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## **“It Costs *How* Much?: Developing Student Critical Perspectives through a Discussion of Legal Information Costs**

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### **Introduction**

Teaching students to become cost-effective legal information researchers is an important objective for instructors and librarians.<sup>1</sup> Many educators have written about why and how students should learn about legal research costs and cost-effective research strategies, and several of the American Association of Law Libraries (AALL) Law Student Information Literacy Standards are specifically cost-related.

The literature about teaching legal research costs is generally framed by its practical applications. Cost-effective research helps save money for lawyers and their clients<sup>2</sup> and plays a crucial role in pro bono and public interest work.<sup>3</sup> However, in addition to its practical applications, awareness of legal research costs and the structure of the legal information market strengthens critical perspectives. These critical perspectives can transfer to other areas of students' legal education and their future professional work.

The world of legal research costs is rife with opportunities for critical approaches. Legal information is created by governments and funded by taxpayers, yet legal information is often very expensive and private companies benefit enormously by placing legal information behind paywalls. On the other hand, private companies create and charge for valuable tools such as taxonomies, advanced search, and citators. Also emerging are free and open source providers of legal information that are poised to disrupt the legal information market.

Drawing from critical information literacy, this article suggests ways to discuss legal research costs in the classroom in a manner that bolsters a critical perspective about the legal information and by extension, the legal system as a whole. This article addresses critiquing legal research costs as a learning strategy for developing critical perspectives and includes suggestions for classroom discussion.

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<sup>1</sup>Aliza B. Kaplan & Kathleen Darvil, *Think (and Practice) Like A Lawyer: Legal Research for the New Millennials*, 8 Legal Comm. & Rhetoric: JALWD 153, 156 (2011); Patrick Meyer, *Law Firm Legal Research Requirements for New Attorneys*, 101 Law Libr. J. 297, 312 (2009).

<sup>2</sup> Kaplan & Darvil at 158.

<sup>3</sup> Deborah K. Hackerson, *Access to Justice Starts in the Library: The Importance of Competent Research Skills and Free/low-Cost Research Resources*, 62 Me. L. Rev. 473, 474 (2010).

## Background

Informed by Paulo Freire's theory of critical pedagogy, several librarians have developed and advocated for a critical information literacy approach. Librarians who identify with critical information literacy "seek to anchor information literacy practice and librarianship as a whole to a commitment to both principles of social justice and a systematic critique of the power relations within which our field operates."<sup>4</sup>

Critical information literacy is "more than a set of acquired skills" but "the comprehension of an entire system of thought and the ways that information flows in that system".<sup>5</sup> It is an approach that allows us to view information as a social construct:<sup>6</sup> something that is not just true or false but which is created and perpetuated by people.<sup>7</sup> It encourages us to understand that "the information in our society flows from the points of power, economic and political."<sup>8</sup> As such, librarians using a critical information literacy approach engage students with questions about how information is created, how it is published, and the power structures that exist within the information world.<sup>9</sup>

A critical information literacy approach aimed specifically at legal information would be beneficial to legal research students. These learners are immersed in specialized legal information, such as court cases, statutes and regulations, and scholarly commentary about the law. Legal research students are generally taught about legal information as a tool for problem solving, predicting and planning. However, an awareness of legal information as a social construct, an understanding of the way legal information "flows", and a comprehension of the power structures that undergird that system would be immensely beneficial.

## Why Focus on Costs?

### *Legal Information can be Expensive*

The cost of legal information and teaching cost-effective research are both issues of enormous concern to librarians and educators. Legal information can be very expensive. WestlawNext, the most heavily used fee-based legal information database,<sup>10</sup> charges a

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<sup>4</sup> Ian Beilin, *Beyond the Threshold: Conformity, Resistance, and the ACRL Information Literacy Framework for Higher Education*, In the Library with a Lead Pipe, February 25, 2015, available at: <http://www.inthelibrarywiththeleadpipe.org/2015/beyond-the-threshold-conformity-resistance-and-the-acrl-information-literacy-framework-for-higher-education/> (last visited June 20, 2015), archived at: <http://perma.cc/HEH9-75LJ>.

