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## John West and the Future of Subscription Databases

Taryn Marks

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**JOHN WEST AND THE FUTURE OF LEGAL SUBSCRIPTION DATABASES**

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Submitted to Professor Penny A. Hazelton to fulfill course requirements for Current Issues in Law Librarianship, LIS 595, and to fulfill the graduation requirement of the Culminating Experience Project for MLIS University of Washington Information School

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## JOHN WEST AND THE FUTURE OF LEGAL SUBSCRIPTION DATABASES

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## I. INTRODUCTION

When John West established West Publishing Company in 1872, he asked himself a question: what role will legal publishers play in legal research? John West answered the question by evoking a very different model of case publishing than that of his competitors: “I believe it to be the principal business of American law publishers, to enable the legal profession to examine the American case law on any given subject, as easily, exhaustively, and economically as possible.”<sup>1</sup>

John West’s decision to publish all judicial decisions and to index them was a “significant[t] and dramatic metamorphosis of the legal publishing field,” a change that “had possibly the greatest impact on American jurisprudence from its civilized formation to the present.”<sup>2</sup> Indeed, West’s National Reporters have achieved “quasi-official status as the place of record for American case law,”<sup>3</sup> and “West’s form of standardized case reporting, with unified indexing, became the accepted standard for case information.”<sup>4</sup>

John West’s company still exists today, but the company that John West founded looks nothing like the enormous transnational corporation that owns West Publishing and that continues to brand its legal database with his name.<sup>5</sup> It is a remarkable feat for a salesman, a non-lawyer, to have created a legal publishing company that had, and that continues to have, such a dramatic impact on legal research. West Publishing has survived for over one hundred years, due in no small part to the ingenuity of its founder. Will West Publishing survive another hundred years? Should the company look back at John West and consider what

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<sup>1</sup> *A Symposium of Law Publishers*, 23 AM. L. REV. 396, 401 (1889) [*hereinafter* *Symposium*] (written comments of John B. West).

<sup>2</sup> Joel Howard Cheskis, *Copyright of Legal Materials: From Wheaton to West—Shaping the Practice of Law in America*, Comm. & L., Sept. 1998, at 1.

<sup>3</sup> F. Allan Hanson, *From Key Numbers to Keywords: How Automation Has Transformed the Law*, 94 LAW LIBR. J. 563, 567 (2002).

<sup>4</sup> Robert Berring, *Chaos, Cyberspace and Tradition: Legal Information Transmogrified*, 12 BERKELEY TECH. L.J. 189, 190, 192 (1997); *see also* Olufunmilayo Arewa, *Open Access in a Closed Universe: Lexis, Westlaw, Law Schools, and the Legal Information Market*, 10 LEWIS & CLARK L. REV. 797 (2006)

<sup>5</sup> *See* Berring, *supra* note 4, at 192; *see also* Ross E. Davies, *How West Law was Made: The Company, Its Products, and its Promotions*, 6 CHARLESTON L. REV. 231, 231 (2012) (noting that “West was acquired by Thomson Reuters in 1996, but the brand and identity survived that development”). John West lost control of his name long before that, though, when he left West Publishing Company in 1899. *See infra* Part II.

he would say about the future of legal research and the role that West Publishing should play in the future?

This paper aims to answer the question of the possible future of legal research and legal databases, and the role that West Publishing could play within that future. Legal research is, and will continue to be, a fundamental component of the law and all aspects of legal practice,<sup>6</sup> so the question of how legal research will be conducted in the future is one that will impact all legal professionals. And for law librarians, who frequently stand as the intermediary between the attorneys, students, and professors who use the databases and the companies that run the databases, the question is even more important.

This paper focuses on West Publishing Company because of the dynamic growth and challenges that West Publishing faced throughout its history. West Publishing's growth and response to its challenges evidence the constantly changing legal research environment and the evolving role that legal publishing companies have and will play. Consider that a salesman, not a lawyer, founded what is now a billion dollar West Publishing empire, and the company still retains that salesman's name today; West Publishing survived the transition from print to electronic to become one of the two main players in legal research databases but did so in an extremely bumpy way; and West Publishing was the first of the large legal databases to adapt a Google-like interface that mirrored Google's single search bar.

In Part II, I highlight historical developments in West Publishing's history that are relevant to a discussion of the future of legal databases. Focusing on John West and West Publishing when it was under John West's leadership does two things: first, it highlights company trends that impacted the company's growth and development; and second, it provides context for analyzing the future of West Publishing. In Part III, I discuss the shift to online legal databases that occurred in the late 1970s, examining how West Publishing's failure to quickly adapt to the online market hurt the company so badly that West Publishing needed several decades to recover. In Part IV, I examine the current market of legal research, including the rise of smaller, niche databases, and the challenges that West Publishing faces in the future. Part V concludes.

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<sup>6</sup> See Yasmin Sokkar Harker, *"Information is Cheap, but Meaning is Expensive:" Building Analytical Skill into Legal Research Instruction*, 105 LAW LIBR. J. 79, 81 (2013) (stating that "everything a lawyer does, from writing a motion to conducting discovery, must be firmly rooted in sound legal research").

The legal research market attracts many companies because of its size and potential, so West Publishing is constantly facing competition from smaller, niche databases. These smaller, niche databases could potentially be the wave of the future, the new model for legal research. But the size and ubiquity of West Publishing means that as new challengers enter the field of legal research, West Publishing has the luxury of time and money, allowing it to bide its time and focus on the innovations that are most likely to succeed as the market shifts, as new databases develop, and as technology changes. Because of West Publishing's entrenchment, I tentatively cast my vote in favor of West Publishing continuing to dominate the legal research market – but I do so with a grain of salt. West Publishing must be able to flexibly and competitively respond to changes in legal research and it must work to address the cost of its database. John West understood these two key issues when he started his company. If the West Publishing Company wants to excel for another hundred years, it must revert to its roots.

## II. WEST PUBLISHING IN 1890: ESTABLISHING A CULTURE OF CHANGE

In reviewing the history of West Publishing Company and considering the man who started that company, I selectively focus on the historical aspects that most impacted the future of the company. First, there is John West himself, a non-lawyer, a salesman who named the company after himself and created an empire that still retains his name.<sup>7</sup> Second, and more pragmatically, West Publishing Company's National Reporters and the Digest System, and John West's promotion of the two, fundamentally altered how lawyers access, perceive, and research the law.<sup>8</sup>

In 1872, John Briggs West started a business designed to answer a pressing need he had observed as a traveling salesman for a book store: lawyers' need for legal materials, such as dictionaries, treatises, and state reports.<sup>9</sup> Situated in St. Paul, Minnesota, John West was far enough from the publishing centers of New York and Massachusetts to avoid notice from larger publishing companies; but he was

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<sup>7</sup> WILLIAM W. MARVIN, *ORIGIN, GROWTH, LEADERSHIP*, 28 (1969).

<sup>8</sup> See, e.g., Robert C. Berring, *Full-Text Databases and Legal Research: Backing into the Future*, 1 HIGH TECH. L.J. 27, 30-31 (1986) [*hereinafter* Berring, *Full-Text*] (noting that “[l]awyers began to think according to the West categories”).

