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Legally Speaking-Researching the Legal Issues Faced by Librarians, Publishers and Book Distributors

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LEGAL ISSUES

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Legally Speaking — Researching the Legal Issues Faced by Librarians, Publishers, and Book Distributors

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Introduction

The medieval philosopher **Maimonides** once said that the highest form of charity is to teach a person to help himself. The same can be said for the highest form of research assistance—to teach patrons to find their own answers.

This column is about answers. During the last two years, I have endeavored in "Legally Speaking" to answer a wide variety of questions about legal issues that are faced by librarians, publishers, and book distributors. As an attorney, I have tried to provide you with answers, or at least to raise issues for you to think about. However, I am also a librarian. A librarian is supposed to give you the resources so that you can answer questions yourselves. Hence this month's column, which is about where to find answers.

I know that not all of you are fortunate enough to have a comprehensive law library available to you. I also realize that most of you do not have access to the online pay databases such as **Lexis** and **Westlaw**. However, do not despair, there are plenty of resources out there for you on the free Web. This column is a rundown of some of the major Websites that contain legal materials for librarians, publishers, and book distributors.

There are three major types of Websites that you should be aware of. The first type of Website that most people use is a Web portal, such as **Yahoo**. The second type of Web service that people use is a search engine, and the third type of Website actually contains primary legal information or secondary articles relating to the law. These three types of sites are not necessarily mutually exclusive, since many portals include search engines, as well as primary and secondary legal materials.

A portal contains "information ABOUT a specific thing."¹ Portals usually are arranged around a directory. When you click on one of the topics in the directory, you are given a screen with sub-headings. The topic narrows as you click on each link, until eventually you find the materials you need. As the name im-

plies, portals are doors to further information, either on the same site or elsewhere on the Web. One of the most important and well-known portals is **Yahoo**. There are also "niche" portals that lead you to information about a specific topic—for example, **wine.com** (for wine drinkers), **dog.com** (for dog lovers), and **javascript.com** (for programmers).²

One analogy that helps to explain portals is to compare them to that favorite tool of librarians, the bibliography. Portals don't always contain the information you are seeking; rather, they link you to relevant information on their Website, to other portals, or to Websites which contain the desired information. In the same way, a bibliography "links" you to other bibliographies, or to books, articles, and Websites that contain information about your topic.

I often compare the directory of a portal to a table of contents, and the search engine to an index; sometimes you use the table of contents to find information, and sometimes you use the index. By the same token, sometimes you need to use a portal, and sometimes you need to use a search engine.

There are several different kinds of search engines. Most people usually start with a general search engine such as **Google**, **HotBot**, or **AltaVista**. General search engines contain a catalog of sites. They allow you to do keyword searching of the Websites in their catalog. A natural language search engine, such as **Ask Jeeves**, allows you to enter a question. The natural language search engine then uses an algorithm to do key-word searching from your question.

As a librarian, I don't usually recommend natural language searching. The only exception is when I am just beginning to research a topic and I don't know enough about it to formulate keywords. In that situation, I find the natural language search to be helpful; once I find some information about the topic, I can formulate my keywords.

One valuable type of search engine is a meta-search engine such as **Metacrawler**³ or **Ixquick**.⁴ Meta-search engines are services

that will perform your search in a number of general search engines at the same time. I find the meta-search engines to be very helpful. The final type of search engine is the subject-specific search engine, such as **Lawcrawler**, which I will discuss in detail below.

One important factor that you must always remember is to evaluate the quality and reliability of Websites. The information revolution and the World Wide Web have made more knowledge more readily accessible than ever before; at the same time, however, there are potholes on the information superhighway. It is very important to make sure that we remember that not all Websites are accurate.

One advantage of the Internet is that anyone can create his or her own homepage; unfortunately, that is also one of the drawbacks of the Internet. Since judging reliability is a prerequisite for using information, we must look at the following factors:

- Who is sponsoring the Web page? Is the sponsor an expert in the field?
- Does the sponsor have a bias?
- Where is the information coming from?
- Does the material give credit to a source?
- Is *that* source reliable?
- When was the information compiled?
- When was the Web page updated?
- At what potential audience is the sponsor aiming?
- How did you find the Internet site?
- Who wrote the Webpage that referred the user?