<sup>5</sup> James Elmborg, *Critical Information Literacy: Implications for Instructional Practice*, 32 The Journal of Academic Librarianship 192, 196 (2006).

<sup>6</sup> Troy Swanson, *Applying a Critical Pedagogical Perspective to Information Literacy Standards*, 12 Community and Junior College Libraries, Issue 4 at 65, 67 (2004).

<sup>7</sup> *Id.* at 72.

<sup>8</sup> *Id.* at 72.

<sup>9</sup> *Id.* at 73.

<sup>10</sup> Josh Poje, *Legal Research*, ABA TECHREPORT 2014, available at: <http://www.americanbar.org/publications/techreport/2014/legal-research.html>

retail price of \$13.33 per minute to view a judicial opinion and \$20.00 per minute to view a federal statute.<sup>11</sup> For Lexis Advance, WestlawNext's major competitor, the retail price is \$19 to access a judicial opinion or a statute.<sup>12</sup> Print materials can be just as expensive. For example, the most recent edition of Kurzban's Immigration Law Sourcebook, one of the leading secondary sources for immigration law, costs \$599.<sup>13</sup> The American Bar Association's 2014 *Legal Technology Survey Report* found that only 14% of lawyers were "very satisfied" with the costs of their fee-based legal research tool.<sup>14</sup>

The American Association of Law Libraries (AALL) Legal Research Competencies and Standards for Law Student Information Literacy make cost-effective research a priority. The document specifies that an information literate law student constructs and implements "efficient and cost-effective search strategies", and lists "identifying the most cost-effective sources" and "calculating cost of use against time on research" as required skills.<sup>15</sup>

AALL is not alone in its focus on cost-effective research – many authors have discussed the importance of cost-effective legal research in the workplace.<sup>16</sup> In a 2009 survey, law firm librarians were asked to identify the most important research skill new attorneys should have. From a list of eight skills, "cost-effective research" was ranked the most important.<sup>17</sup> Law librarian Emily Marcum states "[cost] recovery of online research has

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(last visited June 20, 2015), *archived at*: <http://perma.cc/5RDU-GFXV>. (33% of lawyers name WestlawNext as the most used fee-based legal research tool.).

<sup>11</sup> Note that these are *retail* prices. Most attorneys have a subscription plan where they pay a flat fee for a content package. The retail prices would apply only outside of a particular content package. See Thurgood Marshall Law Library, Research Department, *Successful Summer Strategies: Research in the Real World* (April 16, 2015), *available at*: [http://law.umaryland.libguides.com/summer\\_survival\\_cost\\_effective\\_pricing](http://law.umaryland.libguides.com/summer_survival_cost_effective_pricing) (last visited June 20, 2015) ("Firms usually have a fixed rate contract negotiated with the vendor depending on firm past or predicted use. Some of the databases may be outside the contract and incur additional fees for access."). See also Josh Poje, *Legal Research*, ABA TECHREPORT 2014, *available at*: <http://www.americanbar.org/publications/techreport/2014/legal-research.html> (last visited June 20, 2015), *archived at*: <http://perma.cc/5RDU-GFXV>. (66% of respondents had a negotiated flat fee plan).

<sup>12</sup> Lexis Advance, *Price Guide for Commercial Markets* (2013), *available at*: <http://web.lexis.com/help/research/lapriceguide.pdf> (last visited June 15, 2015), *archived at*: <https://perma.cc/VC56-3J7L>.

<sup>13</sup> Members of the American Immigration Lawyers Association may purchase receive a discounted price of \$399. AILA Agora, Kurzban's Immigration Law Sourcebook, *available at*: <http://agora.aila.org/product/detail/1848> (last visited June 20, 2015), *archived at*: <http://perma.cc/RL7E-86LE>.

<sup>14</sup> Josh Poje, *Legal Research*, ABA TECHREPORT 2014, *available at*: <http://www.americanbar.org/publications/techreport/2014/legal-research.html> (last visited June 20, 2015), *archived at*: <http://perma.cc/5RDU-GFXV>.