<sup>9</sup> Robert M. Jarvis, *John B. West: Founder of the West Publishing Company*, 50 AM. J. LEGAL HIST., 1, 4-5 (2008-2010).

close to the frontier lawyers who required his services.<sup>10</sup> His publishing company succeeded primarily because of two business decisions: the choice to universally publish cases (which became the National Reporter System); and the decision to foster an indexing system that would eventually become West's Key Number System.<sup>11</sup>

**a. John West's Early Innovations Were Key to West Publishing's Success**

For the first four years of his business, John West focused on obtaining and selling general law books, though he also dabbled in the production of legal forms.<sup>12</sup> In 1876, however, John West's brother, Horatio West, joined John West in the business and the two began work on a Syllabi. The Syllabi eventually became the National Reporter System and catapulted West to national attention and made him a favorite in the courts.<sup>13</sup> He continued that success with the American Digest Classification System.

***i. National Reporter System Established West Publishing in the Courts***

The Syllabi was the first innovation of the West Publishing Company, and appeared to set the stage for West Publishing to be an innovative, open access company. The first Syllabi, an eight-page weekly newsletter that printed Minnesota Supreme Court cases, served West's goal of "provid[ing] lawyers with a cheap and efficient means for learning about new cases."<sup>14</sup> The Minnesota Syllabi proved so popular that, by 1879, John West had added coverage of Iowa, Michigan, Nebraska, Wisconsin, and the Dakota territory, and renamed the Syllabi the *Northwestern Reporter*.<sup>15</sup> In 1882, John West and his brother partnered with two investors; the four incorporated as West Publishing Company.<sup>16</sup> John West was listed as the president, with Horatio West as the treasurer, and the two partners served as secretary and stockholder.<sup>17</sup> Over the

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<sup>10</sup> See Thomas A. Woxland, "Forever Associated with the Practice of Law:" *The Early Years of the West Publishing Company*, LEGAL REFERENCE SERVICES Q., Spring 1985, at 117-18.

<sup>11</sup> Woxland, *supra* note 10, at 119.

<sup>12</sup> *Id.* at 115; see also MARVIN, *supra* note 7, at 28.

<sup>13</sup> Woxland, *supra* note 10, at 116; see also MARVIN, *supra* note 7, at 30.

<sup>14</sup> Jarvis, *supra* note 9, at 6.

<sup>15</sup> *Id.*

<sup>16</sup> *Id.*; see also MARVIN, *supra* note 7, at 40.

<sup>17</sup> Jarvis, *supra* note 9, at 6; MARVIN, *supra* note 7, at 40.

next three years, the company expanded its Reporter system, adding several regional reporters until the Reporter reached national coverage in 1885.<sup>18</sup> The success of the National Reporter System was a stark demonstration of the company's popularity and drive: West Publishing went from reporting a single state to reporting almost 40 states in less than ten years.<sup>19</sup>

West's success derived from one fact: West decided to publish the entirety of court opinions and to publish all court opinions. His business model differed radically from that of the courts and of other publishing companies. First, not all courts published their opinions. Second, many opinions were published by the court's reporter; these reporters were cited by the reporter's name, making it difficult to determine the court from which the opinion came, and the reporters could be unreliable. Third, the courts that did publish their opinions awarded publishing contracts based on political associations rather than on publishing merit. As a result, opinions were often poorly edited, incorrect, and published at irregular or rare intervals.<sup>20</sup>

John West changed this: his company released court opinions quickly and at consistent intervals, and sold the opinions at a relatively inexpensive price.<sup>21</sup> Additionally, John West gained customers because "all of the Reporters were edited and published on one uniform plan."<sup>22</sup> Mistakes were rare and opinions were formatted in a consistent manner.<sup>23</sup> West Publishing's success meant that

[o]ver time, West's . . . became the reporter of record for many jurisdictions. Even when a state published its own case reports, the West reporter versions were preferred because of the widespread distribution, reliability, and speed with which they were published.<sup>24</sup>

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<sup>18</sup> Woxland, *supra* note 10, at 116.

<sup>19</sup> *Id.* Although West Publishing Company faced several lawsuits over whether the individual states owned a copyright protection over their own court opinions, the courts ruled in West Publishing's favor and the issue was settled in 1888 when the Supreme Court announced that court opinions "were freely available to anyone." *Id.* at 122 (citing *Banks & Bros. v. Manchester*, 128 U.S. 244 (1888)).

<sup>20</sup> Woxland, *supra* note 10, at 118; MARVIN, *supra* note 7, at 32-33.

<sup>21</sup> Woxland, *supra* note 10, at 118; MARVIN, *supra* note 7, at 32-33.

<sup>22</sup> MARVIN, *supra* note 7, at 44.

<sup>23</sup> *Id.*

<sup>24</sup> Richard A. Leiter, *The 21st Century Law Librarian Conundrum: Free Law and Paying to Understand It*, 29 LEGAL INFO. ALERT, no. 1, 2010, at 1. The same was also



John West's decision to publish all opinions also differed markedly from the publishing standard set by his most immediate competitor, the Lawyers Cooperative Publishing Company.<sup>25</sup> The Lawyers Cooperative decided not to publish all cases, reasoning that many cases merely echoed law that had already been settled.<sup>26</sup> Instead, the Lawyers Cooperative chose to publish only those cases that they believed demonstrated legal issues that were "new or unusual, or [that] show[ed] development of the law."<sup>27</sup> The Lawyers Cooperative especially liked cases that dealt with laws relevant to the growing legal fields of commercial litigation and politics.<sup>28</sup>

***ii. The American Digest Classification System Solidified West Publishing's Reputation***

Soon after his success as a national publisher, John West introduced his second important innovation: the American Digest Classification System. Started in 1887, the digest system aimed to classify every case according to its subject content.<sup>29</sup> West Publishing was not the first to index cases; Little, Brown & Company had started a similar indexing system, the U.S. Digest, which indexed cases back to the early 1800s.<sup>30</sup> But West Publishing had two distinct advantages over Little, Brown: West Publishing already received all opinions through the National Reporter System, and the company had started indexing some of the cases that it published.<sup>31</sup> Additionally, John West again provided quick, reliable, and relatively inexpensive access to the classification system.<sup>32</sup> The Digest was

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true for statutes: "Although [West's state and federal codes] were considered 'unofficial' versions, [West] annotated codes became well regarded and authoritative. In some cases, the West codes were adopted as official versions." *Id.*

<sup>25</sup> Woxland, *supra* note 10, at 119.

<sup>26</sup> Byron D. Cooper, *The Role of Publishing Houses in Developing Legal Research and Publication: The United States*, 38 AM. J. COMP. L. 611, 618-19 (1990); *see also Symposium, supra* note 1, at 409 (president of the Lawyers Cooperative stating that such "reiterations" were "of no general value; indeed many of them had no value whatever, except to the parties and their counsel").

<sup>27</sup> *Symposium, supra* note 1, at 409-410.

<sup>28</sup> *Id.* This system eventually became the basis for legal encyclopedias such as the American Law Reports. Cooper, *supra* note 26, at 619 &n.46.