As researchers, we do this type of evaluation every time we find a reference in our research. However, we need to be even more vigilant with Websites. One important note to remember is to watch out for second-level sources, where you start with a reliable site, then follow a link to an unreliable site.

Web Portals

Findlaw — <http://www.findlaw.com/> or <http://guide.lp.findlaw.com/01topics/10cyberspace/index.html> — **Findlaw** is a le-

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gal portal. This is one of the sites that anyone researching legal matters should use. Not only does **Findlaw** refer you to other Websites, but it also contains a great deal of primary and secondary information. **Findlaw** contains U.S. Supreme Court cases, the U.S. Code, and the Code of Federal Regulations. **Findlaw** also has links to online statutes, administrative regulations, and Attorney General offices from every state. I also like the legal forms that are linked to or available on **Findlaw**. One of the most valuable parts of **Findlaw** is the variety of helpful articles on various topics.

Findlaw uses a directory system which is similar to a table of contents. You can also search the entire site, or use the **Lawcrawler** search engine to find more information on the Web. **Findlaw** has been around for quite a while, and keeps on getting better and better.

Cornell University Legal Information Institute — <http://www.law.cornell.edu/> — The **Legal Information Institute** was the first site on the Internet devoted to legal research. Even before the World Wide Web was available, **Cornell** was providing free access to legal information. This site contains an abundance of primary materials. One interesting feature of the site is that **Cornell** contains the full text of the opinions of the U.S. Supreme Court. The **LII** is part of **Project Hermes**, the official Web provider of Supreme Court opinions. These decisions are released simultaneously at the Supreme Court building in Washington and on the **Cornell Website**.

Washlaw: Washburn University School of Law — <http://www.washlaw.edu/> — **Washlaw** was one of the first legal Websites. This site contains a wide variety of primary legal documents, including court cases, statutes, and administrative regulations. **Washlaw** also provides access to a number of legal directories. **Washlaw**, along with **Findlaw** and **Cornell**, comprise the "Legal Trinity" of Websites.

Search Engines

Lawcrawler — <http://lawcrawler.findlaw.com/> — **Lawcrawler** is a legal search engine. Although most people are familiar with general search engines such as **Google**, **HotBot**,

and **FastSearch**, many researchers don't know about the subject-specific search engines such as **Lawcrawler**. **Lawcrawler** will search the Web specifically for sites with legal information. The quality of the search results is often better than you can find by using a general search engine or a meta-search engine. **Lawcrawler** is a service of **Findlaw**. CA-VEAT: Remember to evaluate the reliability of the Website, since **Lawcrawler** picks up sites from the general public, as well as sites from professionals.

Catalaw — <http://www.catalaw.com/> — **Catalaw** calls itself a "searchable meta-index of legal indexes on the Web."⁵ **Catalaw** contains a number of topical categories, similar to a Web portal such as **Findlaw** or **Washlaw**. However, the difference is that each entry is itself a search engine or a Web portal. **Catalaw's** goal is to be "a single gateway to all legal and government indexes on the Internet."⁶ **Catalaw** is very helpful in doing legal research.

Websites Containing Primary and Secondary Legal Materials

I. Library Sites

American Library Association Office for Intellectual Freedom — <http://www.ala.org/alaorg/oif/> — The **Office for Intellectual Freedom** is the primary administrative office of the **American Library Association (ALA)** for issues dealing with censorship and challenges to books, Internet filtering in libraries, and other issues relating to the First Amendment. Some of the documents to be found on the Website include:

- The Intellectual Freedom Manual
- Freedom to Read Statement
- The 100 most frequently challenged books of the year
- What to do if a book is challenged in your library
- Internet Use Policies, statements and papers opposing filtering, and resolutions of state library associations
- Court decisions relating to Internet filtering
- A memorandum on Internet filtering in public libraries from the law firm of Jenner & Block
- Library Bill of Rights, along with several interpretations
- Guidelines for the development of policies and procedures regarding user behavior and library use
- The ALA's Code of Ethics for librarians
- News stories about censorship, the Internet, and Filtering

The **Office of Intellectual Freedom** also has information about the **Freedom of Information Act** and about open-records laws, as well as sample policies, court decisions, and other materials on the privacy and confidentiality of library records. I find the sample policies to be especially helpful, since a well-written policy will take care of most situations and help avoid litigation.