<sup>15</sup> Am. Ass'n of Law Libraries Standards and Competencies for Law Student Information Literacy, *available at*: <http://www.aallnet.org/Archived/Leadership-Governance/policies/PublicPolicies/policy-lawstu.html>, (last visited June 25, 2015), *archived at*: <http://perma.cc/U3LE-F5MX>.

<sup>16</sup> But see Sarah Gotschall, *Teaching Cost-Effective Research Skills: Have We Overemphasized Its Importance?* 29 *Legal Reference Services Q.* 149, 152 (2010) (arguing that there may be an over-emphasis on the importance of cost-effective legal research training rooted in an over-reliance on law librarian surveys. Law librarian surveys, while useful, reflect the experience of librarians in large firms, and do not necessarily apply to other types of workplaces.).

<sup>17</sup> Patrick Meyer, *Law Firm Legal Research Requirements for New Attorneys*, 101 *Law Libr. J.* 297, 311 (2009).

become increasingly important to a law firm's bottom line as more and more clients are refusing to pay and pricing structures have been changing.”<sup>18</sup> In an article detailing the results of focus groups with legal employers, Susan C. Wawrose found that employers are “concerned about the cost of legal research”.<sup>19</sup>

Legal educators have taken note of these concerns. Shawn G. Nevers advises law students to learn cost-effective research while in law school<sup>20</sup> and Joseph D. Lawson argues that law students who will eventually become solo and small firm attorneys have a particular need to learn cost-effective strategies.<sup>21</sup>

But besides practical reasons, there are two additional reasons why costs are a good place to focus critical information literacy development: first, the legal information industry is shifting rapidly. This shift allows for interesting observations, the ability to compare and contrast various models for publishing, and for rich discussion about the legal information ecosystem and the (changing) power structures behind it. Second, the essential role of legal information in the broader context of society naturally evokes interesting social and political discussion.

### ***The Legal Information Industry is Shifting***

In 1977, there existed a variety of legal information providers. “[A]t least 23 legal publishers of some size and reputation were separately owned (along with scores of smaller ones)”.<sup>22</sup> However, the 1990s and 2000’s saw several corporate mergers that reduced this number significantly.<sup>23</sup> The changes in the legal information industry were so significant that in 1999 *Legal Reference Services Quarterly* published a special issue dedicated to the “new landscape” of legal information and characterized the new landscape by a “trend towards concentration in the legal publishing industry” as well as an increase in electronic publishing.<sup>24</sup> By the year 2005, just three publishers controlled 90% of the legal information market: Thomson West, LexisNexis, and Wolters Kluwer.<sup>25</sup>

In the last several years, these three “traditional” publishers have dominated the legal information industry even though many commentators have complained about their

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<sup>18</sup> Emily Marcum, *The Quest for Client Savings in Legal Research: WestlawNext v. Westlaw Classic* 32 *Legal Reference Services Q.* 142, 143 (2013).

<sup>19</sup> Susan C. Wawrose, *What Do Legal Employers Want to See in New Graduates?: Using Focus Groups to Find Out*, 39 *Ohio N.U. L. Rev.* 505, 552 (2013).

<sup>20</sup> Shawn G. Nevers, *Becoming a Cost Effective Researcher*, *Student Law*, December 2012, available at: [http://www.americanbar.org/publications/student\\_lawyer/2012-13/dec/cost\\_effective\\_researcher.html](http://www.americanbar.org/publications/student_lawyer/2012-13/dec/cost_effective_researcher.html), archived at: <http://perma.cc/K6QZ-CMEW>.

<sup>21</sup> Joseph D. Lawson, *What About the Majority? Considering the Legal Research Practices of Solo and Small Firm Attorneys*, 106 *Law Libr. J.* 377, 401 (2014).

<sup>22</sup> Kendall F. Svengalis, *Member’s Briefing, Legal Publishing on the Eve of a Millennium*, *AALL Spectrum*, July 1999 at 19, 22, available at [http://www.aallnet.org/mm/Publications/spectrum/archives/Vol-3/pub\\_sp9907/pub-sp9907-mb.pdf](http://www.aallnet.org/mm/Publications/spectrum/archives/Vol-3/pub_sp9907/pub-sp9907-mb.pdf) (last visited June 22, 2015), archived at: <http://perma.cc/EJE7-KG44>.