<sup>29</sup> Jarvis, *supra* note 9, at 8.

<sup>30</sup> MARVIN, *supra* note 7, at 68.

<sup>31</sup> *Id.* at 69.

<sup>32</sup> *Id.*

immediately popular with members of the bar: the publication soon “outgr[e]w its original format and coverage.”<sup>33</sup>

Due to the growth and popularity of his Digest system, West outpaced his competition, and bought the U.S. Digest from Little, Brown in 1889.<sup>34</sup> Ten years later, in 1898, the American Bar Association endorsed West’s American Classification Plan as “the model for modern digesting.”<sup>35</sup> West’s Classification scheme eventually formed the basis for West’s Key Number System, through which all cases are uniformly and permanently assigned numbers that are associated with specific subjects, or “points of law.”<sup>36</sup>

### **b. John West the Man**

One other reason for West’s success was John West himself. Before founding West Publishing, John West was a salesman. When John West’s brother Horatio joined the company, West reverted to an advertising role and left Horatio in charge of operations.<sup>37</sup> West spent much of his time traveling around the country, selling his product, meeting with judges and attorneys, and convincing the American Bar Association to endorse his company.<sup>38</sup> Through his salesmanship, West Publishing ingratiated itself with the legal community, especially with judges who cared about the publication quality of their opinions. The system of cooperation that John West established, through which judges sent their opinions to West Publishing and only to West Publishing, continued into the 1970s. John West did so well at marketing his company and the company did so well at backing John West’s claims, that it came to a point where even John West could not compete with his empire. In 1899, John West left West Publishing to form a new legal publishing company.<sup>39</sup> But his new company shut down within twenty years, unable to compete with West Publishing.<sup>40</sup>

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<sup>33</sup> Woxland, *supra* note 10, at 116.

<sup>34</sup> MARVIN, *supra* note 7, at 68-69.

<sup>35</sup> *Id.* at 74.

<sup>36</sup> MARVIN, *supra* note 7, at 80; *see also* West’s Key Number System: The Key to Finding Good Law, <http://lawschool.westlaw.com/knumbers/>. Estimates as to the number of keynumbers vary; West’s most recent estimate is 100,000. *Id.* at <http://lawschool.westlaw.com/knumbers/explanal.asp?mainpage=16&subpage=4>.

<sup>37</sup> Woxland, *supra* note 10; MARVIN, *supra* note 7.

<sup>38</sup> Woxland, *supra* note 10; MARVIN, *supra* note 7.

<sup>39</sup> Jarvis, *supra* note 9, at 1.

<sup>40</sup> *Id.*

### III. WEST PUBLISHING IN THE LATE TWENTIETH CENTURY: WEST PUBLISHING FAILS TO ADAPT TO THE INTERNET ERA

From West Publishing's early establishment and success in the late 1800s, we fast-forward to the late 1960s, to the creation of the first legal databases.<sup>41</sup> The concept of legal databases first arose in the mid-twentieth century, coinciding with the development of the computer. At this time, West Publishing still had a strong reputation within the legal community.

#### a. Lexis Dominated Early Electronic Legal Databases

Computer-assisted legal research first developed in the late 1960s and early 1970s as a project of the Ohio Bar Association. The Ohio Bar, in conjunction with Data Corporation, created a product called OBAR—the Ohio Bar Automated Research.<sup>42</sup> The creators of OBAR decided to place the full text of cases online, searchable through Boolean operators.<sup>43</sup> OBAR's creators wanted to shift away from West Publishing's system of digests and indexing and to focus on the search engine of the database; rather than relying on indexing, OBAR would be non-indexed full text.<sup>44</sup> To replace the digests and indexing of the West system that lawyers and librarians had come to rely upon for research, the OBAR team created the KWIC (key word in context) system.<sup>45</sup> If OBAR's Boolean search operators, search logic, and keyword searches functioned efficiently, then indexes and digests would be unnecessary. In 1973, OBAR, now renamed as Lexis,<sup>46</sup> entered the market through proprietary terminals installed in law firms.<sup>47</sup>

West Publishing responded slowly to this new challenger. Westlaw—West Publishing's digital database—appeared in 1975, but it only included West

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<sup>41</sup> For the purposes of this paper, which focuses on the future of legal electronic databases and how West Publishing Company's early years could frame that future, West Publishing Company's pre-computer-assisted legal research years will not be explored outside of Part II, *infra*.

<sup>42</sup> William G. Harrington, *A Brief History of Computer-Assisted Legal Research*, 77 LAW LIBR. J. 543 (1985).

<sup>43</sup> *Id.* at 546.

<sup>44</sup> *Id.*

<sup>45</sup> *See id.* at 551-52.

<sup>46</sup> When Lexis and Westlaw first appeared, publications frequently capitalized the entire word. It is unclear whether this was due to the companies' own references or to distinguish the names. As the two names became more familiar, the capitalization was dropped. I follow the more modern usage, which capitalizes only the first letter.

<sup>47</sup> Harrington, *supra* note 42, at 552.

Publishing's headnotes (without the full text of any corresponding cases) and the search function was clunky and hard to use.<sup>48</sup> Unlike John West, who had developed his company based on lawyers' needs, West Publishing believed that lawyers would only wish to search headnotes. The folly of West Publishing's prediction soon became apparent: Lexis had changed the game and surged ahead. West Publishing eventually added full text to its database in December 1976,<sup>49</sup> but by then Westlaw had fallen far behind Lexis in terms of searchability and functionality.<sup>50</sup> Not until the mid-1980s did Westlaw overcome its poor entrance and become a reliable, user-friendly legal database.<sup>51</sup>

Despite the gains Westlaw made in the 1980s, the Westlaw database remained inferior to the Lexis system.<sup>52</sup> When Westlaw had first entered the digital research scene, Lexis responded by improving its own system. In 1980, Nexis was added to Lexis's legal database, providing news and business reports;<sup>53</sup> the Lexis team started to draft its own version of headnotes and to develop a Lexis-equivalent to West Publishing's Key Number system; Shepherd's Citations was added in 1981;<sup>54</sup> and Lexis began writing summaries of cases that mirrored West Publishing's Syllabus.<sup>55</sup> As a digital legal research system, Westlaw did not truly challenge Lexis until the mid-1980s; even then, Lexis still "outpace[d] Westlaw sales nine to one."<sup>56</sup> Lexis clearly won the first round.<sup>57</sup>

Throughout the rest of the 1980s and into the early 1990s, Westlaw and Lexis continued to develop their individual databases, to enhance their content, and to add features. The companies adhered to a competitive theme, mirroring each

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<sup>48</sup> Harrington, *supra* note 42, at 552.

<sup>49</sup> *Id.* at 553-54.

<sup>50</sup> *Id.* at 553; Sandra S. Gold, *A Comparison of Lexis & Westlaw*, U.S. LAW LIBR. ALERT, Apr. 1982, at 1 (noting that "West has lagged behind [Lexis] in both depth and breadth of the database for several years").

<sup>51</sup> Harrington, *supra* note 42, at 554.