ALA Office for Information Technology

Policy — <http://www.ala.org/oitp/index.html> — The **Office for Information Technology Policy** contains information on its Website which deals with copyright, telecommunications and E-Rates, Internet Governance, cyberspace issues, and Internet Filtering. This Website also contains the **Children's Online Privacy Protection Act (COPPA)**. In addition, the Website contains information about the **Uniform Computer Information Transactions Act (UCITA)**, which is a proposed state law concerning the licensing of computer databases.⁷

ALA Washington Office — <http://www.ala.org/washoff/> — The **Washington Office** of the **ALA** deals with lobbying and policymaking initiatives. This Website is a good place to look for recent information on library-related legislation.

ALA Office for Human Resources Development and Recruitment — <http://www.ala.org/hrdr/employment.html> — This Website includes materials on library salaries and personnel utilization. Although not strictly legal in nature, this type of information is often needed for contract negotiations and collective bargaining. Statistical information on job availability, salaries, and personnel utilization is also needed for immigration purposes. Employers who use guest workers from other countries must provide this information to the **Immigration and Naturalization Service**.

ACRL Washington Office Legislative Issues — <http://www.ala.org/acrl/legalis.html> — The **Association of College and Research Libraries (ACRL)** is a division of the **American Library Association**. **ACRL's Washington Office** deals with intellectual property and technology issues, access to government information, and information on the Association's lobbying efforts for budgetary appropriations for government agencies. Some of the topics covered include:

- Anticircumvention
- Database protection
- Distance education
- Copyright and the first sale doctrine
- Uniform Computer Information Transactions Act (UCITA)
- Information on E-Government and electronic government initiatives
- Telecommunications policy, including advanced services and broadband
- Intellectual freedom issues, including Internet filtering

ACRL Intellectual Freedom Principles for Academic Libraries — <http://www.ala.org/acrl/principles.html> — **ACRL** has posted an interpretation of the **Library Bill of Rights**. This interpretation is relevant to college and university libraries.

ACRL Guidelines and Standards — <http://www.ala.org/acrl/guides/index.html> — This Website contains model guidelines and standards for academic libraries. Some of the documents include:

- Materials on academic and faculty status for librarians

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when he about to give tongue on *Competition and Change; the melange of creators, consumers and middle men*. He was excellent on Monday but I am told that he was "combative" in this latter speech: this sounds to be like a compliment. The latter talk was to an interesting conference put together every year by a mysterious organization called the **IBLC**, which houses hand-picked librarians in a good hotel outside the city and gives them good talks to occupy their minds. There were 70 registrants.

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- Model Statement for the Screening & Appointment of Academic Librarians Using a Search Committee
- Model Statement of Criteria and Procedures for Appointment, Promotion in Academic Rank, and Tenure for College and University Librarians
- Guideline on Collective Bargaining
- Statement on the Terminal Professional Degree for Academic Librarians
- Statement on the Certification & Licensing of Academic Librarians
- Guidelines on theft and security
- Standards for ethical conduct
- Guidelines for policies on access to library materials, services, and facilities

Guidelines for Medical, Legal, and Business Responses at a General Reference Desk — http://www.ala.org/rusa/std_general_ref_desk.html — The **Reference and User Services Association (RUSA)** is a division of the **American Library Association**. RUSA has many guidelines on its Website, including recommendations for dealing with medical, legal, and business questions. Working with patrons on complicated medical and legal topics requires care. We must always help our patrons, but at the same time we must make sure that we are not practicing law or medi-

cine without a license. The **RUSA** guidelines are a good place to start.⁸

American Association of School Librarians Intellectual Freedom Page — <http://www.ala.org/aasl/resources/freedom.html> — Most of the challenges to books take place within the context of school libraries. Internet filtering is also a hot topic in school settings. As a result, the AASL has compiled a resource guide for school library media centers that find themselves at the center of controversy. Some of the materials include:

