

Mr. Smalley:

Here's the data and my current thinking about an InfoSynthesis LII license -- one that would cover our use of Supreme Court decision data from your current and future disks on the Net and on our own disk publications.

Current Numbers / Future Plans -

473 decisions make up my working list of classics (all from NY Public Library list, all from an undergraduate primer, all principal cases discussed in the Emanuels Con. Law study guide). Of this current list - 214 are on USSC+ 95-2, 259 are not (of which 35 are in the chronological slice you told me you expected to finish in time for your next fall release, i.e., between 1967 and 1971). I'll send you the actual list in a following message.

I judge it important, though, that we reach an understanding that isn't restricted to today's version of a particular list. First, if the LII decides to offer a disk that includes all the opinions that appear as principal cases or major note cases in the leading Con Law casebooks (next year or the year following) the population will swell (my scope for the original offering is smaller). I sampled two of the leading books this morning and estimate that standard of coverage suggested above would add over 300 cases to the collection (with a chronological split comparable to my current shorter list). Second, my current list is defined by the plan to offer a Constitutional Law collection but we've already begun to offer selected or key Supreme Court decisions in Ad Law, Copyright, Patent, and Trademark (with data LEXIS gave me to play with two plus years ago) -- i.e., federal law fields for which we have published the statutes in Views for several years. I'd like to be able to use USSC+ data for such topically focused materials. What we don't have any ambition to do is what you are doing -- namely, offering a comprehensive collection of decisions. And we will be focusing on the educational market (law school and other) with a price point that reflects what students have to pay for print collections.

Why USSC+ Data and Not West/LEXIS/LCP Data?

The bigs are now banging heads over legal education. All three of the above are corporate sponsors of the LII. All three have full retrospective data now. But (in candor) for us to acquire the data for these uses from any of them runs three large risks -- delay (in the current environment they find it very hard to make decisions), loss of the posture of neutrality vis-a-vis the lot that we have worked hard to maintain, and finally, a risk that having shared our plans with them they'd proceed to appropriate them.

And as I told you initially I admire the quality and aim of your work and would be delighted at a cooperative arrangement that served the interests of your venture as well as our own.

A Proposed Licensing Framework -

InfoSynthesis would license the LII to draw up to X decisions from current and future USSC+ disks (with full editorial value include links). (My current notion of X is 1,000 which gives flex for the future but represents such a small fraction of the ultimate USSC+ collection to assure you that whatever we do it should boost the market for rather than compete your product(s).) Decisions drawn from USSC+ would be so identified in all settings where the LII distributes them -- on the Internet and on disk. The Net version of all LII collections including USSC+ data would provide a link to the USSC+ website so that the disk product and other offerings of InfoSynthesis would be drawn to the attention of LII users.

#### LII Disk Products and Licensing Fee -

Because of the mix of free distribution via the Net and the likelihood that most if not all LII disk uses are likely to involve a mix of USSC+ data with data drawn from other sources, including public data on the Net, LII editorial material, and data from other commercial publishers, a revenue-based royalty strikes me as impracticable. Consequently, I suggest an up front flat fee per decision drawn from USSC+. \$Y per decision to be paid when that decision is first distributed by the LII, whether on the Net or on disk, in return for an unlimited right to distribute that decision in the future. (My idea for Y is 3 for decisions you've got in hand but at least double that for any decisions you've moved ahead of their chronological place in your queue at our request.)

Percentage Royalty Alternative - The preceding arrangement provides InfoSynthesis with revenue and beneficial Web cross-reference whether or not our disk plan ever gets to first base. On the other hand, it cuts you off from a revenue share should it turn out that our contemplated Con. Law disk does well. (I should note that while we hope for that we don't plan on deploying any sales force or advertising beyond what the Net and word of mouth can carry. We are, after all, a non-profit educational institution.) Although I'm leery of a percentage royalty for reasons noted below, we might be able to construct a workable hybrid along the following lines: an up front \$Y/3 license fee for each decision drawn from USSC+ plus 5% of the fraction of the LII's gross revenues from selling disk-based collections that are largely made up decisions drawn from USSC+ (>50%) represented by the ratio of the bytes of those decisions to the bytes of the full collection. (Percentage royalties start to get very complicated as we think about mixing decisions from USSC+ with decisions drawn from other sources, with other types of material (constitution, Supreme Court rules, LII editorial material) or stirring them into our other topical collections - ad law, copyright etc. where we've already got an inventory of >50. For that reason, I remain much happier with the first model.)

Let me know what you think. I am eager to move ahead asap.