

Part I
A General
View

Chapter 1

Introduction

Welcome to the world of legal information and legal publishing! As an attorney or other legal professional, you cannot function without access to correct and timely legal and general information, whether in the form of statutes, court reports, administrative regulations, municipal ordinances, court rules, forms, legal treatises, encyclopedias, practice books, citator services, law reviews, legal newspapers and newsletters. Unless you have allowed the information revolution to leave you behind, you are now receiving information in a variety of formats, including hard copy, CD-ROM, online databases, and the Internet. The proper representation of your clients in the third millennium requires that you have a fairly sophisticated understanding of the legal information resources in your field of specialization, as well as an ability to utilize that information effectively.

We are living in an age dominated by information, otherwise described as a post-industrial age. The United States has been transformed from a nation that manufactures products and goods into a nation that produces, enhances, processes, and sells information. Lawyers and other legal professionals make their living transforming raw information, legal and otherwise, into knowledge and solutions for their clients. The attorney's role in this age of information is dramatically complicated by its sheer volume.

It has been estimated that, in 1900, the entire body of information in the world was doubling every seventy-five years. By 1950, it was doubling every twenty-five years, and by 1980, every five years. Recent figures suggest that this doubling in the volume of information is now taking place every 22 months. In the legal publishing field, synergies created by the consolidation of the industry have precipitated a heightened level of product development best illustrated by the dramatic enhancements to Westlaw and Lexis-Nexis, the West Group's introduction of **KeyCite**, and corresponding enhancements to **Shepard's Citations**.

Attorneys have responded to this information explosion by specializing. From the perspective of legal information, an attorney in the 21st century simply cannot practice in more than one major regulatory field and still do justice to his or her clients. For example, simply monitoring environmental regulations on a daily basis is a full time job for an information professional. Legal information vendors have responded to this explosion by developing and marketing more specialized legal reference tools. While legal publishers may still maintain the currency of such broad-based products as **Corpus Juris Secundum** for their existing customers, their energies in new product development are directed toward the specialized treatise and the application of sophisticated computer-based technologies to legal information retrieval.

Transformation of the Legal Publishing Industry

Legal publishing is undoubtedly one of the most dynamic sectors of the American economy, evolving into a multi-billion dollar business which has attracted the interest of leading foreign investors. In the 1980's and early 1990's, the legal community witnessed a dramatic consolidation of the legal publishing business as major English, Canadian and Dutch conglomerates snapped up one domestic publisher after another. In sharp contrast to 1977, when at least 23 legal publishers of some size and reputation were separately owned (along with scores of smaller ones), the bulk of legal publishing in the new millennium has been brought under three major corporate umbrellas: the Thomson Corporation (Canadian), Reed-Elsevier (British-Dutch), and Wolters Kluwer (Dutch). Under their new ownership, these consolidated entities have responded to the information revolution by reorganizing product lines, restructuring operations, and developing more sophisticated means of information retrieval and delivery. Unfortunately, for consumers, some have also developed more sophisticated and aggressive marketing strategies, cut editorial costs, and dramatically raised prices.

The most dramatic of these developments took place in 1996 when the Thomson Corporation of Canada purchased the venerable West Publishing Company for \$3.4 billion, creating the world's largest legal publishing enterprise. The Thomson Corporation currently controls 38% of the domestic market in legal information. Though the merger of Thomson and West raised a host of antitrust concerns, particularly among legal information consumers, the Department of Justice's Antitrust Division allowed the merger to proceed with only minor and inconsequential divestitures.

Seeds of Industry Consolidation

The seeds of the present organization of the legal publishing industry were planted in the late 1970s, when the Thomson Corporation of Canada came to appreciate the strategic importance of legal publishing from an investment perspective. High profitability, reliable cash flow from subscription sales, a relatively affluent customer base, and lower risks in product development all contributed to the desirability of acquiring legal publishing entities. What distinguishes this recent wave of mergers and acquisitions, however, from those that preceded them is that these are being played out on a global stage by foreign-owned corporations primarily interested in their profit potential.

