Response to Back Talk

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

by Leslie Strauss (President, SkyRiver Technology Solutions) <leslie@theskyriver.com>

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 cavets 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 was also 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 a 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 only very well have been filed 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 door to competition will lead to greater innovation and technological advancement.

Let’s also clear up 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 use SkyRiver for that function. 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 project 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 straight-forward job. 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.

Filng 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 persons 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 hand, it is a vendor selling services to known members in competition with companies like SkyRiver. It’s easy 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. We believe 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.

The lawsuit of the SkyRiver lawsuit threatens the existence of OCLC and WorldCat, surely that 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. Ongoing work will 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. 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.

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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 IRIAU 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. 🔬