



A Perfect Match

Cost recovery and the librarian

By Mark Gediman

Note:

This article is loosely based on an August 14, 2009, post on www.geeklawblog.com

It's too bad legal services aren't priced like potato chips. If they were, all of the costs that go into the making and selling of legal services would be included in the price of the service. When buying a bag of chips, overhead costs such as research and development, marketing, and personnel are all included in the price. With potato chips, \$4.99 is \$4.99.

Law firms, however, price their services differently. Hourly rates do not typically reflect the large costs of providing access to online subscription services, yet the high cost of these services makes it important to the firm to offset as much of it as possible. Let's take a look how law firms can use cost recovery to actually save the client money—as well as the role of the librarian in making this happen.

Everything's Negotiable

My grandfather firmly believed that there was no such thing as a fixed price. To him, everything was negotiable. He approached a purchase by treating the published price as just a starting point, and he refused to buy unless he thought he was getting the price that he felt was reasonable. Clients in today's legal marketplace have this same attitude.

You can see it in recent news items discussing the attitudes of general counsels at large corporations as they struggle to reduce costs with major law firms. They are negotiating hourly rates aggressively and questioning every item that appears on their bills. The question of whether or not the hourly billing model has gone the way of the dodo has been debated extensively, including by Toby Brown of 3 Geeks and a Law Blog (www.geeklawblog.com). I don't think the hourly rate issue is the same as the online research charges issue. However, I do feel they are both the result of clients trying to get the best deals they can.

In the following analysis, the amounts charged to the client actually reflect the efficiencies these services provide. The analysis is based on the following assumptions:

- Case retrievals using the case name or citation are priced at \$10 per item.
- Searches in all databases covered by the firm's contract are priced at \$40/search.
- Attorney time is billed out at \$300/hour.
- Attorneys doing the research are reasonably familiar with efficient search techniques and strategies.

Although your firm's rates may be different, the hourly rates are average and the pricing shows what can be accomplished by creating a flat-pricing scheme that fits your firm's needs.

In my position as director of information services for a great metropolitan law firm (naw...even I don't believe I'm Superman...all of the time), I find myself constantly explaining/defending/justifying our cost recovery policy to our attorneys. As a result, I've come to realize that a law firm can actually save its clients money by charging back for online services. Below are examples demonstrating why I'm not delusional.

Pulling a Case Online Versus Pulling It off the Shelf

Let's say a firm charges clients \$10 per case when retrieving it from an online service. It takes about a minute to pull and print the case. With a billing rate of \$300/hour, the total cost to pull that case would be \$15 (\$10 for the case, and \$5 for the attorney's time).

If the case is pulled from the shelf, let's figure the following time is spent: five minutes to walk to the books; two minutes to pull the right volume; five more to copy the case; and five more to walk back to the office, for a grand total of 17 minutes. The cost is \$85. And this doesn't count the cost of the space required to house the cases or the copying charges.

The cost to pull the case online is only 17 percent of the cost of pulling it in print. I realize that not everyone does these activities in exactly the same way. However, what is clear is that the client actually saved money in the process.

Case and Code Research is Better Online

First, let's do this research online. Type in your search, starting broadly, and then narrow your search with focus or locate. It takes about five minutes to run the search and about 15-30 minutes to review the cases with your terms in context. In the interest of fairness, we'll assume 30 minutes for searching and round up to 40 minutes to allow for printing. At our hypothetical \$300/hour rate, the cost of the time spent comes to \$200. Add in \$40 for the search and you have a total cost of \$240. This analysis assumes that this is a normal search that is not too esoteric and that the search result is manageable—say about 20 cases. The analysis is essentially the same for searching codes.

Next, let's look at the process for researching cases and codes in print. Picking up a digest or a code index and looking for the correct subject can take anywhere from 10 minutes to an hour. This assumes that what we are looking for is easily translated into the canned headings that are used and not horrendously cross-referenced (i.e., "See post-trial," which then says "See Judgments"). For the sake of discussion, let's stick with 10 minutes. Add about an hour pulling and reading the cases that were listed under the digest heading, and another 17 minutes to copy the darn things. We now have a total time spent of one hour and 27 minutes and a cost of \$435, not including the copying costs.

The cost to research cases and codes online is only 55 percent of the cost of doing it in print—a significant difference.