<sup>52</sup> Jill Abrahamson, John Kennedy, and Ellen Joan Pollack, *West Publishing: The Empire's New Clothes*, STUDENT LAW., Jan. 1984, at 18, 19.

<sup>53</sup> Harrington, *supra* note 42, at 553.

<sup>54</sup> *Database News*, U.S. LAW LIBR. ALERT, Dec. 1981, at 4.

<sup>55</sup> Jason Krause, *Towering Titans*, A.B.A. J., May 2004, at 51, 52.

<sup>56</sup> Abrahamson, *supra* note 52, at 18, 19.

<sup>57</sup> *See, e.g.*, LEGAL INFO. ALERT, Jan. 1984, at 3 (mentioning new additions to the Lexis database); *compare Database News*, U.S. LAW LIBR. ALERT, Dec. 1981, at 4, *with Database News*, LEGAL INFO. ALERT, Feb. 1989, at 4.

other's growth and innovations: for example, Lexis added the first state administrative code in 1988;<sup>58</sup> West followed in 1989.<sup>59</sup>

Fierce competition followed the two companies into the Internet Era, and they continued to closely watch and mimic what the other did. Again, Lexis led the online movement: it was the first to create a website, establishing Lexisnexis.com in 1997; Westlaw.com followed in 1998.<sup>60</sup> Even as the two companies moved online, firms and customers consistently preferred the Lexis legal database to the Westlaw legal database.<sup>61</sup>

Preference for Lexis continued as both databases grew and the content offered by each started to merge with the content offered by the other. Although the Lexis and Westlaw databases initially focused on different areas of law and on different jurisdictions, increased demand for services, the growth of the Internet, and Westlaw's and Lexis's individual desire to become the ultimate legal research database, culminated into two vast systems of national information. Each became indispensable: by 1986, Lexis and Westlaw "already [had] become an integral part of the arsenal of research tools available to the lawyer."<sup>62</sup>

But growth also resulted in the two companies becoming indistinguishable: as early as 1987, the two legal databases were garnering commentary because of their similarities,<sup>63</sup> and that same year within law firm libraries, the term "Wexis"

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<sup>58</sup> Fran Durako & Bob Stivers, *Update V: Lexis and Westlaw*, LEGAL INFO. ALERT, Oct. 1988, at 1.

<sup>59</sup> Kathleen Kelly, *Update VI: Westlaw and Lexis*, LEGAL INFO. ALERT, Oct. 1989, at 1. As an interesting, albeit unscientific example of West Publishing's fall from monopolistic grace and its rise back to prominence, is that prior to 1989, the Legal Information Alert published its annual update with the title *Lexis & Westlaw*. In 1989, and continuing until the publication ended in 2010, the title has remained *Westlaw & Lexis*. The publication has also added (and dropped) various other legal databases as they rise and fall in popularity, including HeinOnline, VersusLaw, and LoisLaw. *See, e.g.*, From the Editor, Donna M. Tuke, LEGAL INFO. ALERT, Jan. 2009, at 2 (noting that VersusLaw had been dropped from the annual review and anticipating that Bloomberg Law would soon be added).

<sup>60</sup> KENDALL F. SVENGALIS, LEGAL INFORMATION BUYER'S GUIDE & REFERENCE MANUAL 2011, 152 (2011) [hereinafter SVENGALIS 2011].

<sup>61</sup> *Id.* at 152.

<sup>62</sup> Berring, *Full-Text*, *supra* note 4, at 28; *see also* SVENGALIS 2011, *supra* note 60, at 149, 151.

<sup>63</sup> Durako & Stivers, *supra* note 58, at 3.

gained recognition.<sup>64</sup> By 1996, Lexis and Westlaw had become “[t]wo commercial concerns providing the same data base of information organized in the same way, even using the same search strategy.”<sup>65</sup> An addition or innovation by one of the two was a “significant enhancement”<sup>66</sup> until it was adopted by the other. As such, each needed to find different ways to distinguish itself, though doing so was easier said than done.

### **b. West Publishing’s Failures Were Symptoms of An Old Company**

West Publishing’s failure to dominate the electronic database field in the way that it had dominated print legal publishing would have made John West shudder: West Publishing initially failed in the digital legal database competition because it did not see how monumental the shift to online resources would be and it continued to believe that print resources would remain the dominant source. From what initially had been an innovative company, over time West Publishing had grown into a conservative company. In 1969, all of West Publishing’s top managers had risen from the ranks of the company, resulting in a team devoted to print.<sup>67</sup> The company had never gone through a fiscal reorganization, a consequence of relative financial conservatism and an aversion to risks.<sup>68</sup> Though good business practices, West Publishing’s culture ultimately held the company back several years, despite its potential for leadership.

West Publishing had several advantages that could have been translated into electronic databases: West Publishing had already created its KeyNumber system and had vast experience indexing cases under that system, while Lexis had to start from scratch,<sup>69</sup> West Publishing had established itself as the “quasi-official arm of

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<sup>64</sup> *LexisNexis, Westlaw*, PLL NEWSL. (Am. Ass’n Law Libraries, Private Law Libraries/Special Interest Section), Fall 1986, at 9. The term became common nomenclature by 1996, though it is no longer popular. Fritz Snyder & Pat Chapman, *Law Librarians’ Pet Peeves*, A.A.L.L. SPECTRUM, Dec. 1998, at 40; but it is still used, *see, e.g.*, Robert J. Ambrogi, *Legal Research: Bloomberg Wants to be a Contender*, OR. ST. B. BULL., Dec. 2009, at 15.

<sup>65</sup> Robert Berring, Editorial, *Thoughts on the Future: A Steroid Enhanced Editorial*, 15 LEG. REF. SERVS. QUAR., no. 3/4, 1997, at 6.

<sup>66</sup> Fritz Snyder, *Update IX Westlaw and Lexis*, LEGAL INFO. ALERT, Jan. 1993, at 5.

<sup>67</sup> MARVIN, *supra* note 7, at 1-2.

<sup>68</sup> *Id.*

<sup>69</sup> See Gold, *supra* note 50, at 3, which emphasizes how much easier West’s KeyNumber and digest system made searching, and lauded West’s case summaries.

the American judiciary,<sup>70</sup> so much so that judges were at first reluctant to send their opinions to Lexis;<sup>71</sup> and West Publishing had almost a century of infrastructure and experience in the legal publishing market.<sup>72</sup> West's apparent advantage over Lexis could have been substantial: when first creating its electronic database, "Lexis hired workers to scan and enter data from West reporters . . . . The result was a competing product that used public information but was taken from a format initially published by West."<sup>73</sup> Rather than capitalizing on these advantages and revolutionizing the legal research market as John West had done, West Publishing waited on the sidelines while Lexis reinvented the legal research field. Indeed, it was not until the late 2000s and early 2010s that West Publishing moved ahead of Lexis in innovations, largely due to the release of WestlawNext and the failures of Lexis Advance.

### c. West Speeds into the Future with WestlawNext – Maybe

In February 2010, to big fanfare, West Publishing revealed WestlawNext at LegalTech.<sup>74</sup> A new, innovative product designed to mirror Google, West Publishing invested an estimated \$1 billion in the creation of WestlawNext.<sup>75</sup> WestlawNext marks West Publishing's first successful innovation in the Internet Era: the first time that Westlaw led Lexis.

