

2011

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Recommended Citation

Ellen Richardson, *Ain't No (Sky)River Wide Enough to Keep Me From Getting to You: SkyRiver, Innovative, OCLC, and the Fight for Control Over the Bibliographic Data, Cataloging Services, ILL, and ILS Markets* (2011), https://digitalcommons.law.uw.edu/law-lib_borgeson/90

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Ain't No (Sky)River Wide Enough to Keep Me From Getting To You: SkyRiver,
Innovative, OCLC, and the fight for control over the bibliographic data,
cataloging services, ILL and ILS markets

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Submitted to

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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

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Seattle, Washington

May 16, 2011

I. INTRODUCTION

On July 28, 2010, SkyRiver Technology Solutions, LLC and Innovative Interfaces, Inc. filed suit against OCLC Online Computer Library Center, alleging the organization was unlawfully monopolizing the bibliographic data, cataloging service, and interlibrary lending markets and attempting to monopolize the market for integrated library systems through anticompetitive and exclusionary agreements, policies and practices.¹ The case is far from over. In fact, it has hardly even begun, but the lawsuit raises important questions about OCLC, the future of the library world and the marketplace for library services. In an era of library budget crunches, resource sharing and access to Interlibrary Loan services take on an increased importance as libraries rely on fellow member institutions to cover gaps in their own collections. Much of the controversy stems over the issue of who owns library records and the data contained in OCLC's WorldCat database.

The SkyRiver/OCLC lawsuit is important in part because it heralds the future of the industry portion of the library world. We're already held captive by the publishing industries, especially in the legal information field where access to information is effectively controlled by three major conglomerates. In 2009, Amazon caused an uproar by deleting George Orwell's 1984 from purchaser's Kindles, without warning, due to questions over whether the provider of the eBook had the rights to distribute it.² More recently, HarperCollins decided to limit library eBook licenses to twenty-six uses.³ Frustrated librarians posted YouTube videos demonstrating what physical books looked like after twenty six uses, about a year's worth of checkouts on a two-week check-out period, and the books were far from unusable.⁴ At what point are libraries simply paying for resources they don't actually own and can be taken away from them at any time?

SkyRiver and OCLC are guarded organizations, and finding information on this topic is not easy. OCLC has had some transparency issues in recent years, such as the proposed record use policy change, where OCLC drafted an entirely new proposed record use policy without consulting members or noting that it was looking to make changes. OCLC's challenges likely stem from its exponential growth from a small, state-wide library consortium to a global behemoth, as well as attempting to navigate the transition from a time when mass data-sharing was an innovative concept to a time when everyone is online and expects access to everything, at all times, for free.

This paper will examine the SkyRiver/Innovative Interfaces v. OCLC lawsuit. The paper begins with a background on the organizations at issue,

¹ Compl. ¶ 1.

² Brad Stone, *Amazon Erases Orwell Books from Kindle*, N.Y. TIMES, July 18, 2009 at B1.

³ Julie Bosman, *Publisher Limits Shelf Life for Library E-Books*, N.Y. TIMES, March 15, 2011, at A1.

⁴ Pioneer Library System, *HarperCollins 26+ Checkouts*, (Mar. 2 2011) <http://www.youtube.com/watch?v=Je90XRRrruM>.

examines their history, the products they offer, and the positions they hold in the library services market, attempting to understand and lay the groundwork for how we've arrived at the current situation. Second, the paper will give an overview of the lawsuit, including the claims for relief and major arguments in OCLC's motion to dismiss. Finally, this paper will attempt to discuss what the lawsuit means for the library world and the library systems and cataloguing utility marketplaces, what potential changes may occur, whether there is a future for OCLC, and what that future might look like.

II. BACKGROUND AND CONTEXT OF LAWSUIT

a. The Parties and Their Products

i. Plaintiffs

SkyRiver Technology Solutions

SkyRiver is a recent entrant to the cataloging services market. It was launched as an alternative to OCLC's bibliographic utility in October 2009.⁵ It offers a smaller bibliographic database and other cataloging services. Like Innovative Interfaces, Inc., Sky River was founded and is owned by Jerry Kline.⁶ The SkyRiver database contains approximately 20 million records, as compared to OCLC's 200 million⁷ and includes a complete set of records from the Library of Congress and the British Library.⁸ According to Leslie Straus, SkyRiver intends to compete on quality, rather than quantity—SkyRiver's database “has been populated with high-caliber MARC records, omitting substandard, skeletal records.”⁹

⁵ Josh Hadro, *OCLC and MSU at Impasse Over SkyRiver*, LIBR. J., Ap. 1, 2010, at 14.

⁶ Marshall Breeding, *SkyRiver and Innovative Interfaces sue OCLC*, LIBR. J., Sept. 1, 2010, at 18.

⁷ Marshall Breeding & Josh Hadro, *SkyRiver Sparks Cataloging Competition*, LIBR. J., Nov. 1, 2009. Note: this article, written in November 2009, states that OCLC has 144 million records. According to OCLC's WorldCat Website, WorldCat has over 200 million records as of January 2011. See *infra* note 22.

⁸ *Id.*

⁹ *Id.* Any member library can create and upload bibliographic records to OCLC, regardless of the quality of their cataloguing. One recent example comes to mind. While working on a faculty research request on the impact of guns in the household on children's mental health, I came across this citation: *Best Practices in the Behavioral Management of Health from Preconception to Adolescence, Vol III*. Institute for Brain Potential. 2008. First, I did a title search in the Gallagher Law Library's catalog. We did not have the item, which was not surprising. I broadened my search to all Summit Libraries (our union catalog borrowing system) through WorldCat Local. While WorldCat is notoriously bad at known-item searching, I had more trouble than usual locating this particular item. WorldCat Local informed me that the University of Washington Libraries held the item *Best Practices in the Behavioral Management of Chronic Disease*, by the Institute for Brain Potential. Close, but not quite. I further broadened my search to “Libraries Worldwide”, but still retrieved only the one result. I switched over to an advanced search, shortening the title to *Best Practices in the Behavioral Management of Health* and adding the Institute for Brain Potential to the keyword field (because Institute for Brain Potential is listed as being the publisher, not the author, and thus, did not return any results when put into the author field). This returned four results, the fourth of which was the item I was looking for. The reason I couldn't find it initially

At present, SkyRiver offers only its bibliographic utility and cataloging services.¹⁰ In addition to their records database, SkyRiver offers: “support for copy and original cataloging, record notification options, and assistance for libraries that acquire shelf-ready materials.”¹¹

According to Richard Jost, Systems Librarian at the University of Washington’s Marian Gould Gallagher Law Library, research Libraries are unlikely to join SkyRiver because it does not have the support OCLC has for large, diverse collections in multiple languages. SkyRiver is likely to be better

was likely due primarily to bad cataloging. In addition to spelling the title incorrectly, the book was listed as being a work of fiction:

4.  [Best practices in the behavioral management of health from preconceptin to adolescence](#)
 Book : Fiction
 Language: English
 Publisher: Los Altos, Calif. : Institute for Brain Potential, 2007-©2008.
 Database: WorldCat
 Libraries that own this item: [WorldCat Libraries](#)

Shockingly, other libraries have used this record. When I went to see if the book could be requested via ILL, more than one library had listed holdings on this record.

[Find a copy in the library](#)

This item isn't held in your library system, but it is held by other WorldCat Libraries. You may request this item from a WorldCat library through interlibrary loan.

WorldCat

Find it in libraries globally Request Item through Interlibrary Loan (about 7-14 days)

Worldwide libraries own this item

Enter your location:

Displaying libraries 1-3 out of 3 Show libraries holding **just this edition**

Library	Held formats	Distance	
1.  Baker College Library Flint Campus Library FLINT, MI 48507 United States	 Book	1800 miles MAP IT	Library info Add to favorites
2.  OCLC Training & ILLiad Participant OCLC Training & Testing symbol TRN Dublin, OH 43017 United States	 Book	1900 miles MAP IT	Library info Add to favorites
3.  Florida Hospital College of Health Science R. A. Williams Library ORLANDO, FL 32803 United States	 Book	2500 miles MAP IT	Library info Ask a librarian Add to favorites

Most users will not spend as much time or try as many variations on a search for a particular item as I did and would be far more likely to give up after their initial search retrieved either no holdings or no relevant results. I continued looking because I was sure the item must be out there somewhere, and I was curious. Given that relatively major errors like this can occur, apparently do not get corrected or otherwise undergo any other form of quality control, and are then used by other libraries, the disconnect between user perseverance and ability to locate items in a catalog could have serious implications, especially if more libraries begin switching over to WorldCat Local as their OPAC. Alternative cataloging utilities, especially ones with a clean set of records or some form of quality control have a certain appeal.

A second example was uncovered while resolving an issue with a book found during an inventory control project. The book, *Technical appendices to Sentencing as a human process*, from the Centre of Criminology at the University of Toronto, was given a call number of HV 8708.H6. HV 8708 is the Library of Congress subject heading for “Social pathology. Social Sciences—Social and public welfare. Criminology—Penology, Prisons and Corrections.” A more accurate call number would be KEO 1192, “Law of Canada (Ontario)—Criminal procedure—Execution of sentence. Corrections. Imprisonment—General works”, which is how our law library reclassified the item.

¹⁰ SKYRIVER, <http://theskyriver.com/services> (last visited May 6, 2011).

¹¹ *Id.*

suited for libraries with smaller, solely English-language collections.¹² This begs the as-of-yet unanswered question of whether SkyRiver has any practical utility in the marketplace.

Innovative Interfaces, Inc. (III)

Innovative Interfaces is a California-based provider of integrated library systems and a pioneer in library automation.¹³ Their principal products are Millennium, Encore, and INN-Reach. Millennium is an ILS, Encore is a discovery platform and INN-Reach is a consortial borrowing system that links multiple library systems in a defined geographic area in a “union” catalog to provide resource sharing among the libraries.¹⁴ Innovative’s Millennium ILS has been particularly popular in law libraries, as it was the first ILS with a comprehensive serials check-in module, well suited to the large number of serials held in law library collections.

ii. Defendant

Online Computer Library Center, Inc. (OCLC)

OCLC is an Ohio-based non-profit corporation founded in 1967 by a small group of Ohio university presidents and library directors.¹⁵ Post WWII, the universe of knowledge was doubling every seven years, and librarians were hard pressed to keep up.¹⁶ OCLC proposed a “paradigm shift in library operations:” Participating libraries would join a cooperative, computerized network to share information, particularly library records.¹⁷ The goal was to streamline library backroom operations, thereby reducing rising costs.¹⁸ Copy cataloging itself was not a new idea, and has actually been around since 1876, when a company called *The Library Bureau* began to sell printed catalog cards.¹⁹ What was new was OCLC’s blending of the oldest knowledge management system, the library, with the newest, computing.²⁰ OCLC’s WorldCat has over 200 million records and 1.6

¹² Interview with Richard Jost, Systems Librarian, University of Washington Marian Gould Gallagher Law Library, in Seattle, Wash. (Feb. 20, 2011).

¹³ *History*, INNOVATIVE INTERFACES, INC., <http://www.iii.com/about/history.shtml> (last visited May 6, 2011).

¹⁴ Compl. ¶ 6. *See also* <http://www.iii.com/products/index.shtml>

¹⁵ *In the beginning*, OCLC, <http://www.oclc.org/us/en/about/history/beginning.htm> (last visited May 6, 2011).

¹⁶ *Heritage: increasing access to information*, OCLC, <http://www.oclc.org/us/en/about/history/default.htm> (last visited May 6, 2011).

¹⁷ *Id.*

¹⁸ *Id.*

¹⁹ Moya K. Mason, *Copy Cataloging: Our Quest for the Perfect Copy*, available at <http://www.moyak.com/papers/cataloguing-library-congress.html> (internal citations omitted) (last visited Jan. 24, 2011).