<sup>23</sup> Olufunmilayo B. Arewa, *Open Access in A Closed Universe: Lexis, Westlaw, Law Schools, and the Legal Information Market*, 10 *Lewis & Clark L. Rev.* 797, 822 (2006).

<sup>24</sup> Samuel E. Trosow, *Introduction: The Political Economy of Legal Information: The New Landscape*, 17 *Legal Reference Services Q.* 1, 1 (1999).

<sup>25</sup> Olufunmilayo B. Arewa, *Open Access in A Closed Universe: Lexis, Westlaw, Law Schools, and the Legal Information Market*, 10 *Lewis & Clark L. Rev.* 797, 822 (2006).

profits and prices.<sup>26</sup> In a 2007 presentation, law librarian Kendall F. Svengalis documents the operating profits of the “big three” legal publishers and the impact of the accompanying high costs on library budgets.<sup>27</sup> Despite this, lawyers and law students still rely on the “big three”. The American Bar Association’s 2014 *Legal Technology Survey Report* found that 33% of lawyers name WestlawNext as the most used fee-based legal research tool.

Recently the emergence of a crop of free and crowd-sourced legal information providers calls into question the value of the traditional legal information market. In 2009, Google Scholar started to offer free, searchable caselaw.<sup>28</sup> Shortly thereafter, a new wave of “next-generation” free legal research tools emerged. In 2012, Ravel launched a free source for caselaw, with visual and analytical features.<sup>29</sup> In 2013, Casetext, “resembling a Wikipedia for caselaw”<sup>30</sup> launched.<sup>31</sup>

The legal information industry is at a crossroads. Although the “big three” publishers still dominate the industry, new kinds of legal research platforms are poised to challenge this dominance. The shifting legal information market provides an opportunity to look into the “cracks” of the market and develop a critical awareness about legal information costs and profits.

### ***The Legal Information Industry is Situated in an Interesting Social and Political Context***

The legal information industry’s social and political context lends itself to discussion, particularly about the power structures behind its creation and distribution. Laws are created by elected representatives, paid for by the taxpayers, and govern almost all aspects of our lives. In a sense, the law belongs to everyone. Yet much legal information is locked behind paywalls, and the legal publishing industry is highly profitable.

Knowledge of the law is essential to democracy. Ralph Nader has written, “The inability of citizens to know the law poses a very large problem in our democracy.”<sup>32</sup> Many people have argued that justice requires open access to our laws.<sup>33</sup> Even before the Internet,

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<sup>26</sup> A Olufunmilayo B. Arewa, *Open Access in A Closed Universe: Lexis, Westlaw, Law Schools, and the Legal Information Market*, 10 Lewis & Clark L. Rev. 797, 822 (2006).

<sup>27</sup> Kendall F. Svengalis, *Legal Information: Globalization, Conglomerates, and Competition: Monopoly or Free Market?* available at: [www.nelawpress.com/AALL2007.ppt](http://www.nelawpress.com/AALL2007.ppt) (last accessed June 15, 2015).

<sup>28</sup> David Hall, *Google, Westlaw, Lexisnexis and Open Access: How the Demand for Free Legal Research Will Change the Legal Profession*, Syracuse Sci. & Tech. L. Rep., Spring 2012, at 53, 57-59.

<sup>29</sup> *Ravel Law, About Us*, available at: <https://www.ravellaw.com/about> (last accessed June 1, 2015), archived at: <https://perma.cc/8R3F-KVSL>.

<sup>30</sup> Katrina June Lee, Susan Azyndar, Ingrid Mattson, *A New Era: Integrating Today's "Next Gen" Research Tools Ravel and Casetext in the Law School Classroom*, 41 Rutgers Computer & Tech. L.J. 31, 49 (2015)

<sup>31</sup> *Casetext, About Us*, available at: <https://casetext.com/about> (last accessed June 1, 2015), archived at: <https://perma.cc/C23E-EXBS>.

