The Missing Piece: Teaching Cost Recovery as Part of Cost-Effective Research

By Kathleen Darvil & Sara Gras

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Due in large part to the declining legal job market, law schools are starting to place great emphasis on graduating students who are prepared to practice. For legal research courses, this means connecting the classroom to “real-world” legal research skills. In today’s market, knowing how to research an issue cost effectively is a pivotal skill. For law firms, a key component of cost-effective research is the ability to recover online legal research costs from clients.

A way to connect classroom legal research instruction to the “real world” of lawyering is to incorporate training for cost-effective research and cost recovery.

Few students contemplate the many costs associated with operating a law practice. Some expenses, such as rent, personnel, computer equipment, and office supplies, are considered overhead. Other costs are classified as additional expenses attributable to individual clients, such as staff overtime, travel, messenger services, and computer research. The ABA Model Rules authorize lawyers to recover these types of expenses from individual clients, but do not specify precisely how costs should be calculated. The Model Rules simply state that the expenses charged must be reasonable. Each law practice must then craft its own policies and strategies for cost recovery in compliance with the ABA Model Rules and ethics opinions and its own state’s opinions.

The high monthly cost of online legal research platforms, such as Westlaw®, LexisNexis®, and Bloomberg, creates a significant incentive to recoup some of those costs from clients. Over half of AmLaw 200 respondents to the LexisNexis Cost Recovery Survey in 2011 reported that recovering research costs was extremely or very important to achieving their financial goals.

It should, in theory, be simple to tally the online research costs associated with each client’s matter—an issue of basic addition—using vendor-supplied price sheets. The price sheets assign dollar values to virtually every task one could perform on the research platform, from running a search to printing a document. These retail prices provide law firms with a baseline they use to assess reasonable legal research expenses. However, these retail prices tell very little about the actual cost of online legal research, since virtually every firm, from solo practitioners to giant international

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5 See Model Rules of Prof’l Conduct R. 1.5.

6 See id. R. 1.5(a) cmt.


8 LexisNexis, supra note 4.
firms, contracts directly with research vendors to avoid the unpredictability of retail prices.

The aim of this article is to inform legal research instructors about law firms’ recovery of online legal research costs from clients, and to suggest ways this information can be integrated into a class on cost-effective research. In March 2013, we requested that academic law librarians complete a brief survey about their own experiences teaching cost-effective research.⁹ Our goal was to learn whether academic law librarians incorporate cost-effective research instruction into their legal research courses and, if so, what information they taught. We specifically wanted to know if they discussed the recovery of research costs from clients. We also wanted to learn whether academic law librarians think cost recovery instruction is important for law students and why.

Of the 151 academic law librarians who responded to the survey, 143 reported that they incorporated cost-effective research into their legal research courses. Almost all of the respondents reported teaching students about free and low-cost research options, and about cost-effective strategies on Westlaw and LexisNexis, such as browsing the table of contents, searching the digest, and using filters. The vast majority of respondents also teach students about the retail pricing of Westlaw and LexisNexis, and about law firm billing models, such as transactional, hourly, or flat rate. Most significantly, although almost 89 percent responded that it was important to teach students about the cost recovery process, only 23 percent reported having a working knowledge of cost recovery strategies employed by law firms.

We utilized the survey results to design a program for the 2013 American Association of Law Libraries Annual Meeting entitled, “It’s All About the Money: Rethinking the Way We Teach Cost-Effective Research.”¹⁰ During the program, a panel of four experienced law firm librarians discussed how their firms, which are of various sizes and located in different regions of the country, tackle recovering legal research costs. The panelists also discussed how they train their associates to research cost-effectively based on their cost recovery strategies.

The Importance of Cost Recovery Instruction

We believe the typical law school approach of teaching law students about cost-effective research, which focuses mainly on retail prices and general cost-saving tips, fails to capture the complexity of how law firms deal with online legal research costs. In some cases, it may even discourage students from tackling research projects efficiently and confidently. The respondents surveyed agreed. One librarian stated, “Law students NEED to understand the business of law, they need to understand how their firm or employer will be charging for the research they do, and the resulting rules that will govern their ability to use different online tools …” Another librarian said,

I learned from a law firm colleague that some recent graduates are so afraid they will be that one that piles up a $10k bill (we all hear those warning stories) that they will waste hours on the Internet and otherwise spinning their wheels rather than run a search that may cost money on Lexis or Westlaw. Recent grads shouldn’t be afraid of research costs, they should be informed.