- Access to Resources and Services in the School Library Media Program: An Interpretation of the Library Bill of Rights
- Access to Electronic Information, Services, and Networks: An Interpretation of the Library Bill of Rights
- Challenged Materials: An Interpretation of the Library Bill of Rights
- Materials on the Children's Internet Protection Act (CIPA) and filtering
- Strategies and tips for dealing with challenges to school library materials
- A workbook explaining how to write writing collection development policies for school library media centers.

The site also includes a bibliography of print resources that are helpful in dealing with intellectual freedom issues.

American Association of School Librarians Copyright Page — <http://www.ala.org/aasl/resources/copyright.html> — This page contains articles dealing with the application of copyright law in the context of the school library and media center. The Website also contains listings of print resources about school libraries and copyright law.

American Association of Law Libraries Washington Affairs Office — <http://www.ll.georgetown.edu/aallwash/> — The **American Association of Law Libraries** includes a number of items that are of interest to libraries and librarians, including:

- The Copyright Office report on the first sale doctrine and archival copying of computer programs
- The library community statement on the proposed anti-terrorism measures
- The library community statement on freedom of speech and access to information
- Mission and policy documents, formal letters and comments, testimony, legislative updates and reports, and action alerts

Medical Library Association Governmental Relations Page — <http://www.mlanet.org/government/> — The **MLA** has information on this page about some of the issues with which the organization is concerned. These topics include:

- Telecommunications (both universal service and communications decency)

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- Access to government information
- Intellectual property and copyright
- The Digital Millennium Copyright Act (DMCA)
- Database issues and licensing of electronic resources
- Uniform Computer Information Transactions Act (UCITA)

The site includes **MLA Copyright Position Statements** and **FAQs**, court cases, and a copy of the 1976 Copyright Law.

II. Sites for publishers and authors

Association of American Publishers — <http://www.publishers.org/> — The **Association of American Publishers (AAP)** is the pre-eminent professional association for publishers. This Website includes information on copyright, piracy, and intellectual freedom.

American Society of Journalists and Authors — <http://www.asja.org/pubtips/pubtips.php> — This Website contains both fact sheets and position papers on various aspects of copyright law. It is a good resource for authors.

American Society of Newspaper Editors — <http://www.asne.org/ideas/ideas.htm> — This Website contains a summary of legal issues faced by newspaper editors. It also explains the association's position on these issues.

Committee to Protect Journalists — <http://www.cpj.org/> — This Website contains news about journalism, legal challenges, and journalistic safety. It also includes legal resources for covering news in specific regions of the world. Although this Website is not specifically about the American legal system, it does contain a profusion of interesting and valuable legal information.

Digital Future Coalition — <http://www.dfc.org/> — The **Digital Future Coalition** is a collaboration of library associations, educational organizations, and other non-profit professional groups. The consortium undertakes research on "hot topics," including database protection, UCITA, and the **Digital Millennium Copyright Act**. The Website includes official documents, statements of position, and analyses of relevant legislation.

Electronic Frontier Foundation — <http://www.eff.org/> — According to their Website, "The **Electronic Frontier Foundation (EFF)** was created to defend our rights to think, speak, and share our ideas, thoughts, and needs using new technologies, such as the Internet and the World Wide Web." As an advocacy group, the **EFF** tracks copyright, intellectual property, and intellectual freedom issues. **EFF** works to influence current legislation, as well as undertaking litigation on behalf of individual rights. The **EFF** has a great deal of material on its Website pertaining to these issues.

