

Cornell Law School
Legal Information Institute

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Mr. John Chatelaine
West Publishing Company
620 Opperman Drive
Eagan, MN 55123

Dear John:

I write on behalf of the Legal Information Institute (LII), on behalf of myself as an electronic author whose current work is published by the LII, and on behalf of colleagues whom I'm trying to encourage to experiment with the creation of digital course materials. I identify these several hats so that you can, if need be, deal with the issues I am about to pose in narrower terms than I pose them in order to provide some resolution before the fall term gets underway. I also trust you will tell me quickly if these issues should be raised with someone else at West.

Let me put my question in the form of a proposal and then circle around to the reasons for it and the issues I see. My proposal is that West license legal academics to incorporate cases downloaded from Westlaw into electronic materials, whether disk, LAN, or Internet-distributed, in return for a one time fee per document (let us say \$3 per case) and subject to certain limits on scale and (perhaps) use. To deal with understandable concerns that this might allow creation of large free collections on the Net some outer limit on numbers of documents per project or per person/per year could be set. The kind of collections I hope such a policy might foster are focused and selective rather than comprehensive ones of the sort required by commercial practitioner-oriented products. Possible use limits might focus on the same concern, e.g., the license might not extend to collections sold to practitioners, but a numerical cap is far simpler to apply than any such use boundary and for that reason is to be preferred.

Currently, both Lexis Nexis and West allow law school faculty to download and redistribute in print and digital format for local use. However, any broader distribution or use, any development of collected materials for electronic "publication" requires a subsequent license on terms that are not knowable when the project is first launched in experimental form. As you know, I am teaching a new course this coming year via the Internet to students at Cornell and three other law schools. The subject is "Copyright and Digital Materials." There is no casebook. I plan to prepare electronic materials for the course more or less as it progresses, materials that during 1996-97 will not be edited or polished. But if all goes well I hope to work on those materials or portions of them next year and offer them to others, very likely in multiple formats including Premise and HTML. What no one in my situation wants to do is invest substantial amounts of time and effort building an organized (and richly linked) collection while uncertainty remains about the terms on which it can be shared (or sold) to others. For reasons I won't belabor upfront "permissions" problems have not existed for those preparing their own print teaching materials in law.

Why a lump sum rather than a percentage royalty? Today, many if not most useful collections of digital course materials will include documents obtained from multiple sources. The course materials for my new course, for example, will be drawn from public domain materials available on the Internet (proposed legislation, the administration's "White Paper"), existing LII materials (the

Copyright Act), and cases drawn from some commercial source (Lexis or Westlaw). In addition, the materials will increasingly reflect my own selection and organizing and include some of my own writing. A percentage royalty assumes a significant revenue stream which in many cases like this is improbable and requires some way to figure out (in advance) what portion of various conceivable final products the downloaded material will represent.

Let me illustrate the latter point with another example. My colleague Roger Cramton is working to assemble a large library of Legal Ethics Material that we (the LII) will distribute on CD-ROM and via the Internet. Like our other publications this will be free on the Net and very inexpensive on disk. The collection to be released this December will include: (1) narrative text prepared under Roger's direction by a number of law firms that have taken this on as a "pro bono" project; (2) background narrative material written by Professor Cramton; (3) public domain codes and rules furnished by state authorities; (4) the ABA Model Rules and Code under license from the ABA (still being negotiated); and (5) key cases from the jurisdictions covered (let us say 50 cases per jurisdiction for this first set of seven jurisdictions). Under my proposed licensing terms, those cases would be downloaded from Westlaw and included in this December's and all future versions, however distributed, upon our payment of a one-time fee per case.

Anticipating one problem, let me be clear that my proposal is concerned only with decisions, not copyrighted editorial material and that I understand that particular copyright or licensing issues may be posed by cases containing pagination in which West claims a copyright. I'd like, for now, to finesse that second obstacle by including in my proposal a stipulation that interior West page numbers must be stripped out by any author taking advantage of this license.

I can, if you like, frame all of this in terms of specific LII and Peter Martin projects, but for reasons I've already noted think it important that the basic issues be resolved in more generic terms (unless to do so means postponing resolution of these matters in our case past September).

Sincerely,

Peter W. Martin