<sup>32</sup> Ralph Nader, *The Law Must Be Free and Accessible to All--Not Secret and Profitable*, Huffington Post, The Blog (Feb. 7, 2014, 4:31 P.M.), available at [http://www.huffingtonpost.com/ralph-nader/the-law-must-be-free-and-accessible\\_b\\_4747745.html](http://www.huffingtonpost.com/ralph-nader/the-law-must-be-free-and-accessible_b_4747745.html), (last visited June 1, 2015) archived at: <http://perma.cc/Q8VU-34UJ>.

<sup>33</sup> Ian Gallacher, “Aux Armes, Citoyens!": Time for Law Schools to Lead the Movement for Free and Open Access to the Law, 40 U. Tol. L. Rev. 1, 15 (2008).

people have pondered the extent of access to the law that should be granted to the public. In an 1866 case concerning the copyright status of Minnesota laws, a Minnesota court stated “[t]he materials for such publication are open to the world. They are public records, subject to inspection by every one[.]”<sup>34</sup> Since the advent of the Internet, and the relative ease of distributing documents quickly, arguments for access to the law have increased.<sup>35</sup> Questions remain, however, such as: what should be the extent and scope of access to the laws, and who should be responsible for providing this access?

The cost of legal information is a good focal point for critical information literacy efforts, not only because it is important to teach about costs as a practical matter, but because the shift in the legal information industry and the socio-political context of legal information allow for interesting discussions about the power structures behind the creation and distribution of legal information. Educators can take advantage of these conditions to add a critical dimension to their teaching. The remainder of this paper outlines some ideas for discussing costs with a critical dimension. It is not a comprehensive list, but it is my hope that this will serve as a starting point for future conversations.

## Ideas for discussion

### *Access to Justice and the Government’s Role in Providing Access to Legal Information*

Many writers have argued that justice requires open access to our laws.<sup>36</sup> However, the government’s role in providing access is still undefined, and many laws are difficult to access. Section 105 of the Copyright Act<sup>37</sup> puts federal laws in the public domain and free alternatives to paid databases such as Westlaw and Lexis have appeared in recent years, particularly with regard to caselaw.

However, access to documents such as state statutes and regulations, municipal laws, agency decisions, and guidance documents are still fraught with problems. For example, many states give the exclusive right to publish “official” codes and regulations to commercial publishers.<sup>38</sup> New York’s “official” administrative regulations are published in print by Thomson West and can be accessed in a Westlaw database. A free version of the administrative rules is available online, but comes with the warning:

“The information contained in the on-line version of the NYCRR is not the official version of the NYCRR. No representation is made as to its accuracy, nor may it be read into evidence in New York State courts. To ensure accuracy and for evidentiary purposes,

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<sup>34</sup> *Davidson v. Wheelock*, 27 F. 61, 62 (C.C.D. Minn. 1866).

<sup>35</sup> Gallacher at 1.

<sup>36</sup> *Id.*

<sup>37</sup> 17 U.S.C.A. § 105 (West, WestlawNext, Current through P.L. 114-9)

<sup>38</sup> Beth Ford, *Open Wide the Gates of Legal Access*, 93 Or. L. Rev. 539, 553 (2014).

reference should be made to the official NYCRR which is available from Thomson Reuters.”<sup>39</sup>

The legal information world has many instances of questionable access similar to this example. To promote critical awareness of legal information, educators can present such an instance for classroom discussion. This will generate debate about questions such as: do governments have an obligation to provide comprehensive, searchable legal information websites? If so, who will pay for it? Do they have an obligation to provide analysis and context? If so, how much? Should governments be able to sell the rights to the official versions of their codes? If so, what is their obligation to provide free alternatives to the public?

### ***Next-Generation and Crowd-Sourced Technologies and the (Potential) Disruption of the Legal Information Market***

In November, 2009, Google Scholar announced their free, searchable database of court opinions.<sup>40</sup> In their announcement, they stated: “We think this addition to Google Scholar will empower the average citizen by helping everyone learn more about the laws that govern us all.” The legal community’s reaction to the announcement was both optimistic and cautious – some commentators championed it as a threat to the very profitable legal information market, while others noted the drawbacks of using Google Scholar in lieu of Westlaw or Lexis.<sup>41</sup> For example, although Google Scholar provides a basic citator or updating tool called “How this document has been cited”, it does not provide information about the status of the case precedents. Without a citator, it is difficult to determine whether a case is still “good law”.

