2-2008

The Ownership Delusion: When Law Libraries "Buy" Electronic Documents, Are They Getting More, or Simply Paying More?

Simon Canick

University of Maryland Francis King Carey School of Law, scanick@law.umaryland.edu

Follow this and additional works at: https://digitalcommons.law.umaryland.edu/fac_pubs

Part of the Collection Development and Management Commons, Legal Education Commons, and the Legal Writing and Research Commons

Digital Commons Citation

https://digitalcommons.law.umaryland.edu/fac_pubs/1570

This Article is brought to you for free and open access by the Francis King Carey School of Law Faculty at DigitalCommons@UM Carey Law. It has been accepted for inclusion in Faculty Scholarship by an authorized administrator of DigitalCommons@UM Carey Law. For more information, please contact smccarty@law.umaryland.edu.
When law libraries “buy” electronic documents, are they getting more, or simply paying more?

by Simon Canick
Not long ago I received an offer for the LexisNexis Congressional Hearings Digital Collections. The retrospective content—nearly 120,000 hearings published between 1824 and 2003, fully searchable and downloadable in PDF format—was quite tempting. Without question it would improve our collection and provide something at once useful and powerful for our students and faculty.

The “discount” price, however, made me cringe: $200,000 plus “a modest fee” of $3,000 per year for use of the LexisNexis interface. Prospective coverage costs an astonishing $33,000 a year, plus another $1,500 for access. I wondered how our budget could accommodate a hit that large. What would we cancel to make it work?

**Purchase plus Access**

For years librarians have worried about the transition from ownership of physical materials to rental of digital information. Because patrons demand electronic access, we continue to move in that direction. But we feel anxious about the implications for our collections. Ideally we would have the best of both worlds: real ownership and control of digital content.

Now law publishers have seemingly called our bluff. In recent years, a new model has emerged, which I’ll call purchase plus access. Libraries pay a lump sum (usually enormous) up-front in order to “buy” the electronic documents, along with a “nominal” charge for continued access and search capability through the vendor’s own interface. Primary examples include Gale’s *Making of Modern Law* (MOML), LexisNexis and Readex versions of the *Serial Set*, LexisNexis’ Hearings and CRS modules, and Hein’s *Foreign and International Law Research Database* (FILRD).

These offers got me thinking about what “ownership” of digital information really means. So last fall, during a LexisNexis presentation of the hearings and CRS modules, I asked, “What happens if we stop paying the access fee?”

The presenters were stumped. “Nobody’s asked that before,” they said. Evidently they hadn’t considered the issue, probably because they assume libraries will never use the files independent of the LexisNexis interface.

For all that money you deserve a better answer, so let’s take a closer look. It turns out that it depends on the license. For some databases, when you stop paying the access fee, you’re entitled to DVDs or tapes full of image files. In other cases, however, you only get the data if the vendor goes out of business. If you’ve already bought MOML or one of the others, you should re-read the license and see what you really own. If you’re considering such a purchase, make sure you carefully review and understand the contract.

Let’s say you buy one of these expensive packages and the access fee rises gradually from $2,500 to $10,000 per year. Eventually you may reassess and decide that the increase isn’t justifiable. Under the “Only if the vendor’s gone out of business” clause, you’re forced to continue paying the higher charge or you lose access. In this scenario, you paid the up-front cost for nothing. Even if you get DVDs, you’re still in a precarious position.

**Because patrons demand electronic access, we continue to move in that direction.**

— Simon Canick

**Who Benefits?**

In fact, this looks like a windfall for the vendors. These deals usually include no alternative plan for ordinary rental; instead, if we want the content, we have to pay the lump sum and annual access fees. Let’s say the database costs $100,000 (payable in four annual installments of $25,000) plus $2,500 per year for access to the interface. In this scenario, the charge is $27,500 for years one through four. Imagine that in years five through 10 the maintenance fee increases by $500 each year, so year five costs $3,000, year six costs $3,500, and so on. The total outlay in the first 10 years is $135,500.

Quantifying the windfall is challenging, because we don’t know what the same vendors would have charged for access only. But based on experience with databases like LexisNexis Congressional and HeinOnline, let’s assume $7,500 for the first year and $500 more each year thereafter. Over the same 10-year period we’d pay $97,500. That’s $38,000 less for the vendors. Even if the total outlay over 10 years is an identical $135,500, vendors benefit from “selling” content because so much of the money comes up front.