²⁰ *In the beginning*, *supra* note 15.

billion holdings as of January 2011, and is the largest catalog of bibliographic data and library materials in the world.²¹

At present, over 72,000 libraries are members of WorldCat.²² This includes academic, research, and other libraries in both the United States and abroad.²³ The WorldCat bibliographic database is considered to be “the world’s most comprehensive bibliographic database” as well as being the only comprehensive bibliographic database of library holdings in the United States.²⁴

Having been in the field for so long gives OCLC an inherent advantage over other, newer, cataloging services and bibliographic utilities. In addition to simply having a better collection of records, OCLC is able to offer support for other library needs, such as diverse collections in multiple languages. Altogether, in the United States, OCLC offers forty-eight products in seven categories: Cataloging and Metadata Management Services and Systems, Reference Discovery, Resource Sharing and Delivery, Content and Collections, and Digital Collection Services.²⁵ OCLC’s primary products and services are in cataloging and resource sharing, such as Connexion, a full-service online cataloging tool, and the WorldCat products, which allow for both web-scale and single search access to individual and global library resources, as well as facilitating resource sharing.²⁶ OCLC is moving into the ILS market with their new Web-scale Management Services (WMS), a cooperative, integrated, cloud-based ILS that is still in the pilot/early adoption stage. WMS provides metadata and license management, acquisitions, circulation, and workflow modules all in one program, and moves “routine yet critical library services . . . to a cooperative, Web-based network.”²⁷ It is currently being tested by a small number of pilot libraries and early adopters, and has just landed its first major contract. Given the structure and capabilities of WMS, coupled with the hegemonic position OCLC holds in the library world, WMS has the potential to be a, if not the, major player in the future ILS marketplace for all libraries. The timing between the announcement of WMS and the SkyRiver/Innovative lawsuit can hardly be coincidental.

b. NACO Nodes

The Name Authority Cooperative Program of the Library of Congress’s Program for Cooperative Cataloging, or NACO, is a cooperative program that creates and contributes authority records for names, uniform titles, and series to

²¹ *The features of Web scale*, OCLC, <http://www.oclc.org/webscale/features.htm> (last visited May 6, 2011). See also Appendix A.

²² *WorldCat Facts and Statistics*, OCLC, <http://www.oclc.org/us/en/worldcat/statistics/default.htm> (last visited May 6, 2011).

²³ Compl. ¶ 3.

²⁴ Compl. ¶ 4.

²⁵ *Products and Services*, OCLC, <http://www.oclc.org/us/en/services/default.htm> (last visited May 6, 2011).

²⁶ *Id.*

²⁷ *Web-scale Management Services*, OCLC, <http://www.oclc.org/webscale/overview.htm> (last visited May 6, 2011).

the Library of Congress and the Name Authority File.²⁸ They also standardize transliterated names from foreign alphabets.²⁹ Participants, who are NACO trained, may also make modifications to existing records within established guidelines.³⁰ Institutions trained in NACO standards submit their name authority records to an official node, which then uploads them to the Library of Congress for review.³¹ Previously, the only two official NACO nodes, which hold a complete and current copy of the Name Authority File, were OCLC and the British Library.³² In early December 2010, in what is clearly a direct challenge to OCLC, SkyRiver was approved as the third official NACO node.

c. OCLC's Record Use Policy

In November 2009, OCLC inadvertently set off a kerfuffle in the library community when it announced it would be replacing its "Guidelines for the Use and Transfer of OCLC-Derived Records with the new "Policy for Use and Transfer of WorldCat Records."³³ The original policy, written in 1987 "was in need of an update to account for changes in accessing and using data brought on by the expansion of the internet into the public realm."³⁴ Many users felt the new policy was too restrictive and were upset OCLC had failed to consult members when drafting it.³⁵ The controversy stemmed over OCLC's assertions that records must contain a MARC field specifying the record came from OCLC and limiting the "reasonable use" of records by members. Much of the uproar came from OCLC's listing of non-reasonable use activities, while failing to enumerate what would be considered reasonable use.

In response to constituent concerns, OCLC delayed implementing their new policy and convened a new review board, the Review Board of Shared Data Creation and Stewardship.³⁶ In May 2009, the review board recommended OCLC

²⁸ Program for Cooperative Cataloging, *NACO—The Name Authority Component of the PCC*, LIBRARY OF CONGRESS, <http://www.loc.gov/catdir/pcc/naco/nacopara.html> (last visited May 9, 2011).

²⁹ David Rapp, *SkyRiver Challenges OCLC as Newest LC Authority Records Node*, LIBR. J., Dec. 2, 2011, http://www.libraryjournal.com/lj/home/888310-264/skyriver_challenges_oclc_as_newest.html.csp.

³⁰ Program for Cooperative Cataloging, *supra* note 28.

³¹ Rapp, *supra* note 29.

³² *Id.*

³³ For a complete discussion of the topic, with archived copies of the proposed Record Use Policies and links to articles and blog posts from the library community on this topic, see Code4Lib, *OCLC Policy Change*, http://wiki.code4lib.org/index.php/OCLC_Policy_Change (last visited May 9, 2011).

³⁴ Rick Mason, *OCLC and Data*, LIBOLOGY BLOG (Apr. 7, 2010), <http://www.libology.com/blog/2010/04/07/oclc-and-data.html>.

³⁵ Josh Hadro, *OCLC Appoints Council to Revamp WorldCat Record Use Policy*, LIBR. J. (Sept. 15, 2009), http://www.libraryjournal.com/lj/technologyproductsvendors/855766-296/oclc_appoints_council_to_revamp.html.csp, see also Josh Hadro, *OCLC Delays Policy, Sets Review Board*, LIBR. J., Feb. 1, 2009 at 23.

³⁶ Hadro, *OCLC Appoints Council to Revamp WorldCat Record Use Policy*, *supra* note 35.

formally withdraw the proposed policy and draft a new one from scratch.³⁷ A Record Use Policy Council was convened in September 2009 to create a new draft policy, taking into consideration the recommendations proposed by the Review Board of Shared Data Creation.³⁸ The current policy became effective August 1, 2010.³⁹

At the heart of the lawsuit for both sides is the issue of who owns bibliographic data and catalog records. That both SkyRiver and OCLC gloss over this question is telling. Of particular interest is where SkyRiver has gotten the records in its database. According to SkyRiver, the records are from the Library of Congress,⁴⁰ however, others have speculated that it is Z39.50 data harvested from other libraries without their knowledge or consent.⁴¹

Allegedly, OCLC would like to restrict usage of its catalog data “in order to prevent competing services from appearing.”⁴² A distinction must be drawn between the bibliographic data contained in a catalog record, and the catalog record itself.⁴³ While the bibliographic data included in the catalog records is likely public information, it is the value added by creating a catalog record—organizing and analyzing this information, and making items in the library’s collection easily findable by a user.⁴⁴ Producing and creating library records in a consistent, quality format allows libraries to share this information and reduce their cataloging costs. While there are a number of different ways to estimate the

³⁷ *Id.* The Review Board issued its Final Report in June, citing seven primary issues with the initially proposed policy: lack of a clear statement of the context in which the proposed policy was issued, problems it was intended to address, and discussion of what was missing from the guidelines it was intended to replace; lack of membership involvement in developing the policy; member uncertainty regarding how members would be permitted to use their own records under the proposed policy; concerns that the proposed policy would limit innovation due to the restrictions in the policy, technical concerns about local library systems needing to implement a persistent provenance field to mark where the record came from and the feasibility of attempting to limit the reuse of individual records or portions of the records; the overall one-sidedness of the policy, favoring OCLC; and whether the policy would be able to meet any legal challenges raised and how it would be enforced. OCLC REVIEW BOARD ON PRINCIPLES OF SHARED DATA CREATION AND STEWARDSHIP, FINAL REPORT 2-3 (June 22, 2009), available at http://www.oclc.org/worldcat/catalog/FinalReport_ReviewBoard.pdf

³⁸ Hadro, *OCLC Appoints Council to Revamp WorldCat Record Use Policy*, *supra* note 35.

³⁹ *Record Use Policy*, OCLC, <http://www.oclc.org/worldcat/recorduse/default.htm> (last visited May 8, 2011).

⁴⁰ See Breeding and Hadro, *supra* note 7.

⁴¹ SkyRiverSkeptic, comment to *OCLC’s Crisis Moment*, FREE RANGE LIBRARIAN (Aug. 4, 2010, 10:54 AM), <http://freerangelibrarian.com/2010/07/30/oclc-in-crisis>. For an interesting anecdote on data capture and library catalogs, see Appendix B.

⁴² Rob Styles, *OCLC, Record Usage, Copyright, Contracts and the Law*, I REALLY DON’T KNOW, (Nov. 6, 2008), <http://dynamicorange.com/2008/11/06/oclc-record-usage-copyright-contracts-and-the-law>.

⁴³ Karen Coyle raises an interesting question on this point: “[A]t what point does a record become no longer an OCLC record? If I download a MARC record, put it through EndNote or Zotero, add it to my Open Office bibliography . . . what have I got?” Karen Coyle, comment to *OCLC, Record Usage, Copyright, Contracts and the Law*, I REALLY DON’T KNOW, (Nov. 6, 2008), <http://dynamicorange.com/2008/11/06/oclc-record-usage-copyright-contracts-and-the-law>.

⁴⁴ See, e.g., Joe Matthews, *The Value of Information in Library Catalogs*, INFORMATION OUTLOOK ONLINE (JUL. 2000), <http://www.sla.org/content/Shop/Information/infoonline/2000/jul00/matthews.cfm>.

value of something, by any account, the value of the records OCLC holds is significant. In 2010, OCLC reported cost-share revenues of \$90.1 million from Metadata Services, which is primarily comprised of cataloging services.⁴⁵

Given the predilection for copy-cataloguing, purchasing ready-made catalog records, and that only a small percentage of catalog records out there are original records, the question of who owns a catalog record becomes even trickier.⁴⁶ Arguably, no one owns the bibliographic data contained in catalog records, and if anyone did, it would certainly not be OCLC.⁴⁷

OCLC itself does not explicitly claim ownership of individual records. According to OCLC, it

“claims copyright rights in WorldCat as a compilation [on behalf of its members], it does not claim copyright ownership of individual records.’ These rights are based on OCLC’s intellectual contribution to WorldCat as a whole, including OCLC’s selection, arrangement and coordination of the material in WorldCat. To the extent copyright rights exist in an individual bibliographic record in WorldCat, the copyright rights in the record would vest with the author of the record. Modifications, corrections and enhancements

⁴⁵ OCLC ANNUAL REPORT 2009/2010 40, 42 (2010).

⁴⁶ See, e.g., Karen A. Coombs, *Who’s Record Is It Anyway*, LIBR. CHIC (Nov. 5, 2008), <http://www.librarywebchic.net/2008/11/05/whos-record-is-it-anyway> (suggesting that “focusing on the ownership issue is such a sticky complicated mess that it is likely to get libraries and OCLC absolute [sic] no where.” The author also posits that the real question should not be who owns the records, but rather “what rights to libraries wish to have for records obtained from OCLC?” Yet, many of the rights she suggests appear very similar to ownership rights. Ideally, she would like the rights of perpetual use for downloaded items, the right to share downloaded items in any fashion the library sees fit, and the right to migrate format and transform records, should the library stop using MARC format.)

