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"A Nickel Isn't Worth a Dime Today:" Soaring Legal Publishing Costs Strain Law Library Budgets

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Have you ever wondered about the cost of a law library? The costs may surprise you. They don't surprise law librarians, who have limited means of containing them.

Escalating price increases in print subscriptions have been the norm for years, and the increases strain library budgets. The American Association of Law Libraries (AALL) compiles a Price Index to help law librarians tracking rising costs and make informed budget decisions.

The 1998-2004 Price Index is based on average annual subscription prices for 914 titles of "legal serials," which include periodicals, court reporters, citators, codes, digests, legal encyclopedias, newsletters, looseleaf services, and supplemented legal treatises. The average cost of a legal serial rose by about 60% between 1998 and 2004, while the Consumer Price Index rose by about 16%. Legal serials make up the largest share of law library expenditures on legal publications - by one estimate up to 95% for the average law office. To appreciate the impact of the price increases, just look at the increase for reporters - which most law libraries still maintain, even if they also pay for an online service like Westlaw or Lexis. The 1998-2004 Price Index shows that the average price of maintaining a reporter more than doubled, from approximately \$856 to \$1,953.

Even where law libraries use online databases in place of print subscriptions, increased reliance on online information has been far from a panacea for spiraling legal publishing costs. Containing costs in one direction may cause costs to bulge in another. Cost-shifting may be one important influence on law library budgets. Between 1999 and 2005, law firm and corporate law libraries have on average devoted over half of the budget to buying access to electronic information. Their average budget for electronic information increased by more than half, while their average budget for print subscriptions increased by more than a third.

Why have law libraries faced mounting financial challenges from the pricing practices of legal publishers? Due to mergers and acquisitions, three foreign conglomerates now dominate the legal publishing market. In 2003, Thomson Publishing Group, Reed Elsevier and Wolters Kluwer divided 84% of total legal publishing sales (\$6.8 billion) in the U.S. There is compelling evidence that market concentration has caused an accelerating rate of price increases for print and online legal information.

Mark McCabe is an economist at Georgia Institute of Technology who has studied the effect of legal publisher mergers on legal serial prices. He examined the effect on legal serial prices (excluding periodicals) of the merger between Thomson and West Publishing Company in 1996. He found that the "West-Thomson merger resulted in substantial price increases for legal encyclopedias and treatises, even after accounting for general price trends." In fact, between 1996 and 2000, "the cumulative post-merger impact on its

treatises and encyclopedias amounts to an increase of about 40%." The 40% increase in Thomson prices "exceeded price increases experienced by comparable titles published by other firms." At the time of the merger, the Justice Department required Thomson to divest a number of titles, but McCabe also found "similar price increases for the divested titles purchased by Reed-Elsevier." During 1997-1998, the prices of these titles increased by about 27%.

Kendall Svengalis, the author of the Legal Information Buyer's Guide & Reference Manual, provides additional evidence that links large price increases to these mergers. The Guide tracks pricing and subscriber supplementation costs for hundreds of legal publications. He characterizes as a "seismic shift" the double-round of prices increases that he recently observed in Thomson titles since February 2005. In "ten years of tracking [Thomson] West prices, or those of any of the major legal publishers," he had never seen prices for initial purchases increase twice in little more than a year. Svengalis also identified increases in a sample of 25 legal treatises. The median increase in prices for supplements was about 42%, with increases varying from 18% to 142%. Thomson accounted for 40% of U.S. sales of legal information in 2003. Thomson's market share appears to have given it the latitude to raise prices so much, and so quickly.

One former industry executive told Svengalis that law librarians "are viewed as the major obstacle to the publishers' ability to roll over the lawyer market." To address pricing practices among legal publishers, AALL relies on its Guide to Fair Business Practices for Legal Publishers. The Guide promotes transparency in price disclosure and fair dealing in pricing plan negotiations.

Unfortunately, such initiatives depend on voluntary compliance. Thomson will not disclose critical details about how it prices its products. Thomson markets pricing plans to individual customers, tailored to such variables as the range of titles and number of copies purchased, or the types of Westlaw databases needed and levels of expected use. As a result, different customers pay different (discounted) prices for the same products. So to make informed decisions about purchases, law library managers should know the pricing criteria that Thomson applies to its products and pricing plans for law library buyers of a given type and size. And law library managers should be able to request this information without any commitment to enter contractual negotiations.

But Thomson does not disclose detailed information about pricing models until a customer enters into negotiations. Charles B. Cater, Chief Marketing Officer for Thomson/West, recently said that "disclosing the prices paid by individual customers would both violate contractual agreements and reveal proprietary information. "In fact, Thomson has demanded non-disclosure agreements. Yet even if disclosure of actual prices, without customer attribution, somehow violated individual customer contracts, Thomson would not risk violating customer contracts, or revealing proprietary information, by disclosing median prices and criteria of pricing models. Non-disclosure clauses prevent librarians from exchanging information about negotiated prices. The lack of transparency, together with spiraling price increases, invites the perception that Thomson is using its market position to maximum advantage, while the people who use law library services indirectly pay the costs.

For more information about the career of law librarianship, go to <http://www.nocall.org> or <http://www.aallnet.org>.

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