To be fair, some libraries may benefit from arrangements featuring big lump-sum payments. In fact, one vendor promoting an ownership plus access product told me that it created this pricing plan because libraries asked for it. Here’s the argument: academic libraries sometimes end a fiscal year with a pool of unspent, one-time money. A lump sum payment to buy a large electronic back-file might suit their needs better than starting up a bunch of new, traditional subscriptions because they may not have the money to maintain them next year.

While this may be true for some very large, affluent libraries, it doesn’t completely pass the sniff test. After all, payment plans (“you don’t have to pay the whole $100,000 now—choose our flexible, four-year payment option!”) are common, and the acquisitions librarians with whom I’ve discussed the matter generally see these charges as impossible to accommodate without massive cuts to other parts of their collections.

Surely we can agree, however, that genuine ownership of digital files is worth more than renting access, so paying extra makes sense. But how much extra? In other words, what is ownership of information worth? I’m unaware of any process to help one make such a judgment. Is your gut instinct good enough? Shouldn’t your ability (or lack thereof) to make the files available to patrons without using the vendor’s interface affect your analysis?
Consider also how, by moving customers to this sort of pricing scheme, vendors create a kind of “sticker shock” effect, whereby our initial horror is replaced gradually by resignation and then acceptance. You might recall when The Police charge $300 for a concert ticket, but next year you’ll hardly notice when Pearl Jam raises its prices from $40 to $60. Similarly the $10,000 database that once seemed vastly overpriced now looks reasonable as you become used to seeing six-figure invoices. The stretching of our expectations to accommodate $100,000+ dollar invoice is an effect, whereby our initial horror is replaced by resignation and then acceptance, extent to which we become used to seeing six-figure invoices. The stretching of our expectations to accommodate $100,000+ dollar invoice is an effect, whereby our initial horror is replaced by resignation and then acceptance.

The ABA Likes Ownership!

One benefit of ownership is our ability to report more volumes to the American Bar Association (ABA). In fact, starting with its 2007 questionnaire, the ABA memorialized a distinction between ownership and access with respect to electronic resources.

Questions 3 and 6 make the distinction between ownership and control over an electronic title which the library has purchased or over which it has otherwise assumed responsibility (Question 3) and access to electronic resources which are licensed or linked to by the library but over which the library has no control... (Question 6)

Here the ABA has announced an enhanced status for electronic resources that are “owned” and “controlled,” notwithstanding the fact that the packages in question offer neither of those, at least not in the conventional sense. But the distinction is important because “electronic titles (owned)” are part of academic law libraries’ volume counts, and volume count still represents a portion of the formula used by U.S. News and World Report to produce its law school rankings, according to Theodore P. Seto’s, “Understanding the U.S. News Law School Rankings” (http://ssrn.com/abstract=937017).

So the ABA’s definitional change adds an incentive to academic law libraries that feel pressure from their deans to increase title counts. But will the dean care enough to supplement the library’s budget in order to buy an electronic package? When I suggested as much at a recent NELLCO acquisitions meeting, the reaction was sarcastic laughter. Most of us understand that we need to find the means within our already-tight budgets.

Alternatives and Missed Opportunities

Now consider the potential impact of the new wave of free, Web-based digital libraries, most notably the Google Book Project (http://books.google.com). Others include Microsoft’s Live Search Books (http://books.live.com) and the Open Content Alliance (http://opencontentalliance.org). We know that five major research libraries (Harvard University, New York Public Library, Stanford University, University of Michigan, and University of Oxford) have partnered with Google to digitize their collections. These libraries hold virtually all of the materials that we’re now rushing to buy from LexisNexis, Thomson Gale, Readex, and Hein. The digitization process continues, but already you can find many of the titles from Making of Modern Law on Google Books.

So can we wait for Google to make these ownership plans obsolete? Google’s not telling. Seeking alternatives to the Serial Set versions from Readex and LexisNexis, I e-mailed Google to ask whether we should expect the program to focus more on government documents in the near future. Google’s response: “As you noted, we have partnered with major research libraries that have an extensive collection of U.S. Government documents...As our program expands, we would like to make more government documents publicly available.” That’s not much to go on, but it’s probably safe to assume that this content will continue to trickle into the database in the coming months and years.