Lexis responded by launching Lexis Advance, made available only to solo practitioners, in October 2010,<sup>76</sup> and then releasing Advance to all Lexis subscribers in December 2011<sup>77</sup>. Lexis Advance, however, has struggled,

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<sup>70</sup> Abrahamson, *supra* note 52, at 38.

<sup>71</sup> In fact, when Lexis first began putting the full text of opinions online, it obtained those opinions from West Publishing.

<sup>72</sup> Abrahamson, *supra* note 52, at 41.

<sup>73</sup> Krause, *supra* note 55, at 45.

<sup>74</sup> Jennifer Frazier, *Perspective: WestlawNext*, A.A.L.L. SPECTRUM, May 2010, at 28.

<sup>75</sup> SVENGALIS 2011, *supra* note 60, at 152.

<sup>76</sup> Carol Ebbinghouse, *New Platform, New Product Mix, New Market, New Pricing – LexisNexis Advance*, Info. Today, Oct. 18, 2010, <http://newsbreaks.infotoday.com/NewsBreaks/New-Platform-New-Product-Mix-New-Market-New-Pricing-LexisNexis-Advance-70706.asp>.

<sup>77</sup> LexisNexis Launches New Release of Lexis Advance, Dec. 5, 2011, Press Release, <http://www.Lexisnexis.com/en-us/about-us/media/press-release.page?id=1323111249773407>.

undergone several makeovers, and generally frustrated the legal community.<sup>78</sup> Its failure is particularly galling considering Lexis's history.

In a move that would have made John West proud, WestlawNext has tried to provide what lawyers want: ease of searching that mimics Google. Both WestlawNext and Lexis Advance bear a striking resemblance to Google: a single search bar appeared at the top of the databases' respective homepages. Even more revolutionary, subscribers no longer have to choose which database to search. Previously, researchers needed to select which database they wished to search within Westlaw, whether it be secondary sources, caselaw within a specific jurisdiction, statutes, etc. With WestlawNext, researchers can search the entire Westlaw content through the single search bar.<sup>79</sup> Additionally, in theory, WestlawNext's Boolean operators function even better in the system, making Boolean logic more effective.<sup>80</sup> WestlawNext "represents a significant departure from how online legal research databases have traditionally worked."<sup>81</sup>

WestlawNext also has been updating its system based upon changes in technology and how research is done. WestlawNext added shareable folders that allow better management of research, continuation of research among different people, and organizational functions. And in another move that John West would have approved, WestlawNext has added a mobile app that should seamlessly link and allow subscribers to shift from laptop to tablet without needing to retrace any research steps.<sup>82</sup>

WestlawNext has received complaints, however. Scholars are already concerned with the impact that WestlawNext will have on the future of legal research: in many ways, Google-like searches that do not require the user to select a database

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<sup>78</sup> See, e.g., Email from law professor to law library director, Feb. 24, 2014 (on file with author).

<sup>79</sup> Leiter, *supra* note 24, at 1; See Christine L. Sellers and Phillip Gragg, *Back and Forth: WestlawNext and Lexis Advance*, 104 LAW LIBR. J. 341, 341-42 (2012); Harker, *supra* note 6, at 84.

<sup>80</sup> Sonnet Ireland, *WestlawNext: The Next Generation of Legal Research*, 29 LEGAL INFO. ALERT, no. 8, 2011, at 3.

<sup>81</sup> Wheeler, *supra* note 85, at 360.

<sup>82</sup> Ruth S. Stevens, *Legal Research: Is There an App for That?*, MICH. B.J., June 2012, at 54. Notably, HeinOnline, FastCase, and Intelliconnect also have mobile apps. *Id.* See also Alex Berrio Matamoros & Mary Ann Neary, *Librarians, Legal Research, and Classroom iPads - A Winning Combination*, A.A.L.L. SPECTRUM, Sept./Oct. 2012, at 28.



source may “assume[] a lack of skill and understanding of material, and attempts to reduce complex and nuanced problems to the lowest common denominator.”<sup>83</sup> Commentators also express concern that by not requiring students to choose a database, students lose perspective and an understanding of the context of a case, a statute, or an administrative regulation.<sup>84</sup>

Another area of potential concern is how WestlawNext’s search algorithm ranks sources. Like Google, WestlawNext’s search engine relies in part upon users to determine the strength of its searches. If a researcher runs a search and then clicks on a certain result in that search, the WestlawNext algorithm may assume that the result the user clicked on is the result that *all* users who run the same (or a similar) search will most want. As a result, less-used sources could become lost underneath frequently-used sources.<sup>85</sup> Unskilled researchers or users unaccustomed to clicking beyond the first page of results could suddenly become the drivers of research results that upend WestlawNext’s search algorithm.<sup>86</sup>

Complaints about the impact that online research will have on the practice of law appear whenever new online research tools become available. Indeed, as early as 1996, commentators complained that the biggest disadvantage to online legal databases was the new “tendency among many attorneys to leap to the computer without having first conducted manual research, or to use [computer assisted legal research] exclusively without consulting other, less costly, sources.”<sup>87</sup> For the purposes of this paper, however, the concern about the impact that WestlawNext will have on legal research only serves to emphasize the point that West Publishing will continue to be a major player in legal research into the future. The creation of WestlawNext, the continued updates being made to WestlawNext, and the relative failure of Lexis to offer a competing product<sup>88</sup> have placed West

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<sup>83</sup> Sellers & Gragg, *supra* note 79, at 344.

<sup>84</sup> *See, e.g.*, Wheeler, *supra* note 85, at 359; Harker, *supra* note 6, at 84-85.

<sup>85</sup> Wheeler, *supra* note 85, at 368-69. Note, however, that like Google, WestlawNext does not reveal the algorithm behind its search engine.

<sup>86</sup> *Id.*

<sup>87</sup> KENDALL F. SVENGALIS, LEGAL INFORMATION BUYER’S GUIDE & REFERENCE MANUAL 1996, 130 (1996) [hereinafter SVENGALIS 1996].

<sup>88</sup> Yet. The grain of salt for this argument is that Lexis recently revealed a newly-designed Lexis Advance that will be released in summer 2014. *See* LexisNexis Law Schools, *A New, Cleaner Look for Lexis Advance*, <https://www.youtube.com/watch?v=hvmYNLBWwd0&feature=youtu.be> (last visited May 12, 2014). The previews, at least, seem to address many of the problems associated with Lexis Advance.

Publishing in a strong position relative to the future. The success of WestlawNext, however, also provides additional monetary fodder for those companies seeking to enter the legal database market.