Students need to understand that cost recovery is important to many firms’ business.¹¹

⁹ The eight-question survey was designed and conducted using the Survey Monkey website. We posted a request for responses to the survey using the list-serv of the Academic Law Libraries Special Interest Section in order to reach the largest number of desired respondents. The survey was open for thirty days and received 151 responses. The survey and a summary of responses received can be found in the Appendix: Survey Questions about Teaching Cost-effective Research, March 2013.

¹⁰ The four panelists were: Caren Riberman, Director of Library & Information Services at Cahill Gordon & Reindel LLP; Mark Gedman, Director of Information Services for Best Best & Krieger LLP; Connie Smith, Firm Director of Research, Libraries and Competitive Intelligence Services at Morgan, Lewis & Bockius; and Cheryl Niemeier, Director of Library Services for Bose McKinney & Evans LLP. The cost recovery strategies described in this article are summaries of the cost recovery approaches taken by the panelists’ firms. An audio recording of the program is available through the AALL2go website, http://aall.sclivelearningcenter.com/index.aspx?PID=6278&SID=177685 (last visited Dec. 6, 2013).

¹¹ Lexis-Nexis, supra note 4.
One obstacle academic law librarians encounter when trying to teach cost recovery is that they do not know how the law firms recover costs. Over 75 percent of our respondents either do not have a working knowledge or only somewhat understand how law firms recover research costs from clients. Because they do not have a solid understanding of this process, they do not effectively teach it.

**Strategies for Recovering Online Legal Research Costs**

There are a number of different potential contractual arrangements between firms and information vendors. The most common type, generally called a flat-rate contract, gives the firm unlimited access to an agreed-upon set of content at a fixed price, although the amount of content and the price charged vary wildly depending on the needs and size of each firm. This means that regardless of use, the firm’s obligation to pay the vendor for use of this content remains constant from month to month. If the retail value of a firm’s usage of an online research platform exceeds the contractual obligation, this difference represents a “discount” on online research costs, which must be passed on to the client. On the other hand, if a firm’s use does not meet or exceed their obligation, they are still responsible for the entire amount and cannot ethically recover higher-than-retail rates from their clients for research.

How do firms ethically proportion their legal research costs and justify those charges to individual clients? Just as there are a number of different contracts between law firms and legal research vendors, there are many different strategies firms employ to determine what reasonable costs belong to individual client matters. Described below are three different methods: traditional proportional billing, all-inclusive billing, and no billing. Each firm determines what fees it can reasonably charge its clients and what strategy makes the most sense for its practice.

**Traditional Proportional Billing**

In the traditional proportional billing method, a firm with a flat-rate contract would discount research charges based on what the firm pays to the vendor. For example, a firm might be contractually obligated to pay $12,500 per month for research. If, in February, the total retail value of the firm’s research is $25,000, then all of the firm’s clients receive a 50 percent discount on research charges from that vendor. If $2,000 worth of research is conducted for a particular client matter that month, then that client would be billed $1,000 for research expenses. However, this “discount” will vary from month to month. If a firm’s retail research costs are equal to or below the amount they are contractually obligated to pay, clients may be billed at the retail rates. In our example, if in March the firm’s research has a retail value of $10,000, then that same client, who received a discount earlier in the year, would be charged the retail rates for research conducted on her behalf.

**All-Inclusive Billing:**

All-Inclusive Billing is a cost recovery approach that fixes a standard fee per search or per minute or hour. Firms may choose this method because clients find it more predictable than proportional billing, as the standard fee does not fluctuate from month to month. Some firms also choose this approach because it allows attorneys to focus on finding the right answer, rather than on the costs associated with online research. Firms base these standard fees on different factors. If a firm formulates a fixed transactional fee, some factors considered are: 1) a historical assessment of the content accessed, including what sources they use and how often they use a given source; 2) the clients’ expectations; and 3) the firm’s budgetary goal for offsetting research costs. To formulate a fixed hourly fee, the firm looks at how many minutes or hours a resource was used in the past year, the costs of that resource, trends in the market, and changes in the contract and services offered.