As it stands, the ownership trend is dispiriting because it’s a reminder of what we could have done on our own. Take the Serial Set, which many academic libraries hold in paper or microform. Couldn’t we have joined forces to create our own digital collection? Imagine if 100 academic libraries had spent $30,000 each to digitize the series, a fraction of the amount charged by Readex and LexisNexis. Would that $3 million have delivered a usable, searchable version of the Serial Set? I suspect the answer is yes. But with so many libraries already invested in the LexisNexis and Readex versions, it’s probably too late to move forward.

It might be more realistic to push vendors to join Portico (http://portico.org) or to consider a cooperative arrangement like Lots of Copies Keep Stuff Safe (LOCKSS) (http://lockss.org). Portico is an archiving service designed to provide perpetual access to electronic journals in the event that their publishers cease to do so. To date, 46 publishers have agreed to commit more than 6,000 journals to the Portico archive.

LOCKSS has a similar aim, but decentralizes the archival function. Using
this approach, libraries download open-source LOCKSS software and host the electronic data locally. Unfortunately most of the databases I’ve described in this article feature government documents and monographs, so they aren’t covered by those e-journal archiving services. To date, law publishers have not been active in either LOCKSS or Portico.

Any solution to this problem starts with awareness by librarians. We should think harder before jumping at the ownership offers on the table. The premise that they offer something fundamentally different (namely ownership instead of rental of digital information) appears to be a mirage. We remain beholden to the vendors—the essential difference is the astronomical price increase. In exchange, all we have is a receipt and the hope that we’ll never need to use the files we bought.

Simon Canick (simon.canick@law.uconn.edu) is associate director for library services and adjunct professor of law at the University of Connecticut School of Law.

getting to know the “e” people—continued from page 25

individuals with whom you want to build relationships.

Practice good communication and, more importantly, good listening skills. Remember that big decisions don’t happen all at once, but rather they happen throughout the year in many small conversations and informal meetings.

Finally, never pass up an opportunity to inform people about the library. Don’t forget about opportunities to use those “elevator speeches” and make sure to always have one prepared in your mind. You might even want to consider creating a uniform “elevator speech” that you can share with your entire staff as well.

Prepare every level of the library staff with the tools and skills to take advantage of any networking opportunities that arise. Regularly provide your staff with relevant and timely information about library initiatives or future projects, so they can all serve as advocates for the library.

In her book, Brag! The Art of Tooting Your Own Horn Without Blowing It, Peggy Klaus coins her own term for elevator speeches and calls them bragologues. She created a 12-question self-evaluation (available for download at www.bragbetter.com) that provides the facts and specific details to use to create bragologues and then edit the bragologues to create shorter versions, which she calls brag bites.

Why Get to Know the Go-To People?

So, why go to all this trouble? Well, in this day and age, it’s no longer an option not to. We need to offer advice, rather than just information, and upgrade our contribution level to our organizations. We have to reach out and redefine our roles—others will not do this for us. We must continually reassess our importance within our organizations. Networking and building key relationships helps the library get what it needs and go where it needs to go. The library doesn’t exist in a vacuum, and we all need to turn to others for support for our library initiatives and ideas.

In addition, your networking efforts will begin to establish you and the library as stakeholders in your organization. In order to do this, some people may have to learn new behaviors, such as projecting the attitude of “I am a key player in the organization’s success” and backing up the projection with concrete accomplishments. Learning these new behaviors and attitudes are well worth it in the end.

No matter what, it helps to start building relationships that will continue to benefit you and the library. I believe that marketing isn’t our issue—relationships are. If they are done right, marketing takes care of itself.

Building good personal relationships really isn’t that difficult. The stretch for many is putting it at the top of the priority list. Remember to focus on the things that preoccupy the stakeholders in your organization; that will help you focus your efforts on things that will get their attention. Good relationships with the go-to people allow us to be entwined in the business process and know what’s really going on.

How Do You Do It?

The final question is how. How do you do this in your organization? The answer to this question will, no doubt, be different for every organization and for every individual. One thing is true for everyone—if you start with small steps and build on those as you go along, the question of how doesn’t seem as daunting.

Think about one thing that you can start with that will improve your relationships and interactions with the go-to people in your organization. Take a small step in the right direction, and then let the momentum of your initial success carry you forward. Cultivating relationships and consistently reaching out is often the key that opens the door to some of the best and most exciting opportunities.

Holly M. Riccio (hriccio@omm.com) is library/calendar manager at O’Melveny & Myers LLP in San Francisco.