⁴⁷ See Mason, *supra* note 34 (noting that “. . . OCLC doesn’t have **any** rights over the data contained in the records. They have some rights on the records themselves, though there is debate over just what rights a cooperative organization has over member-created records.” Mason also cites to O’Connor’s opinion in *Feist v. Rural*, 499 U.S. 340 (1991), which states that “Although a compilation of facts may possess the requisite originality because the author typically chooses which facts to include, in what order to place them, and how to arrange the data so that readers may use them effectively, copyright protection extends only to those components of the work that are original to the author, not the facts themselves.” Mason, applying this to WorldCat MARC records, argues” “Not only does this strongly suggest that the data contained in the records (Author, Title, ISBN, etc.) is not protected, but that the author (i.e., “creator”) of the record is the one who holds what protection does exist.” Thus, it is likely that while one may be able to claim some copyright over a catalog record, no one would be able to claim ownership over the bibliographic data contained in the record, because they are facts); see also John Wilbanks, *Data, Copyrights, and Slogans, Oh My*, COMMON KNOWLEDGE BLOG (Jan. 24, 2009 10:54 AM), http://scienceblogs.com/commonknowledge/2009/01/data_copyrights_and_slogans_oh.php and John Wilbanks, *Data, Copyrights, and Slogans, Part II*, COMMON KNOWLEDGE BLOG (Jan. 26, 2009 10:44 AM), http://scienceblogs.com/commonknowledge/2009/01/data_copyrights_and_slogans_pa.php. For an interesting overview of why search engines pull up primarily commercial enterprises, and not local libraries in search results, see Wendy M. Grossman, *Why you can’t find a library book in your search engine*, THE GUARDIAN (London), Jan. 29, 2009, at 3.

to a record may vest the author of those changes with copyright rights in the changes.”⁴⁸

Under this view, it appears that an individual library owns its catalog records, though possibly only to the extent it had modified a record it downloaded. Interestingly, OCLC purports that the primary premise of the Record Use Policy is not “who owns the records [or] what that means⁴⁹ but instead focuses on “the conviction that WorldCat is a shared community resource that is intended to benefit the cooperative of members who contribute to its growth and financially support it.”⁵⁰

III. SKYRIVER TECHNOLOGY SOLUTIONS, LLC, et al. v. OCLC ONLINE COMPUTER LIBRARY CENTER, INC.⁵¹

At issue in the SkyRiver/OCLC lawsuit are allegations of OCLC’s monopolization and anticompetitive behavior in four different markets for library products and services: a monopoly in the bibliographic data of library holdings, cataloging services, and interlibrary lending between and among academic libraries for resource sharing markets, and an attempted monopolization of the market for integrated library systems.⁵² SkyRiver estimates that OCLC controls over 90% of the bibliographic data, cataloging services, and interlibrary lending markets.

The lawsuit is based on the case of Michigan State University (MSU), an early customer of SkyRiver. Allegedly, OCLC responded to the launch of SkyRiver with “predatory” pricing for batch loading records created through the SkyRiver service.⁵³ In an attempt to lower costs, MSU switched over to SkyRiver for cataloging services, but maintained their subscription to OCLC’s interlibrary loan service.⁵⁴ MSU expected OCLC would charge a low fee for batch-loading cataloging records created through SkyRiver, but the price quote they received turned out to be higher than expected, reportedly eliminating any savings that would have accrued through MSU’s use of the SkyRiver cataloging service.

According to Clifford H. Haka, MSU’s director of libraries, OCLC’s price list suggests that the cost for a record upload is around 23 cents per record and MSU had expected to pay approximately \$6,000 to upload around 26,000 records per year.⁵⁵ Yet the estimate that came back from OCLC was \$31,000, a price “that

⁴⁸ OCLC, *WorldCat Rights and Responsibilities for the OCLC Cooperative* § 2C (June 2, 2011), available at <http://www.oclc.org/worldcat/recorduse/policy/default.htm>; OCLC, *WorldCat Rights and Responsibilities for the OCLC Cooperative—Frequently Asked Questions*, OCLC, <http://www.oclc.org/worldcat/recorduse/policy/questions/default.htm> (last visited May 9, 2011).

⁴⁹ OCLC, *WorldCat Rights and Responsibilities for the OCLC Cooperative—Frequently Asked Questions*, *supra* note 48.

⁵⁰ *Id.*

⁵¹ For the complete docket through May 16, 2011, see Appendix C.

⁵² Compl. ¶ 7, Mem. in Opp. to Mot. to Dismiss ¶ 1

⁵³ David Rapp, *SkyRiver and Innovative Sue OCLC*, *LIBR. J.*, Sept. 1, 2010, at 18.

http://www.libraryjournal.com/lj/home/886099-264/skyriver_and_innovative_interfaces_file.html.csp.

⁵⁴ *Id.*

⁵⁵ Josh Hadro, *OCLC and MSU at Impasse over SkyRiver*, *LIBR. J.*, Apr. 1, 2010, at 14.

would account for original cataloging credits.”⁵⁶ In addition, MSU pays an additional \$88,500 to subscribe to OCLC’s interlibrary loan services.⁵⁷

The lawsuit was initially filed in United States District Court for the Northern District of California in July 2010 and predictable legal wrangling and delaying has ensued. In September, OCLC filed a motion to transfer venue to the United States District Court for the Southern District of Ohio, and a change of venue was granted in late October.⁵⁸ OCLC filed a motion to dismiss in December and SkyRiver/Innovative’s memorandum in opposition to the motion to dismiss was filed in early February. OCLC filed a Reply Memorandum in Support of its Motion to Dismiss in late February and the parties are currently duking it out over whether SkyRiver and Innovative should be granted leave to file a Surreply in Opposition to OCLC’s Motion to Dismiss⁵⁹ in response to OCLC’s Reply memorandum. Discovery, including initial disclosures, has been staying, pending a ruling on OCLC’s Motion to Dismiss.⁶⁰

a. Is III “Hiding” Behind SkyRiver?⁶¹

One question raised by the lawsuit is why SkyRiver and III are suing together. After all, SkyRiver is a bibliographic utility and cataloging services provider, III is an ILS vendor and they don’t share the same library services marketplace. Unlike politics, antitrust lawsuits don’t ordinarily make for strange bedfellows. At first glance, the complaint’s dominant allegation is that OCLC is maintaining artificially high prices for libraries who choose SkyRiver as their Cataloging service or bibliographic utility, in an attempt to starve out SkyRiver as a competitor.⁶² Such allegations, if true, would likely be sufficient evidence of

⁵⁶ *Id.* Neither OCLC nor SkyRiver has transparent pricing practices, and pricing information for library services is notoriously difficult to obtain. SkyRiver alleges OCLC charges different prices to different members, and according to one member of the blogosphere, SkyRiverSkeptic, the SkyRiver pricing model is to simply take an institution’s OCLC cataloging charges and knock 20% off the top. SkyRiverSkeptic, comment to *OCLC’s Crisis Moment*, FREE RANGE LIBRARIAN (Aug. 4, 2010, 10:54 AM), <http://freerangelibrarian.com/2010/07/30/oclc-in-crisis>.

⁵⁷ Hadro, OCLC and MSU at Impasse over SkyRiver, *supra* note 54.

⁵⁸ Order Granting Mot. to Transfer Venue.

⁵⁹ “A movant’s second supplemental response to another party’s opposition to a motion.” BLACK’S LAW DICTIONARY 1582 (9TH ED. 2009). i.e., a party (in this case, OCLC) files a motion. The opposing party files their opposition, the moving party then files a reply memorandum in support of their initial motion, and then the opposing party may request permission to file a surreply in response to the moving party’s reply memorandum.

⁶⁰ Order Granting Mot. to Stay, Apr. 14, 2011.

⁶¹ Norman Oder, *Lawsuit Follow-Up: Is OCLC a Company or a Cooperative? Is III “Hiding” Behind SkyRiver*, LIBR. J. INSIDER (Jul. 30, 2010), <http://blog.libraryjournal.com/ljinsider/2010/07/30/lawsuit-follow-up-is-oclc-a-company-or-a-cooperative-is-iii-hiding-behind-skyriver>.

⁶² Speaking to BNA’s Daily Report for Executives, Arthur Shartis, outside counsel for SkyRiver, accused OCLC of “intimidat[ing] schools purchasing [cataloging and bibliographic utility] services [from SkyRiver] by raising their fees for access to OCLC’s WorldCat ILL tools.” Heather M. Rothman & Diane Freda, *Grassley Seeks Estimate of Nonprofit Tax Exemption, Putting Organizations on Edge*, Daily Rep. Exec. (BNA), No. 49, at J-1 (March 14, 2011).

anti-competitive behavior, but this still does not explain III's presence as a plaintiff. So what's going on?

Technically, SkyRiver is suing regarding OCLC's purported monopoly in the bibliographic data, cataloging services, and ILL markets, and Innovative is suing regarding OCLC's purported attempt to monopolize the ILS market. Both SkyRiver and III are Jerry Kline companies, and good question to ask is why III is entering the bibliographic utility and cataloguing business. An equally good question to ask is why OCLC is getting into the ILS business. Certainly III has been losing clients to OCLC, as OCLC has entered the market for discovery platforms and OPACs, and one of the frequent refrains heard in the complaint is that, by refusing to allow for-profit firms access to their store of catalog records and bibliographic data, OCLC has been stifling its competitors' innovation.⁶³ III must be deathly afraid of what will happen to them when OCLC's ILS is released into the market and is seeking to preserve their market share and fight back any way it can.

OCLC's path to creating an ILS began in 2008, with the introduction of WorldCat Local, locally-branded single search box access to both your library and global library materials.⁶⁴ In 2009, they introduced WorldCat Local "quick start," which lists your library's holdings first in search results, followed by the results of other WorldCat libraries, and integrating OCLC resource-sharing services. OCLC's WorldCat Navigator, a resource sharing service, was also introduced that year.

WorldCat is essentially the first-ever public view of the data store housed by OCLC. In creating Web-Scale Management Services (WMS), OCLC is essentially designing the back end of an integrated library system, library operations, to increase functionality with current OCLC services, take advantage of OCLC's resources, especially it's ILL and copy-cataloging services and move library automation systems to the cloud.⁶⁵ These are advantages III cannot

⁶³ See, e.g., Compl. § 78. Bradford Lee Eden, in Information Technology & Libraries notes that: "The appearance of WorldCat Local will have a tremendous impact on the disappearance of proprietary vendor OPACs. There will no longer be a need for an integrated library system (ILS); with WorldCat Local, the majority of the world's MARC bibliographic records are available in a Library 2.0 format. The only things missing are some type of inventory and acquisitions module that can be formatted locally and a circulation module. If OCLC could focus their programming efforts on these two services and integrate them into WorldCat Local, library administrators and systems staff would no longer have to deal with proprietary and clunky OPACs (and their huge budgetary lines), but could use the power of Web 2.0 (and hopefully 3.0) tools and services to better position themselves in the new information marketplace." *The New User Environment: The End of Technical Services*, Info. Tech. & Libr., June 2010, at 93, 95.

⁶⁴ *WorldCat Local at a Glance*, OCLC, <http://www.oclc.org/us/en/worldcatlocal/about/default.htm> (last visited May 9, 2011).