III. Government Sites

Federal Communications Commission — <http://www.fcc.gov/> — The **Federal Communications Commission (FCC)** is the federal agency charged with setting the nation's telecommunications policy. As a result, the **FCC** deals with many library-related issues, such as E-Rates and Internet filtering. This Website contains a large amount of primary material, including regulations and administrative law decisions. I also recommend the **FCC** radio and television databases for information on licensed broadcast stations, such as ownership, frequency, and mailing address.

U.S. Copyright Office — <http://lcweb.loc.gov/copyright/> — Needless to say, if you are interested in copyright law you will eventually have to go to the **Copyright Office's Website** for information or forms. This Website is a treasure trove of copyright information. There is a great deal of good background information, as well as information about legislation, copyright office circulars and publications, and even a database to search copyright records. You can also download and print all of the forms you need in **Adobe Acrobat .pdf** format, which uses the free **Adobe Acrobat** reader. This reader is found on most computers. Even WebTV users can read .pdf files, so the **Copyright Office Website** is a good place to obtain your copyright forms.

IV. Tutorials

ALA Washington Office Copyright Tutorial — <http://copyright.ala.org/> — The Washington office of **ALA** has a very good copyright tutorial that answers many questions for librarians and authors. The Website also includes a tutorial that explains the **Uniform Computer Information Transactions Act (UCITA)**.

A Guide to Copyright for Music Librarians — <http://www.musiclibraryassoc.org/Copyright/copyhome.htm> — The **Music Library Association (MLA)** has created this copyright guide, which is very comprehensive, and covers many of the questions that come up in the field of music and music librarianship. Some of these issues, such as electronic reserves, are encountered by other librarians as well. Some of the issues discussed include:

- The **MLA's** statement on copyright law and fair use in music
- Guidelines on library reserves and the digital transmission of electronic reserves
- Guidelines for educational use of music
- Fair Use guidelines for educational multimedia
- Book and article copying guidelines for classrooms in not-for-profit educational institutions
- Guidelines for recording broadcast programs off the air for educational purposes

- A copy of the **ALA's** model policy concerning college and university photocopying for classroom, research, and library use
- The **ALA's** proposed guidelines on "Fair Use in the Electronic Age"

Copyright Crash Course — <http://www3.utsystem.edu/ogc/IntellectualProperty/cprtindx.htm#top> — This tutorial was created by **Georgia Harper**, manager of the Intellectual Property Section of the General Counsel's Office at the **University of Texas** system (the state university system in Texas). The site includes information on fair use, creating multimedia and distance education courseware, copyright in the digital library, and licensing. The site also includes online presentations aimed at faculty, students, staff, librarians, artists, and administrators. This site is especially helpful in determining whether a use of copyrighted material falls within the fair use exemption.

Conclusion

The Web contains an impressive array of resources for researching legal issues. This column has only scratched the surface of what is available. There are many Websites that contain portals, search engines, and primary or secondary legal materials, although it is still important to evaluate the reliability of these sites. The resources listed in this article will help you answer many of the questions that librarians, publishers, and book distributors encounter in the 21st Century.

Endnotes

1. **Portal King, Inc.**, "What is a Portal?" 12 Nov. 2001. <http://www.portalking.com/portal.htm>
2. **InfoZen, Inc.**, "What is a Portal?" 12 Nov. 2001. <http://www.infozen.com/portal.html>
3. The URL for Metacrawler is <http://www.metacrawler.com/>
4. The URL for Ixquick is <http://www.ixquick.com/>
5. **Catalaw**, 12 Nov. 2001. <http://www.catalaw.com/>
6. **Catalaw**, 12 Nov. 2001. <http://www.catalaw.com/>
7. For more information on this topic, see my "Legally Speaking" article on UCITA, "The Uniform Computer Information Transactions Act: 2B or not 2B?" In *Against the Grain*, December 1999/January 2000, p.54.
8. For more information on this topic, see my "Legally Speaking" column, "Reference Questions and the Unauthorized Practice of Law." *Against the Grain*, February 2001, p.57.
9. **Electronic Freedom Foundation**, "About EFF: General Information About the Electronic Frontier Foundation." 12 Nov. 2001. <http://www.eff.org/abouteff.html>