

AALL Special Committee on Open Access  
Final Report  
June 14, 2005

The AALL Special Committee on Open Access was charged with identifying the relevant issues for the legal community concerning Open Access and determining what role if any the Association should play in the current Open Access debate. Our interim report published as a Members Briefing in the April 2005 issue of AALL Spectrum outlines the issues affecting the legal community and the general contributions AALL might take. The committee does recommend that AALL take an active role in promoting and assisting in the open access movement. Our final report reviews these issues briefly and lists the specific steps which we believe should be taken.

Issues:

Legal scholarship<sup>1</sup> is a natural match with the principles of open access. Open Access is generally defined as the electronic publishing of scholarly work that is freely made available without copyright restraints other than attribution. In law, the school published journal is the principal medium for scholarly publication. Unlike scientific literature, our print subscription costs are relatively small, most journals are subsidized by law their law schools, and authors do not have to pay to publish. The entire process is seen as part of the educational process and scholarly tradition that expects and activity engages in the sharing of information. This sharing of information has become even more enhanced in the digital world as authors published their articles on their own websites and repositories such as SSRN and BePress.

Open Access can greatly enhance this sharing and distribution of legal scholarship. The legal profession has not made its scholarship as freely available as it could be. Cornell's Legal Information Institute has made an extraordinary contribution in making primary law available to the general public. Making scholarly materials as equally accessible would be a tremendous service to scholars outside the legal profession and members of the general public, both in the United States and abroad.

Despite these advantages, there are still issues that need to be resolved. Many student journal editors require authors to remove digital versions of their articles upon publication in print. Some authors comply, some negotiate different licensing agreements, and many authors just do what they want despite what licensing agreements provide.

Another issue that has not been resolved yet is the issue of the subject tags for the metadata. Many repositories are not searchable in full-text. Rather, an abstract is searchable along with whatever subject terms are assigned. These may be from a

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<sup>1</sup> We limited our exploration of open access to law journals. Monographs play a more minor role in legal scholarship, and their commercial nature would limit the applicability of OA.

controlled list such as BePress' use of the subject headings from the Current Index to Legal Periodicals. Other repositories may rely on whatever terms are assigned by the person posting the article. The result is inadequate retrieval by search engines.

The Committee has just begun to address the critical issue of what constitutes a good repository. Free sources for electronic legal scholarship include SSRN, BePress, the web pages of authors, their law schools, and the publishing journals. Should scholarship be available in one or a small number of repositories of national scope or is it better to have each journal establish and maintain its own individual repository? Beyond this question, what are the critical features for the repository? Can SSRN or BePress provide us with the model repository?

#### AALL Role:

The possible actions AALL might take fall into three areas: metadata standards and repository issues, education, and copyright /licensing agreements.

The greatest contribution law librarians and AALL can make is in the establishment of a standardized list of subjects to be used for the subject metadata tags. These will greatly enhance retrieval of articles. A possible future contribution arising from this is that law librarians themselves might eventually be able to play a role in the assignment of subjects to articles posted by their faculty or institutions. Establishing the standardized vocabulary may mean creating a new list or it may involve adopting an existing list already used by to index our scholarly literature.

Beyond the metadata, we need to continue to examine what is the desirable repository. Our professional experience with both SSRN and BePress is relatively new. We need to evaluate these and other national discipline-focused repositories as well as local, publisher controlled repositories.

Academic law librarians are in an excellent position to educate our faculty and students about the advantages of an Open Access environment. We work directly with faculty, with student editors, and with our schools' technology staffs. We can promote licensing agreements that encourage sharing of scholarly articles and assist our student editors in adopting favorable agreements as well as developing their own electronic archives. The committee should continue to explore how best to spread the word. Our initial thoughts are that a web page should be developed which can include model licensing agreements and identify those schools and journals that are utilizing them.

For Open Access to exist, journals will need to adopt copyright/licensing agreements that permit authors to post their articles in various repositories such as SSRN and BePress. Initially, we would have recommended that the Copyright Committee draft such as model agreement. Just recently, however, Larry Lessig and others announced the Open Access Law Project as part of the Science Commons. See <http://science.creativecommons.org/literature/oalaw>. This includes an Open Access

Model Publishing Agreement. We see no value to multiple models. We prefer that the Copyright Committee review this model and, if it is acceptable, give its approval of the model. Beyond this we do not see a role for AALL in the copyright issue.

While we urge AALL to support OA initiatives, we are not asking that the Executive Board or membership pass a resolution to this effect at this time. A resolution would probably be more appropriate after a model licensing agreement is identified. A resolution would not have to wait until the adoption of a list of subject headings.

Conclusion:

The task force does find that there is a role for the American Association of Law Libraries in the Open Access debate. The Executive Board should support the principles of Open Access in legal scholarship. We recommend the following specific steps be taken for the coming year:

That the Special Committee on Open Access continue for another year in order to undertake activities promoting Open Access;

That the Special Task Force on Open Access be expanded to include members knowledgeable with metadata issues.

That the committee create or adopt a list of subject headings that can be used in assigning metadata for electronically published articles;

That the committee continue to work with the Copyright Committee on selecting a standardized licensing agreement to be used by authors and journals.

That the committee continue its investigation on the important criteria for a repository, evaluating both the current options as well as what might be available in the near future.

Respectfully submitted,

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