

AALL Comments on Impact of Museum and Library Services Analysis
September 20, 2004

Thank you for the opportunity to comment on your plan to identify national needs for, trends in, and impacts of museum and library service. The American Association of Law Libraries (AALL) is a nonprofit educational organization with over 5000 members nationwide who respond to the legal information needs of legislators, judges, and other public officials at all levels of government, corporations and small businesses, law professors and students, attorneys, and members of the general public. AALL's mission is to promote and enhance the value of law libraries, to foster law librarianship and to provide leadership and advocacy in the field of legal information and information policy

We are pleased to see IMLS seek input from stakeholders on areas in which research analyses would be useful to our profession. We commend you for developing a well-organized list of six questions that are further defined by a set of pertinent issues. While each category raises important considerations, we believe the highest priority for further research and study should be given to,

“B. How do digital technology and the Web impact library and museum services?
How can libraries and museums respond to challenges and benefit the public?”

Every aspect of library service today is driven by the rapid changes in digital technology and service delivery. Indeed, each of the other categories—user expectations, diversity, institutional infrastructure, the value of libraries and our impact on education and lifelong learning—revolves around the complex challenges and exciting opportunities of our digital world.

In 2002, AALL published a report entitled *Beyond the Boundaries: Report of the Special Committee on the Future of Law Libraries in the Digital Age*. It recognizes that, as law libraries operate in an increasingly virtual world, the notion of physical boundaries changes dramatically. Law libraries are assuming new roles, providing new and different services, and partnering with other units in our organizations and collaborating with external entities in many new ways. In this report we identified seven significant trends external to law libraries that are shaping the face and the future of our libraries. Most—but not all—of them are reflected in some way in the questions and issues you have already defined.

- **Trends in Commercial Legal Publishing**, including issues of industry consolidation, transition from print to electronic publishing, customization and personalization of products, competition with non-commercial publishing;
- **Trends in Access to Legal Information**, including issues of disintermediation, services marketed directly to end-users, non commercial publishing, and the digital divide;
- **Trends in Preservation and Permanence**, including issues of preservation of the print and electronic record and digitization of information;
- **Trends in Authentication**, including issues of citation reform, authority control, and permanent uniform resource locators;

- **Trends in Intellectual Property Law and Licensing**, including issues of expansion of copyright protections, database protection, the Digital Millennium Copyright Act, and the Tasini decision of the U.S. Supreme Court;
- **Trends in User Expectations**, including expectations of ubiquitous access and “anytime, anyplace” access as well as lack of critical evaluation of information accessed; and
- **Trends in Technology**, including ever-changing hardware, software and formats, and evolution of intranets, extranets and portals.

The report includes brief papers describing each of these trends and identifies the areas or aspects of law libraries that are impacted by them: the physical plant; collections and content; staffing; services; training; and budget. There is a great deal of overlap between the findings in our *Beyond the Boundaries* report and the questions and issues you have identified. In light of the parameters of our report, we would like to suggest the following additional issues for your consideration as important research topics. We describe them below in a broader context than their application to our nation’s law libraries because each of them directly impacts many different types of libraries.

Issue #1, Trends in Commercial Legal Publishing, including issues of industry consolidation, transition from print to electronic publishing, customization and personalization of products, competition with non-commercial publishing.

The combined impact of industry consolidation and rising prices, particularly in scientific, technical, medical (STM) and legal serials, forces libraries to cancel print journal subscriptions. The continuing consolidation in commercial STM and legal publishing—and the concomitant increases in pricing when competition is reduced—have had a major impact on libraries. Today there are three large legal publishers: Reed Elsevier (parent of LexisNexis), Thomson (parent of West Group) and Wolters Kluwer (parent of Aspen and CCH) who control the legal marketplace. All three continue to absorb smaller legal and specialized publishers through mergers. During the past decade, we have witnessed a dramatic period of price increases for print legal serials as a direct result of this diminished competition. Ultimately, however, these price increases are unsustainable and the market is overdue for a shakeout.