⁶⁵ Cloud-computing refers to storing needed applications and information remotely, so that a user accesses it through minimal software or a web browser via their own terminal, in contrast to having the software and data stored on a local server or their personal computer. Moving operations such as an ILS to the cloud allow a library to focus on the actual business of a library, such as cataloging and services, without having to expend resources on maintaining and upgrading software and hardware locally. However, moving to the cloud is not without risk, as was seen in late April when the Amazon cloud malfunctioned, and several popular services, such as CALI,

possibly hope to offer libraries through Millennium without access to OCLC databases and records. If the future of library services is headed towards global access to library records and resource sharing, III's ability to successfully compete in the new environment will be substantially hobbled without access to OCLC's massive datastore.

b. The Complaint

Formally, Innovative Interfaces, Incorporated and SkyRiver Technology Solutions allege that OCLC has violated § 2 of the Sherman Act for Monopolization and Attempted Monopolization and § 1 of the Sherman Act for Unlawful Exclusionary Agreements and Unlawful Tying Arrangements⁶⁶, as well as alleging violations of the California Business and Professions Code for unlawful restraints of trade, unlawful tying arrangements, and unfair competition.⁶⁷ According to paragraph 1 of the complaint, OCLC "is unlawfully monopolizing the bibliographic data, cataloging service and interlibrary lending markets and is attempting to monopolize the market for integrated library systems by anticompetitive and exclusionary agreements, policies and practices."⁶⁸ SkyRiver and Innovative claim OCLC is not a true cooperative, because members "do not share its revenues or control its management, operations or policies. and"⁶⁹ that plaintiffs "have been injured and competition in the relevant markets has been harmed by OCLC's exclusionary and anticompetitive agreements and conduct." This action "is brought to obtain relief for the injuries suffered by plaintiffs, including access to OCLC's unlawfully acquired database, and for the benefit of all libraries, their patrons and consumer by assuring that competition exists in all aspects of electronic bibliographic data compilation and library systems and services."⁷⁰

Central to the claims for relief is a demand for full access to the WorldCat database. Plaintiff SkyRiver assert that cataloging and ILL services "cannot effectively operate without constant access to the bibliographic database"⁷¹ and that there are no reasonably available alternatives.⁷² Similarly, plaintiffs contend that because WorldCat is the only option for this information, libraries are held captive by OCLC and essentially forced to participate in WorldCat. While WorldCat makes limited information publicly available, there is no way to fully access OCLC's data store and integrate it into a library's system without

Foursquare.com, and portions of the New York Times were unavailable for a few days. *See* Steve Lohr, *Amazon's Trouble Raises Cloud Computing Doubts*, N.Y. TIMES, April 23, 2011, at B1.

⁶⁶ A tying arrangement is "an agreement by a party to sell one product . . . Only on the condition that the buyer also purchase a different (or tied) product, or at least agrees he will not purchase that product from any other supplier." Mot. to Dismiss ¶ 28.

⁶⁷ This paper does not discuss SkyRiver/Innovative's claims of violations of the California Business and Professional code because the Sherman Act violations are far more interesting and relevant.

⁶⁸ Compl. ¶ 1

⁶⁹ Compl. ¶ 15

⁷⁰ Compl. ¶ 6

⁷¹ Compl. ¶ 20.

⁷² Compl. ¶¶ 20-22.

participating in WorldCat and subscribing to their services.⁷³ SkyRiver and Innovative also contend that much of the reason there is no readily available alternative to WorldCat is because there are high barriers to entry in these markets.⁷⁴

Not surprisingly, plaintiffs contend that the metadata held by OCLC is part of the public domain or created by individual OCLC member libraries, and thus, is not owned by OCLC.⁷⁵ Indeed, the complaint's oft-repeated refrain is that OCLC refuses to allow for-profit firms access to its database for commercial purposes.⁷⁶

In addition to the claims that OCLC has monopolized and is attempting to monopolize markets for library services, SkyRiver alleges OCLC is using unlawful exclusionary agreements and tying arrangements. SkyRiver contends that restrains trade by refusing to allow for-profit entities access to the WorldCat database and requiring members to deal principally with OCLC through the limits on record sharing contained in the OCLC record use policy and coerces libraries into using OCLC, rather than SkyRiver, for cataloging by prohibitively pricing ILL services.

SkyRiver and Innovative argue that “the inability to be a full participant in OCLC’s ILL service precludes certain types of libraries from obtaining state and federal grants or other aid or tax subsidy assistance.”⁷⁷ Full participation in ILL is a factor in maintaining a library’s status as a “library of last resort.” Thus, to the extent that purchasing both SkyRiver’s cataloging services and subscribing to OCLC’s ILL services is too costly for a library for a library’s budget, to keep their designated status, a library would need to forgo purchasing SkyRiver’s lower-priced cataloging services in favor of maintaining access to ILL services.⁷⁸ Similarly, SkyRiver and Innovative accuse OCLC of using pilot programs as an attempt to avoid universities’ public procurement requirements.⁷⁹

c. The Motion to Dismiss

Predictably, OCLC has moved to dismiss the SkyRiver/Innovative’s complaint in its entirety, stating “[t]his case arises because Plaintiffs believe they are entitled to free access to OCLC’s proprietary WorldCat service” and argues they are merely engaging in behavior expected of competitors—vigorous competition at fair prices for better products.⁸⁰ OCLC also brings up a valid point— SkyRiver and Innovative have access to other sources of records, like the Library of Congress,⁸¹ leading one to the conclusion that it is primarily the library

⁷³ Compl. ¶ 23.

⁷⁴ Compl. ¶ Note, however, that SkyRiver seems to have entered the market just fine.

⁷⁵ Compl. ¶ 4.

⁷⁶ See, e.g., Compl. ¶¶ 5, 26, 28, 29, 34, 35, 36, 38, 39, 65, 76, 82, 84, 89, 90, 91, 92, 98(a), (b), 101, 116(a),(b).

⁷⁷ Compl. ¶ 52.

⁷⁸ *Id.*

⁷⁹ Compl. ¶ 58.

⁸⁰ Mem. in Supp. of Def’s Mot. to Dismiss, § 1.

⁸¹ *Id.* at ¶ 7.

holdings data and OCLC's imminent release of a competing ILS that are really at issue in this case.

The primary thrust of OCLC's memorandum in support of its motion to dismiss is that the plaintiffs have failed to include sufficient facts to support their allegations, but instead have merely made a series of legal conclusions.⁸² In particular, SkyRiver and Innovative have failed to define the markets at issue and plead with particularity that they have been harmed, as general allegations of harm to competition are insufficient. Even if OCLC is found to be a monopoly, it is not necessarily in violation of the Sherman Act, which does not prevent monopolies, but rather makes illegal "the willful acquisition or maintenance of that power as distinguished from growth or development as a consequence of a superior product, business acumen, or historic accident."⁸³

OCLC argues that the unlawful exclusionary agreements claim fails because the complaint merely alleges "the existence of agreements similar to those that have been upheld under Section 1 of the Sherman Act as legitimate vertical agreements."⁸⁴ The tying claim also arguably falls flat because SkyRiver and Innovative have failed to allege the elements of a tying claim under the Sherman Act: actual coercion of a purchase to buy a second product from the seller that it would otherwise not buy or would buy from another vendor.⁸⁵ In response to the specific allegations that OCLC is attempting to force SkyRiver out of the market by cutting prices for cataloging services and raising the prices for record uploading for those libraries who choose SkyRiver over OCLC for their cataloging services, OCLC argues this is more closely akin to offering a package discount for subscription services over the price of separate services, which a vendor is legally allowed to do.⁸⁶

d. Opposition Memorandum to the Motion to Dismiss

In their opposition memorandum, SkyRiver and Innovative accuse OCLC of "mischaracterizing its unlawful punitive pricing and tying arrangements as 'vigorous competition.'" SkyRiver and Innovative respond to OCLC's allegations regarding failure to plead with particularity by clearly stating that OCLC is using punitive pricing to try and drive SkyRiver from the bibliographic data and cataloging market, but do not provide any further specific allegations as to how, exactly, OCLC is injuring Innovative.

One interesting point raised in the motion to dismiss and the opposition memorandum is that OCLC's current record-sharing policy was implemented

⁸² Under the standard set forth in *Ashcroft v. Iqbal*, "[w]hile legal conclusions can provide the framework of a complaint, they must be supported by factual allegations' that if accepted as true, 'state a claim to relief that is plausible on its face,' that is, a set of facts that permit the court to do more than 'infer more than a mere possibility of misconduct' and instead allow 'the court to draw the reasonable inference that the defendant is liable for the misconduct alleged.'" 129 S. Ct. 1937, 1950 (2009).

⁸³ Def.'s Mot. to Dismiss ¶ 14.

⁸⁴ *Id.*

⁸⁵ *Id.*

⁸⁶ Compl. ¶ 80, Mot. to Dismiss ¶ 18-19.

after the complaint was filed, and that SkyRiver and Innovative are pleading under the prior policy which was “exclusionary” and has “enabled OCLC to obtain and maintain the monopoly power it was today.” It’s an interesting argument, given that the policy being pleaded is no longer in effect and that the current records sharing policy was drafted with input from the library community and appears to be successful, as no one from the library community has filed suit against OCLC claiming the records sharing policy has created a monopoly and denied them their vendor of choice.

IV. ANALYSIS

a. How does a non-profit work in the marketplace?

One issue that came up during the controversy over OCLC’s proposed Record Use Policy and has reappeared in the SkyRiver/Innovative Interfaces lawsuit is OCLC’s non-profit status. While OCLC is a registered non-profit, they have also acquired a number of commercial enterprises, many of which they are continuing to run as for-profit entities.⁸⁷ Legally, there is a simple explanation: “Non-profit organizations can acquire for-profit entities . . . Provided they report the income and pay appropriate taxes as a result of those operations within the local jurisdiction.”⁸⁸ Yet this doesn’t answer the more elusive question as to if and how an organization can simultaneously run both a non-profit member cooperative and commercial enterprises successfully. Historically, OCLC has prioritized having financial independence, and the organization has always been determined to pay its own way.⁸⁹ Because OCLC is technically a non-profit, they are not required to pay taxes on their earnings. They have pursued an aggressive acquisitions policy, and purchased the last of their competitors in the cataloguing services and bibliographic utilities markets in 2006,⁹⁰ leaving OCLC as the sole option for cataloguing services until SkyRiver’s arrival.

This is not the first time OCLC’s status as a non-profit entity has been questioned.⁹¹ In 1980, OCLC filed an application for a real property exemption

⁸⁷ See Appendix D.

⁸⁸ Richard Wallis, *OCLC— Questions Answers and an Open Letter*, PANLIBUS, (Nov. 21, 2008, 11:50 AM), <http://blogs.talis.com/panlibus/archives/2008/11/oclc-questions-answers-and-an-open-letter.php>.

⁸⁹ K. Wayne Smith, *OCLC: Yesterday, Today, and Tomorrow*, 25 J. LIBR. ADMIN., 251, 253 (1998). In response to recent heightened scrutiny, caused by Senator Charles Gaffney’s suggestion that Congress take a closer look at non-profit income tax exemptions, OCLC’s president and CEO Jay Jordan stated that OCLC essentially “breaks even” and that all resources are used to fund development and user programs. Rothman and Freda, *supra* note 62.

⁹⁰ Compl. ¶ 6.

⁹¹ There are different exemptions being discussed here: OCLC’s status as a non-profit under federal versus state law, and exemptions for real property and income. In the current lawsuit, SkyRiver and Innovative are questioning OCLC’s exemption from federal income tax and its status as a registered 501(c)(3). OCLC’s previous defense of its status as a non-profit entity arose when it was seeking a real property tax exemption under Ohio state law.

with the Ohio Tax Commissioner, which was denied.⁹² The Board of Tax Appeals affirmed the denial of the exemption,⁹³ as did the Ohio Supreme Court.⁹⁴ All courts opined that OCLC was essentially a data-processing corporation, indistinguishable from its for-profit counterparts. In 1985, the Ohio Legislature responded by adding a section to the Ohio Revised Code, exempting registered 501(c)(3) corporations from property taxes where the property is used for library technology development.⁹⁵

OCLC operates in what has become a gray area of the federal tax code: “fees for service” non-profits, such as universities and hospitals. Under current provisions in the tax code, OCLC is exempt from paying taxes on its business activities because it also provides a social benefit similar to a hospital with a sliding fee scale—an activity or service a for-profit entity would not have an interest in providing. In early March 2011, Senator Charles Grassley (R-IA) suggested Congress calculate the cost of this exemption to consider whether fee-for-service non-profits are practically any different than their for-profit competitors and if the value received from their charitable activities is worth the loss of tax revenue sustained by the exemption. This would also ensure that for-profits providing similar services are able to compete effectively in the marketplace.⁹⁶ While Senator Grassley is not interested in pursuing this particular case, he did mention the OCLC/SkyRiver lawsuit as an example of the underlying issue of a non-profit organization who receives a majority of its revenue not from charitable donations but from charging for the services it offers.⁹⁷

b. What’s next?

