Law Librarian Other Scholarship

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Building Our Own Tools in the Age of Elsevier: AALL 2017 Through the Lens of the bepress Acquisition

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At the beginning of August, Elsevier announced its acquisition of bepress. This was big and surprising news to the academic law library community. Over one third of ABA-accredited U.S. law schools have an active repository hosted on bepress's Digital Commons and several others, including my own institution, the University at Buffalo Law School—are currently building their repositories on the platform. Unsurprisingly, reaction to the news has been negative.[1]

I recently returned to the legal academy after getting my JD and spending a few years practicing law in Syracuse. A few weeks before Elsevier's announcement, I attended my first AALL Annual Meeting in several years. One of my tasks as the new faculty scholarship librarian at University of Buffalo is to work as part of a team that is building and populating the school's Digital Commons repository. Toward that goal, I spent a lot of time at the Annual Meeting attending technology and repository-related programs. Upon reflection, most of the programs I attended fit a theme of librarians transforming their libraries, in part by building their own tools. The bepress acquisition has made this idea even more relevant, and I can't help but look at my conference experience through this lens.

Digital Repositories, Law Libraries, and the Future of Open Access

In *Digital Repositories, Law Libraries, and the Future of Open Access* (session G2 on Tuesday, July 18th at 8:30 a.m.), presenters **Carol Watson** from the University of Georgia, Gregg Gordon from SSRN, and **Corie Dugas** from NELLCO discussed the ten-year history of the legal industry's involvement in digital repositories and the need to think about the next steps.

First, Watson summarized the history of law schools and institutional repositories. Although about half of U.S. law schools have an institutional repository and roughly 300 U.S. and international schools have a series on SSRN, there are no standards for open access, interoperability, or metadata. She also discussed the need to communicate the impact of these systems to our constituents. For example, what do the download numbers actually mean? How do downloads translate to impact?

Next, Gordon explained that his view of open access is "about innovation." He believes the point of open access is to get research into the hands of other researchers before it's available anywhere else. He sees the job of SSRN and Elsevier as providing a better interface. Elsevier won't charge for content. The benefit it gets is to look at the connections between researchers,

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[1]   *See*, *e.g.*, Elsevier Acquires bepress, The Scholarly Kitchen (2017), https://scholarlykitchen.sspnet.org/2017/08/02/elsevier-acquires-bepress/; Elsevier Continues To Build Its Monopoly Solution for All Aspects of Scholarly Communication, Techdirt, https://www.techdirt.com/articles/20170804/0545437924/elsevier-continues-to-build-monopoly-solution-all-aspects-scholarly-communication.shtml; What Was BePress?, Gavia Libraria, https://gavialib.com/2017/08/what-was-bepress/.

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and leverage that. When asked about ethical concerns regarding how that research is conducted, he basically dodged the question by stating that Elsevier has "a team that focuses on privacy" and that it would receive no benefit to steer toward an agenda or view.

Finally, Dugas spoke about LawArXiv, which intends to provide a permanent hosting platform for open access research that is owned and maintained by the member institutions. The project is very new and will be shaped by the institutions, in particular the librarians, using it. LawArXiv was started as a reaction to Elsevier's acquisition of SSRN.

Law Repositories Caucus Meeting and Roundtables

The Law Repositories Caucus roundtables (held on Sunday, July 16th at 12:45 p.m.) featured two sessions and a number of tables, each hosting a different topic. I spent both sessions at the metrics table, where the discussion revolved largely around two subjects: the difficulties involved in collecting citation counts in law, and methods of communicating this information to the faculty and administration.

Several communications ideas were discussed, and my favorite was the school that compiles a quarterly report on all permanent faculty showing SSRN downloads, downloads from the school's Digital Commons repository, and citations for each faculty member.

