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Response to Back Talk

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Reponse to Backtalk — Geese, Nuns and Vengeance: The SkyRiver/OCLC Lawsuit

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As President of SkyRiver, I thank the editors of *Against the Grain* for the opportunity to respond to **Tony Ferguson's** "**Back Talk**" column this month. I have no caveats about who I'm speaking for. I came out of retirement from **Innovative Interfaces** a year ago to run a start-up company called **SkyRiver** because I was excited by the compelling mission that came with it — to introduce a choice for libraries that had been lacking since **OCLC's** acquisition of **RLG** in 2006. Since I started my career as a cataloger at **York University Libraries** in Toronto and later worked for **UTLAS**, there also was symmetry in being part of building a new bibliographic utility for catalogers.

Above all, I know that my friends at **Innovative** consider **Tony** to be a longstanding, valued customer. My hope is that **Tony** and others will consider this response to be part of a dialogue we should be having within our community. My goal here is to clarify several points for his and *ATG* readers' consideration.

First, I'd like to note that **SkyRiver** and **Innovative Interfaces** are separate and distinct companies. It is not a "parent child" relationship. There is, however, common ownership and there are licensing agreements between the two companies. The lawsuit could very well have been filed only by **SkyRiver**. However, as we pondered what we were dealing with, it became clear that it made sense to have **Innovative** join in as a co-plaintiff in the action.

Next, I want to emphasize that the lawsuit is entirely about whether or not **OCLC** has engaged in business practices which ultimately will be found to be illegal. It's **SkyRiver's** position that **OCLC** is in violation of antitrust laws and that those violations have injured **SkyRiver's** business. It's **Innovative's** position that **OCLC's** alleged antitrust violations extend further to impact the market for library systems. We don't believe that **OCLC's** non-profit status and stewardship of **WorldCat** immunize **OCLC** from obeying the law.

Please remember that this lawsuit isn't about who has the best technology or who has the better technical approach. **SkyRiver** is proud of the technology it uses that enables economy as well as nimble development, just as is **Innovative** of its systems, which include cloud-based options. Neither plaintiff seeks **OCLC** technology through this lawsuit. Both plaintiffs believe that opening the doors to competition will lead to greater innovation and technological advancement.

Let's also be clear about how the lawsuit got started. The trigger was **OCLC's** imposition of punitive pricing for batch uploading of holdings against **Michigan State University** and **California State University**, Long Beach after those two institutions chose to move to **SkyRiver** for cataloging. The pricing clearly seemed intended to discourage other academic libraries from moving to **SkyRiver** and it did. It also drew attention to **OCLC's** heavy reliance on cataloging subscription fees for its revenues, which is where **Tony's** geese and nuns make for a particularly apt analogy. **OCLC** apparently decided that it needed to defend its treasure with a vengeance, even to the extent of damaging **WorldCat** by obstructing its members from adding holdings to it.

A brief **SkyRiver** history lesson may provide useful context here. The idea for a new, low-cost, highly functional alternative to **OCLC's** cataloging services arose from a series of conversations with librarians who were interested in having a choice of bibliographic utilities. From a business point of view, it was clear that to be successful, this product would need to achieve price points that would be truly attractive to libraries at a time when budgets have been stressed to the breaking point.

We came to market with our eyes open, knowing that changing cataloging services is not a step that libraries take lightly. However, we didn't anticipate that **OCLC** would introduce this additional roadblock and now that it was there, with no indication that **OCLC** would budge, we had no choice but to take action. We're simply not willing to stand by and see **OCLC** use its strangle-hold on **WorldCat** — a resource created by its members who continue to pay good money to use it — to create an unfair advantage for **OCLC's** other products and services.

Filing this lawsuit was not a trivial undertaking but we concluded that nothing less than a legal complaint had a chance. This assumption is validated by **OCLC's** official response to the lawsuit. Despite our legal action, **OCLC's** press release of August 5, 2010 states that "[the lawsuit] will not divert us from our current plans and activities," many of which we cite as examples of unfair business practice.