Back in the days when they were the two major competitive forces in the industry, West and Lawyers Cooperative claimed to offer complete systems of legal information--West around its National Reporter and Key Number systems, and Lawyers Cooperative around its Total Client-Service Library. However much they and their customers may have believed their marketing claims, legal information consumers still had to shop elsewhere for a variety of additional products, including citators, looseleaf services, legal treatises, and practice books, not to mention legal periodicals, newsletters, and government publications. As the merger frenzy picked up steam in the late 1980s and early 1990s, however, it became obvious to industry analysts that future global competitiveness would require the integration of a full range of legal research products and services. This product integration was also converging with the growing power of

online research which was already bringing these products straight to the lawyer's desktop.

Clearly, the acquisition of a major on-line service was to be the *sine qua non* for any legal publishing enterprise which hoped to compete successfully in this new world of legal research product integration. Conversely, the lack of a complementary line of analytical and practice products would handicap an online provider whose aim was to compete on this emerging landscape. A successful legal publisher in this new environment has to be in a position to offer legal information consumers a complete and integrated product line.

The Legal Publishing Mega-Mall

Now that the dust has pretty much settled on this merger frenzy, the shape of legal publishing is far more clearly delineated than it was a few years ago. Two major legal publishing giants--the Thomson Legal and Regulatory Group (TLRG) and Reed Elsevier--stand like two major anchor stores at opposite ends of the Legal Publishing Mega-Mall. Their two leading legal information companies—West and LexisNexis—each provide legal information consumers with an integrated product line consisting of a major on-line research service (Westlaw and LexisNexis), a sophisticated and citator service (KeyCite and Shepard's), a significant print line of primary law and a large analytical and legal practice product line.

A third conglomerate, Wolters Kluwer now stands on the second tier, with a solid presence in the field of current awareness and analytical and tools (CCH and Aspen Publishers). Its acquisition of Loislaw.com in December 2000 provided it with the base from which to integrate its various product lines into an electronic environment. However, Loislaw is a hardly a competitive threat to either Westlaw or Lexis-Nexis. It commands but a thin slice of the domestic online legal research market, lacks an editorially-enhanced citator service of proven value to the American legal community, and is now facing stiff competition from other low-cost CALR providers, including the bar association sponsored Casemaker.

The remainder of the mall is filled with dozens of smaller specialty boutiques, offering everything from inexpensively-priced online access to primary law, practice books, subject specific treatises and CD-ROMs, newsletters, and regulatory awareness products. Ironically, Loislaw.com, which once proudly held itself out as an independent and less costly on-line alternative for legal information consumers, found itself a takeover target after its stock price plummeted in 2000. The largest American legal publisher still independent after this twenty-one year wave of mergers and acquisitions is Bureau of National Affairs (BNA), an employee-owned company headquartered in Washington, D.C.

Whither the Consumer?

When the Justice Department approved the merger of Thomson and West in 1996, it sanctioned a legal publishing industry dominated by two major players. The divestiture

of a few high profile products and a star pagination licensing provision were supposed to appease opponents of the merger, while preserving Thomson's ability to assemble more content rich computer-based products. Moreover, the Justice Department was convinced that weaknesses in West's star pagination copyright claims together with the momentum of vendor-neutral case citation, were sufficient to protect the public interest. Since 1996, it has stood silent while West consumed additional regional or specialty information providers.

Benefits of Consolidation

It would be easy to find fault with the concentration of the industry without acknowledging some rather substantial benefits. There is no question that the merger wave has ushered in a heightened level of product development and integration. Both the West Group and Reed Elsevier have successfully integrated multiple product lines in both print and on-line formats. Both Westlaw and LexisNexis have now moved almost exclusively to Web-based search engines and provided their users with a wider variety of primary and secondary materials than previously existed.