Unfortunately, no solutions were forthcoming for the citation count problem. The main issue in citation gathering is that the large bibliometric databases like Web of Science and Scopus don't collect student-edited law reviews, where the vast majority of law professor scholarship is published, because they are not peer-reviewed. This limits librarians to using labor-intensive tools including Harzing's Publish or Perish and Plum Analytics (also recently acquired by Elsevier) to gather the data. Because no one tool covers the majority of journals where law professors publish, librarians must spent a lot of time compiling the data from the various tools and weeding out duplicates.

Watson in the Law Library

In *Watson in the Law Library* (session F6 on Monday, July 17th at 2:00 p.m.), Fastcase CEO Ed

Walters and Brian Kuhn, from IBM's Watson team, explored the idea that information professionals should be building their own AI tools and not merely using them as consumers. AI tools are a collection of algorithms that can understand context and meaning, and can reason, learn, and interact with people or other tools. As Walters explained, the main difference between AI tools and traditional tools is that AI tools can work with unstructured data. Most institutional data is unstructured and, consequently, AI tools are potentially very powerful. He also stated that the current focus on lawyers being replaced by AI tools perpetuates a negative stereotype that is unhelpful. Instead of replacing human intelligence, these tools should be used to augment human intelligence by being applied to "brute force" tasks that are time-consuming.

The presentation focused on two systems, Watson and Fastcase's AI sandbox, and their potential application to law organizations, particularly law firms. Walters and Kuhn suggested a number of possible projects that could be implemented in law organizations, including workflow tools for companies to evaluate efficiency of outside counsel or for outside counsel to evaluate their own efficiency and billing practices against

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their clients' guidelines; analysis tools that could use prospective jurors' social media accounts to assist in jury selection or use a judge's previous written decisions to forecast a prospective ruling; and support tools to more efficiently perform pro bono work. The program closed with Walters' challenge to everyone in the room to start using AI tools to build specialized tools for their own organizations.

Bringing It All Together

Although the perspectives and specifics of each session were different, there were a few big ideas that started to take shape for me while at the conference. Looking at the bepress acquisition in the context of its other recent acquisitions, it appears that Elsevier is attempting to purchase the entire mechanism of scholarly communication. Although SSRN and bepress stress that researchers will continue to have free access to content and that institutions will continue to own

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their own data, it appears that in Elsevier's world, those institutions will pay Elsevier dearly for access to the mechanisms of scholarly communication. We'll pay it for our faculty to submit content to journals. We'll pay it again to publish and host those journals. And we'll pay it to host the scholarly output of our own faculty.

Looked at in this light, the lack of metadata standards in our repositories may be a problem. How many schools are going to find that they didn't give enough thought to how their metadata is organized in bepress, and will need to do further work if they wish to migrate to another system in the future? Any such migration is not likely to happen soon. SSRN and Digital Commons are too entrenched for institutions to abandon them in the near future. However, it is time that law librarians as a community start to build alternatives to the tools that Elsevier is purchasing, before we are irreversibly locked in. I think when most of us think about open access, we are also thinking platform-independent. Under the current landscape, it may be necessary to think beyond using open source tools to build repositories, and instead build our own open source scholarly communication *infrastructure*. An infrastructure that can't be easily sold because it is owned not by a single entity but by the community. LawArXiv is one such

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possibility. Shortly after the bepress announcement, LawArXiv stated that it intends to look into replacing other Digital Commons functionality in the future.

But we must think beyond simply looking for a replacement for Digital Commons or other services offered by bepress. We should take up the challenge and start to look at ways we can use AI tools, and other tools, to replace costly services we're currently buying from vendors, or to build our own tools beyond what vendors are offering. For example, can we build chatbots to assist our patrons when the reference desk is closed? Can we build research and knowledge management tools to support our clinics? Can we build tools to sort through circulation data and other usage statistics to provide meaningful analysis of the disparate numbers provided by vendors?

And yet this is not enough. We must also answer bigger questions. How can we build tools and services owned by the community and what does that look like? How can we forge partnerships between law libraries and non-law libraries to build a scholarly communication infrastructure that is not tied to one vendor? How do we do this with limited resources and continually-shrinking budgets? ❦