Since the filing, it has been widely noted that there's an inherent conflict of personas in **OCLC's** current business practices — on the one hand, **OCLC** is ostensibly a member-based, *tax exempt* cooperative working for the good of the entire community and, on the other, **OCLC** is a vendor selling services to its own members in competition with companies like **SkyRiver**. It's easy enough to see which persona thought up the batch upload pricing for **MSU** and **CSULB**.

It's also relevant that **OCLC** pays its executives very handsome salaries and has lavished thousands of dollars on its trustees, many of whom are library directors. There are many in our community who think that **OCLC** is on thin ice on the trustee compensation issue. Can you imagine the uproar if **SkyRiver** was paying a university librarian $50,000/year to sit on an advisory board, while having ultimate authority over the staff making library procurement decisions?

And it shouldn't be heresy to raise the issue of opening **WorldCat** to development by vendors other than **OCLC**. As it stands, **OCLC** claims ownership over and uses the WorldCat database to leverage its entry to the commercial ILS market. Why not have a world where the entire library community has open and fair access to **WorldCat** data? This in turn could inspire technological advances from many directions and that could lead to new companies that produce valuable products for libraries.

If the **SkyRiver** lawsuit threatens the existence of **OCLC** and **WorldCat**, surely that's ultimately due to the actions of the management and board of **OCLC**. 🌴

Author's Note: Marshall Breeding has created a Web page with links to relevant documents, articles and blogs that provide a good background for everything that has transpired to date: http://www.librarytechnology.org/web/breeding/skyriver-vs-oclc/.

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open source **ONIX-PL Editor** tool. Who actually does the encoding — the publisher who delivers it with the resource or the library after acquiring the resource — is also a debated issue due both to resource constraints and to license interpretation. The use of third-party encoding has encountered push-back due to possible liability and indemnity issues. There are also cases where ambiguity with their license terms is preferred versus the clarity provided by an XML-encoded structure. Organizational needs differ in terms of the level of detail needed. However, some recent ERM projects, such as that of the **Statewide California Electronic Library Consortium (SCELC)** and the **JISC** Collections Group in the UK, are experimenting with the use of **ONIX-PL** and may set the stage for additional uptake. We are still in the process of determining whether the pain threshold of managing licenses badly — using paper in file folders — is less than the system costs of using and encoding the licenses.

There is also a chicken and egg problem about the creation of communication protocol standards, such as the **ONIX-PL** or the **Cost or Resource Exchange (CORE)** standards. In order to be effective, a communication standard requires not just one implementer; it requires two. Like any conversation, talking with oneself isn't terribly productive. These communication protocols require multiple implementations to be successful. However, not all companies have the same business goals, development priorities or system models. While there is no one right or wrong approach, it makes coordinating development schedules difficult, which delays adoption. Again, the questions of whether the old "painful" way of addressing the problem is worth the investment in systems to overcome the problem is a balancing act that system suppliers need to weigh carefully.

Each of these ERM-related standards addresses a piece of the total ERM puzzle. As yet, there is no overall framework of standards for ERM in the way that libraries have become accustomed with their ILS. And there are still gaps in the e-resources cycle where no standardization has yet occurred.

Looking forward, **NISO** has chartered a working group to conduct a gap analysis of ERM-related data, standards, and best practices. The findings and recommendations of the working group, led by **Ivy Anderson** at the **California Digital Library** and **Tim Jewell** at the **University of Washington**, will set the stage for the next phase of standards work in this important area. They are scheduled to release a report of their work by year's end and will be discussing their work-to-date at several fall meetings, including the **Charleston Conference**, the **LITA National Forum**, and **NISO's Electronic Resource Management Forum** in Chicago in October.

One thing that I stressed during the **ALA** presentation, and at many other times during the **ALA** conference, is that content providers and systems suppliers are very responsive to customer concerns and needs. If enough librarians demand systems and products that use license encoding and license transfer protocols, suppliers will adopt **ONIX-PL**. If determining cost-per-use calculations is taking far too long and requiring too much data entry and manipulation, ERM vendors could implement **CORE** to address their customers' problem. This process has worked well with **COUNTER**, **SUSHI**, and **SERU** adoption; the library customers were demanding the standards and system suppliers saw the value of implementing them. As the old saying goes, the squeaky wheel does get the grease, which is just as true with libraries and vendors as it is with your car and the mechanic. 🌴