Researching Can Be More Cost Effective Online

The online process is relatively simple: run the search in one or several treatises; focus or locate the sections discussing your specific terms; review the results; and print the sections you want to keep. Say, about 40 minutes of your time. Coupling that with the \$40 search charge gives you a total cost of \$240.

It is not quite as simple to do this with print. The process and time spent are similar to the case/code research referenced above. Assuming the book is on the shelf to begin with, start with the index or table of contents, look at the several sections/chapters that you find for the most relevant, and then copy what you want. Total time is one hour 35 minutes, and the cost comes out to \$435.

Again, this is about a 55 percent difference in cost.

Caveat: The same is not true if the book is a treatise, usually a practice guide, that the end user knows intimately. Several years ago, I published an article in *Legal Assistant Today*

("Books vs. Bytes: Which works best in today's law firm library," May/June 2005) discussing this phenomenon and concluded that it is actually better to keep these types of treatises in print.

I cannot think of anyone who practices law in this day and age (yes, I realize that phrase alone dates me) who does not subscribe to some online service. To not do so would be to invite a malpractice claim. Courts have stated unequivocally that firms should utilize these resources to provide their clients with the best representation possible (see Ellie Margolis' article, "Surfin' Safari-Why Competent Lawyers Should Research on the Web," in the *Yale Journal of Law and Technology*, Volume 10).

An example of the advantage of using a service online instead of in print can be found with Shepardizing (or Keyciting, for you West folks). The Shepard's print service is six to nine months out of date when the firm receives it, a delay caused by editorial deadlines and publishing requirements. Compare this to the online service, which is updated within 24 hours of an opinion being issued and cheaper to use in terms of attorney time, and it is easy to see why this could be important to a client.

Why the Librarian?

Almost every firm librarian I know hates dealing with cost recovery. "Why me?" seems to be the universal cry. Well, there are good reasons it falls on the librarian to enforce these policies and procedures. As noted above, I've been tasked to be the Voice of Cost Recovery in my firm. I have to be part teacher and part forensic accountant and emissary, all of which are the forte of the modern law librarian.

Over the course of my career, I have learned that librarians are uniquely qualified to help the firm to realize the most from its investment in these services. The discussion that follows will illustrate the many ways that librarians use their knowledge of these services. Using my own experience as an example, these are initiatives most librarians could implement.

Here's how I go about making our users as efficient and cost-effective as possible:

- Set a standard per-search charge using our budgeted cost recovery percentage, the monthly search volume for the past 12 months, and other factors. This charge is set in such a way that it is highly unlikely that the firm would exceed 100 percent recovery in keeping with the applicable formal ethics opinions and Model Rules of Professional Conduct issued by the American Bar Association. A flat per-search charge takes the guesswork out of legal research, removing the uncertainty caused by the differences in the retail pricing from database to

database. After implementing this, we actually saw the amount of research billed to clients increase.

- Offer regular training programs to attorneys and other personnel. These programs, conducted by both library staff and vendor representatives, emphasize the value of efficient research within the unique constraints of our firm's contract.
- Keep an eye on the bills. I do this by reviewing the bills monthly and confirming the research billed to the administrative numbers with the users. This accomplishes two things: 1) it reminds users that this research is monitored and that our policy is to bill research on behalf of the client to the client, usually resulting in reclassifying half of this research to a client; and 2) reclassifying excessive charges to reasonable amounts.
- Monitor use of the online subscription services. Checking on this regularly will allow you to shift funds spent on unused services to those that may be more in line with the information needs of the firm.
- Put together a cost recovery policy that takes into account the way attorneys research. Attorneys need low-cost access to treatises and case law, similar to how print materials are used. Case reporters can only be used with a citation. Treatises are used with indexes and tables of contents. Giving the attorneys easy access to the treatises online frees them from worrying about the cost when bringing themselves up to speed on a topic. This ensures that the attorneys in the firm are able to practice law at the highest level.

We all know that these services come at a price. But as you can see from the examples above, these services actually serve to save the clients money and advance their cases. It is reasonable for firms to bill the charges back to the client when they create efficiencies and add quality to the firms' representation of their interests.

The librarian has an important role to play. The experience and expertise of librarians can ensure that the firm has a reasonable cost recovery policy that benefits its clients while simultaneously offsetting as much of the expense of their subscription services as possible. It's not an easy balance to strike but it can make a huge difference in the success of the firm. ■

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