In 2012, Ravel launched a free source for caselaw, with a visual representation feature that allows the user to quickly identify key cases for a given point of law.<sup>42</sup> In 2013, Casetext, “resembling a Wikipedia for caselaw”<sup>43</sup> launched.<sup>44</sup> Casetext provides a searchable database of cases accompanied by crowd-sourced annotations and a crowd-sourced citator called “WeCite”. The existence of a free citator is a game changer in the legal research context.

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<sup>39</sup> New York Codes, Rules and Regulations, available at: [https://govt.westlaw.com/nycrr/index?\\_lguid=i6f14d14e890e4bdda5160cfb780ef1a0&transitionType=Default&contextData=%28sc.Default%29](https://govt.westlaw.com/nycrr/index?_lguid=i6f14d14e890e4bdda5160cfb780ef1a0&transitionType=Default&contextData=%28sc.Default%29) (last visited June 20, 2015), archived at: <https://perma.cc/Q3G9-2VAW>.

<sup>40</sup> *Finding the Laws that Govern Us*, Google Official Blog (November 17, 2009), available at: <http://googleblog.blogspot.com/2009/11/finding-laws-that-govern-us.html>, archived at: <http://perma.cc/8YSV-7BYN>.

<sup>41</sup> David Hall, *Google, Westlaw, Lexisnexis and Open Access: How the Demand for Free Legal Research Will Change the Legal Profession*, Syracuse Sci. & Tech. L. Rep., Spring 2012, at 53, 57-59.

<sup>42</sup> *Ravel Law, About Us*, available at: <https://www.ravellaw.com/about> (last accessed June 1, 2015), archived at: <https://perma.cc/8R3F-KVSL>.

<sup>43</sup> Lee, Azyndar, and Mattson at 49.

<sup>44</sup> *Casetext, About Us*, available at: <https://casetext.com/about> (last accessed June 1, 2015), archived at: <https://perma.cc/C23E-EXBS>.

Students often learn about these tools as free alternatives to fee-based legal databases and there has been discussion about how to use these tools in the law school curriculum.<sup>45</sup> For example, a group of scholars have argued that “next-gen” tools such as Ravel Law and Casetext can be used in the curriculum to help students become practice ready, to help them develop metacognitive skills, to address varied learning styles in the classroom, and to enhance information literacy.<sup>46</sup>

In addition to these goals, free and next-generation tools can be used to develop critical awareness of the legal information market. Free access to law with a robust search feature has the potential to disrupt the legal information market duopoly. Even more, crowd-sourced annotations and case analysis tools can potentially replace the “added-value” that has made the expensive databases indispensable. Presenting one of the free next-generation tools in the classroom will surface discussion about value in the legal information market and the role of pricing and profits in the future.

### *Lawsuits about “Who Owns the Law”*

Lawsuits about “who owns the law” illuminate the power struggles that shape the legal information system. They emphasize the notion that information ownership is sometimes unresolved, and that the information found inside databases and behind paywalls is often there as a result of financial and legal battles.

There have been many lawsuits in which private legal information providers protect their right to charge for information. Legal controversies have occurred around the copyright status of attorney briefs,<sup>47</sup> a system of legal citation,<sup>48</sup> and state codes.<sup>49</sup>

One example that is ripe for discussion is the “standards” lawsuits. Those cases involve laws that incorporate by reference material created by a private standards organization, such as the American Society for Testing and Materials or the National Fire Protection Association. For example, Coast Guard regulations incorporate a number of industry standards concerning vessels and the Occupational Health and Safety Administration (OSHA) incorporates safety standards from private organizations.<sup>50</sup> When the standards

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<sup>45</sup> Katrina June Lee, Susan Azyndar, Ingrid Mattson, *A New Era: Integrating Today's "Next Gen" Research Tools Ravel and Casetext in the Law School Classroom*, 41 Rutgers Computer & Tech. L.J. 31, 49 (2015).