A recent article entitled “Law Serials Pricing and Mergers: A Portfolio Approach” by economist Mark J. McCabe in the *Contributions to Economic Analysis & Policy* examines the impact of recent mergers on law serials pricing for print resources (available at: <http://www.prism.gatech.edu/~mm284/bepress.pdf>). The results of McCabe’s empirical research on the impact of six publisher mergers on law serial pricing during the period 1990-2000 suggest that merger-related price increases were substantial. His analysis focuses principally on print rather than electronic serials. More research is needed on the effect of industry consolidation and subsequent price increases for STM and legal *electronic* resources, and the impact on library services.

We know that libraries of all types and sizes have had to cut their print journal subscriptions for STM and legal titles as a result of the rising costs for print subscriptions.

Despite the promise of the Internet and information technologies, the situation is deteriorating with each passing year and impacts libraries of all types. In 2001, for example, U.S. research libraries spent three times more money for journal subscriptions than in 1986—yet received 5 percent fewer titles. During the same period, the Consumer Price Index rose just 62 percent. Clearly, such costs limit what libraries can make available to the research and education communities and to the public. The full impact of the cancellation of print materials vis-à-vis library services and research is important and merits study.

Issue #2, Trends in Intellectual Property Law and Licensing, including issues of expansion of copyright protections, database protection, the Digital Millennium Copyright Act, and the Tasini decision.

There is agreement in the library community that restrictive licensing term and conditions imposed by publishers severely limit the amount and type of access that many libraries are able to provide to users. In addition, we believe that as a result of legislation enacted in the past few years, such as the *Digital Millennium Copyright Act* and the *Copyright Term Extension Act*, the historic balance in copyright law has shifted significantly to favor the rights of copyright owners over the rights of users. In particular, statutory rights under the copyright law such as first sale and fair use are increasingly threatened or curtailed by contractual provisions in licenses and by technological controls embedded in the electronic sources themselves and the hardware used to access them. We need data on the overall effect of “pay-per-view” access to digital information and the impact of restrictive licensing arrangements on public access.

In addition, AALL believes that the 2001 U.S. Supreme Court decision in *The New York Times Co. v. Tasini* (121 S.Ct. 2381) threatens thousands of documents in electronic databases that librarians and scholars have relied on for access to articles. We need data on the impact of the Tasini decision on commercial databases and on individual publishers.

Issue #3, Trends in Preservation and Permanence, including issues of preservation of the print and electronic record and digitization of legal information, and Trends in Authentication, including issues of citation reform, authority control, and permanent uniform resource locators.

AALL, in conjunction with the Legal Information Preservation Alliance (LIPA), is in the process of developing a national plan for the preservation of print and electronic legal resources. We believe that law libraries collectively share the responsibility of preserving a large body of legal information literature for future generations. One option under consideration is the creation of a national repository for primary law materials in print. Among our concerns for electronic media, in addition to the obvious fact that technology is changing faster than preservation techniques and standards can be developed, is the resistance from vendors to resource sharing for electronic resources and to allowing permanent access to electronic resources. We do not yet fully understand what the impact on library services from the lack of “ownership” of the virtual collection and the long

term role of vendors in maintaining custody of digital information will be. Qualitative measures of evaluation into the long-term effects are needed.

Another area related to preservation that is especially crucial to users of electronic legal resources is defining and developing strategies for verifying authenticity, version control, and integrity of information with the understanding that there is a margin of tolerance for the various categories of law (primary law, secondary law, and other legal resources). The need for authentication, version control and ensuring the integrity of digital information applies to all information but is especially crucial for “born digital” government information.

Issue #4, Trends in Access to Information, including issues of disintermediation, services marketed directly to end-users, non commercial publishing, and the digital divide.

