PRESERVATION, DISCOVERY, AND ACCESSIBILITY (PDA): TALKING POINTS OF A CRITICAL NATURE

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PREPARED BY

AJ Blechner, *Harvard Law Library*
Rebecca Bearden, *Boston University Law Library*
Mindy Kent, *Harvard Law Library*
Scott Matheson, *Yale Law Library*
Jacob Sayward, *Cornell Law Library*
Elisabeth Umpleby, *University of Connecticut Law Library*
Caroline Walters, *Harvard Law Library*

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INTRODUCTION

During the 2021 Annual NELLCO Symposium, a small working group was formed to draft a document summarizing the importance of three critical areas of concern pertaining to electronic resources, particularly as publishers and libraries increasingly transition from print to electronic format: *Preservation, Discovery, and Accessibility (PDA).* This document is meant to serve as a toolkit for librarians as they negotiate with vendors. The importance of each of the three prongs is briefly outlined below followed by detailed talking points, suggested actions, and additional resources.

The narrow focus of this document is intentional. It is not meant to be a comprehensive negotiation checklist, but instead act as a spotlight on these three individual concerns, as librarians and publishers consider the implications the print-to-electronic migration will have on the preservation of legal treatises, discovery of titles in our catalogs, and digital accessibility to ensure that all patrons are able to use our resources. Our hope is that the NELLCO Board will approve these talking points and agree to widely promulgate this document to their staff who regularly engage with vendors. Each section contemplates the problem and considers ways we can partner with vendors to address the consequences of electronic publishing.

These three areas of concern are unique because of their urgency. Our aim is to have these issues on the lips of every librarian who negotiates with vendors. It is time to act together with a strong, consistent message to our publishers.

Preservation:

As print migrates to electronic format, earlier editions of legal treatises are not presently archived on most legal database platforms. The loss of historical legal scholarship on these platforms will impact legal research forever unless we encourage vendors to archive their earlier editions, prospectively, and retrospectively, if possible. There is no greater threat to the future of understanding the law and how it has progressed over time than the absence of searchable, archived earlier editions. Legal scholarship and citation as we know it are at stake.

Discovery:

The discoverability of content in a catalog as well as within a database is essential to the library's ability to support faculty and student scholarship. Metadata and subject descriptions, in conjunction with title browsing and complex searching features within a database, allow for more successful searches, a better user experience, improved resource assessment, and a dynamic catalog. A vendor's commitment to these resources is essential to the discoverability of their products. Without this critical metadata, expensive resources are virtually invisible.

Accessibility:

Universal design ensures that our electronic materials are accessible to all of our patrons - a core ethical and equity issue for our libraries. While our libraries and institutions can provide assistive technology and support for our users, many key accessibility issues can only be resolved by the vendors who create the products we license. To ensure equitable access for all users, and comply with our institutions' requirements, librarians negotiating licensing contracts need honest and complete accessibility information about products. This information should be a crucial factor guiding purchasing decisions. Accessibility requirements must also be a core tenet of all license agreements with vendors. This will help vendors understand how to meet our needs, fulfill our duties to our patrons, and protect our institutions from litigation risk. Over time, we expect that financial incentives toward universal design will enshrine these principles as sound business practice.

Talking Points and Toolkits

PRESERVATION

The preservation of prior editions and superseded content is essential to the support of research. While libraries have been able to undertake the preservation of print materials, we need vendors to assist with the preservation of digital materials. This problem grows every year as fewer titles are published in print, leading researchers to depend on electronic versions that libraries are restricted, technologically and contractually, from archiving within their institutions. We need prior editions and superseded content preserved and made available to libraries and their researchers, and we need this ensured in our licensing agreements.

The Problem:

- Increasingly, law libraries, including research libraries, are choosing to cancel print when it is reliably available electronically because of budget and space constraints.
- When new editions of major treatises are published electronically, the older electronic edition is no longer available on most legal platforms.
- When online major treatises are continuously updated, there is no way to refer to previous texts.

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- In addition, we also expect that many publishers will stop publishing print editions.

If we don't take action and create permanent backups now, already existing gaps in the record of legal thought and practice will continue to grow and information will be permanently lost.