#### **IV. THE RISE OF SMALLER, NICHE DATABASES: CHALLENGERS TO WEST PUBLISHING?**

Since 1977, the number of major legal electronic subscription databases has decreased from over twenty-five to three.<sup>89</sup> The legal research market is a tough one to break into: WestlawNext and Lexis Advance market themselves as one-stop shops. For law students, Westlaw and Lexis frequently are the only source of legal information.<sup>90</sup> For practicing attorneys, the two databases are among the most-used sources for research.<sup>91</sup> For law librarians, whether in law school law libraries, law firm libraries, and sometimes even at public law libraries, Westlaw and Lexis are the databases preferred by the libraries' users, and even among law librarians, Westlaw and Lexis still stand as top sources of information.<sup>92</sup>

##### **a. Companies Will Always Want to Enter the Legal Research Market**

“Legal publishing is undoubtedly one of the most dynamic sectors of the American economy, evolving into a multi-billion dollar business that has attracted the interest of leading foreign investors.”<sup>93</sup> Legal research is always an enticing market because of the law's heavy reliance on easily accessible, accurate legal information. Despite Westlaw and Lexis's dominance, small (and large) companies continue to enter the market. Part of the draw to new market entrants can be explained by the sheer amount of money available, but the legal research market is also attractive to new companies because the law is both constantly growing and offers a unique opportunity for value-added services. As technology develops, and as the amount of legal information available increases, new companies with products that aid lawyers in their research will only become more prevalent.

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<sup>89</sup> See SVENGALIS 2011, *supra* note 60, at 3. Some would argue that Bloomberg Law has yet to earn a place with Westlaw and Lexis, but its recent acquisition of BNA will continue to make it a significant player.

<sup>90</sup> See Wheeler, *supra* note 85, at 360; *see also* Harker, *supra* note 6, at 84-85.

<sup>91</sup> See Interview with law librarian I, in Seattle, Wash. (May 3, 2014) and Interview with law librarian II, in Seattle, Wash. (May 7, 2014). For a variety of reasons, my interviews are being kept anonymous.

<sup>92</sup> Interview with law librarian I, in Seattle, Wash. (May 3, 2014).

<sup>93</sup> SVENGALIS 2011, *supra* note 60, at 3.

There are two reasons why WestlawNext and Lexis dominate, but do not yet completely monopolize, the legal research market: the amount of legal information is constantly growing and much of the legal information relied upon by attorneys, librarians, and law students is publically-available but not easily accessible.

*i. The Amount of Law Constantly Increases*

The first reason why smaller, niche databases can compete with the Westlaw and Lexis is that the amount of information available is constantly increasing. The amount of legal information available is astounding and continues to grow at an incredibly rapid pace. Consider just the snippet of legal materials made up by federal cases: in 1972, 43,000 opinions were published; in 2012, it was 75,000.<sup>94</sup> In 1972, 16 volumes were added to the Federal Reporter; in 2012, 39 volumes were added.<sup>95</sup>

Cases and statutes are not the only sources of legal information, however: law firms' transactional practices require accurate business and market information on companies and accessible databases with financial data, for example. Any service of process requires people-finder information; skip-tracing needs to be conducted.<sup>96</sup> Regulatory attorneys have to find administrative materials in addition to applicable regulations. Materials need to be available at both the federal level and the state level.

Niche and smaller databases thus have a fighting chance competing against Westlaw and Lexis because the amount of information that needs to be processed and available for legal researchers is astronomical. Additionally, niche and smaller databases can capitalize on legal researcher's need to update search results: legal information relied upon by attorneys, judges, and librarians must be current to be accurate. The legal community relies upon a vast amount of information, and Westlaw and Lexis will never be able to collect all of that information, much less provide the same level of service within their platforms for all available information as they do for cases and statutes.

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<sup>94</sup> Kurt Mattson, *Why Do I Need Books; Isn't Everything Online?*, 21 NEV. LAW. 20 (2013).

<sup>95</sup> *Id.* Even the quantity of volumes—39—is misleading: that number only includes published cases, which accounts for less than 20% of cases in the federal courts. *Id.*

<sup>96</sup> Interview with law firm librarian I, Seattle, Wash. (May 3, 2014); Interview with law firm librarian II, Seattle, Wash. (May 7, 2014).

## ***ii. Almost All Legal Information Is Publically Available***

The sheer amount of legal information is only part of the picture, however. The second part is that much of the material available in legal databases is information that is already publically available. This means that the underlying content of many databases, such as cases, statutes, regulations, etc., are public domain material, exempt from copyright protection.<sup>97</sup> It can be somewhat galling to look at the information in Westlaw and Lexis and realize that the two companies are “virtual monopolist[s] of a great deal of free, public legal materials.”<sup>98</sup>

Westlaw and Lexis based their business on adding value to public domain information. The two companies index cases and statutes, provide updating services, link to other relevant documents within the system. Ultimately, a legal database must set itself apart from another not by its public-domain content, but rather by its value-added content.<sup>99</sup> Indeed, “[t]he companies in the best position to prosper in the coming years will be those which provide ‘value-added’ information.”<sup>100</sup> At the same time, companies need to protect the vast amount of labor and “information” that goes into every document uploaded into a database, whether it be indexing, paginating, editing, hyperlinking, adding headnotes, creating access points, or simply harvesting information from government websites.<sup>101</sup> Consider the legal battles that occurred over several decades between Westlaw, Lexis, and other legal publishers regarding star pagination, licensing of headnotes and Shepherds, among many other disputes.<sup>102</sup> Thus, the second reason why new market entrants are drawn to the legal research market, free access to content, makes the value-added by the publishing companies much more important to a database’s success. Commercial viability of current publishing companies is dependent largely upon the value-added services that they can provide.

### **b. Smaller, Niche Companies Can and Do Challenge WestlawNext**

Many smaller companies, enticed by the legal research market, created databases that they hoped would challenge Westlaw and Lexis. They faced stiff

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<sup>97</sup> Debra Baker, *Treading on Titans’ Turf*, A.B.A. J., July 2000, at 45.

<sup>98</sup> Leiter, *supra* note 24, at 1.

<sup>99</sup> See, e.g., SVENGALIS 1996, *supra* note 87, at 10.

<sup>100</sup> *Id.*

<sup>101</sup> Arewa, *supra* note 4.

<sup>102</sup> For a more in-depth discussion of these legal battles, see SVENGALIS 2011, *supra* note 60, at 10-11.

competition, and many failed. In 1977, there were at least 23 legal publishers; as of 2013, there are three umbrella corporations that control the vast majority of legal research: Thomson Reuters, which owns Westlaw, Reed-Elsevier, which owns LexisNexis, and Wolters Kluwer, which owns Aspen Publishing, CCH, and Loislaw.<sup>103</sup>

Additionally, there are a few competitors that make up a significant portion of the remaining market: Bloomberg Law, HeinOnline, and Casemaker, all of which as yet remain outside of the three umbrellas. Previous failures, though, are not good teachers: Westlaw and Lexis do have gaps in coverage, ripe for filling by smaller companies. Additionally, Westlaw and Lexis have weaknesses in some areas in which they already provide coverage, again providing a small niche for another database to enter. Researchers demand user-friendly search platforms that allow subscribers to find the information that the subscriber needs; and researchers require that the database be maintained so that subscribers are able to trust the content. It is impossible for two databases to meet these high research demands for every legal researcher. Westlaw and Lexis may be attempting to become one-stop shops for all legal research. But they are not, and likely will never become so.