What will happen if OCLC loses the SkyRiver lawsuit? Will more bibliographic utilities spring up, blowing the market wide open with access to bibliographic data? Is it possible to estimate the size of the market? Would the market be saturated with just OCLC and SkyRiver? Would we all benefit if OCLC has some competition?

Certainly it might drive prices down for cataloging services and interlibrary loan down. But bear in mind that at present, OCLC is the only union catalog for the United States—there is no replacement. This alone should be an incentive to ensure OCLC’s continued ability to function.⁹⁸ Moreover, according to Larry Alford, the Chair of OCLC’s Board of Trustees, of the 170 million

⁹² Peter E. Murray, *A History of the OCLC Tax-Exemption Status*, DISRUPTIVE LIBRARY TECHNOLOGY JESTER (Oct. 5, 2010, 11:47 PM), <http://dltj.org/article/oclc-tax-exemption-status>.

⁹³ OCLC Online Computer Library Center, Inc. v. Robert R. Kinney, Commissioner of Tax Equalization, CASE NO. 81-D-602 (REAL PROPERTY TAX), STATE OF OHIO -- BOARD OF TAX APPEALS, 1983 Ohio Tax LEXIS 162, October 11, 1983.

⁹⁴ OCLC Online Computer Library Center, Inc. v. Kinney, Commr., 464 N.E.2d 572 (1984).

⁹⁵ Library Research and Services Exemption, R.C. § 5709.72 (2011 Thompson Reuters).

⁹⁶ Rothman and Freda, *supra* note 61.

⁹⁷ *Id.*

⁹⁸ For a further discussion of this point, see Larry Alford, *Governing a Global Cooperative*, 49 J. Libr. Admin 567, 570 (2009) (noting that while OCLC is a not-for-profit organization, it is also “not-for-loss” and must operate in a business-like way to be able to meet the costs of operation and invest in technology and innovation for the future).

WorldCat records, about 50 million of the more popular records generate the majority of OCLC's revenue, supporting the remaining 120 million low use records.⁹⁹ These low-use records make it possible for other libraries to locate and borrow unique or rare materials for their users.¹⁰⁰ By selecting an alternative cataloging service and not providing their cataloging records to OCLC, but still wishing to participate in OCLC's resource sharing aspects makes cataloging rare and unique materials both more difficult and more costly for members that do fully participate in OCLC.

One serious consideration is that OCLC also invests in research and innovation. OCLC was founded as, and continues to be a not-for-profit organization,

“not a commercial enterprise to make profits for its owner. . . it is an enterprise whose purpose is to foster the sharing of information through libraries (and now allied institutions, such as museums and archives) of the world, to strengthen libraries, and to reduce the rate of rise of costs for the operation of those libraries. While the ways in which OCLC supports that purpose must continue to change over time, especially as the information landscape changes, this fundamental purpose has not changed.”¹⁰¹

The same cannot be said for III and SkyRiver, both of which are for-profit entities and are thus limited to producing profitable, but not necessarily innovative, services and applications. The dominant refrain in the complaint is how unfair it is that SkyRiver and Innovative are being forced to compete with a non-profit organization who won't give them access to a resource that has been painstakingly compiled over four decades. Are we willing to give up the opportunity to collaborate with our peer institutions and participate in the development of programs and resources we want and have suggested, the ability to petition for a redress of grievances when OCLC does something we don't like and the assurance our voices and suggestions will actually be heard for cheaper bibliographic data now, only to be told down the road we can only have what SkyRiver wants us to have?

⁹⁹ Larry Alford, the Value of the OCLC Cooperative, Jan. 15, 2010, at 3. Available at http://www.oclc.org/us/en/multimedia/2010/files/arc/Larry_Alford_essay.pdf.

¹⁰⁰ *Id.* For example, during the Gallagher Law Library's Inventory Control Project, we uncovered a copy of Иностранное гражданское и торговое право учебник для вузов и практическое пособие, составлен бригадой под руководством (Inostrannoe grazhdanskoe I torgovoe pravo: uchebnik dlya vuzov I prakticheskoe posobie, sostavlenn brigadoi pod rukovodstvom S.I. Raevicha, or PRIVATE FOREIGN AND COMMERCIAL LAW, A TEXTBOOK FOR GRADUATE STUDENTS, EDITED UNDER THE SUPERVISION OF RAEVICH by the LEGAL SECTION OF THE INSTITUTE OF MONOPOLY OF FOREIGN TRADE, Moscow (1933). Unfortunately, no one on the Gallagher Staff can read Cyrillic. We managed to find a catalog record on OCLC, using a Romanized transcription of the author's name and the date of publication, and discovered that this title is only held in by Harvard, Columbia, and the Library of Congress, solely in microform. It appears the Gallagher Law Library has the only print copy available. Without a fellow member institution having contributed the record, we would not be able to even consider cataloging this book and making it available to users.

¹⁰¹ Alford, *supra* note 97 at 569.

It's important to remember that OCLC is a member-driven institution, and as such, can only be as good as its members. Any union catalog large enough to accommodate records and holdings information for the entire United States is going to be unwieldy, populated with a mixture of excellent and terrible catalog records, and have some governance issues. At present, OCLC is still a not-for-profit organization, investing in research and development on behalf of its members. Whatever SkyRiver's impetus in providing lower cost services to smaller libraries is, they remain a for-profit entity, whose bottom line will always need to be making sufficient profit to sustain itself. While OCLC likely has some explaining to do in this case, consider the outcome from OCLC's previous experience with transparency issues—members were able to make their voices heard, a committee comprised of members and OCLC officers was created, recommendations were made and taken, and ultimately, the new Record Use Policy was revoked and replaced with one more responsive to member concerns. Good luck getting Jerry Kline to take your phone call when he does something you don't like.

It is highly unlikely, however, that OCLC will lose the lawsuit. There is a high standard for proving injury from anti-competitive behavior, and the latter half of the 20th century has been notoriously soft on anti-trust laws.¹⁰² Given the current state of the legal publishing industry¹⁰³, it seems doubtful the court would reorganize the library services marketplace by breaking OCLC down into "Baby Bells."¹⁰⁴

If OCLC wins, they'll still have received intense scrutiny from the courts, the press, the library world, and potentially Congress. They may well need to fight again to retain their status as a non-profit. Hopefully, the SkyRiver lawsuit has raised awareness and gotten the library community thinking about a few of the important issues in the rapidly changing information sphere, such as who owns bibliographic data and catalog records? How can that information be most effectively used for the benefit of all, both users and institutions? What do we, as members, want from OCLC? How can we best leverage our existing assets to meet the needs of the future? Moreover, both the previous challenges incurred with the change in the Record Use Policy and the allegations made by SkyRiver should both serve as a reminder to members that it is our responsibility to keep an eye on OCLC and ensure it conforms to member expectations.

Yet it's worth taking a look at what is likely to happen to OCLC in the immediate future. The library world is once again about to undergo a paradigm shift as the next generation of library software arrives on the scene. With the availability of cloud computing and SaaS¹⁰⁵, grid computing, the ubiquity of

¹⁰² See KENDALL F. SVENGALIS, LEGAL INFORMATION BUYER'S GUIDE & REFERENCE MANUAL, 10 (2009) (accusing the Department of Justice's Antitrust Division as "solidif[ying] their reputation as pusillanimous apologists for pro-monopoly antitrust policy" during the Thompson/West acquisitions in 1995).

¹⁰³ See, e.g., KENDALL F. SVENGALIS, LEGAL INFORMATION BUYER'S GUIDE & REFERENCE MANUAL, 3-24 (2009).

¹⁰⁴ Most of which have merged anyway, leaving us with just three regional telephone companies in the US.

¹⁰⁵ See *supra* n. 65. SaaS, or Software as a Service is related to cloud computing, and refers to a model where data and the software are hosted remotely and a user accesses them through a web

mobile devices, and changes in how users search for information, a new way of thinking about library systems and services is not only needed, but also necessary.¹⁰⁶ Of all the vendors in the various markets for library services, OCLC seems best positioned to provide a fresh perspective. They have the catalog record data and holdings information for most of the libraries in the United States, and certainly all the major ones, an unparalleled understanding of how library resources and services have changed in the past half-century, and the resources and user base to experiment with what libraries need respond to changing patron preferences.

There is clearly a divide in the library world about what OCLC's greatest strength is and what its future mission should be. Is it a guardian of the storehouse of bibliographic data or is it a provider of valuable services who should be sharing access to what happens to be the greatest union catalog ever created?

According to Carl Grant of Ex Libris, "all of these next-generation systems would benefit immensely from access to a massive store of *expanded, networked, linked, and shared* library data."¹⁰⁷ He, however, does not think OCLC is presently in a position to do this. He feels OCLC has strayed too far from its roots as a cooperative, and that there is either a need for a new cooperative, focusing on developing and maintaining a database of information, or for OCLC to return to its roots. Grant argues that OCLC has weakened its position as a provider of shared content and services by acquiring for-profit companies and continuing to run them as such. Under his view, OCLC has clearly been struggling to find a new business model, and should return to what it does best, which would also work in conjunction with, not against, commercial library service vendors.¹⁰⁸ As Chief Librarian of Ex Libris, a competitor in the markets for several library services, however, Grant's position may be biased in favor of keeping his marketshare safe from OCLC. Some of this bias comes to light when he suggests vendors should be granted for-fee access to OCLC content.

Terry Reese, a librarian at Oregon State University wonders "What Would it look like if OCLC was broken up?"¹⁰⁹ Terry argues that OCLC has essentially become "an organization with two distinct facets: a membership component and a vendor component," and that their ability to leverage the Library Commons service "unfairly skews the ability for both commercial and non-commercial entities to provide innovative services . . ." because OCLC is essentially treating WorldCat as its own personal data store.¹¹⁰ He recommends either removing the

browser on a local terminal. Broadly, the term refers to applications such as Google's Gmail, or any other web-based email client, however, the term is more typically used narrowly to describe a business application, frequently where there is a branded software application installed on the user's computer to access to the data, such as with OCLC's Connexion.

¹⁰⁶ See, e.g., Carl Grant, *The Cooperative We Need: Open and Collaborative Library Content*, 30 Pub. Libr. Q., 34 (2011).

¹⁰⁷ *Id.* at 34.

¹⁰⁸ *Id.* at 38-39.

¹⁰⁹ A very similar solution is proposed by Rick Mason at Libology. See Rick Mason, *One Possible OCLC Solution*, LIBOLOGY (Aug. 2 2010), <http://www.libology.com/blog/2010/08/02/one-possible-oclc-solution.html>.

¹¹⁰ Terry Reese, *What would it look like if OCLC was broken up*, TERRY'S WORKLOG (Nov. 3, 2008), <http://people.oregonstate.edu/~reeseet/blog/archives/579>,

barriers to access to allow for both commercial and non-commercial use of the WorldCat data, thereby allowing vendors to create products that could compete with WorldCat Local or spinning off the WorldCat Local/vendor portion of OCLC into a separate business.¹¹¹ Terry also mentions the converse argument, that OCLC's restriction of access to the WorldCat database is ultimately a good thing, because it finally gives the library community some leverage over vendors.¹¹²

It's also possible that OCLC is a relic of an earlier time. Kent Anderson, the Editor-in-Chief of the Scholarly Kitchen blog, proposes that OCLC, an innovative idea when networking individuals through scarce computer resources was scarce and expensive, is rapidly being challenged by the power of social media.¹¹³ SkyRiver and Innovative Interfaces argue that OCLC has "obtained a comprehensive database that cannot practically be duplicated today and for which there is no substitute."¹¹⁴ Yet it has taken them forty years to do so. LibraryThing, which was begun in 2005, has over fifty-eight million catalogued books and can search 690 libraries, plus the Library of Congress.¹¹⁵ Over 240 libraries use LibraryThing to enhance their own catalog content. Its OverCat catalog has thirty-two million records, making it the second largest searchable database of records, next to OCLC¹¹⁶ and unlimited use of the catalog is available for a twenty-five dollar lifetime membership. So it certainly seems possible that OCLC's database can (and will soon) be duplicated. Moreover, OCLC has been adding social media features to WorldCat, such as reviews and tagging, both a clear step towards becoming social media, and a likely response to user wants and changing user expectations.