The Stakeholders:

This is a problem for *all law* libraries (not just research libraries) and publishers:
- Research libraries will be unable to fill their traditional role as repositories for past information.
- Other academic libraries will be unable to rely on research libraries or databases.
- Law firm libraries will not be able to ILL material from previous editions.
- Publishers will lose a wealth of historical data and potential future revenue.

How are earlier editions used for study and historical research? Examples:
- A faculty member regularly consults both current and previous editions of *Scott and Asher on Trusts* for their teaching and writing.
- A scholar consults a series of treatises published between 1877 and 2007 to trace developments in the concept of equity.
- An S.J.D. student compares the organization of multiple editions of treatises in property, conflicts of laws and corporations in order to demonstrate the changes in conceptual organization of the subjects over time.
- A journal editor needs to confirm an article citation of the 2009 edition of *Local Regulation of Adult Businesses*.

Text Mining:
- A student compares the text of a number of treatises on labor and employment law in order to pinpoint the decline of the use of the term "master & servant" and the appearance of the term "employment-at-will."

In Practice:
- A law firm librarian needs a copy of a 1961 treatise on securities as cited in a court opinion.
- A law firm librarian is searching for a copy of a 2008 treatise on mortgage-backed securities for background on an expert witness.

Suggested Actions:

We should be asking publishers for the following:

- **If you continue to publish titles in various editions**, can you keep/archive previous editions on your platforms for full text searching and citation purposes?
- **If you are no longer creating periodic editions**, can you allow version tracking/track changes (like Wikipedia) or comprehensive snapshots (at least annually) that allow comparisons of current and earlier versions (like the comparison of earlier code editions in Statutes in West & Lexis)?
- **If you no longer wish to maintain an archive in your system**, could you contract with a third party (e.g., Hein) or work with an organizational repository (like Palm Print)?
- **If none of the above is doable**, will you allow libraries to download titles before previous editions are removed and place them in discoverable, accessible repositories?
- **If this is not possible**, will you allow libraries to download and dark archive titles before previous editions are removed from your platforms?

Additional Resources:

Preservation Repositories:
- https://clockss.org/

- https://www.lockss.org/
- https://www.portico.org/
- https://www.lipalliance.org/palmprint

CRIV Article:

> Mindy Kent & Caroline Walters, *Gone Forever? Preservation Concerns for Secondary Legal Sources in the Electronic Age and Why it Matters.* THE CRIV SHEET, May 2019 at 6. https://www.aallnet.org/wp-content/uploads/2019/04/The-CRIV-Sheet-Vol.-41-No.-3-042919_FINAL-WEB.pdf

DISCOVERY

Metadata and subject descriptions are contained within MARC records, to describe, represent, and link to a library's electronic resources. MARC records enable a user to discover material at the title level. In an electronic environment, the discovery of titles is vital for access to costly platforms, increasing usage, and likelihood for renewal. Partnership with vendors for discovery and metadata is crucial.

The Problem:

- Since electronic resources are not physically browsable, they are invisible to patrons.
- Lack of discovery for costly resources leads to lower usage and decreases the chance of renewal.
- The volume and scale of electronic content make it impossible to catalog electronic resources on the title level.

The Stakeholders:

All law libraries and publishers need to place value in comprehensive discovery of their electronic resources.

The importance of MARC records and requirements:

- Discovery of a library's electronic resource collection is comprised of database level and title level access. The value of this access provides:
  - Findability of resources
  - Successful search results
  - Better user experience
  - Improved scholarship/research
  - Improved ability to collect usage statistics
- Quality of metadata describing resources directly impacts their discoverability.
- Metadata for resources includes many considerations such as:
  - Available staffing/skill set knowledge and experience with metadata
  - Types of records, library affordability, and delivery into the catalog
  - Title browsing, indexing, and filtering within databases

Suggested Actions:

- When exploring MARC record options, consider the following:
  - Minimum data points requirements within MARC records:
    - Complete title/alternate titles
    - Author(s) (full name)
    - Publisher/governing body
    - Publication date