Citator "Wars" a Boon to Legal Researchers

What does all this mean for you as a consumer of legal information? Your research options have certainly increased dramatically, thanks to the combined efforts of the modern legal information industry. Research tools exist in a multiplicity of formats, with enhanced indexing and research aids. Computer-assisted legal research (CALR), CD-ROM, and the Internet make the task of locating desired information easier and faster, supplementing the traditional indexing and digesting tools which are fraught with human limitations. Supplementation options have also expanded to provide you with more current and up-to-date information. With this panoply of available research tools, the responsibility now falls upon you to select that complement of materials best suited to your practice needs and financial resources. The drive to the Web has also had a profound impact on the configuration of the typical law firm library which has abandoned its reliance on print tools with their rising and duplicative costs.

Competition between Shepard's and KeyCite, coupled with substantial investments in product development, will guarantee that each of these services will be far better and far less expensive than their ancestors. We have also witnessed acceleration in the development of new treatise titles, both from the major players and smaller niche publishers. Online product catalogs provide consumers with more content and pricing information than ever before, although the availability of historical supplementation cost information long sought by law librarians remains an elusive goal.

The relatively high cost of online legal research has also brought forth marketplace challenges from VersusLaw, Fastcase, and others who are prepared to offer consumers access to desired primary law databases at sharply reduced costs. Responding to these challenges, but also trying to more fully tap the substantial small law office market, Westlaw and LexisNexis now offer a variety of lower cost, fixed-rate options tailor-made to the needs of specific firms.

The Down Side of Concentration

Despite the benefits of consolidation, the legal publishing environment also presents a number of challenges and pitfalls for legal information consumers. Both initial and supplementation costs have continued their upward spiral from some publishers who are much more likely to milk subscription lists to maximize revenues than to cut deals for their best customers. Some legal publishers have creatively engineered the growth of multi-volume sets by increasing their size, and accelerating the revision cycle of bound volumes, including the expansion of tables of cases, indices, and ancillary research aids. The decline in the number of subscribers to print reporters, driven by the rising popularity of online access and by rising costs for office space in major cities, has forced up reporter costs at faster rates than previously. Hardcopy reporters, for example, are now routinely being given away by major firms for the cost of postage.

While there are no barriers to entering the legal information marketplace, the near-term prospects for substantial price competition are substantially reduced by the current concentration of authors and editorial resources in the hands of the major legal publishers and by the expectation of similar profit margins by potential competitors who are likely to recognize that consumer buying decisions are more commonly based on substantive content than on price. An overriding concern is that smaller legal publishers with a winning product line will find themselves attractive acquisition targets, as was Loislaw.com.

Using the Legal Information Buyer's Guide

This book was primarily written to address the needs of the solo practitioner and the attorney in the small or medium-sized law firm operating without a law librarian, but will also serve as a valuable resource in a variety of law, academic and public libraries. It is based on the assumption that while lawyers are highly educated people, sophisticated in their knowledge of the law, they often lack even the most rudimentary understanding of the ways of legal publishing and the marketing techniques which unnecessarily siphon away their hard-earned dollars.

It has been estimated that the average lawyer spends more than \$4,000 per year on information, a figure greater than that of any other professional and more than six times that of the average doctor. A major portion of that \$4,000 is wasted, either because many of the materials are poorly selected, are never or rarely used, are ill suited to the lawyer's specialty, or are overpriced. I would hazard to say that the average practitioner could reduce his or her expenditures for legal information by 50% without any essential loss of utility or currency. Applied judiciously, the information and strategies presented in this book will save you thousands of dollars in unnecessary expenditures over the course of your legal career.

Most of the advice offered in this book is information known to law librarians for years, but not effectively conveyed by them to the vast majority of practicing lawyers. Law librarians have rubbed elbows with legal publishers for years at professional meetings and conferences. One of the messages we have heard repeatedly is that the primary market for legal information consists of lawyers, not law libraries. After all, we are told,