In contrast to others in the field, Karen Coombs of LibraryChic feels that OCLC's greatest asset is the services it offers. Bibliographic data, she suggests, is available from other locations, particularly Amazon.com and LibraryThing¹¹⁷, and that OCLC is uniquely positioned to "gather and aggregate data from disparate source[s] and make that data available in open standards compliant machine-readable ways, by providing service architectures, and by acting as a global application services provider."¹¹⁸

Both sides of the argument seem to make it clear there is some sort of future role for OCLC to play as a guardian and facilitator of shared library content. Ultimately, the focus should be on the end user, and how libraries can

¹¹¹ *Id.*

¹¹² *Id.*

¹¹³ OCLC: Indispensable Database Collaborative or Social Media Prelude?

¹¹⁴ Mem. in Opp. to Def's Mot. to Dismiss ¶ 21.

¹¹⁵ *Press Information*, LIBRARYTHING, <http://www.librarything.com/press> (last visited May 9, 2011).

¹¹⁶ *Announcing OverCat*, LIBRARYTHING BLOG, (Jun. 9, 2010), <http://www.librarything.com/blogs/librarything/2010/06/announcing-overcat>.

¹¹⁷ Karen Coyle also argues that that "It's not the bib data that makes WorldCat valuable to the library community, it's the library holdings data attached to those bib records." Karen Coyle, Comment on Rob Styles, *OCLC, Record Usage, Copyright, Contracts and the Law*, I REALLY DON'T KNOW, (Nov. 6, 2008), <http://dynamicorange.com/2008/11/06/oclc-record-usage-copyright-contracts-and-the-law>.

¹¹⁸ *Id.*

best serve patrons and keep them from drifting away from the library and never returning. Libraries have been behind the curve recently on many things—web search results are dominated by e-commerce, and many library catalogs are just now starting to include features pioneered by Facebook, Amazon.com, and Google. While SkyRiver may be cheaper¹¹⁹, as librarians, the focus should be on providing reliable quality and service to users over time.¹²⁰ When a user does a web search for a book, and the first results that pop up are from Amazon and the Google eBookstore, libraries are already losing the battle.¹²¹ Libraries should fight for better access to their materials, such as having local library holdings of an item be one of the top search results. With the breadth and depth of its holdings, OCLC is likely the best candidate to support this vision of the future, if it can continue to respond to member concerns so its own users don't become alienated.

¹¹⁹ For now— some members of the library community have accused III of having “charge early, charge often” pricing tendencies, which would likely be replicated by SkyRiver, considering they're run by the same people.

¹²⁰ Thanks to Karen Schneider for initially proposing this idea. See *Karen Schneider, OCLC's Crisis Moment*, FREE RANGE LIBRARIAN (Aug. 4, 2010, 10:54 AM), <http://freerangelibrarian.com/2010/07/30/oclc-in-crisis>. See also Alford, *Governing a Global Cooperative*, *supra* note 97, for a discussion of some of OCLC's pro bono activities over the years, such as helping the FBI identify the owners of stolen library materials, hosting CONSER, and helping libraries recreate catalogs destroyed by natural disasters.

¹²¹ See, e.g., Aaron Swartz, *Stealing Your Library: The OCLC Powergrab*, Raw Thought (Nov. 13, 2008) <http://www.aaronsw.com/weblog/oclcscam>. Aaron Swartz is a co-founder of Open Library, <http://openlibrary.org/>.

Appendix A

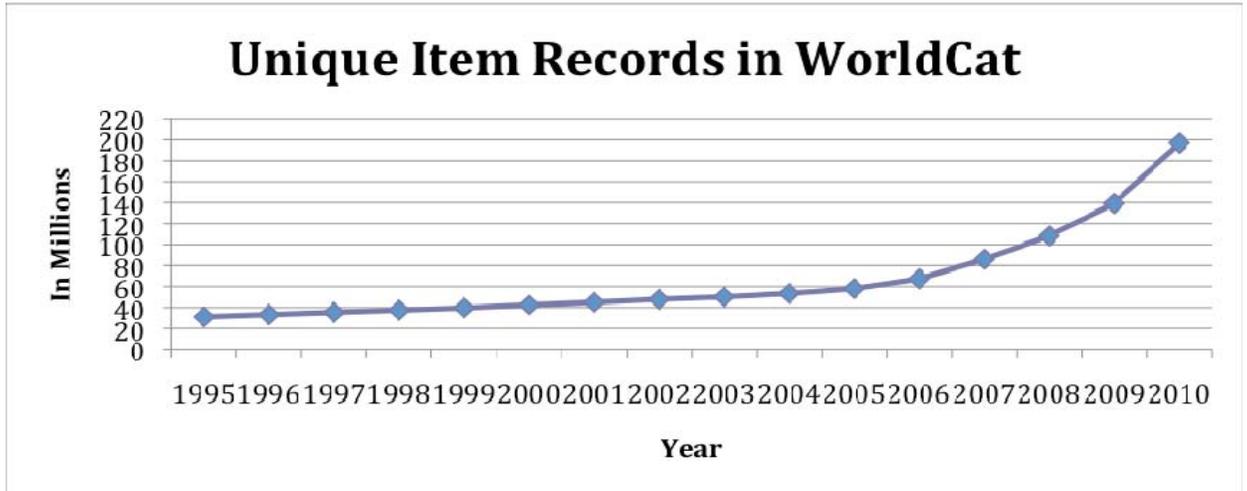


Chart compiled from OCLC Annual Report Data

Appendix B

The issue of data capture from library catalogs recently presented itself in an interesting fashion at the University of Washington. The law school, in conjunction with the law library, has a policy of cataloging and adding student seminar papers to library's collection. Records of these papers should only show up in two places, MARIAN, the Gallagher Law Library's catalog and WorldCat. An alumnus of the law school noticed his former seminar paper listed for sale on Amazon.com and was understandably concerned. The topic came up during class, and we theorized that Amazon had been crawling our catalog, seeking titles to add to their catalog, which naturally, turned into a discussion on who owns catalog records. Later, I decided to delve into this intriguing issue. The Law Library catalogs student papers as a serial, giving them all the uniform title of "Student Papers/University of Washington, School of Law." This gave me an easy way to search Amazon, and searching on this title retrieved an astounding 1,596 student papers.

Books > "Student Papers/University of Washington, School of Law"

Showing 1 - 12 of 1,594 Results Sort by Relevance

-  **Wandering the mental commitment swamp in search of the due process bird (University of Washington. School of Law. Student papers)** by Stephen E Oliver (1975)
Formats Buy new New from Used from
Unknown Binding
Out of Print-Limited Availability
-  **Nuclear reactor safety: The need for adjudicatory hearings in the AEC rule-making process (University of Washington. School of Law. Student papers)** by John G Ziegler (1979)
Formats Buy new New from Used from
Unknown Binding
Out of Print-Limited Availability
-  **An attorney's primer on Alzheimer's disease: Are you ready? (Student papers / University of Washington, School of Law)** by Annette G DeBellefeuille (1989)
Formats Buy new New from Used from
Unknown Binding \$210.00
-  **Slow growth zoning regulations: A valid use of the police power or a taking of private property for public use? (Student papers / University of Washington, School of Law)** by Gordon Charles Klug (1991)
Formats Buy new New from Used from
Unknown Binding
Out of Print-Limited Availability

While many were listed as being out-of-print and limited availability, remarkably, some could actually be purchased from an Amazon Marketplace Seller. I contacted Amazon to ask where I could locate a copy of a listed, but not for sale paper, "‘Celebrity goodwill’ should not be entertained as a marital asset under community property schemes for property distribution," and where Amazon obtained their out-of-print listings, but was informed simply that the book was out of print, and Amazon did not know when it would be back in print. The question of where and how they obtained listings for out-of-print materials was never answered.

Starting in December 2003, Google has had an agreement with OCLC to access metadata from WorldCat. *See* So, Can Google Use OCLC Records? Yes, But. Norman Oder, Library Journal, 09/10/2009, <http://www.libraryjournal.com/article/CA6695887.html>. When you search a book on Google, one of the location options in the "Get this Book" column is to find the book in a library near you. Selecting this link takes you to WorldCat. I tracked

the path of one catalog record from MARIAN, the Gallagher Law Library's Catalog to Amazon:
The original listing in the library catalog:

AUTHOR [DeBellefeuille, Annette G](#) [Permanent link for this record](#)

TITLE [An attorney's primer on Alzheimer's disease : are you ready? / Annette G. deBellefeuille](#)

PUBLICATION INFORMATION 1989

LOCATION	CALL NO.	STATUS
Reference Area Microfiche	KF480.5.A6 D42 1989 c.2	CHECK SHELVES

DESCRIPTION 43 leaves ; 28 cm

SERIES [Student papers \(University of Washington. School of Law\)](#)

NOTE "B595 Mental Health & the Law, Mental Health Law Seminar winter/spring 1989, Professor Ralph Johnson."

BIBLIOGRAPHY Includes bibliographical references

LOCAL NOTE Another copy: 1 microfiche

SUBJECT [Alzheimer's disease](#)
[Mental health laws -- United States](#)
[Attorney and client -- United States](#)

CONFERENCE [Mental Health & the Law, Law B595 \(1989\)](#)

OCLC 41779956

The listing on Google books:

Google books [An attorney's primer on Alzheimer's disease : are yo](#) Search Books [Advanced Book Search](#)

An attorney's primer on Alzheimer's disease: are you ready? [Add to My Library](#)

 [Annette G. DeBellefeuille, Ralph Whitney Johnson](#)
0 Reviews
1989 - 86 pages

[Get this book](#)
[Amazon](#)
[Find in a library](#)
All sellers >

[What people are saying](#) - [Write a review](#)

We haven't found any reviews in the usual places.

Bibliographic information

Title [An attorney's primer on Alzheimer's disease: are you ready?](#)
[Student papers](#)

Authors [Annette G. DeBellefeuille](#), [Ralph Whitney Johnson](#)

Published 1989

Length 86 pages

Subjects [Alzheimer's disease](#)
[Attorney and client](#)
[Mental health laws](#)

Export Citation [BIBTeX](#) [EndNote](#) [RefMan](#)

The listing of the paper for sale on Amazon:

Note: This item is only available from third-party sellers ([see all offers](#).)

An attorney's primer on Alzheimer's disease: Are you ready? (Student papers / University of Washington, School of Law) [Unknown Binding]
[Annette G. DeBellefeuille](#) (Author)
[Be the first to review this item](#) | [Like](#) (0)

Available from these sellers.

1 used from \$210.00

[See all buying options](#)

Have one to sell? [Sell yours here](#)

[Add to Wish List](#)

Share [Email](#) [Facebook](#) [Twitter](#)

Potentially, Amazon.com has been crawling Google for book listings and that is how the paper ended up being listed there, however, the issue remains unresolved and this is only a hypothetical consideration as to how and why the listings made their way onto Amazon.com.