- ISSN/ISBN
- At least one subject heading
  - Delivery of MARC records:
    - Automated
    - Email/website downloading
    - Manual manipulation
  - Types of MARC records
    - Vendor supplied - quality varies
    - Free or cost associated – quality varies
    - Purchased 3rd party MARC records - good quality
    - Library system knowledge base records - quality varies
    - Manual (records created in house) – requires specialized skills and staff time
  - Alternatives to MARC records – for use when MARC records are not an option
    - Vendor supplied title lists (KBART files) – As some vendors cannot provide full MARC records for their resources, providing title level discovery can be accomplished using KBART files, which contain basic metadata such as title, ISSN, and coverage information. See KBART FAQs hyperlinked below for more information.
    - Unified indexes (coverage dates/holdings/article/chapter level linking)

- When exploring database searching options, consider the following:
  - Usability and staff/user training
  - Adequate indexing
  - Ability to browse by title
  - Filtering and/or facet functionality
  - Volume/date coverage as well as latest updated information

Additional Resources:

- What is a MARC record and why is it important?: https://www.loc.gov/marc/umb/um01to06.html
- KBART FAQs: http://www.niso.org/standards-committees/kbart/kbart-frequently-asked-questions
- Vendor Supplied Record Advisory Group (VRAG) is a group of dedicated professional catalogers who are eager to work with vendors to help them develop their discovery strategies, including updated comprehensive list of Vendor records for digital law collections: https://www.aallnet.org/tssis/about-us/committees/metadata-committee/working-groups-roundtables/vendor-supplied-records/

"Rich metadata and subject description is vital for discovery of e-resources and offers a win/win scenario for libraries, patrons, and publishers alike."

ACCESSIBILITY

Many of the digital resources that libraries license fail to meet the needs of all users, particularly patrons who require assistive technology or have print disabilities. This presents legal, ethical, and service-related challenges for libraries and universities working to provide an equitable experience for all users. Much of the work required to cure design flaws rests with the creators and vendors of products libraries license. The most powerful tool we have to support our patrons is our purchasing power. By making inclusive purchasing decisions, we can ensure universal design will become the only sound business choice for vendors.

The Problem:

- We have a moral and legal responsibility to ensure that library resources are accessible for all patrons, including people who have vision, hearing, or other disabilities.
- While many publishers are working toward accessibility compliance, many are not, and full compliance has not been achieved by most if not all legal publishers.
- Vendors are not always transparent about their compliance and accessibility functionality.

The Stakeholders:

- Current and prospective library users
- Librarians (duty to ensure access for all patrons)
- Universities (especially accessibility offices and risk management)
- Database Vendors (often the only ones who can "fix" accessibility problems)
- Third Party Auditing Services
- Advocacy Groups (some have sued universities in the past)

Suggested Actions:

- Any claims regarding product accessibility should be verified by a third-party audit. This includes content in Voluntary Product Accessibility Templates (VPAT).
- All contracts should contain language requiring vendors' products to meet appropriate accessibility guidelines with limited time periods to cure any access issues that are later discovered.
- Libraries should be able to request a contact from each vendor who is knowledgeable about how to effectively navigate the product with assistive technology. These contacts should be made available to librarians and users who have accessibility questions.

Additional Resources:

Standards:
- [Web Content Accessibility Guidelines](#) (WCAG) - comes with several grades: e.g. A, AA, AAA
- [Section 508](#) of the Rehabilitation Act - directly applies to government agencies, frequently followed/mentioned along with the Americans with Disabilities Act.

VPATs and 3rd Party Audits:
- [Deque Systems](#) - Used by Big 10
- List of additional 3rd Party Auditors: [Digital Accessibility Companies Roundup](#)
- [Resources for librarians on how to read a VPAT](#)
- [Sample VPAT](#) from major legal information vendor

Examples of Standard Contract Language:
- [Big 10 Standardized License Language](#)
- [National Center on Accessible Education Materials Sample Language](#)
- [Association of Research Libraries License Language](#)
- [Ontario Council of University Libraries: Accessibility Information Toolkit for Libraries](#)
- [NELLCO Model License 5.1.e](#)