***i. Westlaw and Lexis Are Not One-Stop Shops and Niche Databases Are Offering Alternatives***

WestlawNext and Lexis take advantage of peoples' desire for ease of access that does not require shifting between databases in order to research different topics. But Westlaw and Lexis are not immutable: the two databases are incredibly expensive, increasing at a rate that appears exponential at times,<sup>104</sup> and that cost factors into researchers' decisions as to which database to use. Additionally, Westlaw and Lexis simply cannot maintain the amount of legal information available and the amount of legal information that an attorney, a law professor, a law student, a law librarian, may need in any given situation. As a result, both databases have gaps and weaknesses in coverage, offering prime opportunities for smaller, niche databases.

Thus, smaller alternatives to WestlawNext or Lexis are frequently good sources of a limited type of information that cater to a niche of legal information. HeinOnline, for example, provides access to journals and bar reviews back to the

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<sup>103</sup> KENDALL F. SVENGALIS, LEGAL INFORMATION BUYER'S GUIDE & REFERENCE MANUAL 2013, 3-4 (2013).

<sup>104</sup> *Id.*

periodical's inception, a service not offered by Westlaw or Lexis. Practical Law tailors its information to business attorneys seeking information such as checklists or standard documents and clauses, and offers efficiency tools such as brief banks and market updates. Business development and competitive intelligence databases such as Accurint and TLO provide searchable information from public records and for skip traces; Knowledge Mosaic allows subscribers to search SEC filings, provides model documents, and law firm memos. BNA's Portfolios, especially the tax and labor and employment portfolios, are another excellent examples of a company stepping into a gap left by Westlaw.

Small law firms and solo attorneys are targeted by Casemaker and Fastcase; access is frequently provided through an attorney's bar membership.<sup>105</sup> Even larger firms encourage attorneys to use these cheaper alternatives rather than relying on Westlaw or Lexis.<sup>106</sup> State and local government websites are becoming more accessible and being loaded with more content, such as the statutes, codes, and cases relevant to that specific state. Though some are clunky,<sup>107</sup> and some are almost unusable,<sup>108</sup> others provide effective access points to the legal information available in their databases. For example, Seattle's Municipal Code website is efficient, streamlined, easily searched, and relatively user-friendly.<sup>109</sup>

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<sup>105</sup> *Free Legal Research for State Bar Association Members* (Oct. 11, 2013, 8:57am), <http://dukelawref.blogspot.com/2013/10/free-legal-research-for-state-bar.html>

<sup>106</sup> Interview with law librarian II, in Seattle, Wash. (May 7, 2014).

<sup>107</sup> For example, the North Carolina Court System's publication of opinions from the North Carolina Court of Appeals and Supreme Court: opinions are only available back to 1998, limited searching is available, and opinions can only be browsed by clicking into a zip file of opinions from a single year. Opinions of the N.C. Appellate Courts, <http://appellate.nccourts.org/opinions/> (last visited May 5, 2014).

<sup>108</sup> Examples range from DeKalb, Illinois, which posts its municipal code on its website though does not have a search function, *see* Office of the City Clerk, Municipal Code, [http://www.cityofdekalb.com/CityClerk/Municipal\\_Code.htm](http://www.cityofdekalb.com/CityClerk/Municipal_Code.htm) (last visited May 5, 2014); to the City of Lynn, Massachusetts, through which I could locate its code only by searching the website, at which point a static PDF file could be found. Welcome to the City of Lynn Website, <http://www.ci.lynn.ma.us/> (last visited May 5, 2014); and City of Lynn Ordinances, [http://www.ci.lynn.ma.us/cityhall\\_documents/clerk/2013/City\\_Ordinances.pdf](http://www.ci.lynn.ma.us/cityhall_documents/clerk/2013/City_Ordinances.pdf) (last visited May 5, 2014).

<sup>109</sup> *See, e.g.*, Seattle Municipal Code, <http://clerk.seattle.gov/~public/code1.htm> (last visited May 5, 2014). Municode.com also provides libraries of city codes, though cities have to opt into and purchase that service. Code Library, <https://www.municode.com/Library> (last visited May 5, 2014).

Smaller, niche databases can also offer alternative solutions to the concerns raised by scholars about WestlawNext.<sup>110</sup> HeinOnline provides an excellent example of how forcing a researcher to choose a smaller, more limited source can impact researcher quality. Although HeinOnline does allow a researcher to search the entire subscription database, the search engine is somewhat unintuitive and filtering search results is a demanding, often futile task. The researcher who first chooses a smaller library within the HeinOnline database, however, has a far greater chance of locating a relevant source. Choosing to search only within HeinOnline's Journal Database, for example, yields far different results than searching only within HeinOnline's Congressional Services database.

Lastly, smaller, niche databases can highlight weaknesses in Westlaw and Lexis's coverage. Consider research in foreign and international law. Although both Westlaw and Lexis offer some international and foreign law in their databases, the information is not comprehensive, and is limited to only a few countries. Experienced researchers know that neither Westlaw nor Lexis is a strong starting point for foreign law, and that neither has a strong international law database.<sup>111</sup> A smart foreign or international researcher would start with GlobaLex<sup>112</sup>; with the American Bar Association's International Law Section<sup>113</sup> or The Foreign Law Guide<sup>114</sup>; or even with a print resource that is no longer updated such as Germain's Transnational Law Research.<sup>115</sup> International organizations are also better alternatives to Westlaw or Lexis: both the United Nations and the European Union archive and allow access to each organization's respective documents, as well as organization-specific guides designed for each website.<sup>116</sup>

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<sup>110</sup> See *infra* Part III.c.

<sup>111</sup> Lexis does have some foreign and international law sources, but compared with the other available databases, it is surprisingly weak.

<sup>112</sup> GLOBALEX, <http://www.nyulawglobal.org/globalex/> (last visited May 12, 2014).

<sup>113</sup> American Society of International Law, *Electronic Research Guide (ERG)*, <http://www.asil.org/resources/electronic-resource-guide-erg>; American Society of International Law, *Electronic Information System for International Law (EISIL)*, <http://www.eisil.org/>.

<sup>114</sup> MARCI HOFFMAN, ed., *FOREIGN LAW GUIDE*, <http://referenceworks.brillonline.com/browse/foreign-law-guide>.

<sup>115</sup> CLAIRE GERMAIN, *GERMAIN'S TRANSNATIONAL LAW RESEARCH: A GUIDE FOR ATTORNEYS* (1991).

<sup>116</sup> See, e.g., United Nations, *United Nations Research Guides*, <http://research.un.org/en/docs>; European Union, *EU Law*, [http://europa.eu/eu-law/index\\_en.htm](http://europa.eu/eu-law/index_en.htm).

As different publishing companies develop alternatives to Westlaw and Lexis, they face several concerns. Link rot,<sup>117</sup> authenticity, reliable and continued access, and citator services are some examples. State governments, with the support of the American Association of Law Librarians, are attempting to address some of these issues through the Uniform Electronic Legal Material Act.<sup>118</sup> Both Casemaker and Fastcase are developing citator services, although neither yet compares to Westlaw's or Lexis's.<sup>119</sup> But niche and smaller databases have the ability to garner subscribers from the ranks of Westlaw and Lexis, so long as those databases provide user-friendly services, relatively inexpensive access, and high quality material.