Appendix C

Date Filed	#	Document Text
Jul 28, 2010		CASE DESIGNATED for Electronic Filing. (tn, COURT STAFF) [Transferred from California Northern on 11/12/2010.]
Jul 28, 2010	<u>4</u>	Certificate of Interested Persons or Entities filed by Plaintiffs Innovative Interfaces, Inc. & SkyRiver Technology Solutions, LLC identifying Other Affiliate Gerald M. Kline for Innovative Interfaces, Inc., SkyRiver Technology Solutions, LLC. (tn, COURT STAFF) (Filed on 7/28/2010) [Transferred from California Northern on 11/12/2010.]
Jul 28, 2010	<u>3</u>	ADR SCHEDULING ORDER: Joint Case Management Statement due 1/3/2011 & InitialCase Management Conference set for 1/10/2011 at 4:00 PM.. (tn, COURT STAFF) (Filed on 7/28/2010) [Transferred from California Northern on 11/12/2010.]
Jul 28, 2010	<u>2</u>	SUMMONS Issued as to Defendant OCLC Online Computer Library Center, Inc..(tn, COURT STAFF) (Filed on 7/28/2010) [Transferred from California Northern on 11/12/2010.]
Jul 28, 2010	<u>1</u>	COMPLAINT for Federal & State Antitrust Violations, Unfair Competition & Jury Trial Demanded - [Summons Issued] against OCLC Online Computer Library Center, Inc., [Filing Fee: \$350.00, Receipt Number 34611048637] Filed by Plaintiffs Innovative Interfaces, Inc. & SkyRiver Technology Solutions, LLC. (Attachments: #(1) Civil Cover Sheet). (tn, COURT STAFF) (Filed on 7/28/2010) [Transferred from California Northern on 11/12/2010.]
Jul 30, 2010	<u>5</u>	SUMMONS Returned Executed by Innovative Interfaces, Inc., SkyRiver Technology Solutions, LLC. OCLC Online Computer Library Center, Inc. served on 7/29/2010, answer due 8/19/2010. (Schaberg, Robert) (Filed on 7/30/2010) [Transferred from California Northern on 11/12/2010.]
Aug 4, 2010	<u>6</u>	Declination to Proceed Before a U.S. Magistrate Judge by Innovative Interfaces, Inc., SkyRiver Technology Solutions, LLC and Request for Reassignment To A United States District Judge. (Shartsis, Mary) (Filed on 8/4/2010) [Transferred from California Northern on 11/12/2010.]
Aug 5, 2010	<u>7</u>	CLERK'S NOTICE of Impending Reassignment to U.S. District Judge (ahy, COURT STAFF) (Filed on 8/5/2010) [Transferred from California Northern on 11/12/2010.]
Aug 6, 2010	<u>8</u>	ORDER REASSIGNING CASE. Case reassigned to Judge Hon. Jeffrey S. White for all further proceedings. Judge Magistrate Judge Bernard Zimmerman no longer assigned to the case.. Signed by Executive Committee on 8/6/10. (as, COURT STAFF) (Filed on 8/6/2010) [Transferred from California Northern on

		11/12/2010.]
Aug 12, 2010	<u>9</u>	INITIAL SCHEDULING CONFERENCE ORDER: Case Management Conference set for 1/14/2011 01:30 PM in Courtroom 11, 19th Floor, San Francisco. Case Management Statement due by 1/7/2011.. Signed by Judge Jeffrey S. White on 8/12/10. (jjoS, COURT STAFF) (Filed on 8/12/2010) [Transferred from California Northern on 11/12/2010.]
Aug 13, 2010	<u>10</u>	STIPULATION Stipulation and [Proposed] Order Deferring Response Date and Setting Briefing Schedule on Transfer Motion by OCLC Online Computer Library Center, Inc.. (Wisoff, Carl) (Filed on 8/13/2010) [Transferred from California Northern on 11/12/2010.]
Aug 20, 2010	<u>13</u>	Proposed Order re 12 MOTION for leave to appear in Pro Hac Vice (Filing fee \$ 210, receipt number 34611049597.) by OCLC Online Computer Library Center, Inc.. (hdj, COURT STAFF) (Filed on 8/20/2010) [Transferred from California Northern on 11/12/2010.]
Aug 20, 2010	<u>12</u>	MOTION for leave to appear in Pro Hac Vice-James A. Wilson (Filing fee \$ 210, receipt number 34611049597.) filed by OCLC Online Computer Library Center, Inc.. (hdj, COURT STAFF) (Filed on 8/20/2010) [Transferred from California Northern on 11/12/2010.]
Aug 23, 2010	<u>11</u>	ORDER GRANTING 10 Stipulation Deferring Response Date and Setting Briefing Schedule on Transfer Motion. Motion Hearing set for 10/29/2010 09:00 AM in Courtroom 11, 19th Floor, San Francisco.. Signed by Judge Jeffrey S. White on 8/23/10. (jjoS, COURT STAFF) (Filed on 8/23/2010) [Transferred from California Northern on 11/12/2010.]
Aug 24, 2010	<u>14</u>	ORDER by Judge JEFFREY S. WHITE granting 12 Motion for Pro Hac Vice for James A. Wilson (jjoS, COURT STAFF) (Filed on 8/24/2010) [Transferred from California Northern on 11/12/2010.]
Sep 2, 2010	<u>15</u>	ASSOCIATION of Counsel by OCLC Online Computer Library Center, Inc.. (Wisoff, Carl) (Filed on 9/2/2010) [Transferred from California Northern on 11/12/2010.]
Sep 9, 2010	<u>18</u>	Certificate of Interested Entities by OCLC Online Computer Library Center, Inc. identifying Corporate Parent OCLC Online Computer Library Center, Inc. for OCLC Online Computer Library Center, Inc.. Defendant's Certificate of Interested Persons or Entities (Wisoff, Carl) (Filed on 9/9/2010) [Transferred from California Northern on 11/12/2010.]
Sep 9, 2010	<u>17</u>	Declaration of Bruce Crocco in Support of 16 MOTION to Transfer Case Defendant's Notice of Motion and Motion;

		Memorandum of Points and Authorities in Support of Motion to Transfer Venue MOTION to Change Venue Declaration of Bruce Crocco in Support of Motion to Transfer Venue Pursuant to 28 U.S. C. Section 1404(A) filed by OCLC Online Computer Library Center, Inc.. (Related document(s) 16) (Wisoff, Carl) (Filed on 9/9/2010) [Transferred from California Northern on 11/12/2010.]
Sep 9, 2010	<u>1</u> <u>6</u>	MOTION to Transfer Case Defendant's Notice of Motion and Motion; Memorandum of Points and Authorities in Support of Motion to Transfer Venue, MOTION to Change Venue filed by OCLC Online Computer Library Center, Inc.. Motion Hearing set for 10/29/2010 09:00 AM in Courtroom 11, 19th Floor, San Francisco. (Attachments: # 1 Proposed Order)(Wisoff, Carl) (Filed on 9/9/2010) [Transferred from California Northern on 11/12/2010.]
Sep 10, 2010		***Deadlines terminated pursuant to the filing of the motion (Duplicate deadlines) 16 MOTION to Transfer Case. (jjoS, COURT STAFF) (Filed on 9/10/2010) [Transferred from California Northern on 11/12/2010.]
Sep 13, 2010	<u>1</u> <u>9</u>	ORDER SETTING BRIEFING SCHEDULE -Set/Reset Deadlines as to 16 MOTION to Transfer Case Defendant's Notice of Motion and Motion; Memorandum of Points and Authorities in Support of Motion to Transfer Venue MOTION to Change Venue., ORDER Responses due by 9/27/2010. Replies due by 10/4/2010. Signed by Judge Jeffrey S. White on 09/13/10. (sis, COURT STAFF) (Filed on 9/13/2010) Modified on 9/13/2010 (sis, COURT STAFF). [Transferred from California Northern on 11/12/2010.]
Sep 27, 2010	<u>2</u> <u>4</u>	Request for Judicial Notice re 20 Memorandum in Opposition, filed by Innovative Interfaces, Inc., SkyRiver Technology Solutions, LLC. (Attachments: # 1 Exhibit Exhibits A-C)(Related document(s) 20) (Shartsis, Mary) (Filed on 9/27/2010) [Transferred from California Northern on 11/12/2010.]
Sep 27, 2010	<u>2</u> <u>3</u>	DECLARATION in Opposition to 16 MOTION to Transfer Case Defendant's Notice of Motion and Motion; Memorandum of Points and Authorities in Support of Motion to Transfer Venue MOTION to Change Venue Declaration of James Hofbauer filed by Innovative Interfaces, Inc., SkyRiver Technology Solutions, LLC. (Related document(s) 16) (Shartsis, Mary) (Filed on 9/27/2010) [Transferred from California Northern on 11/12/2010.]
Sep 27, 2010	<u>2</u> <u>2</u>	DECLARATION in Opposition to 16 MOTION to Transfer Case Defendant's Notice of Motion and Motion; Memorandum of Points and Authorities in Support of Motion to Transfer Venue MOTION to Change Venue Declaration of Leslie Straus filed by Innovative Interfaces, Inc., SkyRiver Technology Solutions, LLC. (Attachments: # 1 Exhibit Exhibits A-B)(Related

		document(s) 16) (Shartsis, Mary) (Filed on 9/27/2010) [Transferred from California Northern on 11/12/2010.]
Sep 27, 2010	<u>2</u> <u>1</u>	DECLARATION in Opposition to 16 MOTION to Transfer Case Defendant's Notice of Motion and Motion; Memorandum of Points and Authorities in Support of Motion to Transfer Venue MOTION to Change Venue Declaration of Mary Jo Shartsis filed by Innovative Interfaces, Inc., SkyRiver Technology Solutions, LLC. (Attachments: # 1 Exhibit Exhibits A-E)(Related document(s) 16) (Shartsis, Mary) (Filed on 9/27/2010) [Transferred from California Northern on 11/12/2010.]
Sep 27, 2010	<u>2</u> <u>0</u>	Memorandum in Opposition re 16 MOTION to Transfer Case Defendant's Notice of Motion and Motion; Memorandum of Points and Authorities in Support of Motion to Transfer Venue MOTION to Change Venue filed by Innovative Interfaces, Inc., SkyRiver Technology Solutions, LLC. (Attachments: # 1 Proposed Order [Proposed] Order)(Shartsis, Mary) (Filed on 9/27/2010) [Transferred from California Northern on 11/12/2010.]
Oct 4, 2010	<u>2</u> <u>5</u>	Reply Memorandum re 16 MOTION to Transfer Case Defendant's Notice of Motion and Motion; Memorandum of Points and Authorities in Support of Motion to Transfer Venue MOTION to Change Venue Defendant's Reply in Further Support of its Motion to Transfer Venue filed by OCLC Online Computer Library Center, Inc.. (Wisoff, Carl) (Filed on 10/4/2010) [Transferred from California Northern on 11/12/2010.]
Oct 28, 2010	<u>2</u> <u>6</u>	ORDER by Judge Jeffrey S. White GRANTING 16 Motion to Transfer Venue.(jswlc2, COURT STAFF) (Filed on 10/28/2010) [Transferred from California Northern on 11/12/2010.]
Nov 1, 2010	<u>2</u> <u>8</u>	Transferred case to USDC-Southern Ohio. (hdj, COURT STAFF) (Filed on 11/1/2010) [Transferred from California Northern on 11/12/2010.]
Nov 1, 2010	2 7	*** FILED IN ERROR. DOCUMENT LOCKED. DOCUMENT TO BE REFILED LATER. *** Transferred case to USDC-Southern Ohio, Cincinnati. (hdj, COURT STAFF) (Filed on 11/1/2010) Modified on 11/1/2010 (ewn, COURT STAFF). [Transferred from California Northern on 11/12/2010.]
Nov 12, 2010	<u>3</u> <u>0</u>	NOTICE of Docketing Transfer by Clerk of Southern District of Ohio (kk2)
Nov 12, 2010		Judge Michael H. Watson and Magistrate Judge Terence P Kemp added. (er1)
Nov 12, 2010	<u>2</u> <u>9</u>	Case transferred in from District of California Northern; Case Number 3:10-cv-03305. Original file electronic copy of transfer order and docket sheet received.
Nov 15, 2010	<u>3</u> <u>1</u>	Notice by Clerk of Southern District of Ohio of Pro Hac Vice Rules as to Attorneys Arthur Joel Shartsis, Mary Jo C Shartsis, Robert E Schaberg, Simone Marie Katz-O'Neill & Carl Brandon