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12 Firms must account for these discounts when recovering costs from their clients, since the ABA’s Committee on Ethics and Professional Responsibility has made it clear that lawyers and firms may not use recovery of costs as profit centers, and should pass along discounts from third-party providers to clients. ABA Comm. on Ethics & Prof’l Responsibility, Formal Op. 93-379 (1993) (discussing billing for professional fees, disbursements and other expenses).
Students should understand that if their employers have expended time and energy negotiating contracts with online research vendors, it is because they want these tools to be used."

No Billing:
For a number of reasons, some firms do not attempt to recover their legal research costs directly from the client. Two main reasons firms adopt this approach are (1) because it benefits the clients, who no longer have added research expenses, and (2) because it allows attorneys to focus on the accuracy of their research, rather than the cost. It is also eliminates the time and energy required to calculate the research fees that can or should be billed to the client. However, this model may not be practicable for large law firms with multimillion-dollar legal research contracts.\textsuperscript{13}

Teaching Strategies
The approach one takes to teaching cost-effective legal research will vary depending on the amount of available time, the setting, and the students. However, based on our experiences as teachers and feedback from survey respondents and program panelists, we offer the following suggestions for anyone interested in broadening their approach to teaching this subject.

Consult Experts
As the panelists in our AALL program discussed, law firm cost recovery strategies are varied and constantly evolving based on the business’s needs. Many law school librarians are quite removed from the operations and business decisions of private law firms, so it is helpful to utilize the expertise of professionals involved in billing and negotiating online research costs. This can provide students with an accurate perspective on what future employers expect of them. If time allows, students may benefit from presentations of law firm librarians who are familiar with cost recovery. Otherwise, librarians can discuss the various cost recovery methods that their law firm colleagues use. The discussion highlights the complexity and variability of these strategies.

Dig Deeper with Vendors
Academic representatives of online research vendors generally do not have daily contact with law firm or government clients. Often their information about billing and contract practices are out of date. However, they can often access current law firm pricing information through their colleagues and provide answers to specific questions, or put students in contact with law firm vendor representatives who may be more knowledgeable. If vendor representatives teach "prepare to practice" sessions at your school, ask them to include in those sessions a discussion of the different approaches firms take to calculating research costs and the methods researchers employ to be cost effective. If these sessions are not given at your school, then ask the vendor representatives to help you understand law firms’ different strategies for doing cost-effective research, and then pass this information along to students.

Avoid Scare Tactics
One of the librarians on our panel described the arduous process of deprogramming new associates who were so afraid of incurring online research costs that they would waste hours of billable time doing research on Google\textsuperscript{®} that ultimately was incomplete and unreliable. Associates’ fear of unpredictable and exorbitant costs is precisely what vendor contracts are designed to avoid. Students should understand that if their employers have expended time and energy negotiating contracts with online research vendors, it is because they want these tools to be used. When used properly, online research platforms can save significant time and improve reliability of legal research. If you use retail price sheets in teaching, explaining how law firms use these price sheets will avoid creating anxiety in students that may impede effective research practices. When students understand that the prices generally have a proportional, but not direct, effect on how clients are billed for legal research, they are more likely to research cautiously, but without fear. Students should also be encouraged to ask questions of their employers about billing practices and the financial expectations related to online research costs.

\textsuperscript{13} Lexis-Nexis, supra note 4
Conclusion
In order to prepare students to practice law competently and confidently, law schools need to provide students with the skills that the legal market requires. Employers expect and need recent graduates to have a strong grasp of online legal research tools—not just how to answer a question, but how to research efficiently. Teach students to understand the appropriate sources for particular tasks, while keeping an eye on the cost to both the firm and the client for using these sources. With on-the-job training time diminishing at law firms, legal research instructors must take responsibility for teaching their students about real-world business considerations and include information on cost recovery in law firms so that their students will be better prepared to begin legal research tasks as professionals.

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Another Perspective

"Somewhat surprisingly, a majority (56%) of students said that cost containment/cost-effective research was ‘never mentioned’ (37%) or ‘not important’ (19%) to their employers. Twenty-one percent said it was ‘somewhat important,’ 11% ‘important,’ and 12% ‘very important.’ Students’ perceptions of their employers’ level of concern was apparently reflected in own their research practices. A majority of students reported that cost considerations were ‘not important’ (51%) for their choices of research sources or formats. Twenty-nine percent said it was ‘somewhat important,’ 13% ‘important,’ and 7% ‘very important.’"

Sarah Gotschall, Teaching Cost Effective Research Skills: Have We Overemphasized Its Importance?, 29 Legal Reference Services Q. 149, 153 (2010).