West Publishing and Lexis, however, are aware of these gaps and the need to fill them. Both companies are responding to evolving research needs organically—e.g., through the development of new search tools such as WestlawNext and Lexis Advance—and through acquisition—Practical Law was recently acquired by West Group and is now prominently featured on law schools students' WestlawNext homepage; and Lexis recently acquired Knowledge Mosiac. With established reputations and impressive revenues, West Publishing and Lexis each have an array of options for how best to remain competitive, but neither should permit themselves to become complacent or their respective market shares will erode over time.

## *ii. Can Bloomberg Law Prove a Competitor?*

The newest challenger to Westlaw is taking a different approach than that of the smaller, niche databases. Rather than filling in gaps, Bloomberg Law is attempting to be a serious competitor that can challenge Westlaw or Lexis as an equal. Backed by the Bloomberg name, money, and experience, Bloomberg Law has the potential to become the third in the competitive duopoly. It does have some advantages: it recently acquired BNA, a well-respected database heavily relied upon by tax and labor and employment researchers.<sup>120</sup> Additionally,

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<sup>117</sup> See generally Jonathan Zittain, Kendra Albert, & Lawrence Lessig, *Perma: Scoping and Addressing the Problem of Link and Reference Rot in Legal Citations*, 127 HARV. L. REV. F. 176 (2014).

<sup>118</sup> American Association of Law Librarians, *Uniform Electronic Legal Materials Act, Summary and Frequently Asked Questions*, available at <http://www.aallnet.org/Documents/Government-Relations/UELMA/UELMAFAQs.pdf>.

<sup>119</sup> Greg Lambert, *Casemaker Unique among Legal Research Providers*, 40 COLO. LAW. 57 (2011).

<sup>120</sup> Interview with law librarian II, in Seattle, Wash. (May 7, 2014).



because of Bloomberg L.P.'s reputation as a securities and stock market corporation, Bloomberg Law has immense drawing power in its tax, securities, business, and corporation resources.<sup>121</sup>

But Bloomberg Law faces several challenges: it is competing with two well-entrenched companies quite unwilling to relinquish control over any parts of the legal research market. Bloomberg Law is comparatively as expensive as Westlaw and Lexis. Bloomberg has not mastered the sales pitch and advertising quality of Westlaw and Lexis; for example, Bloomberg Law was launched in 2009 but has only recently been introduced in law schools. Law firms and law libraries are reluctant to pay for a third database that does not appear to offer substantially different material than that already offered by Westlaw, Lexis, and other smaller, cheaper, niche databases. Bloomberg has not yet fully developed indexing, digest, or citator services robust enough to compete with Westlaw and Lexis's equivalent services. Lastly, Bloomberg currently only offers a single subscription option: subscribers must pay for all content in Bloomberg Law, at a rather hefty price. Westlaw and Lexis continue to offer flat rate and subscription options, allowing for some bundling and for some choice for subscribers in terms of which database streams will be part of the subscription.<sup>122</sup> Ultimately, Bloomberg may become a temporary experiment by a large company attempting to fight its way into the billion-dollar legal research market.

## V: CONCLUSION: THE CONTINUED DOMINANCE OF JOHN WEST

As a businessman, John West saw a gap in legal information: lawyers needed efficient and inexpensive access to recently-published cases. Driven by the demands of his customers, John West provided uniform access to cases, he provided an indexing service for those cases, and he provided these services inexpensively, quickly, and reliably.

John West was not a philanthropist, however: his business made him a substantial profit, much to the chagrin of some judges.<sup>123</sup> The company that he started still makes a substantial profit, and has ingratiated itself so much within the legal community that many find it difficult to imagine legal research without WestlawNext.

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<sup>121</sup> See Bloomberg BNA, *About Us*, <http://www.bna.com/about-bna-a4760/>.

<sup>122</sup> Interview with law librarian II, in Seattle, Wash. (May 7, 2014); Interview with law librarian III, IV, in Seattle, Wash. (May 7, 2014).

<sup>123</sup> See Ross E. Davies, *How West Law was Made: The Company, Its Products, and its Promotions*, 6 CHARLESTON L. REV. 231, 237 (2012).

But it is entirely possible that in ten years, Westlaw will no longer exist, unable to survive the technological and cultural changes of the future. Smaller, niche databases are developing more sophisticated systems and many of those databases are significantly less expensive than Westlaw. A large corporation such as West Group cannot adapt or innovate as quickly as smaller, more flexible companies. An increasing amount of legal material is available for free and calls for open access are gaining popularity and support.<sup>124</sup>

Westlaw, though has a distinct advantage over these smaller databases and a possible antidote to open access: Westlaw has enormous amounts of money behind it and the time to watch new developments carefully before taking any action. A new start-up database must prove its usefulness, reliability, and user-friendliness before being adopted by the legal market. Many, though not all, of these start-ups must recoup the amount of money and time invested in the database in a short period of time, or risk bankruptcy. Westlaw, however, has already proved its reliability; when it introduces a new product, the success or failure of that product is unlikely to bankrupt the conglomerate. And West Publishing has the ability to purchase some of its strong, smaller competitors and to incorporate them into its conglomerate of legal databases.

Consider Lexis Advance: the company no doubt invested a substantial amount of money and time in creating the platform. Its dismal reviews resulted in the company investing additional time and money into revamping the product, a luxury that most smaller databases would not have had. Just as Westlaw did when Lexis forged ahead in the creation of legal databases, Lexis stumbled over a new technology. But also like Westlaw, Lexis can remedy its mistakes without tumbling into bankruptcy.

But Westlaw's future depends largely upon West Publishing's ability to read the market, to be willing to flexibly change and adapt to consumers' needs, and to offer a product that continues to meet and exceed lawyers' and librarians' expectations of a legal research database, especially in light of WestlawNext's cost. West Publishing's future also relies on its ability to work with its subscribers to create a market that is feasible for both West Publishing and its subscribers. John West's desire to provide inexpensive access to materials must again become a dominant marker for West Publishing.

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<sup>124</sup> See, e.g., Arewa, *supra* note 4.

It is likely that Westlaw will continue to be a presence in the legal research market for at least the foreseeable future. Some lawyers will always prefer the one-stop shopping that Westlaw offers, unwilling to shift between different databases when doing research. Some researchers, frustrated with or no longer able to pay for WestlawNext, will abandon the database in favor of the smaller, cheaper alternatives that are getting better every day.

John West established a company that has transformed into something he likely never imagined. West Publishing was founded with the goal of providing uniform, efficient, and inexpensive access to legal materials, in response to the needs of lawyers. As West Publishing's history demonstrates, the company succeeded when it adhered most closely with these simple goals. And as long as West Publishing responds to the needs and demands of the legal community, as it did when John West himself ran the company, it may have the chance to evolve with, or even to lead, the legal research industry in the next century.<sup>125</sup>

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<sup>125</sup> The company may have the chance; West Group's president has stated that innovation by the competitor "invigorate" the company, "making [West] revamp to become nimbler and quicker." Quoted Baker, *supra* note 97, at 44.