they license hosted services such as TIND. These open-source alternatives can be just as costly as for-profit, vendor-supported solutions. The decision to choose open-source software over a proprietary service should be motivated by more than just cost savings. The real value is the independence and flexibility that having your own system offers. Like any investment, libraries must weigh the risks with the rewards.

Moving Forward
We can hope that vendors will deal fairly with libraries and act in good faith. But we must also be careful not to become so dependent on publishers that we cannot do without them. It is incumbent upon us to explore more self-sufficient publishing models. Though the expense of creating our own open-access platforms is admittedly very great, doing nothing could be even more costly.

OPEN SOURCE ALTERNATIVES

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