Disintermediation increases as remote access to library services, such as e-reference, e-document delivery, and other access/delivery mechanisms available through library portals, become the norm. Although more trivial directional and retrieval reference services decrease, the nature and complexity of reference questions increase. New measurement models need to be developed and standardized to assess the quality of a library’s virtual services. We believe there are new opportunities for law librarians to provide coordinated “virtual” legal reference services with local public and state libraries. For law libraries, the digital divide will continue to pose challenges, especially for older users and public patrons, such as pro se litigants.

Issue #5, Trends in User Expectations, including expectations of ubiquitous access and “anytime, anyplace” access as well as lack of critical evaluation of information accessed.

Higher user expectations are universal because of the unrelenting hype about the Internet. We would like to suggest two additional issues for examination under,

“A. How do changing community expectations impact library and museum services? How can libraries and museums respond to these expectations?”

First, as the number of individuals with Internet access continues to increase, so does the expectation that all information, including government information, is available in an electronic format. It’s important that libraries understand how different categories of users evaluate information they locate on the Internet, and we would benefit from research in this arena.

An online survey to examine the use and effects of electronic resources on college undergraduate and graduate students was conducted recently by the Electronic Publishing Initiative (EPIC) at Columbia University as part of a larger project on electronic resources. The results, available at: <http://www.epic.columbia.edu/eval/eval04frame.html>, led EPIC to point out the urgent need to train students on how to evaluate online resources and to provide them with better access to full-text digital sources. As reported in *Library Journal* in June, 99% of respondents said they use electronic resources for

their assignments. Students are more apt to use the Internet and email for general research, and turn to library electronic resources for in-depth research assignments. It's important to note that 50% of respondents said they have difficulty separating out reliable from unreliable information.

Second, during the past few years, we have witnessed the changing pattern of use of our nation's public law libraries by pro se litigants. As documented in a number of surveys conducted in early 2000, the number of attorneys using public law libraries is decreasing. With a corresponding increase in the depth and breadth of materials available in an electronic format, the attorney now accesses most, if not all, primary legal resources online. At the same time, the number of lay users is increasing, including a dramatic rise in the number of self-represented litigants. This growing group of law library users requires more assistance and training than that previously provided to attorneys using public law libraries, and affects the format and content of public law library collections. The public would benefit from research to develop new ways of partnering with public law libraries, perhaps even coordinating "virtual" reference services with local public and state libraries, to better meet the needs of pro se litigants.

Issue #6, The costs of an electronic library, including a comparison with the costs of acquiring and maintaining a print collection.

The increased costs for an electronic library include, to name a few, online subscriptions; computer costs; Internet connections; the need for technical staff; indexing or cataloging electronic content; on-going training; and customization of electronic information resources. There are also new staff costs as well because trends in licensing also illustrate the need for specialized training of library staff to be able to manage licenses, user ids, and passwords for end users and copyright permission. On the other hand, space needs will probably be quite different. We need new workload measures in the move from print to electronic management functions.

Issue#7, The public value of libraries.

You have listed some important issues under,

“E. What are the challenges of developing and communicating a public value role for libraries and museums? How can museums and libraries respond to them?”

We would like to suggest an additional one that we hear about often from our members. Law libraries of all types are under varying degrees of scrutiny by administrators, policymakers and even legislators who are under the misguided assumption that “it's all free on the Internet” and therefore we no longer need collections of books, or even librarians. Over the past couple of years, this argument has threatened many of our nation's public law libraries. We have found it especially difficult to dispel because our arguments are not based on any type of research data. We would like to see IMLS address this myth as you develop a research agenda on the public value of libraries.

CONCLUSION

We commend IMLS for providing us with an excellent outline of key questions and issues for consideration as you determine next steps in moving forward on your research agenda. During the past few years, AALL has focused a great deal of time and energy on redefining the traditional roles of a law library in the digital age. We are pleased to have this opportunity to summarize the findings of our 2002 report, *Beyond the Boundaries*, as part of our comments. Please let us know if you would like a copy of our report, and feel free to contact us if you have any questions. Thank you very much.

Respectfully submitted by:

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