		Wisoff (kk2)
Nov 22, 2010	<u>3</u> <u>2</u>	Unopposed MOTION for Extension of Time to File Answer re 1 Complaint and to Extend Date for Opposition to Motion to Dismiss by Defendant OCLC Online Computer Library Center, Inc. New dates requested 12/13/2010 & 1/14/2011. (Wilson, James) Modified on 11/23/2010 to clarify text (kk2)
Nov 23, 2010	<u>3</u> <u>3</u>	ORDER granting 32 Motion for Extension of Time to Answer. OCLC Online Computer Library Center, Inc. answer due 12/13/2010. Plaintiff's Memorandum in Opposition due by 01/14/2011. Reply due by 01/31/2011. Signed by Magistrate Judge Terence P Kemp on 11/23/2010. (sr)
Nov 24, 2010	<u>3</u> <u>4</u>	NOTICE: Initial Conference set for 1/4/2011 @ 4:00pm in chambers before Magistrate Judge Terence P Kemp - (Attachments: # 1 Important Notice-3, # 2 Notice re discovery) (wh1)
Dec 1, 2010	<u>4</u> <u>0</u>	NOTICE of Appearance by Thomas Leslie Long for Plaintiffs Innovative Interfaces, Inc. & SkyRiver Technology Solutions, LLC (Long, Thomas)
Dec 1, 2010	<u>3</u> <u>9</u>	MOTION for Leave to Appear Pro Hac Vice of Robert E. Schaberg by Plaintiffs Innovative Interfaces, Inc. & SkyRiver Technology Solutions, LLC. (Filing fee \$ 200) (Attachments: # 1 Certificate of Good Standing) (Kincaid, Robert)
Dec 1, 2010	<u>3</u> <u>8</u>	MOTION for Leave to Appear Pro Hac Vice of Richard F. Munzinger by Plaintiffs Innovative Interfaces, Inc. & SkyRiver Technology Solutions, LLC. (Filing fee \$ 200) (Attachments: # 1 Certificate of Good Standing) (Kincaid, Robert)
Dec 1, 2010	<u>3</u> <u>7</u>	MOTION for Leave to Appear Pro Hac Vice of Mary Jo Shartsis by Plaintiffs Innovative Interfaces, Inc. & SkyRiver Technology Solutions, LLC. (Filing fee \$ 200) (Attachments: # 1 Certificate of Good Standing) (Kincaid, Robert)
Dec 1, 2010	<u>3</u> <u>6</u>	MOTION for Leave to Appear Pro Hac Vice of Arthur J. Shartsis by Plaintiffs Innovative Interfaces, Inc. & SkyRiver Technology Solutions, LLC. (Filing fee \$ 200) (Attachments: # 1 Certificate of Good Standing) (Kincaid, Robert)
Dec 1, 2010	<u>3</u> <u>5</u>	NOTICE of Appearance by Robert Myron Kincaid, Jr for Plaintiffs Innovative Interfaces, Inc. & SkyRiver Technology Solutions, LLC (Kincaid, Robert)
Dec 2, 2010	<u>4</u> <u>2</u>	CERTIFICATE OF SERVICE re 40 Notice of Appearance of Thomas Leslie Long by Plaintiffs Innovative Interfaces, Inc. & SkyRiver Technology Solutions, LLC (Long, Thomas) Modified on 12/3/2010 to clarify text (kk2)
Dec 2, 2010	<u>4</u> <u>1</u>	CERTIFICATE OF SERVICE re 35 Notice of Appearance of Robert Myron Kincaid, Jr by Plaintiffs Innovative Interfaces, Inc. & SkyRiver Technology Solutions, LLC (Kincaid, Robert) Modified on 12/3/2010 to clarify text (kk2)

Dec 3, 2010	<u>4</u> <u>4</u>	ORDER granting 36 , 37 , 38 , and 39 Motion for Leave to Appear Pro Hac Vice of Arthur J. Shartsis, Mary Jo Shartsis, Richard F. Munzinger, and Robert E. Schaberg. Signed by Magistrate Judge Terence P Kemp on 12/3/2010. (pes1)
Dec 3, 2010		PHV Filing fee re: 36 , 37 , 38 , and 39 (A Shartsis, MJ Shartsis, Munzinger & Shaberg): \$ 800, receipt number COL15114 (pes1)
Dec 3, 2010	<u>4</u> <u>3</u>	Joint MOTION to Stay Discovery by Plaintiffs Innovative Interfaces Inc., SkyRiver Technology Solutions LLC & Defendant OCLC Online Computer Library Center, Inc.. (Wilson, James)
Dec 13, 2010	<u>4</u> <u>5</u>	MOTION to Dismiss by Defendant OCLC Online Computer Library Center, Inc. Responses due by 1/14/2011 (Attachments: # 1 Exhibit 1) (Brewer, Martha)
Dec 22, 2010	<u>4</u> <u>6</u>	Unopposed MOTION for Extension of Time to File Memorandum in Opposition to Defendant's 45 Motion to Dismiss by Plaintiffs Innovative Interfaces, Inc. & SkyRiver Technology Solutions, LLC. New date requested 2/4/2011. (Attachments: # 1 Text of Proposed Order) (Kincaid, Robert) Modified on 12/30/2010 to add doc link to mtn (kk2)
Dec 29, 2010	<u>4</u> <u>8</u>	NOTICE: Initial Conference RESET for 2/8/2011 @ 1:45pm in chambers before Magistrate Judge Terence P Kemp (wh1)
Dec 29, 2010		Reset Deadlines as to 45 MOTION to Dismiss . Responses due by 2/4/2011. (jcw1)
Dec 29, 2010	<u>4</u> <u>7</u>	ORDER granting 46 Motion for Extension of Time to File Response to 45 Motion to Dismiss. New date 2/4/11. Signed by Magistrate Judge Terence P Kemp on 12/29/10. (jcw1) Modified on 12/30/2010 to add doc link to mtn to dismiss (kk2)
Jan 24, 2011	<u>4</u> <u>9</u>	NOTICE: Initial Conference RESET for 3/29/2011 @ 1:30pm by teleconference before Magistrate Judge Terence P Kemp -Robert Kincaid Jr will initiate conf call to 614.719.3410 (wh1) (wh1).
Feb 4, 2011	<u>5</u> <u>1</u>	NOTICE of Request for Judicial Notice re 50 Response in Opposition to Motion by Plaintiffs Innovative Interfaces, Inc. & SkyRiver Technology Solutions, LLC (Shartsis, Mary Jo) Modified on 2/7/2011 to clarify text (kk2)
Feb 4, 2011	<u>5</u> <u>0</u>	RESPONSE in Opposition re 45 MOTION to Dismiss filed by Plaintiffs Innovative Interfaces, Inc. & SkyRiver Technology Solutions, LLC. (Shartsis, Mary Jo)
Feb 22, 2011	<u>5</u> <u>2</u>	REPLY to Response to 45 MOTION to Dismiss filed by Defendant OCLC Online Computer Library Center, Inc. (Brewer, Martha)
Mar 7, 2011	<u>5</u> <u>3</u>	First MOTION for Leave to File a Surreply in Opposition to OCLC Online Computer Library Center, Inc.'s 45 Motion to Dismiss by Plaintiffs Innovative Interfaces, Inc. & SkyRiver Technology Solutions, LLC. (Long, Thomas) Modified on 3/8/2011 to add doc link (kk2)

Mar 16, 2011	<u>5</u> <u>4</u>	RESPONSE in Opposition re 53 First MOTION for Leave to File a Surreply in Opposition to OCLC Online Computer Library Center, Inc.'s 45 Motion to Dismiss filed by Defendant OCLC Online Computer Library Center, Inc. (Brewer, Martha)
Mar 22, 2011	<u>5</u> <u>5</u>	RULE 26(f) REPORT by Plaintiffs Innovative Interfaces, Inc., SkyRiver Technology Solutions, LLC & Defendant OCLC Online Computer Library Center Inc. (Attachments: # 1 Exhibit A - Stipulated Protective Order, # 2 Exhibit B - Agreed Protective Order) (Schaberg, Robert) Modified on 3/23/2011 to correct filers (kk2)
Mar 23, 2011	<u>5</u> <u>7</u>	STIPULATED PROTECTIVE ORDER. Signed by Magistrate Judge Terence P Kemp on 3/23/2011. (pes1)
Mar 23, 2011	<u>5</u> <u>6</u>	AGREED PROTECTIVE ORDER REGARDING NON-WAIVER OF PRIVILEGE. Signed by Magistrate Judge Terence P Kemp on 3/23/2011. (pes1)
Mar 29, 2011		Initial Pretrial Conference held on 3/29/2011 before Magistrate Judge Terence P. Kemp. (jv)
Apr 14, 2011	<u>5</u> <u>8</u>	ORDER granting 43 Motion to Stay. All discovery is stayed pending a ruling on the defendant's motion to dismiss. Signed by Magistrate Judge Terence P Kemp on 04/14/2011. (sr)

Dockets and Filings, JUSTIA.COM,
<http://dockets.justia.com/docket/ohio/ohsdce/2:2010cv01017/142122/> (last visited May 9, 2011).

Appendix D

Apr 1982	Purchased Total Library System from The Claremont Colleges in California. HP/3000 based system.
May 1, 1983	Purchased Integrated Library System (ILS) purchased from Lister Hill Center of National Library of Medicine. Development of Local Library System discontinued.
Aug 1, 1983	OCLC acquires Avatar to assist in the development of LS/2000.
Jun 1, 1983	OCLC Launches LS/2000 library automation system.
Feb 1, 1987	OCLC acquires ALIS I and I software from Data Phase to be marketed under the new name of LS/2.
Apr 1, 1990	OCLC sells Local System Division to Ameritech Information Systems.
Feb 1, 1991	OCLC acquires UTLAS from Thomas Canada Limited.
Jun 1, 1993	OCLC Acquires Information Dimensions, Inc., from Battelle Memorial Institute.
Jul 1, 1997	OCLC sells Information Dimensions to Gores Technology Group. (IDI became part of OpenText in June 1998.)
Oct 1, 1997	OCLC acquires Blackwell North America's authority control service business.
Feb 1, 1999	OCLC acquires WLN.
Dec 1, 1999	OCLC and PICA enter joint ownership agreement.
Feb 1, 2000	OCLC acquires PAIS (Public Affairs Information Service).
Oct 1, 2000	OCLC acquires Canadian-based Library Technical Services.
Oct 1, 2000	OCLC becomes exclusive distributor for ILLiad software developed by Virginia Tech and Atlas Systems.
Jan 1, 2002	OCLC acquires netLibrary.
May 1, 2002	OCLC enters partnership with Olive Software.
Jun 1, 2002	OCLC enters into partnership with DiMeMa Inc. for CONTENTdm.
Aug 1, 2004	OCLC absorbs 24/7 Reference Service from Metropolitan Cooperative Library System.
Dec 1, 2004	OCLC sells PAIS to CSA.
Jun 1, 2005	OCLC PICA acquires Sisis Informations-systeme.
Nov 1, 2005	OCLC PICA acquires Fretwell-Downing Informatics Group.
Jan 1, 2006	OCLC acquires assets of Openly Informatics.
Jul 1, 2006	RLG combines with OCLC
Aug 14, 2006	OCLC acquires DiMeMa
Jul 1, 2007	OCLC acquires remaining shares of OCLC PICA, B.V.
Jan 1, 2008	OCLC acquires EZProxy from Useful Utilities
Sept. 12, 2008	OCLC acquires AmLib
Aug 1, 2009	OCLC sells Preservation Service Center assets to Backstage Library Works
Mar 17, 2010	OCLC sells NetLibrary assets to EBSCO