<sup>46</sup> Id. at 49.

<sup>47</sup> *West v. White Publishing*, No. 12 Civ.1340 JSR (S.D.N.Y., July 3, 2014), available at: <http://www.arl.org/storage/documents/publications/White-v-west-publishing-decision-3jul2014.pdf> (last accessed June 22, 2015), archived at: <http://perma.cc/N4MB-3UXH>.

<sup>48</sup> Leslie A. Gordon, *Opening Statements, Legal Minds Differ on Whether the Bluebook is Subject to Copyright Protection*, (February 1, 2015), available at:

[http://www.abajournal.com/magazine/article/legal\\_minds\\_differ\\_on\\_whether\\_the\\_bluebook\\_is\\_subject\\_to\\_copyright\\_protecti](http://www.abajournal.com/magazine/article/legal_minds_differ_on_whether_the_bluebook_is_subject_to_copyright_protecti) (last accessed June 22, 2015), archived at: <http://perma.cc/DBT6-L7B4>.

<sup>49</sup> Victor Li, *Who Owns the Law? Technology Reignites the War Over Just How Public Documents Should Be*, ABA Journal (June 1, 2014), available at: [http://www.abajournal.com/magazine/article/who\\_owns\\_the\\_law\\_technology\\_reignites\\_the\\_war\\_over\\_just\\_how\\_public\\_document](http://www.abajournal.com/magazine/article/who_owns_the_law_technology_reignites_the_war_over_just_how_public_document), archived at: <http://perma.cc/V9WP-944Y>.

<sup>50</sup> Emily S. Bremer, *Incorporation by Reference in an Open-Government Age*, 36 Harv. J.L. & Pub. Pol'y 131 (2013).



are incorporated by reference, they become “the law”, but the standards organizations that create them still retain copyright, and often sell access to them.

Public.Resource.org is a non-profit organization that is dedicated to “making government information more accessible”.<sup>51</sup> As part of its mission, it posts on its website standards that have been incorporated in to the law. In defense of its actions, Public.Resource.org’s founder Bernard Malamud has stated, “Equal protection of the laws and due process are jeopardized if some citizens can afford to purchase access to the laws that all of us are bound to obey – with potential criminal penalties for noncompliance – but others cannot.”<sup>52</sup> Public.Resource.org has been sued twice by groups of standard organizations for copyright infringement.<sup>53</sup>

While the cases have not yet been decided, they provoke discussion about power and controversy in the legal information world. Classroom discussion concerning legal information lawsuits will advance critical awareness of ownership and access. Moreover, it emphasizes the often unresolved state of legal information ownership.

## Conclusion

The cost of legal information is a good focal point for developing critical information literacy. It allows for rich discussion about power struggles, paradigm shifts, and access. The social and political context of legal information inspires dialogue about fairness and access, and the changing landscape of the legal information market makes now a particularly good time to focus on costs. Teaching students about costs can be more than just practical – it can provide a doorway into critical information literacy.

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<sup>51</sup> *Public.Resource.Org Homepage*, available at: <https://public.resource.org/> (last accessed June 25, 2015), archived at: <https://perma.cc/BG5A-LE5Y>.

<sup>52</sup> Victor Li, *Who Owns the Law? Technology Reignites the War Over Just How Public Documents Should Be*, ABA Journal (June 1, 2014), available at: [http://www.abajournal.com/magazine/article/who\\_owns\\_the\\_law\\_technology\\_reignites\\_the\\_war\\_over\\_just\\_how\\_public\\_document](http://www.abajournal.com/magazine/article/who_owns_the_law_technology_reignites_the_war_over_just_how_public_document), archived at: <http://perma.cc/V9WP-944Y>.

<sup>53</sup> Tim Cushing, *Public.Resource.Org Sued (Again) For Publication Of A Document Incorporated Into Federal Regulations [Update]*, Techdirt (May 29, 2014) available at: <https://www.techdirt.com/articles/20140526/17193727368/publicresourceorg-sued-again-publication-document-incorporated-into-federal-regulations.shtml>, archived at: <https://perma.cc/DPN9-GQV7>.